

GAHC010108002023



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

Case No. : WP(C)/3126/2023

MD. AMIR HUSSAIN
S/O- MD. ABDUL KADIR @ ABDUL KADIR ALI
R/O- VILL- KUYDOL,
P.S.- JAGIROAD,
DISTRICT- MORIGAON (ASSAM).

VERSUS

UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
GOVT. OF INDIA, SHASTRI BHAWAN,
TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

DEPARTMENT OF HOME AND POLITICAL

DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER OF MORIGAON
P.O. AND DISTRICT- MORIGAON

ASSAM
PIN- 782105.

4:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
P.O. AND DISTRICT- MORIGAON

ASSAM
PIN- 782105.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR OF NRC OF ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

02.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the respondents in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Mr. NK Das, learned counsel for the Deputy Commissioner, Morigaon.

2. The petitioner Md. Amir Hussain had been referred to the Foreigners Tribunal No.1, Morigaon for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT Case No. 141/2007.

3. The petitioner was served with the notice of the Tribunal and initially the

petitioner appeared before the Tribunal, but later on, without any acceptable reason, the petitioner did not attend the Tribunal any further. In the resultant situation, the ex-parte order dated 07.01.2012 was passed declaring the petitioner to be a foreigner.

4. Considering the conduct of the petitioner as reflected in the order of the Tribunal, no infirmity can be noticed in the ex-parte opinion dated 07.01.2012.

5. But, however, for the interest of justice, the petitioner is given one more opportunity to establish his case on merit by discharging the burden under Section 9 of the Foreigners Act, 1946. However, for the conduct of the petitioner as aforementioned, a cost of Rs. 5000/- is imposed on the petitioner to be deposited before the District Legal Services Authority, Morigaon and upon showing the proof of payment to appear before the Tribunal.

6. In view of the above, the ex-parte order dated 07.01.2012 is set aside.

7. Accordingly, the petitioner shall appear before the Foreigners Tribunal No.1, Morigaon on 10.07.2023. Upon appearance of the petitioner, the Tribunal may pass any order on merit.

8. It is stated that presently the petitioner is under detention in the detention camp at Goalpara. Accordingly, we direct the Superintendent of Police (Border), Morigaon to release the petitioner forthwith, so as to enable him to appear before the Tribunal at Morigaon. The Superintendent of Police (Border), Morigaon while releasing the petitioner/proceedee may obtain necessary information and documentation from him as required under the Rules for securing his presence. The Superintendent of Police (Border), Morigaon shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner.

9. It is made clear that the petitioner shall not leave the jurisdiction of Morigaon district without giving details of the place of destination and his/her place of stay to the Superintendent of Police (Border), Morigaon.
10. It is further made clear that failure on the part of the petitioner to provide the relevant mobile/contact number will warrant recalling of this release order.
11. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant