

GAHC010007602018



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

Case No. : WP(C)/206/2018

SMTI SEFALI RANI DAS
W/O PRABODH DAS
D/O LAKSHMI DAS @ LAKHI DAS
R/O VILL- MOHANKHAL
P.S. SONAI, DIST. CACHAR, ASSAM

VERSUS

THE UNION OF INDIA
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI, INDIA,

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI
INDIA

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

4:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION NRC

ASSAM
BHANGAGARH
GUWAHATI-5

5:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
DIST. CACHAR

ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
CACHAR
SILCHAR
DIST. CACHAR
ASSAM

7:THE FOREIGNEERS TRIBUNAL 6TH
SILCAHR
DIST. CACHAR
ASSA

Advocate for the Petitioner : MR. B P SINHA

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

20.07.2021

[N. Kotiswar Singh, J.]

Heard Mr. B.P. Sinha, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned ASGI, for respondent No.1; Ms. A. Verma, learned Special Counsel, FT, appearing for respondent Nos.3, 5, 6 and 7; Mr. A. Bhuyan, learned standing counsel, ECI, appearing for respondent No.2 and Ms. L. Devi, learned standing counsel, NRC, appearing for respondent No.4.

2. Considering the nature of the case and also after hearing the submission of the learned counsel for the parties, we are of the view that the matter may be remanded to the learned Foreigners' Tribunal 6th, Silchar, Assam, for reconsideration.

3. The petitioner was proceeded against before the Foreigners' Tribunal 6th, Silchar,

Assam, in F.T. 6th Case No.404/2015 on the reference being made. After being duly served the notice, the petitioner appeared before the Foreigners' Tribunal. According to the petitioner, she filed her written statement along with certain documents. However, unfortunately the petitioner did not get proper legal advice from her engaged counsel, who not only failed to give proper legal advice but also failed to appear before the Foreigners' Tribunal. The petitioner, also not being well versed with the legal provisions and also because of the communication gap between the petitioner and her engaged counsel, remained absent before the learned Tribunal on several occasions resulting in the Tribunal passing the *ex-parte* order declaring her to be a foreigner, as mentioned in paragraph 14 of the writ petition. It has been submitted that there was no willful negligence or disregard on the part of the petitioner about the proceeding as the petitioner duly appeared and filed her written statement. Accordingly, the petitioner has pleaded before this Court that the petitioner may be permitted to approach the Tribunal again to prove her case as an Indian citizen.

4. Ms. A. Verma, learned counsel for the State, considering the circumstances has also not raised any serious objection to the same.

5. We are of the view that citizenship being a very important right of a person should ordinarily be decided on merit rather than by way of default as has happened in the present case and as such, under the circumstances as discussed above, we allow the petitioner to appear before the learned Tribunal again to prove her case that she is a citizen of this country and not a foreigner.

6. Consequently, the impugned order dated 19.09.2017 passed by the learned Member, Foreigners' Tribunal 6th, Silchar, Assam in F.T. 6th Case No.404/2015 is set aside. The petitioner

will appear before the Foreigners' Tribunal within a period of 1(one) month from today.

7. With this order, the petition stands disposed of.

8. Send back the LCR forthwith.

Sd/- Soumitra Saikia
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant