

GAHC010120642022



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

**Case No. : WP(C)/4123/2022**

ABDUL RAHMAN @ MD SAYAB ALI  
S/O- LATE ABDUL GAFUR @ GAFUR,  
VILL- LAWGAON, P.O- SOLMARI,  
P.S- NAGAON, SADAR,  
DIST- NAGAON, ASSAM, PIN-782002

VERSUS

THE UNION OF INDIA AND 5 ORS (F)  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS,  
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 DEPUTY COMMISSIONER  
NAGAON  
PIN-782002

4:THE ELECTION COMMISSION OF INDIA  
NEW DELHI-110001

5:THE STATE COORDINATOR  
NATIONAL REGISTER OF CITIZENS  
ASSAM  
BHANGAGARH  
GUWAHATI-05  
DIST- KAMRUP (M)

6:THE SUPERINTENDENT OF POLICE (B)  
NAGAON  
DIST- NAGAON  
PIN-78200

**Advocate for the Petitioner** : MR H R A CHOUDHURY

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH**  
**HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR**  
**ORDER**

**22-06-2022**

[N. Kotiswar Singh, CJ (Acting)]

Heard Mr. H. Ali, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC appearing for respondent no.1; Mr. G. Sarma, learned Special Counsel, F.T. appearing for respondent no.6; Ms. K. Phukan, learned Government Advocate, Assam, appearing for respondent nos. 2 & 3, Mr. A. Bhuyan, learned Standing Counsel, ECI, appearing for respondent no.4 and Mr. K.K. Parasar, learned Standing Counsel, NRC, appearing for respondent no.5.

2. Considering the nature of the case and after hearing the submission made by learned counsel for the parties, we are of the view that the matter can be disposed of at this stage without issuing any formal notice to the respondents.

3. This is the second round of litigation. By filing this petition the petitioner has

challenged the impugned *ex parte* order dated 02.03.2022 passed by the Foreigners Tribunal No.1, Nagaon, Assam in Misc. Case 2 /2022 arising out of Case No.1150/2012 (D), by which the prayer of the petitioner for setting aside *ex parte* order dated 31.08.2021 passed by the Foreigners Tribunal 1<sup>st</sup>, Nagaon in F.T. Case No.1150/2012 (D) by which the petitioner was declared as a foreigner who had entered into the territory of India (Assam) illegally on or after 25.03.1971 was rejected.

4. Earlier by filing WP(C) No.985/2019, the petitioner had prayed before this Court to set aside the *ex parte* order dated 31.08.2021 passed by the Foreigners Tribunal 1<sup>st</sup>, Nagaon in F.T. Case No.1150/2012 (D) whereby the petitioner was declared as a foreigner and this Court allowed the petition by allowing him to appear before the Tribunal again to prove his citizenship. However, according to the Tribunal though the petitioner appeared before the Tribunal regularly but after the lock down due to COVID-19 pandemic, the petitioner remained absent from 11.05.2020 to 31.07.2020. The Tribunal made the observation that the petitioner last appeared on 15.02.2020 and the next date was fixed on 25.03.2020 for evidence and cross-examination but in the meantime, the Tribunal's work got suspended due to lock down imposed on account of COVID-19 pandemic. The Tribunal resumed its regular work in the month of July, 2020 and the case was fixed on 31.07.2020 for evidence and D.W. cross-examination but neither the petitioner nor his engaged counsel was present or enquired about the status of the proceeding. Accordingly, the Tribunal held that there appeared to be great negligence on the part of the petitioner in not appearing before the Tribunal and rejected the plea that he being an illiterate person and suffering from various illness was not able to appear before the Tribunal with his engaged counsel. Accordingly, the Tribunal

rejected the petition and upheld the impugned *ex parte* order dated 31.08.2021 by which the petitioner was declared a foreigner.

5. We have heard learned counsel for the parties and also perused the order dated 02.03.2022 passed by the Tribunal. It appears that the petitioner could not appear before the Tribunal due to COVID-19 pandemic and accordingly, we are of the opinion that the same may not be considered as wilful or deliberate attempt to evade the proceeding before the Tribunal as the petitioner himself has appeared before this Court to challenge the said *ex parte* order dated 02.03.2022.

6. We have also taken into consideration the submission advanced by the learned counsel for the petitioner that there are sufficient materials to show that the petitioner is an Indian and not a foreigner. The documents are as follows:

(i) Voters list of 1966 where the name of the petitioner's father, namely, A. Goffur appeared.

(ii) Voters list of 1971 where the petitioner's name appeared by showing his father's name, A. Goffur.

(iii) Voters lists of 1985, 1990, 1993, 1997 etc where the petitioner's name appeared by showing his father's name, A. Goffur along with his wife, Moriom Nessa.

7. Under such circumstances, we are of the opinion that if the petitioner is able to prove the aforesaid documents, he can make a legitimate claim that he is a citizen of this country. Accordingly, we afford another opportunity to the petitioner to prove that he is an Indian and not a foreigner, because, ordinarily, such an opinion of the Tribunal, in our view, ought to be given after analyzing all the relevant evidences that may be produced by the proceedee and

not by way of default as has happened in the present case.

8. In view of above, we allow this petition by setting aside the impugned order dated 02.03.2022 passed by the Foreigners Tribunal No.1, Nagaon, Assam in Misc. Case 2 /2022 arising out of Case No.1150/2012 (D), and remand the matter to the Foreigners Tribunal No.1, Nagaon, to decide the matter afresh. The petitioner may produce necessary documents and adduce evidence to prove that he is an Indian and not a foreigner.

9. Accordingly, the petitioner is directed to appear before the concerned Foreigners Tribunal on 20.07.2022 and thereafter, the Tribunal will proceed with the matter in accordance with law.

10. We are also of the view that since the citizenship of the petitioner had come under cloud, the petitioner shall appear before the Superintendent of Police (Border), Nagaon and will remain on bail on furnishing a bail bond of Rs.5000/- (Rupees five thousand) only with one surety of the like amount to the satisfaction of the Superintendent of Police (Border), Nagaon till disposal of the reference. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner, if so advised.

The petitioner shall not leave the jurisdiction of Hojai District without giving details of the place of destination and his place of stay to the Superintendent of Police (Border), Nagaon.

11. With the above observations and directions, the present writ petition stands disposed of.

12. Copy of this order be furnished to the Superintendent of Police (Border), Nagaon for doing the needful.

**JUDGE**

**CHIEF JUSTICE (ACTING)**

**Comparing Assistant**