

GAHC010290192023



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

Case No. : WP(C)/7626/2023

ANISUR RAHMAN @ ANIDUR RAHMAN
S/O ALI HUSSAIN @ ANI HUSSAIN, R/O VILL-GUNAIBORI, P.S.-
MOIRABORI, DIST-MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA, MINISTRY
OF HOME AFFAIRS, SHASTRI BHAWAN, NEW DELHI-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06

3:THE DEPUTY COMMISSIONER
MORIGAON
PIN-782105

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
PIN-782105

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM
GUWAHATI-78100

Advocate for the Petitioner : MR H R A CHOUDHURY

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

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

05.01.2024

(M. R. Pathak, J)

Heard Mrs. H. Ahmed, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2 and 4; Mr. P. Sarma, learned Government Advocate, Assam for the respondent No. 3 as well as Mr. H. Kuli, learned Standing Counsel, Election Commission of India for the respondent No. 5.

2. Earlier, the learned Member, Foreigners' Tribunal No.5th, Morigaon, Assam vide Order dated 30.01.2021 in Case No. F.T.(D)884/2017 on being referred by the Superintendent of Police (Border) Morigaon, after hearing the parties including the petitioner and the evidence adduced by him, opined the petitioner to be a foreigner under the Foreigners' Act, 1946 of post 25.03.1971 stream.

3. Being aggrieved with the said Order dated 30.01.2021, the petitioner preferred a writ petition being WP(C) No.2563/2021 and the Court after hearing the parties vide Order dated 07.06.2023 remanded back the said Case No. F.T. (D)884/2017 to the learned Member, Foreigners' Tribunal No.5th, Morigaon, Assam for reconsideration of the case pertaining to the Voters List of villages namely Ural Kotapathar, Belguri and Gunaibari.

4. Pursuant to the said direction of this Court dated 07.06.2021 passed in WP(C) No.2563/2021, the learned Member, Foreigners' Tribunal No.5th, Morigaon, after obtaining and perusing the report from the Election Office, Morigaon, Superintendent of Police (Border), Morigaon and the Circle Officer, Lahorighat came to the finding that the said 3(three) villages are distinct and separate revenue villages having their respective numbers and also came to the conclusion that the Voters List of the year 1993 exhibited by the petitioner relates to villages Ural, Kotapather and Belguri whereas the Voters Lists of the years 1965, 1970 and 2010 exhibited by the petitioner relates to village Gunaibari and that those three villages are not the same village and thereby, the petitioner failed to prove his citizenship and by the impugned opinion dated 25.10.2023 passed in said Case No. F.T.(D)884/2017, the learned Member, Foreigners Tribunal No.5th, Morigaon declared the petitioner to be a foreigner under the Foreigners Act, 1946, who had illegally entered into the territory of India (Assam) from the specified territory after 25.03.1971.

5. Being aggrieved with the said impugned opinion/order dated 25.10.2023, noted above, the petitioner has filed this writ petition on 20.12.2023.

6. Issue **Notice**, returnable by **eight weeks**.

7. As Mr. G. Sarma, learned Standing counsel, Home Department, Assam; Mr. P. Sarma, learned Government Advocate, Assam as well as Mr. H. Kuli, learned Standing Counsel, Election Commission of India have accepted notice on behalf of the respondent Nos. 2 and 4; 3 and 5 respectively, no formal notice need to be issued to those respondents.

8. Petitioner shall serve requisite extra copies of this writ petition along with the Annexures appended thereto to Mr. R. K. Dev Choudhury, learned Deputy

Solicitor General of India; Mr. G. Sarma, learned Standing counsel, Home Department, Assam; Mr. P. Sarma, learned Government Advocate, Assam as well as Mr. H. Kuli, learned Standing Counsel, Election Commission of India by 09.01.2024, obtaining necessary acknowledgments from them in that regard.

9. Petitioner shall also take steps for service of notice on the respondent No.6 by Registered post with A/D by 09.01.2024, providing its correct and proper address with requisite postal stamps.

10. Office to requisition the record of F.T. Case No. F.T.(D)884/2017 from the office of the learned Member, Foreigners' Tribunal No. 5th, Morigaon, Assam.

11. A Copy of this order requisitioning the case record and the forwarding letter, by which the case record is sent to this Court, be made part of the record file of the Tribunal.

12. In the interim, the petitioner, namely, **Anisur Rahman @ Anidur Rahman**, if has not already been detained in custody, shall not be taken into custody and deported from the territory of India, subject to the condition that he shall appear before the Superintendent of Police (Border), Morigaon **on or before 22.01.2024** during the office hours and shall furnish a bail bond of Rs.5,000/- with one local surety of the like amount to the satisfaction of the said authority.

13. On his appearance before the Superintendent of Police (Border), Morigaon, as directed above, the said authority shall obtain necessary information and documentation as required under the Rules from the petitioner for securing his presence.

14. Further, the Superintendent of Police (Border), Morigaon is directed that on appearance of the petitioner within the period indicated above, the

biometrics of the iris of both eyes, the fingerprints of both hands and the photograph of the petitioner shall be obtained, where after, he shall be allowed to remain on bail.

15. It is made clear that without giving full details of the petitioner's present address and/or destination before the Superintendent of Police (Border), Morigaon and without obtaining any prior written permission from the said authority, the petitioner shall not leave the jurisdiction of said Superintendent of Police (Border), Morigaon.

16. Failure on the part of the petitioner to comply with the aforesaid directions, the bail granted to him shall stand automatically vacated and he shall be liable to be taken back into custody.

17. This order be brought to the notice of the Registrar (Judicial).

18. On the returnable date, the petitioner shall apprise the Court as to when he appeared before the Superintendent of Police (Border), Morigaon, as directed above.

19. Registry shall list this matter for admission immediately on receipt of the record from the concerned Tribunal, on a date to be fixed by it.

JUDGE

JUDGE

Comparing Assistant