GAHC010305112019

2026:GAU-AS:16523

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

Case No. : WP(C)/9539/2019

MD AHMED ALI @ AHAMAD
S/O LATE JUNAB ALI @ JONAB ALI @ JANAB ALI, R/O VILL-BHOJKHOWA CHAPORI (RAJBHARAL), P.S.-TEZPUR, DIST-SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE SECRETARY TO THE GOVERNMENT OF INDIA, THE MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-781005

5:THE DEPUTY COMMISSIONER
SONITPUR
P.O.-TEZPUR
DIST-SONITPUR

ASSAM
PIN-784001

6:THE SUPERINTENDENT OF POLICE (BORDER)
SONITPUR
P.O.-TEZPUR
DIST-SONITPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MR. L R MAZUMDER, MR. F A HASSAN,MD. I HUSSAIN

Advocate for the Respondent : ASSTT.S.G.I., SC, ECI,SC, F.T,SC, ECI,SC, NRC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE PRANJAL DAS

For the petitioner : Mr. I. Hussain, Advocate.

For respondents : Mr. I. Borthakur, CGC.
: Ms. A. Verma, SC, FT & Border.
: Mr. P. Sarmah, Addl. Sr. GA.
: Mr. A.I. Ali, SC, ECI.

Date on which judgment is reserved : 20.07.2026

Date of pronouncement of judgment : 11.11.2026

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. I. Hussain, learned counsel for the petitioner. Also

heard Mr. I. Borthakur, learned CGC for respondent no.1; Ms. A. Verma, learned standing counsel for FT and Border matters, for respondent nos. 2, 4 and 7; Mr. A.I. Ali, learned standing counsel for the Election Commission of India, representing respondent no. 3; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for respondent no. 5.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Ahmed Ali @ Ahamad has assailed the opinion dated 12.12.2018, passed by the learned Member, Foreigners Tribunal, Tezpur (1st), Sonitpur, Assam, in F.T. Case No. 118/2016, arising out of Police Enquiry No. 222/2016, by which he was declared to be a foreigner who had illegally entered India from specified territory of Bangladesh on or after 25.03.1971 without valid documents.

3) Assailing the impugned opinion, the learned counsel for the petitioner had referred to the pleadings and evidence on record and had submitted that the petitioner had filed his written statement and denied that he was a foreigner and asserted that he was a citizen of India. He had also stated that his parents, Late Junab Ali @ Jonab Ali @ Janab Ali @ Md. Junabali and Late Hurutun Nessa @ Hartam Nessa were the original residents of village- Rajbharal, P.S. Tezpur, Dist. Darrang, now Dist. Sonitpur and their names appeared in the voter list of 1966, 1971 and 1977 of village- Rajbharal, under 73 Tezpur LAC. The petitioner had studied upto Class-V in the year 1978 at Bhojkhowa Shirajia Aided M.E. Madrassa, Bhojkhowa, Tezpur. The name of the petitioner and his wife, Musstt. Rahima's name appeared in the voter list of 1997 at village- Rajbharal and as a resident of the said village, the petitioner has obtained a certificate from the *Gaonburah* of his village. It was submitted that there were some discrepancies in the names of his father, mother and his

own name, as well as in respect of their age, which was duly explained in his written statement. In this regard, reliance was placed on the decision of this Court in the case of *Abdul Matali @ Mataleb v. Union of India & Ors., 2015 (2) GLT 617*. It was submitted that as per the notice issued to the petitioner, he was accused of illegally entering into India between 01.01.1966 and 25.03.1971 and therefore, the learned Tribunal could not have declared the petitioner as a foreigner of post 25.03.1971. Thus, it was submitted that as the petitioner had duly proved his pleadings, the impugned opinion was liable to be interfered with.

4) Per contra, the learned standing counsel for the FT and Border matters has made her submissions to support the impugned opinion.

5) Considered the submissions and also perused the Tribunal's records that was called for. Also considered the case cited at the Bar.

6) The learned counsel for the petitioner had in a concise manner, referred to the contents of the written statement. The petitioner, in his evidence-on-affidavit, filed as DW-1 had reiterated the statements made in his written statement and had exhibited the following documents:-

a. Certified copy of voter list of 1966 (Ext.1).
b. Certified copy of voter list of 1971 (Ext.2).
c. Certified copy of voter list of 1977 (Ext.3).
d. Certified copy of voter list of 1985 (Ext.4).
e. School certificate no. 83/21 dated 23.06.1983, issued by the Headmaster of Bhojkhowa Shirajia Aided M.E. Madrassa, Bhojkhowa, Tezpur (Ext.5)
f. Certified copy of voter list of 1997 (Ext.6).
g. *Gaonburah's* Certificate no. 886 of village- Rajbharal (Ext.7).

7) The learned Tribunal in the impugned opinion, had discussed the pleadings and evidence tendered by all the three witnesses examined by the petitioner.

8) It may be mentioned that in view of the order of remand proposed to be passed, the Court has refrained from discussing the pleadings and evidence and analysis of the impugned opinion on merit.

9) On a perusal of the Tribunal's records that was called for, it is noticed thatthe petitioner was served with a notice/ summons specifically alleging that he had illegally entered into India between 01.01.1966 and 25.03.1971. The said notice is available at page 32 of the said record. In the said context, it may be mentioned that this Court, in the case of *Rukia Begum Barbhuiya @ Rukia Begum v. Union of India & Ors., 2023 (4) GLT 1208: (2023) 0 Supreme(Gau) 568*, had elaborately dealt with the matter. It was held by referring to the provision of Paragraph 2 (1) of the Foreigners (Tribunals) Order, 1964 and Section 2(a) of the Foreigners Act, 1946, had held to the effect that reference before the Foreigners Tribunal can only be as to whether a person is or is not a foreigner within the meaning of Foreigners Act, 1946. It was observed that Section 2(a) of the Foreigners Act, 1946 defines foreigner to mean a person who is not a citizen of India. The Court had also elaborately considered the provision of Section 6-A of the Citizenship Act, 1955, which is a special provision for the State of Assam and it was observed that if a person is a foreigner who has entered into India (Assam) between 01.01.1966 and 25.03.1971, the said person has to register himself with the Foreigners Registration Office, which has consequences attached to such registration. However, in case a person had entered into the State of Assam after 25.03.1971, such person(s) are to be declared as foreigners. Paragraph nos. 12, 13 and 21 thereof is quoted below: -

> ***12***. *A reading of the provisions of Section 6 A makes it explicit that it is a special provision as to citizenship of persons covered by the Assam Accord and the core provisions of Section 6 A are that a person who may have entered the State*

of Assam from the specified territory prior to 01.01.1966 shall be deemed to be a citizen of India from the 1st day of January, 1966. The further provision is that such persons who entered the State of Assam from the specified territory after 01.01.1966, but before 25.03.1971 from the specified territory, and has been detected to be a foreigner, shall register himself with the Foreigners Registering Authority of the district concerned and upon having been registered shall be debarred of any voting rights for a period of ten years, but otherwise retaining all such other rights that a citizen of India may be bestowed with under the provisions and further that upon expiry of the period of ten years, even the voting rights would be restored back. In case of persons, who had entered the State of Assam from the specified territory on or after 25.03.1971, such persons are to be declared as foreigners.

13. *In view of the provisions of Section 6 A of the Citizenship Act 1955, Clause 2(1) of the Foreigners Tribunal Order 1964 would now have to be understood that once a reference is made, the reference would be whether the person concerned is or is not a foreigner, meaning thereby, whether the person concerned is a foreigner, who had entered the Staten of Assam from the specified territory on or after 25.03.1971 or he is a person who belongs to any of the other categories i.e., a person who entered the State of Assam from the specified territory before 01.01.1966 or between 01.01.1966 and 25.03.1971. No other meaning can be attributed to the reference under Clause 2(1) of the Foreigners Tribunal Order 1964 i.e. whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946. We further take note that even if a reference is made by setting up a question whether the person had entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971, the reference would have to be understood to be a reference under Clause 2(1) of the Foreigners Tribunal Order 1964 i.e., as to whether he is a foreigner or not. If the reference is worded whether the person concerned, is a person who had entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971, in order to arrive at any such conclusion that the reference itself is faulty inasmuchas, the decision of the Tribunal upon the materials on record would be that the person concerned had entered the State of Assam from the specified territory on or after 25.03.1971, in such circumstance, the only situation that can be envisaged is that the Tribunal first arrives at a conclusion of its own that the person concerned had entered the State of Assam from the specified territory on or after 25.03.1971, meaning thereby that the reference itself had been answered by the Tribunal. After having answered the reference, it would be an inconceivable situation that merely because the reference is worded whether the person had*

entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971 it has to be referred back to the referral authority to make a fair reference now putting up a question whether the person concerned had entered the State of Assam on or after 25.03.1971. In such situation, as the matter would have to be referred back only after a final decision has been arrived at and now if the reference is again made with a corrected expression in the questions framed, the same may lead to further complications that the subsequent reference would be barred by the principles of resjudicatainasmuchasit would be a subsequent reference on the same issue between the same set of parties where an earlier decision had already been arrived at. It is noticed that in Falani Bibi (supra) the aforesaid aspect of the further implication of a corrected reference being again made had not been gone into and from such point of view, it can be said that the view taken therein would be per in curium of the further consequences of a fresh reference being made.

* * *

21. *We further add that going by the statutory provisions of Clause 2(1) of the Foreigners Tribunal Order 1964 any reference would have to be understood to be a reference to the Tribunal on the question whether the person so referred is a foreigner or not within the meaning of Foreigners Act 1946, where again foreigner is given the meaning of a person who is not a citizen and again where a citizen is defined under the Citizenship Act 1955*.

10) Therefore, following the ratio of the case of *Rukia Begum Barbhuiya @ Rukia Begum (supra)*, the Court is of the considered opinion that the petitioner deserves one more opportunity to prove his citizenship. To enable the petitioner to avail such opportunity, the Court is inclined to set aside the impugned opinion dated 12.12.2018, passed by the learned Member, Foreigners Tribunal, Tezpur (1st), Sonitpur, Assam, in F.T. Case No. 118/2016, arising out of Police Enquiry No. 222/2016.

11) The petitioner, who is duly represented by his learned counsel, is directed to appear before the said learned Tribunal within the outer limit of 04.12.2026 without requirement of service of any fresh notice of appearance, and the petitioner by producing a certified copy of this order, shall also file

additional evidence-on-affidavit, if so advised to prove his citizenship and to prove that he is not a foreigner of post 25.03.1971 stream. In the event the petitioner produces any additional material, the learned Tribunal shall pass a fresh opinion in accordance with law.

12) It is further provided that on his appearance before the learned Tribunal, the petitioner shall apply for bail, which shall be considered by the learned Tribunal in accordance with law. The said bail shall remain valid for a period of 30 (thirty) days beyond the date when a fresh opinion is passed.

13) It is made clear that if the petitioner fails to appear within the time allowed, it would be permissible for the petitioner to treat the petitioner as absent on call and pass a fresh opinion in accordance with law, without being influenced by this order.

14) It is also clarified at the cost of repetition that the Court has not examined the impugned opinion on merit.

15) The Registry shall return back the Tribunal's record along with a copy of this order as to make it a part of record by the said learned Tribunal.

16) The writ petition is allowed to the extent as indicated above, with remand of the matter back to the said learned Tribunal.

JUDGE **JUDGE**

Digitally signed by Champak Rajbongshi
Date: 2026.11.11 16:59:51 +05'30'

Comparing Assistant **Private Secretary**