

GAHC010132982019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 4104/2019

1:GEETA @ GITA SUTRADHAR (PAUL)
W/O- BABLU @ NIBARAN SUTRADHAR, R/O- VILL- DHENUDHARA, P.S.
GOHPUR, DIST- BISWANATH, ASSAM

VERSUS

1:UNION OF INDIA AND 5 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, NEW DELHI

2:STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
ASSAM SECRETARIAT
DISPUR
GHY-6

3:ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:OFFICE OF THE STATE COORDINATOR OF NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
GHY-5
KAMRUP (M)
ASSAM

5:DY. COMMISSIONER
BISWANATH
P.O. P.S. DIST- BISWANATH
ASSAM

6:SUPERINTENDENT OF POLICE (B)
BISWANATH
P.O. P.S. AND DIST- BISWANATH
ASSA

Advocate for the Petitioner : MR. R PHUKAN

Advocate for the Respondent : ASSTT.S.G.I.

:: BEFORE ::

HON'BLE MR. JUSTICE MANOJIT BHUYAN

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

:: ORDER ::

31.07.2019

(Manojit Bhuyan, J)

Heard Mr. R. Phukan, learned counsel for the petitioner as well as Mr. J. Payeng, learned counsel representing respondent nos.2, 5 and 6. Ms. A. Borgohain, learned counsel represents respondent no.3 whereas Ms. U. Das, learned counsel appears for respondent no.4. None appears for respondent no.1.

Petitioner assails order/opinion dated 31.05.2016 passed by the Foreigners' Tribunal- 4th, Tezpur, Gohpur, Sonitpur, in F.T. Case No.281/2015, declaring her to be a foreigner, having entered into the State after 25.03.1971.

It appears from the materials available on record that consequent upon service of notice dated 21.09.2015, the petitioner appeared before the Tribunal on 07.10.2015 and on 05.11.2015 filed written statement wherein it is stated that she was born and brought up at 1 No. Kalighat village under Kotowali in the district of Sonitpur, Assam. It is also

stated that she is an elector of No.8 Natabari Constituency of Cooch Bihar (West Bengal), her mother is a voter of Cooch Bihar West Assembly Constituency and her father late Sashipada Paul purchased a land in the year 1967. But the petitioner could not produce a single document with the written statement. Moreover, the petitioner did not file evidence-on-affidavit and took time on 27.11.2015 and 06.01.2016 and remained absent on subsequent dates. In such a situation, an adverse view was taken by the Tribunal and the impugned order/opinion dated 31.05.2016 was rendered.

Mr. Phukan submits that if the petitioner could adduce evidence in support of her citizenship, the Tribunal would not have declared her as foreigner. Further, that she came to learn about the impugned order only when her husband was arrested on 03.05.2019.

It is seen that the Tribunal had no option but to affirm the reference made against the petitioner in the absence of any documents or evidence supporting her claim. In this we find no hesitation but to agree with the findings and opinion rendered by the Tribunal. Mere filing of written statement without supporting documents or evidence cannot entitle a proceedee to make claim that he/she is not a foreigner. Although the petitioner projected that she is an Indian citizen, however, failed to make proof in accordance with law.

In the course of hearing it was informed that the petitioner's husband was arrested on 03.05.2019 and then she came to know about the impugned order. It is seen that since the date of the order i.e. 31.05.2016 until the date of arrest of her husband on 03.05.2019, the petitioner made no effort to assail the order/opinion of the Tribunal. In this the petitioner has demonstrated total negligence and laches on her part, disentitling her to seek equity, besides not having a clear case on merits warranting interference to the impugned opinion.

We would also observe that the Tribunal rendered the impugned opinion/order upon due appreciation of the materials available on record. We do not find any infirmity in the findings and opinion of the Tribunal. It is not the case of the petitioner that there had been violation of the principles of natural justice and/or that she was denied opportunity

to discharge her burden, as required under Section 9 of the *Foreigners Act, 1946*. We would further observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out by the petitioner that interference is warranted on ground that the Tribunal had acted on evidence which is legally impermissible and/or that it refused to admit admissible evidence and/or that the Tribunal gave findings not supported by any evidence at all. In other words, the petitioner has not been able to make out a case demonstrating any errors apparent on the face of the record.

On the discussions and findings above, we find no merit in the writ petition. Accordingly, the same stands dismissed, however, without any order as to cost.

A copy of this order be made part of the case records of the Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant