GAHC010028552024

2026:GAU-AS:16577-DB

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

Case No. : WP(C)/816/2024

MD ABDUL RASID @ ABDUL RACHID
S/O- LATE ABDUL SUBHAN,
R/O- VILLAGE BARABHETI GAON,
P.S- SOOTEA,
SUB DIVISION- BISWANATH, DIST- SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE DEPUTY COMMISSIONER
SONITPUR
TEZPUR
ASSAM

5:THE DEPUTY COMMISSIONER
BISWANATH ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
DIST- SONITPUR
P.O- TEZPUR
ASSAM

7:THE SUPERINTENDENT OF POLICE (B)
BISWANATH POLICE DISTRICT
BISWANATH CHARIALI
BISWANATH
ASSAM

8:THE OFFICER IN CHARGE
P.S- SOOTEA
DIST- SONITPUR
ASSA

Advocate for the Petitioner : MR. N N JHA, MR. MOHIT BERIA,MS M SAHOO,MR. M UDDIN

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 11.11.2026
(K.R. Surana, J)

Heard Mr. N.N. Jha, learned counsel for the petitioner. Also heard Mr. S. Chanda, learned CGC; Mr. G. Sarma, learned standing counsel for the FT and Border matters; Mr. A.I. Ali, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Abdul Rasid @ Abdul Rachid, has assailed the impugned *ex parte* opinion dated 10.11.2017, passed by the learned Member, Foreigners' Tribunal-6, Tezpur, in Case No. FT C (6)126/2017, arising out of

Memo No. TZP.(B)/09/3988 dated 19.11.2009, in connection with F.T. Case No. 410/09, by which the petitioner was declared to be a foreigner of post 25.03.1971 stream.

3. As per the said opinion, the notice was duly served as per the provisions of paragraph 3(5)(f) of the Foreigners (Tribunals) Order, 1964.

4. On perusal of the record, which was call for from the learned Tribunal, the process server's report clearly states that in the presence of the VDP Secretary, the notice was affixed at a conspicuous place of the village. Therefore, the finding by the learned Tribunal that notice was duly served in accordance with paragraph 3(5)(f) of the Foreigners (Tribunals) Order, 1964 is incorrect, which vitiates the impugned opinion as the public place where the notice was hanged was definitely not the last place of residence of the petitioner.

5. Accordingly, owing to the non-compliance of the provisions of paragraph 3(5)(f) of the Foreigners (Tribunals) Order, 1964, the impugned *ex parte* opinion dated 10.11.2017, passed by the learned Member, Foreigners' Tribunal-6, Tezpur, in Case No. FT C (6)126/2017 is set aside.

6. The petitioner, who is duly represented by his learned counsel, is directed to appear before the learned Member, Foreigners' Tribunal-6, Tezpur within an outer limit of 30 (thirty) days from the date of this order without requiring any fresh notice to be served for appearance and by filing a certified copy of this order, the petitioner shall also file his written statement as well as the relevant documents on which he intends to rely upon.

7. It is provided that on the date of appearance of the petitioner, he shall be ready and willing to take bail of such sum as may be deemed fit and proper

by the learned Tribunal. It is provided that the bail so granted by the learned Tribunal shall be ordered to remain valid for a period of 30 (thirty) days from the date of the opinion that may be passed by the said learned Tribunal.

8. In the event the petitioner fails to appear before the learned Tribunal within the time allowed, the learned Tribunal shall treat the petitioner as absent on call and proceed to pass a fresh opinion in accordance with law.

9. The learned Tribunal shall, as far as practicable, make an endeavour to render its opinion within the time allowed under Paragraph 17(14) of the Immigration and Foreigners Order, 2025.

10. The Registry shall return back the Tribunal's records along with a copy of this order to be made a part of the record.

11. The learned standing counsel for the FT and Border matters shall also transmit a downloaded copy of this order to the respondent authorities to bring the order to the notice of the said authorities.

12. This writ petition stands allowed with the order of remand as indicated above.

JUDGE **JUDGE**

Comparing Assistant