

GAHC010151192019



2026:GAU-AS:5675

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

Case No. : WP(C)/4906/2019

SHAMAR ALI @ SAMAR ALI
S/O- LT. HARMUZ ALI @ HARMUZ ALI FAKIR, VILL. BALIDUNGA PAM, P.O.
MOIRABARI, P.S. MOIRABARI, DIST. MORIGAON, ASSAM, PIN- 782121.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF INDIA,
HOME DEPTT., NEW DELHI-1, INDIA.

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

3:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH
GHY.-5
ASSAM.

4:THE ELECTION COMMISSION OF INDIA
REP. BY THE COMMISSIONER
NIRVACHAN SADAN
ASHOKA ROAD
DELHI. 110001.

5:THE DEPUTY COMMISSIONER
MORIGAON

DIST. MORIGAON
ASSAM.

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST. MORIGAON
ASSAM

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the petitioner : Mr. Z. Hammad.

For the respondents : Mr. G. Pegu, CGC,
: Mr. A.I. Ali, SC, ECI
: Mr. G. Sarma, SC, FT & NRC

For the State respondent : Mr. P. Sarmah, Addl. Sr. G.A.

Date on which judgment is reserved : 16.03.2026

Date of pronouncement of judgment : 24.04.2026

**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. Z. Hammad, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC for respondent no.1; Mr. G. Sarma, learned standing counsel for FT, Border matters and NRC for respondent nos. 2, 3 and 6; Mr. N. Kalita, learned counsel, appearing on behalf of Mr. A.I. Ali, learned standing counsel for respondent no. 4; 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. Shamar Ali @ Samar Ali, has assailed the opinion dated 14.08.2018, passed by the learned Member, Foreigners Tribunal-2nd, Morigaon, Assam, in Case No. F.T. 75/2013, arising out of Police Ref. F.T. Case No. 127/11, dated 25.04.2011, thereby declaring him to be an illegal migrant/foreigner who has illegally entered into India (Assam) on or after 25.03.1971.

3. In view of the order of remand proposed to be passed, the detailed discussion regarding the pleadings and evidence has not been made in this order.

4. It would suffice to mention that on service of notice, the petitioner appeared before the learned Tribunal and had filed his written statement. In brief, the petitioner had stated that the allegation against him was absolutely false and the Verification Officer could not make a proper enquiry and submitted a false and manufactured report without visiting the house of the petitioner. By denying the contents of Annexure-A and Annexure-B verification form, he had stated in his written statement that he was born at village-Balidunga Pam under Bhuragaon P.S., Dist. Morigaon to Harmuz Ali @ Harmuz Ali Fakir (father) and Maleka Khatun (mother), where he is permanently residing till date. The father of Harmuz Ali is Yasin Ali, who is also called Yasin. Ten documents were filed along with the written statement, out of which 7 (seven) documents were in respect of the petitioner.

5. In support of the defence, the petitioner had examined himself as DW-1. In his evidence-on-affidavit, the petitioner had stated that he and his

father were born and brought up in village- Balidunga Pam under Bhuragaon P.S., Dist. Morigaon. In the year 2001, he got married to Miss Aspin Nahar, daughter of Md. Abdul Maleque, resident of village- Hekenamara, under P.S. and Dist. Morigaon. The learned Tribunal has recorded the cross-examination of DW-1 on 03.03.2017. For the reasons stated hereinbelow, the contents of the cross-examination have not been discussed in this order. In support of his case, he had exhibited the following documents:-

- a. *Gaonburah* certificate in his name (Ext.A).
- b. *Panchayat* certificate in his name (Ext.B).
- c. *Panchayat* certificate cum marriage certificate (Ext.C).
- d. Birth certificate of petitioner's son (Ext.D).
- e. International Passport in the name of Yesin Ali, petitioner's grandfather (Ext.E).
- f. Certified copy of voter list of 2005 (Ext.F).
- g. Certified copy of voter list of 1966 in the name of his parents (Ext.G).
- h. Certified copy of voter list of 1970 in the name of his parents (Ext.H).
- i. Draft *Chitha* of land in the name of his father (Ext.I).
- j. Land holder certificate in the name of his father (Ext.J).
- k. Revenue paid receipt (Ext.K).

6. The petitioner had examined Md. Abdul Maleque, the father of petitioner's wife Aapin Nahar as DW-2, who had adduced evidence in support of citizenship of his daughter. The learned Tribunal has recorded the cross-examination of DW-2 on 03.03.2017. For the reasons stated hereinbelow, the contents of the cross-examination have not been discussed in this order. To support his evidence that Aspin Nahar, his daughter is an Indian citizen DW-2 had exhibited the following documents:-

- a. *Gaonburah* certificate in the name of Aspin Nahar (Ext.L).
- b. *Panchayat* certificate in the name of Aspin Nahar (Ext.M).
- c. Voter list of 1965 in the name of grandfather of Aspin Nahar (Ext.N).
- d. Voter list of 1970 in the name of grandfather of Aspin Nahar (Ext.O).
- e. Voter list of 1993 in his name (Ext.P).
- f. Voter list of 1997 in his name and family (Ext.Q).

- g. Voter list of 2016 in his name wife and son (Ext.R).
- h. Land record in respect of land inherited by him from his father (Ext.S).

7. The petitioner had also examined Md. Muslemuddin, the Govt. *Gaonburah* of Balidangapam, 2 No. Barkur Pathar, Kheuji Pathar and Hatilarua Pathar villages as DW-3. In brief, as per his examination-in-chief, he had issued Ext.A residence certificate in the name of Samar Ali, son of Harmuz Ali and Ext.A(1) is his signature. According to him, both opposite parties are permanent residents of his *Lot* and Indian citizens and not foreigners. DW-3 was neither cross-examined by the learned Government Pleader nor examined by the learned Tribunal.

8. The petitioner had also examined Digen Deuri, Govt. *Gaonburah* of Damal, Charaihagi and Hekenamara village as DW-4. In brief, in his examination-in-chief, he had stated that he had issued Ext.L and Ext.L(i) is his signature. He had stated that the opposite party no.2 is not a foreigner but an Indian citizen. DW-4 was neither cross-examined by the learned Government Pleader nor examined by the learned Tribunal.

9. The learned Tribunal, upon appreciating the evidence on record, discarded Ext.C, Ext.L to Ext.S, as they were in respect of the proceedee no. 2, against whom no enquiry or reference was made. The other exhibits in respect of the petitioner were held to be untrustworthy and thus, discarded. Resultantly, by the impugned opinion, the petitioner was held to be a foreigner of post 25.03.1971.

10. In paragraphs 5 and 6 of this order, the reasons for not discussing the cross-examination of DW-1 and DW-2 were not mentioned. The reason is that in the entire order-sheet as well as in order dated 03.03.2017, as well as in the impugned opinion dated 14.08.2018, the learned Tribunal did not

record the presence of Government Pleader. Therefore, there was no one for the State to cross-examine the DW-1 and DW-2. There is no doubt that the learned Tribunal had the power under Section 165 of the Evidence Act, 1872 to ask questions to witnesses. But if it was the Tribunal's queries, which were responded to, the answers by DW-1 and DW-2 could not have been recorded as if they were cross-examined. The answers ought to have been recorded either as "answer to Tribunal's queries" or in any other appropriate heading. The manner in which cross-examination of DW-1 and DW-2 was recorded, is highly improper and is found to have vitiated the proceedings.

11. In paragraph 9 above, it has been mentioned that the learned Tribunal had discarded Ext.C, Ext.L to Ext.S, as they were in respect of the proceedee no. 2, against whom no enquiry or reference was made. If that be the case, the Tribunal ought not to have registered the reference against proceedee nos. 2 and 3, namely, Musstt. Yasbin Begum, wife of Md. Samar Ali, and Md. Masidul Ali. It is seen that notice addressed to all the three proceedees to appear in the proceeding of F.T.75/2013 was served on the petitioner. Accordingly, the petitioner had appeared and contested the case for all the three proceedees. Accordingly, evidence was also led in respect of all the three proceedees by examining 4 (four) witnesses.

12. On an examination of the Tribunal's record, it is seen that vide Memo bearing F.T.C/ NO. 127/11 dated 25.04.2011 (available at pg. 14 of Tribunal's record), the Superintendent of Police (Border), Morigaon, had directed an enquiry to be conducted in respect of the petitioner and accordingly, enquiry was made only against the petitioner. However, while making the reference before the learned Foreigners Tribunal-2nd, Morigaon, it was stated by the Superintendent of Police (Border), Morigaon that the petitioner and his family

members entered into India after 25.03.1971. The learned Tribunal, till the termination of proceeding, did not exempt the appearance of the proceedee nos. 2 and 3. However, while rendering its opinion dated 14.08.2018, the learned Tribunal, while discarding Ext.C and Ext.L to Ext.S, had recorded that against the proceedee nos. 2 and 3, there was no reference.

13. In the considered opinion of the Court, the procedure adopted by the learned Tribunal to initially proceed against the petitioner, his wife and his son was illegal. Without any reference, neither any proceeding could have been registered against the wife and son of the petitioner nor any process could not have been issued against them. This calls for some reforms in the streamlining of the procedure to be followed in the proceedings before all the Foreigners Tribunals in the State, for which an appropriate order would be passed hereinafter.

14. In this case, on receipt of the notice, the petitioner had to take defence not only for himself but also for his wife and son. He had also adduced evidence for himself and those two other proceedees, i.e. his wife and son. Under the circumstances, it is quite possible that if the petitioner had to defend himself, he could have taken more appropriate defence.

15. Be that as it may, the Court is of the considered opinion that the proceeding is found to have been vitiated on the ground that though the learned Tribunal had the power to ask questions to DW-1 and DW-2 under Section 165 of the Evidence Act, 1872, corresponding to Section 168 of the Bharatiya Sakshya Adhiniyam, 2023, but such power was not exercised and instead, the learned Tribunal by recording the cross-examination of DW-1 and DW-2, had donned the gown of a prosecutor and also acted as a judge in the case.

16. Therefore, the Court has no hesitation to remand the matter back to the learned Tribunal for being taken up at the stage of cross-examination of DW-1 and DW-2. In order to facilitate the remand, the impugned opinion dated 14.08.2018, passed by the learned Member, Foreigners Tribunal-2nd, Morigaon, Assam, in Case No. F.T. 75/2013, arising out of Police Ref. F.T. Case No. 127/11 dated 25.04.2011, is set aside on the following conditions:-

- i. The proceeding of Case No. F.T. 75/2013 is remanded before the learned Member, Foreigners Tribunal-2nd Morigaon, to be taken up afresh from the stage of cross-examination of DW-1 and DW-2.
- ii. The petitioner shall appear before the said learned Tribunal on or before 30.05.2026, without requiring any fresh notice of appearance to be served and by producing a certified copy of this order, wait for further order to be passed by the said learned Tribunal.
- iii. The petitioner is represented by his learned counsel and therefore, he is deemed to have notice of requirement to appear within the time allowed.
- iv. In the event the petitioner fails to appear within the time allowed, it would be open for the learned Tribunal to treat the petitioner as absent on call and pass appropriate orders.
- v. On commencement of the proceeding, the said learned Tribunal shall pass an order indicating that the reference is only against the petitioner, namely, Shamar Ali @ Samar Ali, against whom reference was made by the Superintendent of Police (Border). The said learned Tribunal shall also pass an appropriate order, exempting the petitioner from relying on the exhibits which are in respect of his wife and son.

- vi. In the event the petitioner is able to satisfy the learned Tribunal that DW-2 is not available for any reason whatsoever, the learned Tribunal shall give reasonable opportunity to the petitioner to examine another witness, if so advised.
- vii. The learned Tribunal shall make all endeavours to complete the proceeding, as far as practicable, within the time prescribed by Order 3 (14) of the Foreigners Tribunal Order, 1964.

17. In paragraph 13 of the order, reference was made for some reforms in the streamlining of the procedure to be followed in the proceedings before all the Foreigners Tribunals in the State. In this regard, it may be stated as under:-

- a. It may be stated that it is a normal feature in all proceedings before the Foreigners Tribunals that on receipt of reference from the jurisdictional Superintendent of Police (Border), that a case is registered and process/ notice is issued.
- b. However, the Foreigners Tribunal do not prepare any memorandum to record the name, other particulars like father's name, address, etc. of the proceedee.
- c. Due to lack of keeping a Memorandum regarding the name of suspected foreigner against whom reference is made i.e. the proceedee(s), the parties against whom no enquiry or reference is made, have to suffer proceeding before the Foreigners Tribunal(s), as has happened in this case.
- d. Therefore, the Court is of the considered opinion that the Government of Assam, through the Home and Political Department

and/or through any other competent authority should take a decision and issue a Guideline, Notification and/or Standing Order or Standard Operating Procedure, by whatever name called, to be followed by all Foreigners Tribunals in the State, providing that on receipt of reference, a Memorandum of Proceedee(s)/Opposite Parties be prepared in all new and pending references.

- e. The Court can only hope that the competent authority in the Government of Assam would do the needful at the earliest in issuing Guidelines/ Notifications/ Standing Orders/ Procedure of Practice in terms of this order.

18. In the absence of any existing Guidelines/ Notifications/ Standing Orders/ Procedure of Practice, and till the same are issued, this Court, by invoking its Superintending Jurisdiction over the Foreigners Tribunals in the State of Assam, hereby directs all the Foreigners Tribunals in the State of Assam that on receipt of reference from the jurisdictional authority, i.e. the Superintendent of Police (Border), that a Memorandum of Proceedee(s)/Opposite Parties be prepared in (i) all new references, and (ii) in all references that are pending for disposal before the Foreigners Tribunals.

19. The learned Standing Counsel for the FT, Border matters and NRC shall send a downloaded copy of this order to the Secretary to the Government of Assam, Home and Political Department. The said authority, on receipt of a downloaded copy of this order, shall transmit a downloaded copy of this order to all the Foreigners Tribunals in the State of Assam and the said authority shall report compliance to the Registrar (Judicial), Gauhati High Court, Guwahati.

20. This writ petition is partly allowed by setting aside the impugned opinion and remand of the matter to the said learned Tribunal on terms as indicated above.

21. The parties are left to bear their own cost.

JUDGE

JUDGE.

Comparing Assistant

(Private Secretary)