

GAHC010022402025



2025:GAU-AS:13385

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

I.A.(Civil)/295/2025

WITH

Review.Pet./15716/2024 (FN)

Nalu Miya @ Nalsan Ali @ MD Lalu Miya

D/O: Late Sikim Ali,

Vill: Topgaon

P.O: Bongaigaon,P.S. Mererchar,

District- Bongaigaon, Assam

..... Applicant/Petitioner

-VERSUS-

1. The Union of India, represented by the

Ministry of Home Affairs, Government of India, New Delhi-1

2. The State of Assam, represented by the Department of Home, Government of Assam, Dispur, Guwahati-05

3. The Election Commision of India, Nirvachan Sadan, Ashok Road, New Delhi, PIN-110001.

4. The State Coordinator, National Registration of Citizen, Assam, Bhangagarh, Guwahati-05.
5. The District Commissioner, Bongaigaon, District-Bongaigaon, Assam, PIN-783384.
6. The Superintendent of Police, Bongaigaon, DistBongaigaon, Assam, PIN-783384.
7. The Officer-in-Charge, Mererchar Police Station, District-Bongaigaon, Assam, PIN-783384.

.....Opposite Parties/Respondents

For the applicant/petitioner:: Mr. M. I. Hussain, Adv.

For the Opp. parties/respondents :: Mr. J. Payeng, SC, F.T.matters

Mr. K. K. Parasar, CGC, respondent No.1

Mr. G. Sarma, SC, NRC,

Mr. H. K. Hazarika, GA, for the State

Mr. H. Kuli, ECI

Date of hearing :: 04.09.2025

Date of Judgment :: 25.09.2025

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE NELSON SAILO

JUDGMENT AND ORDER (CAV)

(Nelson Sailo, Judge)

Heard Mr. M. I. Hussain, learned counsel for the applicant/review petitioner, Mr. J. Payeng, learned Standing Counsel for the FT matters, Mr. KK

Parasar CGC for respondent No.1, Mr. G. Sarma Standing Counsel NRC, Mr. HK Hazarika Government Advocate for the State and Mr. H. Kuli for the Election Commission of India.

[2.] Both the Interlocutory Application as well as the Review Petition are being disposed of by this common order. The I.A is filed seeking condonation of 2417 days delay in filing the Review Petition against the order dated 23.05.2018, passed in WP(C)/6719/2016. The only reason for the delay according to the applicant is due to poverty. The applicant along with other labourers went to Kerala for earning money and got engaged in a company. They were not paid regularly and hence after a few months they wanted to come back but the company did not allow them to leave the work on the ground that a huge amount of advance money for 5(five) years had been taken by their leader and therefore, he was not allowed to leave the company. The applicant therefore could not come back for 5(five) years and when he eventually did, he came back with an empty hand. Therefore, he was able to file the review petition only after a delay of 2417 days. According to him as the reason for the delay is due to *bonafide* reasons, the delay may be condoned.

[3.] Mr. J. Payeng, learned Standing Counsel, FT matters submits that no documents has been annexed by the applicant/petitioner in support of his

explanation and therefore, the explanation for the delay being cryptic cannot be accepted. He submits that even on merit, no grounds for review has been made out by the petitioner.

[4.] We have heard the learned counsels for the parties and have noticed that not only has the applicant failed to annex any documents in support of his version but he has also failed to explain the delay with relevant particulars such as, the time when left for Kerala, the reference of the company where he worked etc. He has also not mentioned when he came back from Kerala and how he was ultimately able to file the review petition. Notwithstanding, such deficit in the material particulars and explanations with supporting documents, we proceed to examine the review petition on merit as well.

[5.] As already stated, the petitioner seeks review of the order dated 23.05.2018, passed by this Court in WP(C)/6719/2016. It may be stated herein that the Foreigners Tribunal, Bongaigaon No.2 at Abhayapuri vide order dated 23.09.2016 in BNGN/FT/Case No.3909/2007 (*State Vs. Md.Lalu Miya*) had declared the petitioner to be a foreigner who had illegally entered into India (Assam) from Bangladesh after 25.03.1971. Being aggrieved with the same, the petitioner had filed the writ petition invoking Article 226 of the Constitution of India. The writ petition was heard and disposed of by this Court vide order

dated 23.05.2018, by coming to the conclusion that the petitioner failed to discharge his burden under Section 9 of the Foreigners Act, 1946 and failed to prove that he was not a foreigner but a citizen of India and thus the writ petition was dismissed.

[6.] The petitioner has now sought for a review of the order dated 23.05.2018 and the grounds raised for review may be abstracted herein below for ready perusal:

i. For that, although, all the documents exhibited by him amply proves his citizenship of India and his linkage to his father Late Sikim Ali, grandfather Noimuddin Sheikh, the learned Tribunal opined that the evidences adduced by the petitioner are not trustworthy and also that he has failed to prove that he was born through genuine Indian Parents and by impugned order dated 23.09.2016 declared the petitioner to be a foreigner/illegal migrants of post 25.03.1971 stream. Travelling beyond jurisdiction the Ld. Tribunal has also directed to intimate the Respondent No. 3 to take necessary steps for deleting the name of the petitioner from the electoral roles and also to intimate the Respondent No. 4 for taking necessary steps in violation of Order 3(1) of Foreigners' (Tribunals) Order, 1964. But the Hon'ble High Court failed to appreciate the above aspect.

ii. For that, the learned Foreigners' Tribunal failed to appreciate that the certified copies of the voters list exhibited by him has been furnished as applied by him only in respect of himself and his wife and therefore the grounds for not considering his aforesaid evidences as trustworthy since

the name of his siblings and mother did not appear in those voters list is absurd, illegal and bad in law. Similarly, non-consideration of the bank passbook exhibited as Exhibit No. 12 by the petitioner in support of his linkage with his father Late Sikim Ali as not trustworthy evidence is also illegal and arbitrary, as such, the Hon'ble High Court ought to have interfered with the impugned order passed by the Ld. Tribunal and further declare the petitioner as a bonafide citizen of India.

*iii.*For that, while dismissing the Writ Petition vide Order dated 23.05.2018 the Hon'ble Court failed to appreciate the fact of the case and relevant laws in proper perspective. The Hon'ble High Court while passed the impugned order dated 23.05.2018 didn't consider the public documents filed by the petitioner before the Ld. Tribunal and uphold the erroneous order passed by the Ld. Tribunal vide Order dated 23.09.2016.

*iv.*For that, while the impugned order dated 23.05.2018 was passed by the Honble High Court, the erroneous order passed by the Ld. Tribunal was uphold though the Ld.Tribunal didn't at all discuss the evidences filed by the petitioner which are public document u/s- 74 of the Indian Evidence Act 1872. Those documents are also not controverted by the State. The settled position of law is that the documents and evidences, if not controverted, are considered as accepted. As such, the impugned order passed by the Ld. Tribunal and by this Hon'ble High Court can't sustain in the eye or law.

*v.*For that, the petitioner adduced witness of DW-1 by himself on 02-06-2016 but neither the DW1 was cross-examined before the Ld. Tribunal nor did the Ld. Tribunal make any whisper about the evidence of DW-1 in the impugned order. But the Hon'ble High Court did not consider this aspect

while dismissed the writ petition. This vital question of law has been decided by this Hon'ble Court to the effect that any order passed by the Ld.Tribunal without discussing the evidences and witness cannot sustain in the eye of law. In this regard our Hon'ble High Court has also been pleased to pass different Judgments.

vi.*For that, the notice dated 23-06-2014 which was sent to the petitioner was without any main grounds of doubt. As per the Order 3(1) of Foreigners' (Tribunals) Order, 1964 the main grounds of doubt must be mentioned in the notice and the same is reiterated by the Hon'ble Full Bench of this Hon'ble Court, Hon'ble Division and also by the Hon'ble Supreme Court. But the notice was sent in violation of the statutory provision as well as the judgments passed by different courts in this regard.*

Vii.*For that, due to inadvertence he failed to submit the voter list of 1975 and 1977 wherein his name appears along with his grandparents and parents and other family members. The petitioner also failed to submit the voter list of 1985 of 34 No. Abhayapuri North L.A.C. of District: Goalpara, Sub-division: North- Salmara, Police Station:74, Naravita M.V. School Name of the village: 174 Naravita Pt. -I. wherein the brothers and mother name of the petitioner recorded vide SL Nos. 371 to 375.*

Viii.*For that, the petitioner begs to state that though the impugned order has been passed on 23-05-2018 by this Hon'ble Court, but due to poverty, the petitioner could not file the writ petition at earliest possible time. For earning livelihood, he stays outside the state. Till he could collect the expenses, the delay has been caused in filing the Review Petition, which is not intentional rather under compelling circumstances and hence the delay may kindly be condoned by this Hon'ble Court.*

ix. For that the petitioner has not been yet taken into custody but the police is contemplating to arrest the petitioner and keep in detention camp. As such this Review petition may be allowed by this Hon'ble Court and declare the petitioner as a citizen of India in the interest of justice.

[7.] The petitioner in preferring the instant review petition has invoked Chapter-X of the Gauhati High Court Rules and Order XLVII of the Rule 1 and 2 of the Civil Procedure Code (CPC). In terms of the provisions of the CPC, a review can be entertained if there has been some mistake or error apparent on the face of the record or the petitioner despite due care and diligence could not produce the evidence at the time when the degree was passed or order made and/or on account of other sufficient reasons. It may be seen that ground No.(i) and (ii) are in respect of the Tribunal's Opinion and therefore cannot be the subject matter of review in the present review petition.

[8.] In respect of ground No.(iii) and (iv), this Court had indeed taken into consideration the documents exhibited by the petitioner which can be seen from paragraph Nos.15 to 21 of the order dated 23.05.2018. The same may be abstracted below for ready perusal –

“15. Ext. 1 was a photocopy of a translated copy of voters list of Abhayapuri Constituency for the year 1966. Here two of the voters were Shikim Ali, son of Naimuddin Sheikh, aged 30 years; and Rupban Bibi, wife of Shikim Ali, aged 28 years.

15.1. Ext. 1 was not a photocopy of a certified copy. As per Section 76 of the Indian Evidence

Act, 1872 (Evidence Act) to be called a certified copy of a public document, there must be a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer having custody of the public document with his name and his official title and shall be sealed whenever such officer is authorized by law to make use of a seal. A look at Ext. 1 will show that it is a translated copy and does not contain the statutory certificate of the public officer certifying that it was a true copy of the public document i.e. the electoral roll. Therefore, Ext. 1 was not a certified copy of the electoral roll of 1966. If it is not a certified copy then it is not secondary evidence as per Section 63 of the Evidence Act. As per Section 61 of the Evidence Act, contents of documents may be proved either by primary evidence or by secondary evidence. Certainly, Ext. 1 was not primary evidence; as described above, it was also not secondary evidence. Therefore, contents of Ext. 1 were not proved.

16. Similar is the position in respect of Ext. 2 (translated copy of the voters list of 1970), Ext. 3 (translated copy of the voters list of 1985), Ext. 4 (translated copy of the voters list of 1997), Ext. 5 (translated copy of the voters list of 2008), Ext. 6 (translated copy of the voters list of 2011); and Ext. 7 (translated copy of the voters list of 2014). For the reasons discussed above for discarding Ext. 1, Exts. 2 to 7 would also be of no assistance to the petitioner as the contents of those exhibits were not proved.

17. Ext. 8 is stated to be a periodic khiraj patta in the name of Md. Shikim Ali issued on 31.03.2009. Ext. 9 is a periodic khiraj patta dated 31.03.2009 of some land in the name of Sri Santosh Ch Sarkar.

18. Ext. 10 is stated to be a sale deed dated 18.02.1981. Ext. 11 is also stated to be a sale

deed dated 15.12.1993. None of these documents would be of any assistance to the petitioner inasmuch as these documents are post 25.03.1971 documents.

19. Ext. 12 is a photo copy of bank pass book of United Bank of India, Bongaigaon Branch where the account holder was Nalu Mia, son of Shikim Ali. Citizenship of India cannot be established on the basis of a bank pass book. In this case, the account was opened on 09.02.2008.

20. The last of the documents is Ext. 13, stated to be an elector photo identity card issued by the Election Commission of India where the elector's name was mentioned as Rup Bhan Beoaba and the relation's name was mentioned as Shikim Ali. No reliance can be placed on this document either, because this document is not indicative of the linkage between Lalu Mia @ Nalu Mia and Shikim Ali.

21. Net result of the above discussion is that petitioner could not prove on the basis of any admissible evidence that he was the son of Shikim Ali relatable to be a period prior to 25.03.1971 which is the cut-off date for identification of foreigners in the State of Assam as per Section 6A of the Citizenship Act, 1955, as amended."

[9.] The petitioner in ground No.(v) has taken the stand that the Tribunal did not cross examine DW-1 but the fact remains that the review sought for in this petition is the order passed in the WP(C) and not the Opinion of the Tribunal. Likewise, ground No. (vi) has not been agitated by the petitioner either before the Tribunal or before this Court in the writ petition. The petitioner has neither annexed a copy of the notice that was issued to him or a copy of the Tribunal's

opinion in his review petition. At any rate the burden of proof is upon the petitioner under section 9 of the Foreigners Act, 1946 that he is not a foreigner but a citizen of India.

[10.] It may be stated herein that it is a settled principle of law that a review petition is not an appeal in disguise and therefore ground taken by the petitioner do not qualify as the ground for review and they rather are ground to be taken in appeal. In respect of ground No. (vii), it is the contention of the petitioner that due to inadvertence, he failed to submit the voter list of 1975 and 1977, wherein, his name appears along with his grandparents and parents and other family members. The petitioner also failed to submit the voter list of 1985 of 34 No. Abhayapuri North L.A.C of District-Goalpara, Sub-Division- North Salmara, Police Station- 74 Naravita M.V school name of the Village- 174 Naravita Part-I, wherein, the brothers and mother name of the petitioner were recorded at Sl. No.371 and 375. However, the petitioner in his written statement filed before the Tribunal on 23.02.2015 stated that he was born at Village Naravita Part-I under Mererchar Police Station in the District of Bongaigaon but in 1985, the family shifted to Topgaon Part-II under the same Police Station. He stated that his father was a voter in 1966 in respect of Abhayapuri constituency then again in 1970, the petitioner became a voter in 1985 of North Abhayapuri constituency; then again in 1987, 2011 and 2014. However, in his written

statement, the petitioner did not mention the name of his father. In the supporting affidavit, he identified himself as Nalu Miya @ Nalsan Ali, son of late Sikim Ali aged 56 years. Thus, from this it could be gathered that the petitioner's father was Sikim Ali. If the petitioner was of 56 years of age in 2015, it would mean that he was born some time in 1959. Therefore, according to the petitioner, his father Sikim Ali was a citizen of India and being son of Sikim Ali, he was a citizen of India.

[11.] The petitioner filed his evidence-in-chief by way of an affidavit on 02.06.2016 describing himself as Lalu Miya @ Nalu Miya @ Nalsan Ali. He also filed a large number of documents which were marked as exhibit 1 to 13. This Court while considering the writ petition of the petitioner on 23.05.2018 had taken into consideration the documents exhibited by the petitioner individually and had come to the conclusion that the contents of the exhibit have not improved by the petitioner in accordance with law and therefore, they could not be accepted. It would therefore not be necessary to revisit the exhibits and that too in a review petition. The petitioner had placed his reliance on the order of the Tribunal dated 26.12.2016, passed in BNGN/FT Case No.4212/2009 by which Rahima Khatun was declared to be not a foreigner by the Tribunal. However, the fact remains that the petitioner has not exhibited any documents and prove the same to show that Rahima Khatun is his wife. Rahima Khatun

being the daughter of a different father, the decision of the Tribunal in her favour cannot be relied upon by the petitioner. This Court had also taken note that the projected wife of the petitioner i.e., Rahima Khatun had also not deposed before the Tribunal in the reference made against the petitioner. Similarly, the petitioner had also not deposed in favour of Rahima Khatun in the reference made against her.

[12.] As for ground No. (viii), the same has already been answered in the preceding paragraph No.4 of this order and the same is not being repeated for brevity.

[13.] Thus upon due consideration, we are of the considered view that the petitioner has failed to make out any case for review of the order dated 23.05.2018. Having found no merit in the review petition, both the Review Petition as well as Interlocutory Application seeking delay condonation are hereby dismissed.

JUDGE

JUDGE

Comparing Assistant