GAHC010267022017

2026:GAU-AS:15337-DB

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

Case No. : WP(C)/6385/2017

FAZILA KHATUN @ FOJLATUN NESSA
W/O ABDUL SUKKUR D/O MAKTAJIL HUSSAIN R/O VILL- USHNABAS, P.S. BADARPUR DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM 3 ORS
REP. BY THE MINISTRY OF HOME, DISPUR, GUWAHATI-6.

2:SUPERINTENDENT OF POLICE BORDER

KARIMGANJ

3:UNION OF INDIA

REP. BY MINISTRY OF HOME AFFAIRS
NEW DELHI.

4:DEPUTY COMMISSIONER ELECTION
KARIMGANJ

Advocate for the Petitioner : MR.S K GHOSH, MS.F AHMED

Advocate for the Respondent : ASSTT.S.G.I., GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 12/10/2026

(K.R. Surana, J)

1. Heard Ms. F. Ahmed, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel, FT & Border Matters; Mr. V.K. Chopra, learned CGC; Mr. P. Sarmah, learned Senior Government Advocate, Assam and Mr. A.I. Ali, learned Standing Counsel, ECI.

2. By filing this writ petition under the Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 29/08/2016 passed by the learned Member, Foreigners Tribunal-I, Karimganj, in FT Case No. 763/2009, arising out of Police Enquiry No. D/3288/98 of the Superintendent of Police, Karimganj, by which the petitioner was declared to be a foreigner post 25th March, 1971 stream.

3. In view of the order of remand which the Court proposes to pass, the evidence has not been discussed in this order.

4. It would suffice to mention that the petitioner, in spite of receiving notice of the proceeding, remained absent without contesting the reference and accordingly, by order dated 02/11/2011, the petitioner was declared *ex-parte* to be a foreigner on failure to discharge her burden under Section 9 of the Foreigners Act, 1946. The said order was assailed by the petitioner by filing a writ petition, being WP(C) No. 4910/2015 and this Court by order dated 01/02/2016, allowed the said writ petition, granting the petitioner an opportunity of hearing by filing her written statement and evidence and the learned Tribunal was directed to dispose of the proceedings, in accordance with law, within a period of 60 days from the date of appearance of the petitioner, i.e. from 15/02/2016. The petitioner appeared before the learned Tribunal and filed her written statement and she had also examined herself as OPW-1 and she had exhibited 13 documents.

5. From the impugned opinion dated 29/08/2016, it appears that the learned

Tribunal had observed that in the absence of cross examination, the exhibited documents should not have been admitted, but in order to expedite the matter, as directed by this Court, those documents were admitted. However, the learned Tribunal had discarded the Kabinnama (Ext.- 12) and the School Certificate (Ext.-13), and it was held that the petitioner was unable to link herself with her projected father. Accordingly, the petitioner was declared to be a foreigner of Post 1971 stream.

6. Thereafter, the petitioner preferred the Review Petition for setting aside the opinion dated 29-08-2016 and the said learned Tribunal, by an order dated 19-08-2017, rejected the review petition on the grounds that the order was not *ex-parte* and that the petitioner did not appear for cross examination and accordingly justified the opinion dated 29-08-2016.

7. It may be mentioned that the learned standing counsel for the Border and FT Matters has opposed the proposed order of remand by submitting that the petitioner was at default in appearing for cross-examination and therefore, the learned Tribunal had rightly held that the petitioner had failed to prove her link with her projected father. It is further submitted that the opinion was passed in the year 2016 and if the matter is remanded after a period of 10 years, it would not serve the interest of the State because the reference is of the year 1998 and that the petitioner would continue to reside in India, despite being declared a foreigner on two occasions.

8. On a perusal of the order sheet of the learned Tribunal, it is noted that on 13-07-2016, the petitioner had submitted her attendance but when the matter was called, she did not appear and the learned Tribunal had issued a bailable warrant of arrest for production of the petitioner on the next date. The matter was fixed on 28-07-2016 for cross-examination, as last chance. On 28/07/2016, the learned Tribunal had recorded that this Court had directed to complete the proceeding within 60 days and therefore, one last opportunity was again granted to the petitioner for cross-examination and argument and the matter was fixed on 04/08/2016. On 04-08-2016,

11-08-2016 and 29-08-2016, none appeared for the petitioner and the petitioner was declared to be a foreigner of post 1971 stream.

9. In the application for review, which was filed by the petitioner before the learned Tribunal, the petitioner had stated that she had submitted her examination-in-chief as PW-1 on 06/05/2016 and the next dates were fixed on 27/05/2016 and 16/06/2016, for her cross-examination, she was present but she was not cross-examined by the State counsel. She had stated that on 13-07-2016, she was present before the Court without engaging her counsel because on 11-07-2016, the advocates for the two Bar associations of Karimganj District had abstained from conducting or participating in any case pending before the Presiding Officer of the said learned Tribunal, by adopting a joint resolution. She had stated that the petitioner had appeared before the learned Tribunal on 04-08-2016 and 11-08-2016, but due to non-cooperation of her learned counsel, she was unable to submit her *hazira* (court attendance) and accordingly the *ex-parte* opinion was again passed on 29-08-2016.

10. It appears from the order sheet of the learned Tribunal that the petitioner had filed her attendance on 13-07-2016 and it also appears that the entire order sheet from 05-03-2016 till 29-08-2016, i.e. 05-03-2016, 11-03-2016, 18-03-2016, 26-04-2016, 06-05-2016, 27-05-2016, 16-06-2016, 13-07-2016, 28-07-2016, 04-08-2016, 11-08-2016 and 29-08-2016, the learned Tribunal did not record the presence of either the learned counsel for the petitioner or the learned APP. This reinforces the statement made by the petitioner before the learned Tribunal in her review petition that since 13-07-2016, the 2 (two) Bar Associations of Karimganj District (now Sribhumi District) were not cooperating with the said learned Tribunal.

11. Under such circumstances, the petitioner has been able to show cause of her absence before the learned Tribunal, which was brought to the notice of the learned Tribunal by filing a review petition, seeking setting aside the *ex-parte* opinion.

12. Therefore, notwithstanding the objection raised by the learned Standing Counsel, Border and FT Matters, this Court finds that there were good reasons which prevented the petitioner from filing her *hazira* (Court attendance) and not being able to pursue her case. In the event of non-cooperation by the learned counsel, the Court is inclined to accept that appropriate steps could not have been taken by the petitioner, of her own, for proving of the documents.

13. Accordingly, having found that the petitioner has suffered prejudice for non-appearance of the learned counsel and to take appropriate steps on and from 13-07-2016 till the opinion was passed on 29-08-2016, the petitioner deserves one more opportunity to participate in the proceeding before the learned Tribunal.

14. Accordingly, the writ petition stands allowed and the impugned opinion dated 29/08/2016 passed by the learned Member, Foreigners Tribunal-I, Karimganj, in FT Case No. 763/2009, arising out of the Police Enquiry No. D/3288/98 of the Superintendent of Police, Karimganj, is set aside.

15. The matter is remanded back to the said learned Tribunal. The petitioner is directed to appear before the said learned Tribunal within the outer time limit of 13-11-2026 and by producing a certified copy of this order, shall be ready to face cross-examination by the State Counsel. On the date of appearance, the petitioner shall also take steps for production of any witness on which she relies on. The learned Tribunal shall dispose of the reference in accordance with law and in accordance with the provisions of Paragraph 3(14), of the Foreigners (Tribunals) Order, 1964, which is *para-materia* to the provisions of Paragraph 17(14) of the Immigration and Foreigners Order, 2025.

16. It is made clear that if the petitioner fails to appear on the date and does not take steps for which liberty is granted, it would be open to the learned Tribunal to treat the petitioner as not having taken steps in terms of this order and it would be

permissible for the said learned Tribunal to pass appropriate order in accordance with law and the opportunity so granted by this Court shall stand lapsed.

17. The Registry shall send back the Tribunal's records expeditiously along with a copy of the order, to be made a part of the record by the said learned Tribunal.

18. It is clarified that the petitioner was granted bail by order date 30-10-2016 on furnishing a security of Rs. 5000/- and accordingly, on her appearance before the Tribunal, the petitioner shall file fresh bail application for consideration by the learned Tribunal, which shall be considered in accordance with law, and shall be subject to its satisfaction. The bail granted by this Court by order dated 30/10/2016, is extended till 13/11/2026, or the date of appearance of the petitioner before the said learned Tribunal, whichever is earlier.

JUDGE **JUDGE**

Comparing Assistant