

GAHC010022622026



2026:GAU-AS:4058-DB

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

Case No. : WP(C)/1392/2026

MD HUSSAIN ALI
S/O LATE NIRASHA SHEIKH, R/O VILL.- BIHUDIA PS- KHARUPETIA DIST.-
DARANG, ASSAM.

VERSUS

THE UNION OF INDIA and othrs
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF INDIA, HOME AFFAIRS DEPARTMENT, NEW DELHI-01.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI 06.

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01
INDIA.

4:THE STATE CO ORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI 05

5:THE DISTRICT COMMISSIONER

DARRANG
MONGALDAI
DIST.- DARRANG

ASSAM. PIN- 784115

6:THE SUPERINTENDENT OF POLICE DARRANG

DISTRICT- DARRANG
ASSAM. PIN- 78411

Advocate for the Petitioner : MS K TAYE, MS. M KHATUN,MR A ALI

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 18.03.2026
(K.R. Surana, J)

Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC; Mr. G. Sarma, learned standing counsel for the FT and Border matters; Ms. S. Katakey, learned standing counsel for the ECI; and Ms. R.B. Bora, learned Jr. Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Hussain Ali, has assailed the impugned *ex parte* opinion dated 30.07.2019, passed by the learned Member, Foreigners Tribunal (3rd), Darrang, Mangaldai, in F.T. (3rd) Case No. 3282/2012, arising out of Ref- IM(D)T Case No. 960/2004, by which he was declared to be a foreigner of post 25.03.1971 stream.

3. The learned counsel for the petitioner has submitted that the is a *bona fide* Indian citizen by birth, permanently residing in Village Bihudia under Kharupetia Police Station in the district of Darrang, Assam. It is submitted that

the petitioner has never shifted his residence and belongs to a family whose citizenship is well established through historical records. His father's name appears in the voter lists of 1958, 1966, and 1971, and subsequent electoral rolls, thereby establishing legacy data prior to the cut-off period. The petitioner has also pointed out a minor discrepancy in the spelling of his father's name in official records, clarifying that the actual name is Nirasha Sk, but the same is incorrectly recorded in the case record as Nirosha Sk. It is further submits that his own name, along with those of his family members, appears continuously in voter lists from 1985 up to 2018, and that they have exercised their voting rights in their constituency. In addition to electoral records, he relies on multiple supporting documents such as NRC records, Aadhaar card, PAN card, School Leaving Certificate, and land revenue payment receipts to establish his identity, linkage, and citizenship. The petitioner states that he initially appeared before the learned Tribunal and filed his written statement. However, he failed to appear in subsequent dates due to a *bona fide* misunderstanding that the matter had been concluded, compounded by lack of communication from his engaged advocate. Additionally, the intervening COVID-19 pandemic and his migration to Karnataka for livelihood further prevented him from following up on the case.

4. Accordingly, the learned Tribunal proceeded *ex parte* and passed the opinion dated 30.07.2019 declaring the petitioner to be a foreigner. The petitioner claims that he remained unaware of this development until November 2025, when he returned to his native village. Thereafter, he promptly applied for and obtained a certified copy of the impugned order in January 2026 and has filed the present writ petition without intentional delay.

5. It is submitted that there is no other efficacious or alternative remedy available to the petitioner and that denial of relief would result in grave prejudice and hardship to him and his family. The petition is stated to have been *filed bona fide* and in the interest of justice.

6. This writ petition was filed on 05.02.2026, to assail the *ex parte* opinion dated 30.07.2019, i.e. after there has been an extraordinary delay of 6 years, 6 months, 6 days (or 2382 days). Hence, the matter was heard on delay and laches on part of the petitioner to assail the impugned *ex parte* opinion.

7. Per contra, the learned standing counsel for the FT, Border matters and NRC had submitted that the explanation given for the inordinate delay is vague and insufficient and not supported by any documents or any other cogent and reliable material.

8. The learned CGC and the learned Addl. Senior Govt. Advocate for the other appearing respondents have adopted the submissions made by the learned standing counsel for the FT, Border matters and NRC.

9. The learned Tribunal, vide impugned *ex parte* opinion has held that the petitioner had failed to submit any document in support of his citizenship before the Enquiry Officer during the spot verification. The petitioner had also remained absent in the proceeding after filing written statement. Accordingly, it was held that the petitioner had failed to discharge his burden of proof under Section 9 of the Foreigners Act, 1946 that he is not a foreigner but an Indian. Resultantly, the *ex parte* opinion was passed against the petitioner, thereby declaring him to be a foreigner of post 25.03.1971 stream.

10. In respect of inordinate delay and laches in assailing the impugned *ex parte* opinion after a lapse of 6 years, 6 months, 6 days (or 2382 days), it may be stated that there is no period of limitation prescribed for filing a writ petition, but unless the petitioner demonstrates good and cogent reason, delay and laches would disentitle the petitioner to equitable relief on the principle that delay defeats equity. If one needs any authority on the point, the decision of the Supreme Court of India in the case of *Mrinmoy Maity v. Chhanda Koley*, 2024 INSC 314: (2024) 0 Supreme(SC) 351, and *Chairman/Managing Director, U.P. Power Corporation Ltd. V. Ram Gopal*, (2020) 13 SCC 225: (2020) 0 Supreme(SC) 93 (Full Bench). In the later case, while approving the decision of the Supreme Court of India in the case of *P.S. Sadasivaswamy v. State of Tamil Nadu*, (1975) 1 SCC 152 and *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479, it was held to the effect that limitation does not strictly apply to a proceeding under Articles 32 and 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time and the High Courts were cautioned by observing that prolonged delay of many years ought not to have been overlooked or condoned. Paragraph 16 thereof [as extracted from (2020) 0 Supreme(SC) 93] is quoted below:-

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu vs. State of Kerala, (2009) 2 SCC 479 this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It

is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

11. Thus, except for some absolute vague statement that the petitioner was under the impression that the proceeding was over or the intervening Covid pandemic or the petitioner went to Kerala for livelihood, no reason has been assigned for the petitioner's failure approach this Court within a reasonable time of passing of the impugned *ex parte* opinion. The *ex parte* opinion was passed on 30.07.2019, but the petitioner had applied for and received the certified copy on 07.01.2026. He has filed this writ petition on 05.02.2026. Thus, the petitioner, despite full knowledge of the consequences of being declared as a foreigner, has allowed the said *ex parte* opinion to attain finality for over 6 years. Moreover, the delay is found to be not properly explained.

12. The Supreme Court of India, in paragraph 46 of the case of *Urban Improvement Trust v. Vidhya Devi*, 2024 INSC 980: (2024) 0 Supreme(SC) 1189, has reiterated the law that undue delay in approaching the Court can be a ground for refusing relief and it has been expressed that only in exceptional cases, delay can be condoned. The said paragraph 46 [extracted from (2024) 0 Supreme(SC) 1189] is quoted below:-

"46. As regards the appellant's challenge to the inordinate delay of 21 years in filing of the writ petitions by the respondents, we are of the view that the same needs to be considered in the facts and circumstances of the case. While it is true that the courts have consistently held that undue delay in approaching the court can be a ground for refusing relief, the courts have also recognized that in exceptional cases, where the impugned action is patently illegal or affects fundamental rights, the delay must be condoned."

13. In respect of the legal proposition that delay and laches is fatal to a belated challenge to the opinion of the Foreigners Tribunals, it may be relevant to refer to the decision of this Court in the case of *Jonali Das v. Union of India*, 2018 (5) GLT 492: (2018) 0 Supreme (Gau) 1186. Paragraph 9 thereof is as follows:-

“9. In Azmat Ali @ Amzad Ali Vs. Union of India [W.P.(C) No.4971/2018, disposed of on 01.08.2018], this Court had observed as follows:-

"It is more than three decades that the issue of influx of foreign nationals has been in public domain in the State of Assam and has engaged the attention of the people. Interest of the State is of paramount importance in that unabated influx has the potential to affect the integrity and sovereignty of the country. Citizenship of a person, no doubt, is a very valuable right and should be zealously guarded. There is no gainsaying the fact that a person who is alleged to be a foreigner must be given due and reasonable opportunity to establish that he is a citizen of India. However, if a person does not take steps for safeguarding his interest, he does so at his own risk and peril as grant of opportunity cannot be an endless exercise. Right to a fair hearing or 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."

14. 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.

15. Moreover, 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 with 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. A similar opinion has also been expressed by this Court in the case of *Abu Bokkor Siddique v. Union of India, 2019 (1) GLT 813*.

16. It must be taken note of the fact that the Supreme Court of India, in the case of *Sarbananda Sonowal (supra)*, 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.

17. Be that as it may, as the issue of citizenship has been raised, notwithstanding the delay and laches, the Court has carefully examined the materials available in the writ petition and on merit, the opinion expressed by the learned Tribunal cannot be faulted with on any count. Thus, the challenge to the impugned *ex parte* opinion dated 30.07.2019, passed by the learned

Member, Foreigners Tribunal (3rd), Darrang, Mangaldai, in F.T. (3rd) Case No. 3282/2012, arising out of Ref- IM(D)T Case No. 960/2004, by which the petitioner was declared to be a foreigner of post 25.03.1971 stream, fails.

18. Resultantly, this writ petition is dismissed on merit as well as on account of delay and laches at the "motion stage" without issuing notice upon the respondents. The consequences of the said *ex parte* opinion shall follow.

19. There shall be no order as to cost.

20. 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 Foreigners Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant