

2025 LiveLaw (SC) 238

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.**

SPECIAL LEAVE PETITION (CRIMINAL) NO.12481/2023; FEBRUARY 11, 2025
REZIA KHATUN @ REZIA KHATUN *versus* UNION OF INDIA & ORS.

Foreigners Act, 1946; Section 3 - Foreigners (Tribunal) Order, 1964 - Whether a Foreigners Tribunal has the authority to reopen and review its own concluded judgment on citizenship. Held, Foreigners Tribunal lacks the power to sit in appeal over its own judgment or reopen a concluded issue of citizenship. The Court set aside the Tribunal's order dated December 24, 2019, which reopened an inquiry into the appellant's citizenship despite a prior final order on February 15, 2018, declaring the appellant an Indian citizen. The Court also set aside the High Court's judgment upholding the Tribunal's action, noting that the State failed to challenge the original order and no legal provision permitted the Tribunal to review its own findings. The February 15, 2018, order was deemed final and unchallengeable by the State or Union. (Para 7, 8)

[Arising out of impugned final judgment and order dated 09-06-2023 in WP(C) No. 2811/2020 passed by the Gauhati High Court]

For Petitioner(s): Mr. Pijush Kanti Roy, Sr. Adv. Mrs. Kakali Roy, Adv. Mr. Rajesh Kumar Chaurasia, AOR Mr. Sujeet Kumar, Adv. Mr. Shailendra Kumar Nirmal, Adv. Mr. Nitin Kumar Gupta, Adv.

For Respondent(s): Mr. K.M.Nataraj, A.S.G. Mr. Shuvodeep Roy, Adv. Mr. Sharath Nambiar, Adv. Mr. Anuj Srinivas Udupa, Adv. Mr. Karunesh Kr.Shukla, Adv. Ms. Satvika Thakur, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Shuvodeep Roy, AOR Mr. Deepayan Dutta, Adv. Mr. Saurabh Tripathi, Adv. Mr. Ankit Agarwal, AOR Ms. Viyushti Rawat, Adv. Mr. Ashish Shukla, Adv.

ORDER

1. Leave granted.

2. Foreigners Tribunal was established under the Foreigners (Tribunal) Order, 1964 (for short, 'the 1964 order'). The 1964 Order was issued by the Central Government in exercise of powers under Section 3 of the Foreigners Act, 1946 (for short, 'the 1946 Act'). An adjudication was made by the Tribunal in F.T. Case No.14/2016, (State of Assam vs. Must. Rezia Khatun). By order dated 15th February, 2018 after consideration of oral and documentary evidence on record, the Tribunal came to the conclusion that the appellant herein is not a foreigner from Bangladesh on or after 25th March, 1971. The reference at the instance of the State Government was answered accordingly.

3. Then comes second order dated 24th December, 2019 in F.T. Case No.2854 of 2012 again filed at the instance of State of Assam. The Tribunal entertained a fresh reference and passed an order holding that Tribunal is not divested of power to scrutinize the documents and materials and even findings in the earlier proceedings. Therefore, the Tribunal decided to entertain the reference and directed the appellant to file a written statement. The said order was challenged by the present appellant by filing a writ petition under Article 226 of the Constitution of India. By the impugned judgment, the High Court upheld the power of the Tribunal to go into the question notwithstanding the earlier order and rejected the argument of the appellant based on the plea of *res judicata*.

4. When we made a query to the learned counsel appearing for the State whether the Tribunal has power of review, he could not show any such provision.

5. What stares at the face is that the first order dated 15th February, 2018 was passed after hearing the learned Assistant Government Advocate who appeared for the State. His appearance is specifically noted. In fact, in the opening part of the order, the Tribunal has noted the case was registered upon a reference made by the Superintendent of Police under clause 3(1) of the 1964 order and that is how the State was represented by a Government Advocate. The second page of the order records that firstly, evidence was adduced of the appellant and secondly, arguments on behalf of the State were heard. After hearing the arguments of the State Advocate, after considering the oral evidence of the respondents and documents produced by her, the Tribunal recorded a categorical finding that the appellant was not a foreigner.

6. Now coming to the second order dated 24th December, 2019, it is based on a Police Enquiry No.816 of 1998. The State was a party to order dated 15th February, 2018. The State did not challenge the said order by approaching the High Court. The State did not apply for recall of the order. The State did not file any proceedings for declaration that the order is nullity.

7. In the second order dated 24th December, 2019, the Tribunal goes to the extent of holding that it is not divested with the power to scrutinize the documents and even findings in the earlier proceedings. The order indicates that the Tribunal wants to sit over in an appeal against its own concluded judgment and order. Such power can never be exercised by the Tribunal. The remedy of the State Government or for that matter the Central Government was to challenge the order dated 15th February, 2018.

8. The High Court has missed the real issue. The real issue was whether the Tribunal could have reopened the case by recording a finding that it can scrutinize the findings recorded by the same Tribunal in earlier judgment which had become final. As the Tribunal was powerless to do it, only on that ground, we set aside the impugned judgment of the High Court as well as the impugned order dated 24th December, 2019 in F.T. Case No.2854/2012.

9. Accordingly, F.T. Case No.2854/2012 stands disposed of.

10. The Appeal is accordingly allowed.

11. This observation made today in February, 2025 does not mean that now it is open for the State or Union of India to challenge the first order dated 15th February, 2018.

12. Pending application(s), if any, shall stand disposed of.

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