

GAHC010157712023



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

Case No. : WP(C)/4201/2023

MD. IDDISH ALI @ IDRISH ALI
S/O- LT. KAJIMUDDIN SHEK,
PERMANENT RESIDENT OF -
VILLAGE- KIRAKARA (CHAPARI),
P.S.- SIPAJHAR, DIST.- DARRANG(ASSAM),
PIN- 784115.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI, PIN- 110001.

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

HOME DEPARTMENT
DISPUR

GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE STATE ELECTION COMMISSION
ASSAM

HOUSEFED COMPLEX
DISPUR

GUWAHATI- 781006.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
(NRC) ASSAM
P.O. BHANGAGARH
GUWAHATI- 781005

DIST.- KAMRUP(M)
ASSAM.

5:THE DEPUTY COMMISSIONER
KAMRUP(M)
AT GUWAHATI
AT HENGRABARI
DIST.- KAMRUP(M) (ASSAM)

PIN- 781036.

6:THE DEPUTY COMMISSIONER
DARRANG
AT MANGALDAI

DIST.- KAMRUP (ASSAM)

PIN- 784125.

7:THE DEPUTY COMMISSIONER OF POLICE (B)
KAMRUP(M)
AT GUWAHATI

P.O.- PANBAZAR

DIST.- KAMRUP(M)
ASSAM

PIN- 781001

Advocate for the Petitioner : MR Z HUSSAIN

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

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

31.08.2023

(Lanusungkum Jamir, J)

Heard Mr. Z. Hussain, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC as well Standing Counsel, NRC representing the respondent Nos. 1 & 4; Mr. J. Payeng, learned Standing Counsel, Foreigners Tribunal for the respondent Nos. 2 & 7 as well as Mr. T. Pegu, learned Standing Counsel, Election Commission of India for the respondent No.3 and Mr. P. Sarma, learned Additional Government Advocate for the State respondent Nos. 5 & 6.

2. On reference made by the Sr. Superintendent of Police, Kamrup (M) with regard to the doubt of nationality of the petitioner, F. T. Case No. FT [K(M)-4]66/18 was registered against the petitioner. Thereafter, as the petitioner did not appear before the learned Tribunal, the Tribunal passed the *ex-parte* Order dated 30.08.2018 declaring the petitioner to be a foreigner who entered the State of Assam after 25.03.1971. Being aggrieved, this writ petition is instituted.

3. We have perused the *ex-parte* Order dated 30.08.2018 passed by the learned Foreigners Tribunal, No.4, Kamrup (M), Guwahati, wherein, it is indicated that the copy of the notice was affixed at a conspicuous part of the place in presence of witnesses where the proceede was originally traced and left without information to the referral authority. In view of that, the Tribunal drew a presumption of service of notice upon the petitioner/proceede and thereafter, passed the order.

4. In the present case in hand, as the petitioner has approached this Court challenging the *ex-parte* Order dated 30.08.2018, we are of the opinion that without entering into the

merits the matter should be remanded back to the Tribunal for the ends of justice.

5. Mr. J. Payeng, the learned Standing Counsel, Foreigners Tribunal has also raised no objection.

6. In that view of the matter, the *ex-parte* Order dated 30.08.2018 passed by the learned Foreigners Tribunal, No.4, Kamrup (M), Guwahati in F. T. Case No. FT [K(M)-4]66/18 is set aside.

7. At this stage, the learned counsel for the petitioner submits that the petitioner is in custody in connection with Pragjyotishpur P.S. Case No.90/19, registered under Section 3 of the Passport Entry into India Act, 1920.

8. The Superintendent of Central Jail, Guwahati is accordingly directed to produce the petitioner before the learned Foreigners Tribunal, No.4, Kamrup (M), Guwahati on **25.09.2023**. In the meantime, if the petitioner is already released on bail, he is directed to appear on the said date fixed i.e. on 25.09.2023.

9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant