

GAHC010120482018



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

Case No. : WP(C)/3669/2018

AMENA BIBI @ AMELA BIBI
W/O NURUL HAQUE
R/O VILL- HONTRADAHA
MOUZA- DAMAKA CHAKA BAUSHI, P.S. SARBHOG,
DIST. BARPETA, ASSAM,

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN,
NEW DELHI- 1.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER

BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN - 781301

4:THE SUPERINTENDENT OF POLICE (B)

BARPETA
P.O.AND DIST. BARPETA

ASSAM
PIN- 781301

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI
TO BE REP. BY CHIEF ELECTION COMMISSIONER OF INDIA

NEW DELHI-1.

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION

ASSAM
BHANGAGARH
LACHIT NAGAR
GUWAHATI -5

Advocate for the Petitioner : DR. B AHMED

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

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 30.06.2022
(N. Kotiswar Singh, J)

Heard Mr. N. Haque, learned counsel for the petitioner. Ms. L. Devi, learned standing counsel appears on behalf of CGC as well as NRC; Ms. A. Verma, learned Standing Counsel appears on behalf of Foreigners Tribunal; Ms. U. Das, learned Government Advocate appears on behalf of State of Assam and Mr. A. Ali, learned Standing Counsel appears on behalf of Election Commission of India.

2) In this petition, the petitioner has challenged the impugned order dated 27.04.2018 passed by learned Foreigners' Tribunal No. 11th Barpeta at Sarbhog in F. T. Case No. Bpt/11th /F.T.1168/2017.

3) Learned counsel for the petitioner submits that the opinion cannot stand the scrutiny of law in as much as, the learned Tribunal while rendering opinion did not analyze the evidence on record nor gave any reasons for not accepting those evidences on record and as such, it amounts to non application of mind on documents so adduced.

4) In order to appreciate the aforesaid submission made by the learned counsel, we have gone through the opinion and accordingly extract the relevant portion:

“SUMMARY

1. *The name of the father of the OP was not recorded in terms of the Reference as the OP did not furnish the same at the time of Inquiry.*
2. *However OP has contested the reference projecting one Sahyat SK. S/O-Sakinuddin SK. Who was a citizen of India as his name was recorded in the NRC of 1951 and in the voter lists of 1960 and 1970 vide Exts A, A1 & B respectively as her father.*
3. *There is no document filed by the OP as her Exhibit, which links the OP to her projected father Sahiyat SK.*
4. *Ext F which is the Gaonburah certificate suggest the doubtful nature of the nationality of the OP.*
5. *In the absence of any documentary Evidence supporting the claim of the OP of her Indian Nationality, the evidence of the OP recorded as DW 1 also stands rejected.*

OPINION

In my opinion the OP has failed to discharge the burden of proving that she is not a foreigner.

Reference has been answered in affirmative.

ORDER

OP is a foreigner of Post 1971 stream liable to deportation”

- 5) Having gone through the summary & opinion, we also find that there is no discussion about the admissibility, reliability, creditability, in other words the evidentiary value, which is required to be undertaken by Tribunal, if evidences are adduced, which has not been done in the present case .
- 6) Under the circumstances, we agree with the submission advanced that there

has been total non application of mind by the learned Tribunal, while giving his opinion. There was no proper analysis and discussion of the evidences on record on the basis of which the Tribunal is expected to render his opinion.

7) Accordingly, for the above reasons, we allow this petition by setting aside the impugned impugned order dated 27.04.2018 passed by learned Foreigners' Tribunal No. 11th Barpeta at Sarbhog in F. T. Case No. Bpt/11th /F.T.1168/2017.

8) We accordingly, remand the matter to the learned Tribunal for re-consideration. The learned Tribunal would be required to analyze the evidence on record and give reasons for accepting or not accepting the evidences on record before it gives its finding as to the citizenship status of the petitioner.

9) The petitioner will appear before the learned Tribunal within a period of one month from the date of receipt of a certified copy of this Order.

10) Since the citizenship of the petitioner has come under cloud, the earlier order passed by this Court on 12.06.2018 will continue to operate till culmination of the proceeding before the learned Tribunal by passing an opinion.

11) The learned counsel for the petitioner submits that though the petitioner has exhibited the certificate issued by the Gaonbora as Ext. F, he was not examined and prays that he may be allowed to examine the same. In this regard, the petitioner will file necessary application before the Tribunal and the Tribunal will consider and dispose of the same in accordance with law.

12) The writ petition is, accordingly, disposed of.

JUDGE

JUDGE

Comparing Assistant