GAHC010102112026

2026:GAU-AS:16240-DB

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

Case No. : WP(C)/2845/2026

ASIR ALI @ ASIR UDDIN
S/O-LATE NUR ALI,
R/O-SALMARA, P.O-SALMARA, P.S.-CHAPARMUKH, DIST-NAGAON,
ASSAM.

VERSUS

THE UNION OF INDIA AND ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI-110001

2:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-11001.

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

4:THE DISTRICT COMMISSIONER
GOLAGHAT
P.O. P.S-GOLAGHAT
ASSAM.

5:THE SUPERINTENDENT OF POLICE (B)
GOLAGHAT
GOLAGHAT
ASSAM.

6:THE STATE CO ORDINATOR
NRC
HOUSEFED COMPLEX
BANPHOOL NAGAR
GUWAHATI-06.

7:MD. NAZRUL ISLAM CHOUDHURY
S/O-HUSSAIN AHMED CHOUDHURY

R/O-BASKANDI
P.O-BASKANDI
P.S.-SILCHAR
DIST-CACHAR
ASSAM. PIN-788101

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the petitioner : Mr. N. Hoque, Advocate.
For respondents : Mr. N. Upadhyay, CGC.
: Ms. A. Verma, SC, FT & Border.
: Mr. P. Sarmah, Addl. Sr. Govt. Advocate.
: Ms. S. Katakey, SC, ECI.

Date on which judgment is reserved : 06.08.2026

Date of pronouncement of judgment : 05.11.2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J.)

Heard Mr. N. Hoque, learned counsel for the petitioner. Also heard Ms. A. Verma, learned standing counsel for FT and Border matters; Ms. S.

Katakey, learned standing counsel for ECI; Mr. N. Upadhyay, learned CGC for the Union of India; and Mr. P. Sarmah, learned Addl. Senior Government Advocate for the State.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Asir Ali @ Asir Uddin, has assailed the *ex parte* opinion dated 04.07.2022, passed by the learned Member, Foreigners' Tribunal, Jorhat, in Case No. F.T.G. 1891/2011, corresponding to S.P.'s Enquiry No. 22/2011, whereby he was declared to be a foreigner of post-25.03.1971 stream.

3) Assailing the impugned *ex parte* opinion, the learned counsel for the petitioner has submitted that the petitioner is an illiterate person and his wife has studied only up to Class-III. It has been submitted that neither the petitioner nor his wife was ever served with any notice issued by the learned Tribunal. The petitioner has specifically disputed the signatures appearing in the acknowledgement of receipt of notice in the Tribunal's record and has asserted that the same are neither his signatures nor those of his wife. It has been further submitted that pursuant to the said *ex parte* opinion, the petitioner was arrested on 25.05.2025, at about 3:00 AM by the Border Police, Golaghat, and is presently lodged at the Transit Camp/Holding Centre at Matia, Goalpara. The learned counsel for the petitioner has submitted that the petitioner has a good defence to establish that he is not a foreigner. Hence, he has prayed for one opportunity to the petitioner to contest the proceeding and prove his defence. In support of his submissions, the learned counsel for the petitioner has relied upon the case of *Savitri Dey @ Swasthi Dey v. Union of India & Ors., 2026 INSC 694: 2026 Supreme (SC) 786: 2026(4) GLT (SC) 1*.

4) Per contra, the learned Standing Counsel for the FT and Border matters has submitted in support of the impugned opinion. It has been

submitted that upon perusal of the records of the learned Tribunal, it would appear that the notice was personally served on the petitioner on 12.05.2022 and the petitioner had acknowledged receipt thereof by affixing his signature. It has been further submitted that the service report was also identified by the Gaonburah of Village Bidyapur, namely, Nazrul Islam Choudhury. Accordingly, the notice was duly served upon the petitioner in terms of Paragraph 3(5)(a) of the Foreigners (Tribunals) Order, 1964. It has also been submitted that despite being afforded several opportunities to appear before the learned Tribunal and file his written statement, the petitioner had failed to do so, as a result of which the learned Tribunal had proceeded *ex parte* and delivered its opinion in accordance with law. It has been contended that the impugned opinion does not warrant any interference.

5) Considered the submissions and perused the records of the learned Tribunal, which were called for and received.

6) On perusal of the records of the learned Tribunal, it appears that the notice was issued on 13.05.2022, fixing 26.05.2022 for service report and appearance. The order sheet reflects that the notice was served on 12.05.2022 and the service report was placed before the learned Tribunal on 26.05.2022. Upon examination of the service report, it appears that the notice was personally received by the petitioner, who is stated to have affixed his signature towards acknowledgement of receipt thereof. The service report was also identified by the Gaonburah of Village Bidyapur, namely, Nazrul Islam Choudhury. Thus, the records of the learned Tribunal reflect that the notice was served upon the petitioner in the manner prescribed under Paragraph 3(5)(a) of the Foreigners (Tribunals) Order, 1964.

7) However, the petitioner has specifically disputed the signature

appearing on the acknowledgement of receipt of notice and has asserted that the same is not his signature. The petitioner has also taken the stand that he is an illiterate person and that his wife has studied only up to Class-III, and that neither of them had received any notice from the learned Tribunal.

8) A perusal of the order sheets further reveals that despite the alleged service of notice, the petitioner remained absent before the learned Tribunal on 26.05.2022, 02.06.2022, 08.06.2022, 16.06.2022 and 23.06.2022, on which dates the matter was fixed for service report, appearance and filing of written statement. Consequently, the learned Tribunal proceeded *ex parte* against the petitioner and delivered its opinion on 04.07.2022, passed purportedly in accordance with Paragraphs 3(8) and 3(14) of the Foreigners (Tribunals) Order, 1964.

9) Under the circumstances, taking into consideration the specific stand taken by the petitioner disputing the genuineness of the signature appearing on the acknowledgement of receipt of notice, as well as his assertion regarding his inability to read and understand the notice, the Court is of the considered opinion that in the interest of justice, the petitioner deserves one opportunity to contest the proceeding and establish his defence before the learned Tribunal.

10) Resultantly, without expressing any opinion on the correctness or otherwise of the service of notice reflected in the records of the learned Tribunal, or finding any fault in the impugned opinion, but solely on the consideration that the petitioner has raised a specific dispute regarding the genuineness of the signature appearing on the acknowledgement of receipt of notice and has prayed for an opportunity to establish his defence, the impugned *ex parte* opinion dated 04.07.2022, passed by the learned Member, Foreigners'

Tribunal, Jorhat, in Case No. F.T.G. 1891/2011, corresponding to S.P.'s Enquiry No. 22/2011, whereby the petitioner was declared to be a foreigner of post-25.03.1971 stream, is set aside at the motion stage, without issuing notice upon the respondents.

11) The aforesaid proceeding is restored back to the file of the learned Foreigners' Tribunal, Jorhat.

12) The family members of the petitioner shall approach the Office of the Superintendent of Police (Border), Golaghat, and furnish bail of Rs.10,000/- (Rupees Ten thousand only) with one surety of like amount to the satisfaction of the Superintendent of Police (Border), Golaghat, and shall take steps to have the petitioner, namely, Asir Ali @ Asir Uddin, released from the Transit Camp/Holding Centre at Matia, Goalpara, within 3 (three) days from the date of acceptance of the bail bond.

13) The petitioner, who is duly represented by his learned counsel, is directed to appear before the said learned Tribunal on or before the outer time limit of 15.12.2026, without requirement of any fresh notice to be served on him for appearance.

14) The petitioner is also directed that on the date of his appearance, he shall produce the certified copy of this order before the learned Tribunal and shall also file his written statement of defence and produce all the documents on which he intends to rely upon. Thereafter, the learned Tribunal shall give opportunity to the petitioner to take steps for securing the presence of witnesses and for production of documents, if so advised.

15) It is clarified that in the event the petitioner fails to appear and file his written statement within the time allowed, it would be permissible for the

learned Tribunal to treat the petitioner to have defaulted in appearing and/or to take steps and pass a fresh opinion in accordance with law. The learned Tribunal shall take into consideration the mandate of Paragraph 3(14) of the Foreigners (Tribunals) Order, 1964 and Paragraph 17(14) of the Immigration and Foreigners Order, 2025 and, as far as practicable, make an attempt to dispose of the reference within a period of 60 (sixty) days from the date of appearance of the petitioner.

16) Thus, the writ petition is conditionally allowed on terms as indicated above by remanding the matter back to the learned Tribunal.

17) The learned Standing Counsel for Home Department and FT matters shall transmit a downloaded copy of this order to the concerned respondent authorities for information.

18) The Registry shall return the learned Tribunal's record, together with a copy of this order, to be made a part of the record by the said learned Tribunal for future reference.

19) Under the circumstances, there shall be no order as to costs.

JUDGE **JUDGE**

Comparing Assistant

Munna Kumar Digitally signed by Munna Kumar Date: 2026.11.05 11:43:56 +05'30'

Private Secretary