GAHC010122272024

2026:GAU-AS:16135-DB

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

Case No. : WP(C)/3167/2024

ABUL KASHEM
S/O- LATE AMIR UDDIN,
R/O- VILLAGE CHAPARBORI,
P.S- SARTHEBARI, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, 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 DEPUTY COMMISSIONER
BARPETA

P.S
P.O AND DIST- BARPETA
PIN-781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA

P.S
P.O AND DIST- BARPETA
PIN-781301

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-110001

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

Advocate for the Petitioner : MR. A R SIKDAR, MR. S I TALUKDAR

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 MRIDUL KUMAR KALITA

ORDER

Date : 02.11.2026
(K.R. Surana, J)

Heard Mr. J.A. Sikdar, learned counsel appearing on behalf of Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. N. Upadhay, 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 Mrs. R.B. Borah, learned Jr. Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned *ex parte* opinion dated 16.03.2024, passed by the learned Member, Foreigners' Tribunal-III, Barpeta, in F.T. Case No. 3235/(III) of 2016, arising out of Ref. IM(D)T No. 1928/2001, by which the petitioner was declared to be a foreigner of post 25.03.1971 stream.

3. The learned standing counsel for the FT and Border matters, having perused the records of the learned Tribunal, has submitted that the conduct of

the petitioner was not good as many attempts were made by the police personnel to serve the process upon the petitioner, but the same was refused on several occasions. As per the process server's report dated 07.09.2023, the police personnel serving the process met the petitioner and in the presence of the Gaonburah and the Block Level Officer, informed the petitioner about the notice, but he refused to accept the same and, therefore, the service report was returned. Accordingly, it is submitted that, owing to the said conduct of the petitioner, interference with the impugned *ex parte* opinion dated 16.03.2024 is not warranted.

4. On a perusal of the process service report dated 07.09.2023, although it is clearly stated that the petitioner refused to accept service and that the Gaonburah and the Block Level Officer had asked the petitioner to accept the notice, but he refused. Nonetheless, the said process server’s report does not contain any endorsement by any witness to the effect that the notice was served upon the petitioner or that he refused to accept the same. Therefore, it would be appropriate to quote the provision of paragraph 3(5)(e) of the Foreigners (Tribunals) Order, 1964:

> “*3. Procedure for disposal of questions.*
>
> > *5(e) If the proceedee or an available adult member of his or her family refuses to accept the notice, the process server shall give a report to the Foreigners Tribunal in that regard along with the name and address of a person of the locality, who was present at the time of making such an effort to get the notices served, provided such person is available and willing to be a witness to such service and the process server shall obtain the signature or thumb impression of such witness, if he or she is present and willing to sign or put his or her thumb impression, as the case may be;”*

5. From the above referred provision, as the petitioner had refused to

accept the notice, it was incumbent upon the process server to obtain the signature or thumb impression of the witnesses, if any witness was present and willing to sign or put his or her thumb impression, as the case may be. It is not reported by the process server that the witnesses present had refused to sign as witnesses in the return of the process regarding the petitioner's refusal to accept the notice. Therefore, as the service of process is not found to be in accordance with the requirement of paragraph 3(5)(e) of the Foreigners (Tribunals) Order, 1964, the impugned *ex parte* opinion dated 16.03.2024, passed by the learned Member, Foreigners' Tribunal-III, Barpeta, in F.T. Case No. 3235/(III) of 2016, arising out of Ref. IM(D)T No. 1928/2001 is hereby set aside.

6. The matter is remanded back to the said Tribunal for passing a fresh opinion in accordance with law.

7. 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 30.11.2026. On the said date, along with the certified copy of this order, the petitioner shall also file his written statement of defence and copies of the documents on which he intends to rely.

8. It is provided that, in the event the petitioner defaults in making an appearance within the time allowed or does not file his written statement and documents, it would be open to the learned Tribunal to treat the petitioner as being in default in compliance with the order of the Court and pass such appropriate orders as it deems fit and proper.

9. In the event the petitioner appears, files his written statement and

produces copies of the documents, the learned Tribunal shall make an endeavour to provide an opportunity to the petitioner to prove his case and dispose of the proceeding within the time prescribed under paragraph 17(14) of the Immigration and Foreigners Order, 2024.

10. The Registry shall send back the records along with a copy of this order to be made part of the record by the said learned Tribunal.

11. The learned standing counsel for the FT and Border matters shall also send a copy of this order to the concerned authorities for their record.

12. The writ petition stands allowed to the extent as indicated above.

JUDGE **JUDGE**

Comparing Assistant