

GAHC010181202025



DB

2026:GAU-AS:9356-

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

Case No. : WP(C)/4918/2025

SAMIRAN NESSA
D/O ABDUL SAMAD, W/O SHAHJAHAN, R/O VILL- BHATNAPAITYCHOR,
P.S.- BARPETA ROAD, DIST- BARPETA, ASSAM

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-110001

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME AND POLITICAL (B) DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-781004

5:THE DISTRICT COMMISSIONER
BARPETA
ASSAM-781301

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM-78130

Advocates for the petitioner : Ms. D. Ghosh, Advocate

Advocates for the respondents : Mr. J. Payeng, Adv for R- 3, 5 & 6
: Mr. A.I. Ali, Adv for R-2

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved : 17.06.2026
Date of pronouncement of judgment : 26.06.2026
Whether the pronouncement is of the : NA.
operative part of the judgment ?
Whether the full judgment has been
pronounced? : Yes

J U D G M E N T & O R D E R (CAV)

(Rajesh Mazumdar, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned counsel for the respondent Nos. 3, 5 & 6 and Mr. M. Islam, learned counsel appearing on behalf of Mr. A.I. Ali, learned counsel for the respondent No. 2.

2. The petitioner has preferred this writ petition, being aggrieved by the Opinion dated 5.12.2018 passed by the learned Member, Foreigners Tribunal Number-6, Barpeta, on 5.12.2018 in F.T Case Number 400/2015, corresponding to reference case number 132/B/98 dated 02.07.1998. By the aforesaid opinion, the writ petitioner, who was a proceedee therein, had been declared to be a

foreigner/illegal immigrant, who had entered Assam on or after 25.03.1971.

3. The Electoral Registration Officer doubted the citizenship of the petitioner and had the matter verified by on-the-spot local verification. The concerned local verification officer had, on 22.9.1997, recorded that the petitioner, on enquiry, could not produce any documentary evidence indicating her Indian citizenship. The Superintendent of Police, Barpeta, had forwarded the case records of IMDT Doubtful Case Number 132/B/98 dated 02.07.1998 to the Chairman of the IMDT Court, Barpeta.

4. The Foreigners Tribunal 6, Barpeta, received the reference and by order dated 02.11.2015, required issuance of notice to the petitioner, fixing 15.12.2015 for service report and appearance. On her appearance, the petitioner submitted her written statement and affidavit. On the next date, the petitioner submitted the evidence-in-chief on affidavit, and the matter was fixed for cross-examination. The petitioner was cross-examined on 27.09.2016. Thereafter, the projected father of the petitioner adduced his evidence as DW-2, and another person also adduced evidence on a different date. The final arguments were heard on 12.09.2018, and the impugned Opinion was rendered on 05.12.2018.

5. During the proceedings before the learned Tribunal, the petitioner exhibited the following documents.

a) Ext A: is the certified copy of the E/Roll 1966.

(b) Ext B: is the certified copy of the E/Roll 1970.

(c) Ext C: is the certified copy of the E/Roll 1997.

(d) Ext D: is the certified copy of the E/Roll 2010.

(e) Ext E: is the certificate of Gaonburha of village: Alopaticchar Non K.

(f) Ext F: is the certificate of Gaonburha of village: Bhatnapaitychar.

(g) Ext G: is the certificate of G.P. Secretary of Vil: Dharmapur Bhatnapaity Gaon Panchayat.

(h)Ext: is an Affidavit."

6. The learned Tribunal has recorded that the proceedee had pleaded very few material facts in her written statement and had not disclosed the date and year of her birth. She had not mentioned her place of birth and her upbringing. The proceedee had also abstained from disclosing the date of her marriage. The proceedee did not disclose the details of her grandmother or her mother and had referred to DW-2 and projected him as her father. The proceedee had given evidence that her projected grandfather was included as a voter in the voter list of 1970 and 1985, while the name of her projected father appeared in the voter list of 1985 and 2010.

7. The learned Tribunal had observed that the petitioner did not disclose from where her forefathers had come from, where her parents were born and brought up, whether her projected father had any brothers and sisters, the date or year in which the projected parents got married, or whether the petitioner had any brothers and sisters. The learned Tribunal noticed that the proceedee did not disclose the details about herself. Thus, the learned Tribunal found fault with the projected stand of the proceedee. The learned Tribunal had also observed that the affidavit filed by the proceedee did not disclose that she

understood the contents thereof.

8. Referring to the evidence of the DW-2, i.e., the projected father of the proceedee, the learned Tribunal found that it contained manuscript sentences, in relation to facts which were not pleaded in the written statement. The learned Tribunal observed that due to non-disclosure and also suppression of material facts, the written statement and the evidence under consideration could not be regarded as admissible or reliable evidence. The learned Tribunal found that the document sought to be projected to establish a link between the proceedee and the projected father was a certificate issued by the Secretary of 72 No. Dharmapur, Bhatnapaity Gaon Panchayat. However, this document was not proved in accordance with the law. With regard to Exhibit-F, the learned Tribunal held that the authority issuing the same had not been examined to prove either the document or the contents thereof and further, due to the usage of the State Emblem, the certificate would be inadmissible in evidence. With regard to the evidence led by the projected father of the proceedee, the learned Tribunal held that the aforesaid witness did not establish his linkage to the projected grandfather of the petitioner.

9. The DW2, according to the Tribunal, had failed to disclose the period when they had shifted from their villages. The learned Tribunal found various shortcomings in the the evidence of DW2, which, according to the learned Tribunal, had resulted in the failure of the DW-2 to either connect him to his projected ancestors, or to connect him to the proceedee. The learned Tribunal found that the voter lists of 1966 and 1970 were not referable to the biological parents of the proceedee and hence, the documents relied upon by the proceedee had lost their probative value. The learned Tribunal observed that the

O.P had failed to establish that she was an Indian by birth.

10. Ms. D. Ghosh, the learned counsel for the petitioner had submitted that the appreciation of the evidence, in the manner it was done, is not acceptable in law and therefore, the impugned opinion, deserves interference of this Court. She has submitted that the father of the petitioner had adduced evidence as DW-2 and the petitioner had exhibited the certificates issued by the Gaon Panchayat and the Gaonbura and had also adduced the evidence of the Gaonbura of village Alopaticchar Non K as DW-3, in her support. The learned counsel for the petitioner had submitted that, although some vital material facts had not been brought to the knowledge of the learned Tribunal in the written statement filed by the petitioner, the petitioner has given all relevant material facts in this writ petition. Therefore, the interest of justice would demand that the petitioner is given an opportunity to bring the facts before the learned Tribunal and to lead further evidence in support of her projection and the impugned Opinion deserves interference of this Court to that extent. The learned counsel has submitted that, given an opportunity, the petitioner would be able to establish not only several facts to demonstrate her claim as an Indian citizen, but, she would also be able to bring on evidence records to prove her projection as an Indian Citizen.

11. The learned counsel has submitted that the petitioner would be able to produce certified copies of voters list to establish her linkage before the Tribunal in the event the matter is remanded back to the Tribunal, to afford an opportunity of defence to the petitioner.

12. Mr. J. Payeng, learned Standing Counsel, Foreigners Tribunal has submitted that the writ petition suffers from unexplained delay and laches, inasmuch as,

the petitioner herein was declared to be a foreigner by the order dated 05.12.2018 and the present writ petition has been filed on 12th August, 2025. The learned counsel has submitted that pursuant to the Opinion dated 05.12.2018, the petitioner was taken into custody by the concerned authorities on 20.12.2024. He submits that although the petitioner had filed a writ petition bearing W.P(C) No. 4402/2005, the same was withdrawn on 06.08.2025, with a liberty to file afresh. The learned Standing Counsel has submitted that such a liberty would not *ipso-facto* amount to condonation of delay on the part of the petitioner in filing the present writ petition. The learned Standing Counsel has submitted that this Court in WP(C) No. 7037/2025 by order dated 12.03.2026 had rejected the writ petition on the ground of inordinate delay and laches of about six (6) years in assailing the impugned Opinion. He has submitted that in the aforesaid case also, the petitioner claimed to be a rustic and poor person. He has therefore submitted that the present writ petition be dismissed on the grounds of delay and laches itself.

13. On the merits of the claim made by the petitioner in this writ petition, the learned Standing Counsel has submitted that a perusal of the records available before the learned Tribunal would reveal that the learned Tribunal did not commit any error when it appreciated the written statement and the evidence led by the petitioner herein. The learned Standing Counsel has further submitted that even with regard to the evidence led by D.W Nos. 2 & 3, the order of the Tribunal also did not suffer from any discrepancy. With regard to the evidence led by D.W-3, the learned Standing Counsel has submitted that the evidence led would show that he was not the Government Gaonburah of the village and was rather the son of the Gaonburah, who was bedridden due to his illness. With regard to the voter list of 1966 as exhibited by the petitioner, the

learned Standing Counsel has submitted that, when the same is contrasted with the voter list of 1970, the sudden appearance of Biyakul Miya in the list of 1970 raises doubts. The absence of the name Biyakul Miya in the voter list of 1966 has not been explained by the petitioner in the proceedings before the learned Tribunal. The learned Standing Counsel has pointed out other discrepancies in the evidence led by the petitioner before the learned Tribunal and has submitted that the learned Tribunal did not commit any error when it rejected the projection of the petitioner herein.

14. The learned Standing Counsel has also submitted that the documents now sought to be relied upon by the petitioner for establishing her linkage to her projected ancestors cannot be allowed to question the validity of the Opinion of the learned Tribunal.

15. We have perused the Opinion of the learned Tribunal and we have also gone through the Trial Court Records, which has been received on requisition.

16. The records reveal that the petitioner had appeared and filed her written statement on 15.12.2015 and thereafter, had submitted her evidence-in-chief on affidavit on 20.01.2016. The matters were fixed on 02.03.2016 and 05.04.2016, when the cross-examination could not take place, although the petitioner was present.

17. The records of the Trial Court reveal that the writ petitioner had been afforded opportunity to contest the allegation of being a foreigner, who had entered India after 25.03.1971 and to facilitate her defence, she had adduced her own evidence and the evidence of two other witnesses. The document exhibited by the petitioner have also been considered and it is seen that the documents available on record did not establish a clear linkage of the petitioner

either to her projected father or to the projected other relatives.

18. This Court in ***Ayna Khatun Alias Anowara Khatun Vs. Union of India & Ors.*** passed in ***WP(C) No. 7037/2025***, held as follows:

“30. 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 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."

31. 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."

32. 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.

34. It must be taken note of the fact that the Supreme Court of India, in the case of Sarbananda Sonowal v. Union of India, 2005) 5 SCC 665, in paragraph 73, had 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.”

19. We are of the opinion that the aforesaid judgment would apply to the facts of the present case also. The learned counsel for the petitioner has relied upon the Judgment & Order dated 15.05.2026 passed by this Court in the case of ***Niva Suklabaidya @ Niva Baidya Vs. Union of India & Ors.***, to impress that this Court has also condoned the delay of more than 9 years and 4 months. She has referred to the Judgment of this Court in ***Hamida Begam Vs. Union of India & Ors.*** in ***WP(C) No. 250/2024*** delivered on 06.03.2024 where this Court had condoned the delay of 15 years by remanding the Opinion rendered against the petitioner therein back to the learned Tribunal to allow the petitioner therein an opportunity to contest the allegation against her.

20. We noticed that the aforesaid two judgments were delivered in the facts of those cases and the judgments may not be applicable to the facts of the present case. In ***Niva Suklabaidya @ Niva Baidya*** (supra), no fault was found with ex-parte Opinion passed against the petitioner therein. However, since the petitioner had projected that her grand-father was registered as Indian citizen and her projected uncle had also been declared to be not a foreigner by the F.T, it was deemed fit to remand the matter back to the learned Tribunal to prove her case.

21. In the case of ***Hamida Begam*** (supra), notice was not served to the petitioner in the manner known and recognized in law and therefore, this Court set aside the *ex-parte* order and granted the petitioner an opportunity to prove her case before the learned Tribunal.

22. In the present case, we have also examined the materials available in the writ petition and we find that the Opinion expressed by the learned Tribunal does not require interference. Resultantly, the writ petition fails both on the account of inordinate delay and laches, as well as on merits.

23. Writ Petition is accordingly dismissed. No order as to cost.

24. Registry to return the Trial Court Records expeditiously along with a copy of this Order.

JUDGE

JUDGE

Comparing Assistant