

WP(C) 3269/2016

BEFORE

HON'BLE MR. JUSTICE UJJAL BHUYAN

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Ujjal Bhuyan, J.

Heard Ms. R Choudhury, learned counsel for the petitioner, Ms. G Sarma, learned counsel for respondent No.1 and Mr. M Bhagabati, learned Govt. Advocate, Assam for respondent Nos.2 to 4.

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of orders dated 28.03.2016 and 29.04.2016, passed by the learned Member, Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri in BNGN/FT/ No.1 695/2007.

Petitioner is facing a proceeding under the Foreigners' Act 1946 on the allegation that she is a foreigner having illegally entered into India on or after 25.03.1971. This proceeding has been registered as BNGN/FT/ No.1695/2007.

On receipt of notice from the Tribunal, petitioner had appeared and submitted written statement. However, the order sheet of the proceeding which has been placed on record discloses default on the part of the petitioner thereafter. On 28.03.2016 for failure of the petitioner to submit evidence on affidavit, case was fixed on 29.04.2016 for arguments. On 29.04.2016, petitioner had filed an application along with evidence in chief of DW1, DW2 and DW3 on affidavit and requested the Tribunal to accept the same. However, learned Member did not accept the prayer made on behalf of the petitioner and rejected the application fixing 26.05.2015 for arguments.

Learned counsel for the petitioner submits that thereafter case has been fixed on 08.06.2016 for arguments.

After hearing learned counsel for the parties and upon due consideration, we are of the view that it would be in the interest of justice, if the evidence tendered by the petitioner is taken into consideration. As noticed above, evidence of DW1, DW2 and DW3 on affidavit were filed before the Tribunal along with an application on 29.04.2016. We feel that Tribunal may take on record the said evidence along with any documents sought to be exhibited allowing the State to cross-examine the defence witnesses and thereafter to proceed with the arguments of the case in accordance with law. Accordingly, orders dated 28.03.2016 and 29.04.2016 are set aside. Evidence of DW Nos.1, 2 & 3 along with the documents sought to be exhibited be taken on record with liberty to the State to cross-examine the said witnesses. Consequently, petitioner shall appear before the Tribunal along with the aforesaid three witnesses on 08.06.2016 for their cross-examination whereafter, Tribunal shall proceed in accordance with law.

This disposes of the writ petition. No costs.