

GAHC010245902019



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

Case No. : WP(C)/7810/2019

BULBULI BIBI @ BULBULI KHATUN
W/O- MD. NAZIMUDDIN SEIKH, D/O- LT GIYAS FAKIR, VILL- HEKAIPARA,
P.O. CHANDRAPARA, P.S. KOKRAJHAR, DIST- KOKRAJHAR, B.T.C.
(ASSAM), PIN- 783360

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

4:THE DY. COMMISSIONER
KOKRAJHAR
DIST- KOKRAJHAR
ASSAM
PIN- 783370

5:THE SUPERINTENDENT OF POLICE (B)
KOKRAJHAR
P.O. AND P.S. KOKRAJHAR

DIST- KOKRAJHAR
ASSAM
PIN- 783370

6:THE NATIONAL REGISTER OF CITIZEN
REP. BY THE STATE COORDINATOR
ASYUT PLAZA
BHANGAGARH
GHY-05
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. P KATAKI

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

:: BEFORE ::

HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE MANISH CHOUDHURY
ORDER

22.03.2021

(N. Kotiswar Singh, J)

Heard Mr. P. Kataki, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC appearing for respondent No. 1; Mr. A. Kalita, learned Special Counsel, F.T. for respondent nos. 3, 4 and 5; Ms. B. Das, learned Standing Counsel, ECI for respondent no. 2; and Ms. L. Devi, learned Standing Counsel, NRC appearing for respondent No. 6.

2. The case of the petitioner is that the petitioner had been earlier proceeded against before the Foreigners' Tribunal, Kokrajhar in case no. K/FT/D/771/11(B/KJR/D,voter/2010/164) and the said Tribunal vide opinion dated 30.09.2013 had declared the petitioner not to be a foreigner of 1966-1971 stream and whose name had been wrongly recorded in the D- voter list and the petitioner was set at liberty.

3. The grievance of the petitioner is that the petitioner had been proceeded again in spite of the same earlier order rendered on 30.09.2013 declaring him to be not a foreigner. By, the subsequent proceeding in K/FT/D/714/10, (No. B/KJR/D.Voter/2010/108,dated 23.10.2010),

the learned Tribunal vide impugned opinion dated 18.07.2017 has declared the petitioner as a foreigner of the post 1971 stream.

4. The petitioner acknowledged that the petitioner after receipt of notice in the subsequent proceeding in K/FT/D/714/10, (No.B/KJR/D.Voter/2010/108, dated 23.10.2010) appeared before the Tribunal and brought to the notice of the Tribunal, about the earlier proceeding. In the written statement it was also mentioned that she was proceeded against by the Foreigners Tribunal, Kokrajhar in F.T. Case No. K/FT/D/771/11 and the Tribunal gave the opinion in her favour stating that she was not a foreigner and her name should not have been recorded in the "D" voters list. However, the Tribunal did not accept the same as the name of the father was dissimilar and also rejected the other evidences as not of any probative evidentiary value and accordingly made the reference against her.

5. We have perused the original records. From the records, it is evident that a report was made by the Government Verification Officer on which basis, the reference was made. In the said report, it is noted that the name of the person proceeded is recorded as Smt. Bulbuli Bibi with the address of Hekaipara and the name of her husband has been recorded as Najimuddin in the year of birth as 1981.

6. In the deposition as well as in the documents filed by the proceedee, the proceedee, she had described herself as Bulbuli Bibi @ Bulbuli Khatun, D/o Giyas Fakir, W/o Najimuddin of village Hekaipara under P.S. and District Kokrajhar and in the earlier, proceeding, the proceedee was described as Bulbuli Bibi, daughter of Late Giapuddin Fakir of village Hekaipara under P.S. and District-Kokrajhar. We have also perused the Annexure-IV, the voters list of 1997 relates to 30 no. East Kokrajhar Legislative Assembly Constituency. Though two references were made above, it appears that the persons sought to be proceeded in the aforesaid two references appear to be the same person. In both the proceedings the name of the proceedee has been recorded as Bulbuli Bibi and the husband's name has been recorded in one reference as Najimuddin and in the another as Nazim. The village is also, the same, viz., Hekaipara, P.O. Titaguri, P.S. and district-Kokrajhar. From the hand writings, in respect of both the reports and reference orders these appear to be recorded by the same person on 18.05.2005. The Government Verification Officer report also appears to be written by the same officer on the same date. In respect of in one, the proceedee has been described as

Smti. Bulbuli Bibi, w/o Najimuddin and in the other, the proceedee has been recorded as Shri Bulbuli Bibi and the "Nazim" has been shown against the column of Father/Mother/Husband's name. We have also compared by the letters of reference made by Superintendent of Police of Kokrajhar in both the cases. Though the reference case/memo numbers are different, both these bare the same signature. The name of the husband has been Najimuddin in one reference and in the other reference, the husband's name is described as Nazim. The name of village and the police station however remain the same.

7. Thus it appears that the only difference or inconsistency is about the difference is the name of the husband, viz, Nazim and Najimuddin. We feel that this difference is minor and not substantial and hence can be ignored. Similarly, the name of the father of the proceedee has been recorded as late Giapuddin Fakir in the first proceeding and in the second proceeding, it has been recorded as Giyas Fakir. We are also of the opinion that these are minor variations, and as such the same can be ignored.

8. From the above, it appears that it was the same person who was sought to be proceeded against. However the finding given in the first proceeding under Case no. K/FT/D/771/11(B/KJR/D, voter/2010/164) vide opinion dated 30.09.2013 that the proceedee is not a foreigner of 1966-1971 stream and her name should not have been recorded in the 'D' voters list. The said finding given in earlier opinion dated on 30.09.2013 has not been interfered with and has attained finality. Accordingly, we are of the view that the subsequent finding opinion given by the Foreigners' Tribunal in K/FT/D/714/10, (No. (B/KJR/D.voter/2010/108, dated 23.12.2010) rendered 18.08.2017 is barred by principle of res-judicata, as has been held by the Hon'ble Apex Court in judgment reported in Abdul Kuddus Vs Union of India, (2019) Vol. 6 SCC 604, that in the proceedings before the Foreigners' Tribunal, the principle of res-judicata is applicable.

9. Accordingly, we are satisfied that the petitioner was earlier declared not to be a foreigner in the aforesaid proceedings of Foreigners' Tribunal, Kokrajhar, the subsequent proceeding will not lie as it will be hit by the principle of res-judicata.

10. For the reasons discussed above, we allow this petition and we also hold that as the petitioner had not been declared a foreigner by the Foreigners' Tribunal in the earlier

proceeding the petitioner will be declared as an Indian Citizen. We also found that her husband is an Indian Citizen and has not been declared a foreigner.

JUDGE

JUDGE

Comparing Assistant