

GAHC010003352022



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

**Case No. : WP(C)/193/2022**

MD MAYNUL @ MOINUL HOQUE @ MD. MOINUL  
S/O LATE FAIZUDDIN, R/O VILL- JORGARH, P.S.-TEZPUR, PIN-784001, DIST-  
SONITPUR, ASSAM

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA  
REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA  
NIRVACHAN ASHOKA ROAD  
NEW DELHI

3:THE STATE OF ASSAM  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM  
HOME DEPARTMENT  
DISPUR  
GUWAHATI-781006

4:THE NATIONAL REGISTER OF CITIZENS  
REPRESENTED BY THE STATE COORDINATOR ACHYUT PLAZA  
BHANGGARH  
GUWAHATI-781005  
DIST- KAMRUP(M)  
ASSAM

5:THE DEPUTY COMMISSIONER  
SONITPUR  
TEZPUR

DIST- SONITPUR  
ASSAM  
PIN-784001

6:THE MEMBER  
FOREIGNERS TRIBUNAL 1ST  
SONITPUR  
TEZPUR  
DIST- SONITPUR  
ASSAM  
PIN-784001

7:THE SUPERINTENDENT OF POLICE (B)  
SONITPUR  
TEZPUR  
P.O. AND P.S.-TEZPUR  
DIST- SONITPUR  
ASSAM  
PIN-78400

**Advocate for the Petitioner** : MR. A PAUL

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

**BEFORE**  
**HON'BLE MR. JUSTICE N. KOTISWAR SINGH**  
**HON'BLE MRS. JUSTICE MALASRI NANDI**  
**ORDER**  
**(ORAL)**

**11-01 -2022**

[N. Kotiswar Singh, JJ]

Heard Mr. A. Paul, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Asstt. SGI for respondent no.1 & 4 and ; Ms. A. Verma, learned Special Standing Counsel, F.T. appearing for respondent nos.6 & 7; Mr. A. Bhuyan, learned Standing Counsel, ECI, appearing for respondent no.2 and

Ms. U. Das, learned Government Advocate, Assam, appearing for respondent nos.3 & 5.

2. Considering the nature of the case, we are of the opinion that the present petition can be disposed of at the motion stage itself without issuing any formal notice to the respondents.

3. The present petition has been filed by the petitioner, namely, Md. Maynul @ Moinul Hoque @ Md. Moinul, son of late Faizuddin, resident of village Jorgarh under P.S.:Tezpur, Dist.:Sonitpur, Assam on being aggrieved by the impugned ex parate order dated 31.12.2020 passed by the Foreigners Tribunal, Tezpur No.1, Assam, in F.T.(D) Case No.3512/2012, declaring the petitioner to be a foreigner of post 1971 stream.

4. Learned counsel for the petitioner submits that earlier in another proceeding i.e. in F.T. (D) Case No.8312/2012, the Foreigners Tribunal Tezpur 1<sup>st</sup>, Sonitpur by order dated 31.08.2017 had held that the petitioner, namely, Md. Moinul @ Moinul Hoque, son of Late Foizuddin (Abdul Hussain), resident of village Jorgarh under P.S.Tezpur, Dist. Sonitpur, Assam had been able to discharge his onus to prove that he is not a foreigner but an Indian. Accordingly, the reference was answered in negative against the State and in favour of the petitioner/proceedee. However, the Foreigners Tribunal Tezpur No.1, Assam in the subsequent proceeding i.e. in F.T.(D) Case No.3512/2012 took a view that the proceedee neither submitted his representation nor adduced his evidence in support of his claim that he is an Indian Citizen and accordingly, failed to prove that he is an Indian citizen.

5. The Learned counsel for the petitioner submits that though the petitioner had appeared before the Tribunal after receiving the notice, the reason for the petitioner's inability to appear before the Foreigners Tribunal, Tezpur No.1 on several occasions was because of

ongoing COVID pandemic and as such, it has been submitted that the said *ex parte* order dated 31.12.2020 may be set aside by remanding the matter to the Foreigners Tribunal, more particularly, in the light of the earlier opinion referred by the same Tribunal on 31.08.2017 in F.T.(D) Case No.8312/2012.

6. According to the learned counsel for the petitioner since there is a similarity in the names and particulars of the proceedee in both the proceedings, the second proceeding in respect of F.T.(D) Case No.3512/2012 before the Foreigners Tribunal, Tezpur (1<sup>st</sup>), Assam could not be sustainable in terms of the decision of the Hon'ble Supreme Court passed in ***Abdul Kuddus vs Union of India (2019) 6 SCC 604***, as the proceeding before the Foreigners Tribunal, Tezpur (1<sup>st</sup>), Assam in respect of F.T.(D) Case No.3512/2012 is quasi judicial and the principle of *res judicata* will be applicable in this proceeding.

7. It has been clearly mentioned in *Abdul Kuddus (supra)* that if there had been an order by the Foreigners Tribunal in favour of a person determining the citizenship, the said decision will be binding on subsequent proceedings against the same person and there cannot be another proceeding to re-determine the citizenship of the person, by applying the principle of *res judicata*.

8. In the present case, since this aspect could not be considered by the Foreigners Tribunal as it was decided *ex parte*, we are also of the view that the matter requires to be decided afresh by the Tribunal keeping in mind the earlier opinion dated 31.08.2017 in the light of the decision in *Abdul Kuddus (supra)*.

Only when the Tribunal comes to a finding that the present proceedee is not the same person who was proceeded and was found to be an Indian in F.T.(D) Case No.8312/2012, the

impugned order will be revived and the order of the Tribunal can be challenged by the petitioner both on the issue of identity of the petitioner and other grounds raised in this petition.

9. In view of above, without entering in the merit of the case we remand the matter to the Foreigners Tribunal, Tezpur (1<sup>st</sup>), Sonitpur, Assam by setting aside the impugned order 31.12.2020 passed by the Foreigners Tribunal, Tezpur No.1, Assam, in F.T.(D) Case No.3512/2012 to examine whether the petitioner is the same person who was proceeded in F.T.(D) Case No.8312/2012 by the Foreigners Tribunal, Tezpur 1<sup>st</sup>, Sonitpur. The Foreigners Tribunal Tezpur No.1, Sonitpur shall decide first as to whether the petitioner is the same person who was proceeded in F.T.(D) Case No.8312/2012 or not, for which the petitioner shall appear before the Foreigners Tribunal on 14.02.2022 to enable the Tribunal to examine that he is the same person who was proceeded in F.T.(D) Case No.8312/2012 .

10. Accordingly, this shall be the preliminary issue which is to be decided by the Foreigners Tribunal 1<sup>st</sup> Tezpur, in F.T.(D) Case No.3512/2012 as to whether the present proceedee is the same person who was earlier declared an Indian Citizen in F.T.(D) Case No.8312/2012 by the Foreigners Tribunal Tezpur (1<sup>st</sup>), Sonitpur and if it is found that the petitioner is the same person who was proceeded in F.T.(D) Case No.8312/2012 by the Foreigners Tribunal Tezpur (1<sup>st</sup>), Sonitpur, the present proceeding shall immediately be concluded in favour of the petitioner on the basis of the order passed in F.T.(D) Case No.8312/2012 on 31.08.2017 where the petitioner was declared an Indian citizen.

If, however, the decision is otherwise, the petitioner will be at liberty to challenge this opinion as well as the other findings by approaching this Court again.

11. It is made clear that since the nationality of the petitioner is already under cloud, he will remain on bail on furnishing a bail bond of Rs. 5,000/- (Rupees five thousand) with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Sonitpur during the pendency of the proceeding before the Tribunal. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner. The petitioner also shall not leave the jurisdiction of Sonitpur district without furnishing the details of the place of destination and necessary information including contact number to the Superintendent of Police (Border), Sonitpur.

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

13. Copy of this order be furnished to the Superintendent of Police (B), Sonitpur for doing the needful.

**JUDGE**

**JUDGE**

**Comparing Assistant**