GAHC010247372025

2026:GAU-AS:1745-DB

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

Case No: WP(C)/6775/2025

MUSSTT. MONOWARA KHATUN @ MANOWARA BEGUM
D/O-RUSTAM ALI
W/O- ZAKIR HUSSAIN
R/O-VILLAGE- 3 NO. RAJAPUKHURI
P.S- SARUPATHAR
DISTRICT-GOLAGHAT
ASSAM. PIN-785601

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

3:THE STATE OF ASSAM
REPRESENTED BY THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE ASSAM STATE CO ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-05.

5:THE DISTRICT COMMISSIONER
GOLAGHAT
DISTRICT-GOLAGHAT

ASSAM
PIN- 785621.

6:THE SUPERINTENDENT OF POLICE (B)

GOLAGHAT
DISTRICT-GOLAGHAT
ASSAM
PIN- 785621

Advocate for : MR. S A AHMED
Advocate for : GA
ASSAM appearing for THE UNION OF INDIA AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 09.02.2026
(K.R. Surana, J)

Heard Mr. S.A. Ahmed, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC for respondent no.1; Ms. S. Katakey, learned standing counsel for respondent no.2; Mr. J. Payeng, learned standing counsel for the respondent nos. 3, 4 and 6; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned *ex parte* opinion dated 30.03.2021, passed by the learned Member, Foreigners' Tribunal, Jorhat in Case No. FTG.411/2011, arising out of S.P.'s Enquiry No. 280/2007, thereby declaring the petitioner, namely, Musstt. Monowara Khatun @ Monowara Begum to be a foreigner of post 25.03.1971 stream.

3. This writ petition to assail the *ex parte* opinion dated

30.03.2021, was filed on 06.11.2025, i.e. after 4 years, 7 months, 7 days (or 1682 days). By order dated 18.12.2025, passed in this writ petition, while keeping the issue of maintainability of the writ petition on account of delay and laches open, the records of the learned Tribunal was called for. The said record is received. Perused the same.

4. The learned counsel for the petitioner, in order to explain the delay in assailing the *ex parte* opinion dated 30.03.2021, by filing this writ petition on 06.11.2025, has submitted that since 21.03.2020, there was a nationwide lockdown due to the COVID-19 pandemic. Accordingly, though the petitioner had entered appearance before the learned Tribunal on 10.02.2020 through her learned counsel and filed a petition for adjournment, but the learned counsel for the petitioner did not inform her about the subsequent dates of the proceeding and she was also not informed regarding the steps that were required to be taken, misled the petitioner. Accordingly, the petitioner did not take any steps, which resulted in the passing of the impugned *ex parte* opinion.

5. It has been further submitted that the petitioner is a poor person of below poverty line. It was submitted that pursuant to the *ex parte* opinion dated 30.03.2021, the petitioner was taken into custody on 25.05.2025, and thereafter, her family members made enquiry and came to know about the *ex parte* opinion dated 30.03.2021, passed against her.

6. It has been submitted that thereafter, an application for certified copies of the *ex parte* opinion and other documents was made on 06.06.2025, which were received on 30.06.2025 and thus, within a reasonable time thereafter, the present writ petition was filed on 06.11.2025.

7. The learned counsel for the petitioner has submitted that in this

writ petition, the petitioner has annexed all the relevant documents which would go on to show that the petitioner and other family members are all citizens of India. The petitioner has obtained a copy of the voter list of 1970, which discloses the name of her father, Rustam Ali, as a voter of village Lathima, under Rupahihat Police Station in the district of Nagaon, under 86 No. Dhing LAC. It is also submitted that no member of her family is facing any proceeding, suspecting them to be foreigner. It was submitted that her maternal family members and her husband have been regularly casting their respective votes in all the elections. It is also stated that the names of the petitioner along with her husband appeared in the voter list of 2005 and she has been casting her vote thereafter.

8. Accordingly, it has been submitted that this is a fit and proper case for giving the petitioner one opportunity to contest the proceedings by filing her written statement and evidence as her valuable citizenship right would be extinguished if the *ex parte* opinion is not interfered with. It is further submitted that as the petitioner was taken into custody on 25.05.2025 and has spent more than 7 (seven) months in custody, the petitioner has filed a separate interlocutory application for being released on bail.

9. Per contra, the learned standing counsel for the FT and Border matters has submitted that assuming that he does not raise any objection for non-appearance of the petitioner during the COVID-19 pandemic period, commencing from 21.03.2020 to 01.03.2022, but on and from 01.03.2022, the COVID-19 pandemic period was over and there was no impediment on part of the petitioner to appear before the learned Tribunal to pursue such remedies that were available to her. It was further submitted that the Foreigners (Tribunals) Order, 1964, does not prohibit a Tribunal from passing appropriate

orders for the ends of justice, which would include the power of the learned Tribunal to recall its *ex parte* opinion for good and sufficient causes. Accordingly, it is submitted that after the expiry of the COVID-19 pandemic period, there is an unexplained delay of 3 years, 8 months, 5 days (or 1346 days) in assailing the impugned opinion, which cannot be condoned and/or ignored on account of delay and laches. Accordingly, the learned standing counsel for the FT and Border matters has opposed the prayer to admit this writ petition for hearing and for granting bail to the petitioner.

10. On perusal of the Tribunal's records, it is seen that notice of the proceedings was served on the petitioner on 05.02.2020 and she has received it and in acknowledgment thereof, she had put her right-hand thumb impression in the process server's report. As per the said notice, the date of appearance was mentioned as 10.02.2020 and as per the order sheet, on 10.02.2020, the petitioner had appeared before the learned Tribunal through her learned counsel and vide petition No. 220/2020 dated 10.02.2020, she had prayed for an adjournment, which was allowed and the next date of the proceeding was fixed on 17.02.2020. On the said date, the petitioner was absent without any steps and for the ends of justice, the matter was adjourned to 24.02.2020. On 24.02.2020, the learned counsel for the petitioner had again filed petition no.416/2020 dated 24.02.2020, and prayed for an adjournment, which was allowed as a last chance. Though petitioner had remained absent without steps on 02.03.2020, yet, the learned Tribunal fixed the next date on 12.03.2020 for appearance and for filing the written statement.

11. Since then, the matter was adjourned on 12.03.2020, 20.03.2020, 04.04.2020, 23.06.2020, 19.09.2020, 30.12.2020, 08.01.2021, 18.01.2021, 22.01.2021, 05.02.2021, 11.02.2021, 19.02.2021, 26.02.2021,

11.03.2021, 18.03.2021, and the matter was fixed on 30.03.2021 for passing an *ex parte* opinion. Accordingly, on 30.03.2021, by an *ex parte* opinion, the petitioner was declared to be a foreigner of post-25.03.1971.

12. It may be stated that on an earlier occasion, the petitioner had filed a writ petition to assail the *ex parte* opinion dated 30.03.2021. The said writ petition was registered and numbered as W.P.(C) 4720/2025 and this Court by order dated 20.08.2025, took notice of the fact that the petitioner, who had assailed the *ex parte* opinion dated 30.03.2021, had already been taken into custody on 25.05.2025 and was kept in the Transit Camp, Matia, Goalpara. Thus, while calling for the records, the Court took serious note of the fact that how the affidavit in support of the writ petition could have been signed and sworn by the petitioner by appearing before the Notary Public on 31.07.2025. The petitioner was identified by one Kazibur Rahman, Advocate's clerk and Abdul Kaddus, the Notary Public, having registration No. 37610 of the Govt. of India, having office at Nalbari and Guwahati, who, by affixing his signature and notarial rubber stamp, certified on the said affidavit that he had read over and explained the contents of the writ petition to the declarant, i.e. the petitioner.

13. Under such circumstances, the Court had issued notice to the Notary Public and the Advocate's clerk to show cause as to why their conduct should not be reported to the competent authority and in view of the false presence of the deponent being recorded and a false declaration by the Notary, stating that the contents were read over and explained to the petitioner, why in order to maintain sanctity of the proceedings, the Registry should not lodge an FIR for interference with administration of justice by causing an affidavit to be sworn by the petitioner, who was in custody on 31.07.2025.

14. The Court also takes note of the fact that subsequently, on the

prayer made by the learned counsel for the petitioner, who, upon instruction, prayed for withdrawal of the writ petition, the prayer was allowed and the said W.P.(C) 4720/2025 was closed on withdrawal, however, with liberty to approach again if so advised.

15. The fact that a previous writ petition was filed, being W.P.(C) 4720/2025, which was withdrawn, has not been pleaded in the present writ petition. Be that as it may, the copies of the orders passed on 20.08.2025 and 30.10.2025, by this Court in W.P.(C) 4720/2025 are made part of the learned Tribunal's record. Thus, it is a matter of serious concern that the said orders have been withheld in the writ petition. Be it also stated that the counsel holding the brief for the petitioner in both the writ petitions, i.e. W.P.(C) 4720/2025 and the present writ petition is the same.

16. Accordingly, it is seen that in this case, the time spent in pursuing W.P.(C) 4720/2025 is not pleaded in the present writ petition and excuse for such period is not availed as time spent in the said earlier writ petition.

17. Coming to the present case in hand, even if the contention of the petitioner is accepted that most of the non-appearance was during the COVID-19 pandemic period, but the COVID-19 Pandemic period had come to an end on 01.03.2022 for all judicial purposes. It is not the case of the petitioner that she was given any false or misleading information by the learned Tribunal and/or her learned counsel engaged to represent the petitioner before the learned Tribunal. Accordingly, there is no explanation in this writ petition as to why beyond the COVID-19 Pandemic period i.e. from 01.03.2022 to till 06.11.2025, the date when this writ petition was filed, the petitioner could not assail the impugned opinion. Consequently, as the petitioner had been served with a

notice of the proceeding and she had failed to appear and to take steps to contest the proceeding, and allowed 4 years, 7 months, 7 days to go by without assailing the impugned opinion. There is no explanation as to why the petitioner had failed to collect the dates of the proceeding against her. There is no statement in the writ petition that the petitioner approached her learned counsel, but her learned counsel gave her misleading or false information or committed any professional misconduct.

18. Therefore, as the subsequent non-appearance or non-taking of appropriate steps before the learned Foreigners Tribunal immediately after 01.03.2022, when on the judicial side, the Covid-19 pandemic period was over for all purposes of limitation, the petitioner is seen to have accepted the *ex parte* opinion for 4 years, 7 months, 7 days (or 1682 days).

19. Under such circumstances, the default on part of the petitioner in taking steps in the proceedings or to get the *ex parte* opinion vacated, demonstrates the lack of due diligence on the part of the petitioner to contest the proceeding where her status as a citizen of India was questioned.

20. In the considered opinion of the Court, after service of notice on the petitioner, there was no further requirement of the learned Tribunal to issue a fresh notice for appearance. The petitioner had failed to file her written statement as directed. From the Tribunal's order-sheet it is seen that the petitioner had remained unrepresented on 20 (twenty) dates fixed in the proceeding.

21. The Court is constrained to hold that the Courts and Tribunals, including the Foreigners Tribunal are under no duty to keep on issuing notices to the proceedee after they commit default in appearing in a proceeding. The

Court cannot accept that there can be an endless exercise to keep on issuing notices to a litigant after each and every default committed by a litigant. It was a duty cast on the petitioner to appear and contest the proceeding by filing her written statement. Moreover, under the provisions of Order 3(14) of the Foreigners (Tribunals) Order, 1964, the mandate of law to the learned Tribunal is to dispose of a reference within 60 (sixty) days.

22. This Court, in the case of *Ajbahar Ali v. Union of India, (2025) 0 Supreme (Gau) 763*, had held to the effect that the plea of compliance of the principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of identification and deportation of foreigners. Similar opinion has also been expressed by this Court in the case of *Abu Bokkor Siddique v. Union of India, 2019 (1) GLT 813*.

23. The Supreme Court of India, in the case of *Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665*, in paragraph 73, has held to the effect that the procedure under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision. In paragraph 63, the Supreme Court of India had observed that there can be no manner of doubt that the State of Assam is facing external aggression and internal disturbance on account of large-scale illegal migration of Bangladeshi nationals and that it, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution of India. In paragraph 70, it was observed that the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of the North Eastern region and that their presence has changed the demographic character of that region and the local people of

Assam have been reduced to a status of minority in certain districts.

24. The petitioner had appeared before the learned Tribunal and then defaulted to appear and contest the proceeding on 20 (twenty) dates since her first appearance. Thus, an *ex parte* opinion was rendered on 30.03.2021. The petitioner was taken into custody on 25.05.2025. Then she woke-up to assail the said *ex parte* opinion by filing this writ petition on 06.11.2025, which is about 4 years, 7 months, 7 days (or 1682 days) after passing of the impugned opinion.

25. Although the petitioner has blamed her learned counsel engaged to represent her before the learned Tribunal, but the petitioner has not disclosed the name of the learned counsel. In this case, the petitioner is not even accusing her learned counsel for committing professional misconduct by not appearing and taking steps in the Foreigners Tribunal. The learned counsel for the petitioner has failed to show that the petitioner was in touch with her learned counsel all throughout. Thus, the allegations against the learned counsel engaged by the petitioner to take steps before the Foreigners Tribunal are just an afterthought and/or an eyewash to somehow cover-up the default which the petitioner had made by not contacting her learned counsel and by not filing her written statement and evidence in the proceeding.

26. The Supreme Court of India, in the case of *Shivamma (Dead) by LRs v. Karnataka Housing Board & Ors., 2025 INSC 1104: 2025 Supreme(SC) 1679*, while dealing with the provision of Section 5 of the Limitation Act, 1963 has laid down certain guidelines. Though Section 5 of the Limitation Act, 1963 does not apply to a writ petition, but in the considered opinion of the Court, when a writ petition is filed to assail the opinion of the Foreigners Tribunals, under certiorari jurisdiction, the same principles should apply, requiring the

petitioner to provide at least some cogent and acceptable explanation for the inordinate delay in assailing the opinion.

27. A very vague statement by the petitioner that she is poor and below poverty line; that her learned advocate did not take steps and did not inform her about the next date fixed; cannot be accepted as a good, cogent and acceptable explanation to entertain this writ petition when cause of action to file this writ petition arose on 30.03.2021, the date when the *ex parte* opinion was passed against her.

28. It is not the case of the petitioner that all her family members suffered with such serious physical disabilities which prevented them to visit the learned counsel for the petitioner so as to enquire about the fate of her case. It is also not alleged by the petitioner that her learned counsel had given her any false or misleading information, which convinced the petitioner that she was declared as not a foreigner.

29. Therefore, the petitioner is found to be grossly negligent in assailing the impugned order. The default in appearing and in taking steps in the proceeding is willful and deliberate, with full knowledge of the consequences that may follow. Thus, the impugned *ex parte* opinion cannot be held to be perverse or wrong on any count whatsoever.

30. Though the petitioner has filed several documents in this writ petition, but as this Court is exercising certiorari jurisdiction, this Court would refrain from appreciating the documents as a Court or Tribunal of first instance.

31. Accordingly, in light of the discussions above, this writ petition fails on the ground of unexplained and enormous delay and laches of 4 years, 7 months, 7 days (or 1682 days) to assail the impugned opinion dated 15.06.2012

by filing this writ petition on 06.11.2025.

32. Resultantly, this writ petition fails and is hereby dismissed.

33. All sides are required to bear their own respective cost.

34. There shall be no order as to cost.

35. The learned standing counsel for the FT, Border matters and NRC shall communicate a downloaded copy of this order to the Home and Political (B) Department, so as to send a copy of this order to be made a part of the record of the learned Tribunal for future reference.

JUDGE **JUDGE**

Comparing Assistant