

GAHC010171162023



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

**Case No. : WP(C)/4554/2023**

KRISHNA KONWAR @ KRISHNA MELANG  
SON OF LATE RANUBOR KONWAR,  
RESIDENT OF VILLAGE- MALPUTA,  
PO- UDARI,  
DISTRICT- MORIGAON, ASSAM,  
PIN- 782105.

VERSUS

THE ELECTION COMMISSION OF INDIA AND 4 ORS.  
REPRESENTED BY THE PRINCIPAL SECRETARY AND HAVING ITS OFFICE  
AT NIRVACHAN SADAN, ASHOKA ROAD,  
NEW DELHI- 11001.

2:THE CHIEF ELECTION COMMISSIONER  
ELECTION COMMISSION OF INDIA  
NIRVACHAN SADAN  
ASHOKA ROAD

NEW DELHI- 11001.

3:UNION OF INDIA  
THROUGH THE SECRETARY

MINISTRY OF LAW AND JUSTICE

GOVERNMENT OF INDIA  
AND HAVING ITS OFFICE AT SHASHTRI BHAWAN  
NEW DELHI- 11001.

4:MINISTRY OF HOME AFFAIRS  
GOVERNMENT OF INDIA

REPRESENTED BY ITS SECRETARY AND HAVING ITS OFFICE AT NORTH  
BLOCK

CENTRAL SECRETARIAT  
NEW DELHI- 11001.

5:THE STATE OF ASSAM  
REPRESENTED BY ITS PRINCIPAL SECRETARY

HEALTH AND FAMILY WELFARE DEPARTMENT

GOVERNMENT OF ASSAM

DISPUR  
GUWAHATI- 781006

ASSAM

**Advocate for the Petitioner** : MR K P PATHAK

**Advocate for the Respondent** : SC, ECI

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 09/08/2023**

Heard Mr. K.P. Pathak, learned senior counsel assisted by Mr. B. Das, learned counsel for the writ petitioner. I have also heard Mr. A.I. Ali, learned Standing Counsel, Election Commission of India, appearing on behalf of the respondent nos. 1 and 2. Ms. S. Baruah, learned CGC, is present on behalf of the respondent nos. 3 and 4. Mr. D. Nath, learned Senior Government Advocate, Assam, has appeared on behalf of the respondent no. 5.

The writ petitioner herein belongs to the Tiwa Community, which is a recognized Scheduled Tribe in Assam. He is also a voter of the No. 54 Morigaon Legislative Assembly Constituency (LAC). Being aggrieved by the projection made in draft proposal dated 20/06/2023 prepared by the Election Commission of India (ECI) in connection with delimitation of assembly constituencies in the State of Assam, the petitioner has approached this Court, *inter alia*, contending that as per the projection made in the draft proposal, there is strong possibility that the No, 54 Morigaon LAC, which has a sizeable population of Scheduled Tribes, will not be included in one of the 9(nine) reserved

constituencies in the State of Assam although the population pattern demands so.

Mr. Pathak, learned senior counsel for the writ petitioner has also invited the attention of this Court to the representation dated 06/07/2023 submitted before the ECI by the petitioner and several other voters of the constituency with a request to include the No. 54 Morigaon LAC as a reserved constituency for the Scheduled Tribes to submit that despite receipt of such representation, no action has been taken in the matter till today.

It is also the submission of the learned senior counsel for the writ petitioner that having regard to the population pattern and number of persons belonging to the ST category who are the permanent residents of Morigaon district of Assam, the proposed move on the part of the ECI not to declare one of the constituencies in Morigaon as reserved for ST, is not only in contravention of the mandate of Article 332(3) of the Constitution of India but the same also runs counter to the letter and spirit of section 9(a) of the Delimitation Act, 2002. Under such circumstances, the petitioner has prayed for an interim order from this Court staying the process of delimitation with regard to the Assembly constituencies falling in Morigaon District, till resolution of the controversy.

Mr. A.I. Ali, learned Standing Counsel, ECI, on the other hand, has opposed the prayer made in the writ petition by contending that in view of the order dated 24/07/2023 passed by the Hon'ble Supreme Court of India in ***Writ Petition (Civil) No. 51/2023 (Hirendranath Gohain Vs. Union of India and others)***, no interference in the delimitation process would be permissible at this stage. Mr. Ali further submits that the stand of the petitioner is merely based on the draft proposal, which is yet to be finalized. As such, the writ petition is pre-mature.

After going through the materials available on record and on hearing the submissions of the learned counsel for the parties, it appears that the case projected by the petitioner also finds due support from the request made by the Chief Secretary, Assam, vide communication dated 06/07/2023 addressed to the Deputy Election Commissioner of India whereby, it has been pointed out that the Tiwa Tribes residing in Assam, is an indigenous Tribe and constitute a sizeable community in Morigaon Constituency. Taking note of the same, the Assam Cabinet has also resolved to request the ECI to examine as to whether the No. 54 Morigaon LAC can be considered for reservation as a Scheduled Tribe Constituency.

However, the fact remains that till date no final decision has been taken by the ECI with regard to delimitation of constituencies and reservation of Assembly constituencies in the State of Assam and the process of delimitation is still under progress. Therefore, at this stage, this Court is not inclined to interfere in the matter. However, having regard to the facts and circumstances of the case and the

submissions made at the Bar, it is provided that before finalizing the draft proposal, the respondent no. 1 may examine the grievance of the petitioner, in the light of the provisions of Article 332(3) of the Constitution of India read with section 9(a) of the Delimitation Act, 2002 as well as the Cabinet resolution of the State Government of Assam and take appropriate decision in the matter, as may be warranted, in law as well as in the facts and circumstances of the case.

With the above observation, the writ petition stands disposed of.

**JUDGE**

*sukhamay*

**Comparing Assistant**