

GAHC010131082023



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

Case No. : Review.Pet./79/2023

DIPALI BISWAS
D/O LATE MOHENDRA KUMAR SARKAR @ MOHENDRA KUMAR SHIL
W/O- KHITISH @ KSHITISH CH.@ KHRITISH BISWAS, R/O- MALPUTA,
MORIGAON, P.O. MORIGAON, P.S. MORIGAON, DIST- MORIGAON, PIN-
784125, ASSAM

VERSUS

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

2:THE STATE OF ASSAM
BEING REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
ASSAM SACHIBALAYA
DISPUR
P.O. GHY-6

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE OFFICE OF THE STATE CO-ORDINATOR OF NATIONAL REGISTER OF
CITIZENS (NRC)
ASSAM
1ST FLOOR
ACHYUT PLAZA G.S..ROAD
BHANGAGARH
GHY-5
DIST- KAMRUP (M)

ASSAM

5:THE DY. COMMISSIONER
MORIGAON DISTRICT
ASSAM
PIN- 782105

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON DISTRICT
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. S CHAUHAN, MR. P MAZUMDER, N ALAM, MR. A R SHOME

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 26-02-2026

(K.R. Surana, J)

Heard Mr. S. Chauhan, learned counsel for the petitioner as well as Mr. G. Sarma, learned standing counsel for the Foreigners Tribunal, Mr. N. Kalita, learned standing counsel for the Election Commission of India, Mr. D.J. Das, learned CGC and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate.

2. This review application is directed against the order dated 26.11.2019, passed by this Court in WP(C) 3484/2019. By the said order, the writ petition was dismissed without interfering with the opinion dated 27.03.2019 passed by the learned Member, Foreigners Tribunal, No. 3rd, Morigaon, in Case No. F.T.(C) 284/2015, corresponding to Reference I.M.(D).T. Case No. 36/2005 by which Sri Khitish @ Kshitish Ch. @ Khritish Biswas, Dipali Biswas, Probin @ Prabin Biswas

and Sunita @ Sunitra Biswas were declared as illegal migrants of post 25.03.1971 stream.

3. It may be stated that out of the four petitioners in WP(C) 3484/2019, the opinion of the learned Tribunal was not interfered with regard to the present petitioner, who was the respondent no.2. In so far as the petitioner nos.1, 3 and 4 of WP(C) 3484/2019 are concerned by the order dated 26.11.2019, this Court directed them to appear before the learned Tribunal for fresh adjudication.

4. In this review application, the Court is concerned with the present petitioner, who was the respondent no.2 in WP(C) 3484/2019. Amongst others, the learned counsel for the petitioner has submitted that during the proceedings of WP(C) 3484/2019, he did not peruse the Tribunals record of F.T. (C) 284/2015. However, on a perusal of the said records in connection with this review petition, it has come to his notice that the Superintendent of Police (Border), Morigaon had submitted reference only against the husband of the petitioner no.2, namely, Khitish Biswas. Accordingly, it is seen that the learned Tribunal did not derive jurisdiction to proceed against the present petitioner.

5. Per contra, the learned standing counsel for the FT matters, has opposed the prayer made in this review application on the ground that this is not a new fact which has come to light, but these facts were already available when the writ petition was being heard.

6. On a perusal of the records of the Tribunal, we have noticed that the inquiry was directed only against the husband of the petitioner and it is in Form I and Form II of the report of the Inquiry Officer. The name of the petitioner and her two minor children also appeared. At page-12 of the Tribunals records, which is the reference to the erstwhile Illegal Migrants (Determination) Tribunal

which was exhibited in the proceedings as Ext.4, the reference is found to have been made only against Khritish Biswas and not against the present petitioner.

7. It is too well settled that the learned Tribunal would get jurisdiction only on the basis of the reference made before it. Therefore, the non-consideration of the said fact is accepted to be a good ground for interfering with this review application.

8. Resultantly, the order dated 26.11.2019 passed by this Court in WP(C) 3484/2019, thereby dismissing the said writ petition in respect of the petitioner no.2 is hereby recalled.

9. As there is no reference against the present petitioner, namely, Dipali Biswas, the opinion dated 27.03.2019 passed by the learned Member, Foreigners Tribunal, No. 3rd, Morigaon, in Case No. F.T.(C) 284/2015, corresponding to Reference I.M.(D).T. Case No. 36/2005 in respect of the present petitioner namely, Dipali Biswas, is not found to be sustainable in the absence of any reference.

10. However, the Court is further inclined to provide that this order shall not construed as a bar for the competent authority to make a fresh inquiry against the present petitioner and upon fresh inquiry, if the petitioner is suspected to be not an Indian, the competent authority will be entitled to take steps as they may be so advised.

11. The review petition stands allowed to the extent as indicated above thereby interfering with the order dated 26.11.2019 passed in WP(C) 3484/2019.

12. Let the records of the learned Tribunal be send back along with a copy of the order to be made a part of the record of the said learned Tribunal.

13. The learned standing counsel for the FT matter shall also transmit a downloaded copy of this order to the Superintendent of Police (Border), Morigaon and to the Home & Political (B) Department to bring the order to the notice of the said authority.

14. The petitioner shall also produce a certified copy of the order before the Superintendent of Police (Border), Morigaon to bring the order to the notice of the said authority.

15. No order as to cost.

JUDGE

JUDGE

Comparing Assistant