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

Case No. : WP(C)/3695/2024

SUKUMUDDIN @ SUKURUDDIN ALI
S/O- LATE ARFAN ALI, R/O- VILL- THEPKAI, P.O. SIMLABARI, P.S. BAGUAN, DIST.- GOALPARA, ASSAM, PIN- 783101

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-01

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. AND DIST.- GOALPARA
ASSAM
PIN- 783101

4:THE DEPUTY COMMISSIONER
GOALPARA
P.O.
P.S. AND DIST.- GOALPARA
ASSAM
PIN- 783101

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR. M H TALUKDAR,

Advocate for the Respondent : DY.S.G.I., GA, ASSAM,SC, ELECTION COMMISSION.,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 11.11.2026
(Rajesh Mazumdar, J)

Heard Mr. M.H. Talukdaar, learned counsel for the petitioner. Also heard Mr. S. Chanda, learned CGC; Mr. G. Sarma, learned counsel for the FT matters and NRC; Ms. S. Katakey, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for the State.

2. The present is a writ petition under Article 226 of the Constitution of India assailing the impugned opinion dated 30.11.2017 passed by the learned Member, Foreigners Tribunal No.4th, Goalpara, Assam in F.T. Case No. FT (G-4) 155/15 (Reference ERO Case No. 1287/ 38) declaring the petitioner to be a foreigner who had entered Assam after 25.03.1971

3. The learned Trial Court Records, as called for by the earlier orders, have been received and the matter has been taken up for disposal at the motion stage with the consent of the parties.

4. The learned Tribunal, in the impugned order dated 30.11.2017, had

discussed the written statement filed by the proceedee, the evidence led by the proceedee as DW1, the officer of the Election Branch, office of the Deputy Commissioner, Goalpara who exhibited Exhibit A, B and C which were the voter lists of the year 1966, voter lists of 1970 and voter lists of 1989 as DW2, one Sayed Ali as DW3, who claimed to be a voter included in the year 1996, and also in the year 1974/75, and finally DW4, who was the projected brother of the proceedee. The learned Tribunal, having appreciated the evidence, had come to a finding that the evidence of DW3 and DW4 were not reliable, and having held so, had determined the petitioner herein to be a foreigner of the post 25.03.1971 period.

5. Learned Tribunal has referred to two Exhibits, namely exhibit A, certified copy of the voter list of 1966 and Exhibit B, a certified copy of the voter list of 1970. The learned Tribunal has further referred to the "Xerox copy" of voting extracts of 1989 in the impugned opinion. By referring to the evidence of DW3, the Tribunal has opined that as per the evidence, the family of the proceedee lived at Batabari from 1970 only and prior to that, the family had stayed at Takimari Grazing Reserve and therefore, the evidence of DW3 that he had met the petitioner at Batabari prior to 1970, could not be a true statement. A similar observation was made with regard to the evidence of DW4, who the proceedee claimed to be his elder brother. The evidence of DW4 was rejected as being only an attempt to harmonize with the statement of the petitioner, and that it did not contribute anything new to persuade the Tribunal to believe statements of the petitioner in terms of the material exhibits.

6. We have heard the learned counsel appearing for the parties and we have also gone through the records which have been received.

7. A perusal of the opinion dated 30.11.2017 reveals that at paragraph 4, the learned Tribunal by referring to the evidence led by the petitioner herein, had observed that the family of the petitioner, led by the father of the petitioner, had left village Batabari to Takimari Grazing Reserve after his birth and as such, the name of the parents of the petitioner had been enrolled in the Electoral roll of 1966 at village Takimari Grazing Reserve. The assertion of the petitioner in the written statement and the evidence that, thereafter, the parents of the petitioner had again shifted from village Takimari Grazing Reserve to their native village at Batabari and that their names thereafter appeared in the voter lists of 1970 in village Batabari was also taken into account. Therefore, the learned Tribunal was apparently aware of the assertion of the petitioner, the DW3 and the DW4 that, while the father of the petitioner along with his family had resided at Batabari where the petitioner was born, after his birth the father of the petitioner had shifted to village Takimari Grazing Reserve and then had reverted back to the native village.

8. However, while appreciating the evidence later on, at paragraph 5 of the opinion, the learned Tribunal completely lost sight of the shift of the family of the petitioner from Batabari to Takimari Grazing Reserve and went on to observe that since the family of the petitioner had shifted from Takimari Grazing Reserve to Batabari, the birth of the petitioner at Batabari appeared to be doubtful. The assertions made in the written statement by the petitioner, the evidence led by the petitioner and the DW3 and DW4 as recorded in the opinion itself at paragraph 4 do not tally with the findings arrived at by the learned Tribunal at paragraph 5 of the same opinion.

9. On a closer perusal of the records, it appears that the certified copy of the

Electoral roll for the year 1966 with a digital signature of the issuing authority was exhibited at Exhibit-A, a certified copy of the Electoral roll of the year 1970 containing the digital signature again was marked as Exhibit-B and finally a certified copy of the voters lists of the year 1989, containing the name of the petitioner and his wife, showing the petitioner to be the son of one Arfan Ali was exhibited and was marked as Exhibit C. The evidence of DW2, who was an officer of the Election Branch of the office of the Deputy Commissioner, had, during his deposition, stated that the Exhibit A, B and C were exactly similar to the information available in the office of the Deputy Commissioner. In the opinion impugned in this writ petition, unfortunately Exhibit C does not find any mention and further, the learned Tribunal has referred to the contents of Exhibit C to be part of "xerox copy" of voting extracts of 1989.

10. On going through the records, we have noticed another disturbing factor. By the order dated 11.12.2015, the learned Tribunal had directed the proceedee to furnish certified true copy of the 1989 voters lists which he had relied upon as a link certificate. The subsequent orders do not reflect that the certified copies of the voters' lists of 1989 had been supplied by the petitioner on any particular day. The evidence of DW2, as available in the records, do not reveal the identification of the said witness, save and except containing his signature, and all the columns, including the name of the father, the address, profession etc. have been left blank in the form for recording deposition. Even the date of recording of the evidence is not available.

11. By the order dated 17.02.2017, the learned Tribunal had recorded that an application had been filed seeking exemption of DW 2 on that particular day due to physical illness, and no further reference to the presence of the said

witness on any date thereafter is found. The signature of the learned Member, certifying that the evidence had been read over and affirmed correct, also does not contain the date. The records reveal that on 11.12.2015, the petitioner had submitted a list of documents where the original copy of the NRC, certified copy of the voters lists of 1966, certified copy of the voters lists of 1970, photostat copy of voters lists of 1989 and photostat copy of voters lists of 1997 were tendered before the learned Tribunal. However, the records contain a certified copy of the Electoral roll of 1966 marked as Exhibit A on 07.01.2016 without the signature of the learned Member and on the reverse of the said certificate, seal and signature of the CSC Goalpara, dated 13.11.2015 is available. Similarly, the certified copy of Electoral roll of 1970 was marked as Exhibit-B on 07.11.2016 without the signature of the learned Member of the Tribunal and containing the digital signature certified by the CSC Goalpara on 13.11.2015. The next document available in the paginated serialized record is the certified copy of the voters lists of 1989 which is marked as Exhibit-C on 25.05.2016 without the signature of the learned Member of the Tribunal. The record shows that the certified copy had been obtained on 19.03.2016, that is much after the list of documents dated 11.12.2015. There is no record of these documents being retained into the records, yet they are on record. Thus, it appears that the records of the Tribunal were accessible and were manipulated to include documents which were neither furnished by the petitioner nor were shown to have been exhibited by any particular witness. These documents could not have been taken as legally tendered documents, since none of the orders had referred to the same.

12. Having noticed the several irregularities in the records of the learned Tribunal as well as in the opinion rendered by the learned Tribunal, we are of

the considered view that the opinion dated 30.11.2017 cannot stand the scrutiny of this Court in exercise of powers under Article 226 of the Constitution of India. Accordingly, the matter is required to be remanded back to the learned Tribunal to take up the same from the stage where documents relied upon by the petitioner in his written statement and evidence-in-affidavit are to be exhibited and also to allow the DW2 to adduce evidence by recording his appropriate description, and thereafter to continue with the proceedings in accordance with law, to render a fresh opinion on proper appreciation of the evidence available on record.

13. Having noticed the probable unauthorized access to the records and manipulation thereof, we also deem it fit to observe that the Department of Home and Political should take appropriate decision whether the learned Tribunal is required to be imparted necessary training regarding the maintenance of records, so that the same are not accessed by unauthorized persons and are not subjected to manipulation. We should not be understood to mean that there has been an apparent manipulation of records but the observations made above would require due consideration, since there is introduction of records which do not find mention in the orders of the learned Tribunal.

17. In conclusion, the opinion dated 30.11.2027 is set aside and the records of F.T. Case No. FT (G-4) 155/15 (Reference ERO Case No. 1287/ 38) are remanded back to the learned Foreigners Tribunal No.4th , Goalpara, Assam for a fresh consideration. Since the petitioner is represented in the records, he is directed to appear before the learned Tribunal on or before 18.12.2026 and on

his such appearance, the learned Tribunal shall fix the matter for further proceeding as directed herein before.

15. Writ petition is accordingly disposed of.

16. Registry to send back the TCRs along with the copy of the order of this Court passed today.

17. No order as to costs.

JUDGE **JUDGE**

Comparing Assistant