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

Case No. : WP(C)/5903/2024

BEGUM ZAN
W/O- MANSUR ALI, VILL- CHENGULIA, PS- SORBHOG, DIST.- BARPETA, ASSAM

VERSUS

UNION OF INDIA AND 6 ORS
TO BE REPRESENTED BY SECRETARY TO THE GOVT. OF INDIA, HOME DEPARTMENT, NORTH BLOCK, NEW DELHI-1

2:THE STATE OF ASSAM
TO BE REPRESENTED BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06

3:ADDITIONAL DIRECTOR GENERAL OF POLICE
ASSAM (BORDER)
RUPNAGAR
BHANGAGARH
GUWAHATI-05

4:ELECTION COMMISSION OF INDIA
REP. BY SECRETARY
NIRVASAN SADAN
NEW DELHI-1

5:NATIONAL REGISTRAR OF CITIZENS-NRC
STATE CO-ORDINATOR
ACHYUT PLAZA

BHANGAGARH
GUWAHATI-5
ASSAM

6:DEPUTY COMMISSIONER
BARPETA
ASSAM
PIN- 781301

7:SUPERINTENDENT OF POLICE (BORDER)
BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MR. S B LASKAR, MR. H A LASKAR,MR M AHMED,MR. A S TAPADER

Advocate for the Respondent : DY.S.G.I., SC, F.T,SC, ELECTION COMMISSION.,GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the petitioner	: Mr. A.S. Tapadar, Advocate.
For respondent Nos.2, 3 and 7	: Mr. J. Payeng, standing counsel.
For respondent No.4	: Ms. P. Barua, standing counsel.
For respondent No.5	: Mr. G. Sarma, standing counsel.
Date of hearing	: 13.12.2024.
Date of judgment	: 09.01.2025.

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J)

Heard Mr. A.S. Tapadar, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned standing counsel for FT matters, appearing for respondent nos. 2, 3 and 7, Ms. P. Barua, learned standing counsel for respondent no.4, and Mr. G. Sarma, learned standing counsel for respondent

no.5.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to extend the time limit for registering with FRRO, Barpeta vide opinion dated 29.06.2020, passed by the learned Member, Foreigners Tribunal No.11th, Barpeta in (Bpt/11th) F.T. 1437/2017 [P.E. No. IM(D)T Case No. 2535/97, dated 19.12.97].

3) It may be mentioned that the reference made against the petitioner was answered by holding that the petitioner has entered into Assam after 01.01.1966 but before 25.03.1971 and that the petitioner has failed to prove that she and her father had come to Assam before 01.01.1966. Nonetheless, it was provided in the opinion that the petitioner may register herself with the concerned FRRO in accordance with the provisions prescribed under section 6A (3) of the Citizenship Act, 1955 within 30 (thirty) days from the date of the order.

4) In the 'motion' stage, the parties were heard on maintainability of the writ petition. The preliminary question of law which arises for determination in this case is as follows:-

> Whether the petitioner, who is detected and held as foreigner who has migrated into India (Assam) between 01.01.1966 and 24.03.1971 (both inclusive), but has not registered herself with the Foreigners Regional Registration Officer, Barpeta (i.e. FRRO, Barpeta for short) within the prescribed time limit as per the Citizenship Rules, 2009, will be eligible for the benefit of citizenship?

5) It may be stated that in this regard, the Constitution Bench decision of the Supreme Court of India, in the case of "*In Re: Section 6A of the*

Citizenship Act, 1955", reported in *(2024) 0 Supreme(SC) 942: 2024 INSC 789*, has held, inter alia, in paragraph 218(d) to the effect that the immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and who have been detected as foreigners but have not registered themselves with the registering authority within the prescribed time limit as per the Citizenship Rules, 2009 will no longer be eligible for the benefit of citizenship. The said sub-paragraph 218(d) is quoted below:-

> *d. Immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and who have been detected as foreigners but have not registered themselves with the registering authority within the prescribed time limit as per the Citizenship Rules, 2009 will no longer be eligible for the benefit of citizenship*.

6) The learned counsel for the petitioner has submitted that the observation that has been made in paragraph 218(d) of the aforesaid judgment is the minority view of the Hon'ble Single Judge, whereas the majority verdict does not subscribe to the minority view. In support of his submissions, the learned counsel for the petitioner has placed reliance on the following cases, viz., (i) *Secundrabad Club v. C.I.T.-V, 2023 LiveLaw (SC) 660: 2023 INSC 736*, (ii) *Satish Mondal v. The Union of India & Ors., W.P.(C) 4650/2018, decided on 23.09.2024*, (iii) *Sakat Ali @ Chakkat Ali v. The Union of India & Ors., W.P.(C) 1495/2023, decided on 17.03.2023*, (iv) *Shukorun Nessa @ Sukur Nahar & Ors. v. The Union of India & Ors., W.P.(C) 4802/2022, decided on 05.12.2022*, (v) *Nazir Uddin & Anr. v. The Union of India & Ors., W.P.(C) 6326/2018, decided on 04.02.2020*, (vi) *Surman Ali & Ors. v. The Union of India & Ors., W.P.(C) 6644/2019, decided on 17.12.2019*, (vii) *Laba Das & Anr., v. The Union of India & Ors., W.P.(C) 4647/2018, decided on 23.07.2018*, and (viii) *Prithvi Cotton Mills v. Broach Borough Municipality, AIR 1968 Guj 124*.

7) It would be relevant to quote Rule 19 of the Citizenship Rules,

2009, which reads as under:-

> *19. Registering authority for the purpose of sub-section (3) of section 6A and form for registration.-*
> *(1) The Central Government may, for the purposes of sub-section (3) of section 6A, appoint an officer not below the rank of Additional District Magistrate as the registering authority for every district of the State of Assam.*
> *(2) An application for registration under sub-section (3) of section 6A shall be made in Form XVIII, by the person to the registering authority for the district in which such person is ordinarily a resident within a period of thirty days from the date of receipt of order of the Foreigners Tribunal declaring such person as a foreigner;*
> *"Provided that the registering authority may, for reasons to be recorded in writing, extend the said period to such further period as may be justified in each case but not exceeding sixty days".*
> *(2A) A person who has been declared as a foreigner by the Foreigners Tribunal prior to 16th July, 2013 and has not been registered under sub-section (3) of Section 6A for the reason of non-receipt of order of the Foreigners Tribunal or refusal by the registering authority to register such person as a foreigner on account of delay may, within a period of thirty days from the date of receipt of the order passed by the Foreigners Tribunal, or, from the date of publication of this notification, make an application for registration in Form XVIII to the registering authority of the district in which such person is ordinarily a resident:*
> *Provided that the registering authority may, for reasons to be recorded in writing, extend the said period to such further period as may be justified in each case but not exceeding one hundred eighty days".*
> *(3) The registering authority shall, after entering the particulars of the application in a register in Form XIX, return a copy of the application under his seal to the applicant.*
> *(4) One copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam along with a quarterly return in Form XX.*

8) Therefore, the provision of Sub-Rule (2A) of Rule 19 is very specific in so far as time limit for registration is concerned.

9) Upon consideration of the cases cited by the learned counsel for the petitioner, the Court is constrained to hold that none of the cases cited by

the learned counsel for the petitioner are authority on the point that when the majority view is neither touched upon by the majority decision or that the majority decision is not contrary to the minority view, then also the directions contained in the minority decision cannot be treated as a binding precedent. In other words, in none of the cases cited by the learned counsel for the petitioner are authority on the point that when majority decision is silent on a particular point, then the minority decision of the Supreme Court of India has to be disregarded or ignored.

10) Therefore, briefly, the facts of the cited cases are adverted to below:-

a. The 6 (six) cases of *Satish Mondal (supra), Sakat Ali (supra), Shukorun Nessa (supra), Nazir Uddin (supra), Surman Ali (supra) and Laba Das (supra)* were cited to show that the co-ordinate Bench of this Court has been consistently passing orders to extend the time for a detected and adjudged foreigner by opinion rendered by the Foreigners Tribunals to have entered into Assam between 01.01.1966 to 25.03.1971 (both days inclusive) to register himself/ herself on good cause being shown. The said submissions cannot be accepted because the said decisions are no longer a binding precedent in light of the decision of the Supreme Court of India in paragraph 218(d) of the case of *In Re: Section 6A of the Citizenship Act, 1955*. Thus, the said cases cited by the learned counsel for the petitioner does not help the petitioner in any manner.

b. The case of *Secundrabad Club (supra)*, was cited to support the submissions that the observations made by the minority view

expressed by the Supreme Court of India was not the *ratio decidendi* and therefore, does not constitute a precedent. The Court is unable to accept the said submission because the observations made in paragraph 218(d) of the case of *In Re: Section 6A of the Citizenship Act, 1955* is a point decided by the Supreme Court of India, though by the Hon'ble Single Judge. The learned counsel for the petitioner has not been able to cite any decision of any Courts in India wherein it has been held that when the majority view have neither touched upon by the majority decision or that the minority view was not concurred by the majority decision, then the directions contained in the minority decision cannot be treated as a binding precedent. The said submission is thus, repelled. Thus, the case cited by the learned counsel for the petitioner does not help the petitioner in any manner.

c. The case of *Prithvi Cotton Mills (supra)* was cited for the point that minority opinion expressed by the Supreme Court of India is not binding. In this regard, it is seen that in paragraph 6 of the said judgment, it has been mentioned that "… *the learned Judges of the supreme Court were divided on the first question and a majority of four Judges held that, a rate was a levy on beneficial occupation and that, the connotation of that term included only a levy based on annual letting value and could not take within its purview a levy based on capital value. On that interpretation of the term "rate", their Lordships held that rule 350A and the consequential assessment and levy were void, and allowed the*

appeal. In that view of the matter, the majority of the learned Judges did not deal with the question of legislative competence and kept the question open. Sarkar, J., however, after observing that the contention that a rate did not include a levy on capital value was not raised in the High Court, disagreed with the majority view and held that, a rate could be imposed on the basis of capital value. On that view of the matter, the learned Judge proceeded to deal with the question of legislative competence and, in agreement with the judgment of the Bombay High Court under appeal, the learned Judge held that the rate in question fell within the purview of Entry 42 in List II of Schedule VII of the Government of India, Act, 1935, and was within the competence of the Provincial Legislature." Therefore, when the majority view was to keep the relevant issue open, the High Court of Gujarat had not accepted the minority view. Thus, the case cited by the learned counsel for the petitioner does not help the petitioner in any manner.

11) The learned counsel for the petitioner has not been able to demonstrate from the case of *Re: Section 6A of the Citizenship Act, 1955*, that there was a conflict between the majority opinion and the minority opinion given in paragraph 218(d) thereof. Therefore, the Court is of the considered opinion that the directions contained in paragraph 218(d) of the said case of *Re: Section 6A of the Citizenship Act, 1955*, is binding on this Court.

12) By the opinion dated 29.06.2020, passed by the learned Member, Foreigners Tribunal No.11th, Barpeta in (Bpt/11th) F.T. 1437/2017 [P.E. No. IM(D)T Case No. 2535/97, dated 19.12.97], the petitioner was given option to register herself within 30 days from the date of the opinion in accordance with

the provisions prescribed under section 6A(3) of the Citizenship Act, 1955. However, the petitioner did not avail the opportunity to register herself before the competent authority within the time allowed, or within the extended period as per proviso to Sub-Rule (2A) of Rule 19 of the Citizenship Rules, 2009 (as amended).

13) Therefore, this writ petition fails as this Court, being bound by the decision of the Supreme Court of India in the case of *Re: Section 6A of the Citizenship Act, 1955*, would not have power to extend time for the petitioner, namely, Smt. Begum Zan to register herself before the concerned and/or jurisdictional registering authority in terms of directions given in the opinion dated 29.06.2020, passed by the learned Member, Foreigners Tribunal No.11th, Barpeta in (Bpt/11th) F.T. 1437/2017 [P.E. No. IM(D)T Case No. 2535/97, dated 19.12.97].

14) In light of the discussions above, this writ petition is dismissed at the "motion" stage without issuing notice upon the respondents.

15) There shall be no order as to cost.

JUDGE **JUDGE**

Comparing Assistant