

GAHC010210222025



2025:GAU-AS:13299

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

Case No. : WP(C)/5612/2025

FAZRUL HOQUE
S/O LT DEWAN SHEIKH RO BELGURI PARI II PO BELGURI PS AGOMONI
DIST DHUBRI ASSAM 7873334

VERSUS

UNION OF INDIA AND ORS
REPRESENTED BY MINISRTY OF HOME AFFIAIRS NEW DELHI 1

2:THE STATE OF ASSAM
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT DISPUR GUWAHATI

3:DISTRICT COMMISSIONER
DHUBRI
DIST DHUBRI ASSAM

4:SUPERINTENDENT OF POLICE BORDER DHUBRI
ASSAM

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI

6:THE ELECTION OFFICER DHUBRI
ASSAM

7:THE STATE COORDINATOR NATIONAL REGISTER OF CITIZEN NRC
BANGAGARH GUWAHATI

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the petitioner(s) : Mr. DP Chaliha
Senior Advocate
Ms. M Roy

Advocates for the respondent(s) : Mr. AI Ali
Standing Counsel,
Election Commission of India

Date of hearing & judgment : **25.09.2025**

JUDGMENT & ORDER(ORAL)

Heard Mr. DP Chaliha, the learned Senior Counsel, assisted by Ms. M Roy, the learned counsel appearing on behalf of the petitioner. Mr. AI Ali, the learned Standing Counsel, Election Commission of India, who appears on behalf of the respondent Nos.3, 5 and 6.

2. The case of the petitioner herein is that the petitioner is the son of one Dewan Ali Sheikh and the petitioner's name appeared in the voters list of 132 No. Belguri, Part II, 25 Golakganj Legislative Constituency, Sub-Division Dhubri, till 2013 when 'D' was marked against the name of the petitioner in the Electoral Roll. The petitioner made enquiries from the Superintendent of Police, (Border) Dhubri and the Superintendent of Police (Border), Dhubri issued a communication on 27.11.2014 to the Election Officer, Dhubri informing that the records of the office were checked and found that there was no Foreigners' Tribunal or a 'D' voter case against the petitioner.

Thereupon the petitioner's name continued to remain as a 'D' voter, and it is under such circumstances, the petitioner approached this Court seeking appropriate directions for removal of the tag 'D' voter against his name in the electoral rolls.

3. This Court passed a detailed order on 22.09.2025 seeking instructions from the District Election Officer, Dhubri as well as the Chief Electoral Officer, Assam as to why the petitioner's name continues to remain as 'D' voter and if so, produce the materials on the basis of which the petitioner's name in the electoral rolls was in tagged as 'D' voter.

4. Today, Mr. AI Ali, the learned Standing Counsel appearing on behalf of the Election Commission of India has appeared and placed before this Court two sets of instructions which are kept on record and marked with the letter 'X' and 'Y' respectively. The copies of the said instructions have also been furnished to Ms. M Roy, the learned counsel, who is assisting Mr. DP Chaliha, the learned Senior Counsel for the petitioner during the course of the hearing.

5. From a perusal of the instructions, more particularly, the instruction dated 24.09.2025 issued by the Senior Superintendent of Police (Border) which is kept on record and marked with the letter 'Y', it appears that a Foreigners Tribunal Case bearing No. FT/SVR/3468/2004 was registered before the Foreigners Tribunal Jorhat against the petitioner on the basis of an enquiry being

conducted by the SP bearing SP's Enquiry No.252/2004.

6. It is further seen that the said proceedings before the Foreigners' Tribunal along with 15 other proceedings were disposed of by the learned Member Foreigners' Tribunal Jorhat by the common order dated 22.01.2019 holding, *inter alia*, that the petitioner along with the others were foreigners, who illegally entered into the territory of India after 25th of March 1971 without any valid document.

7. This Court further takes note of the instructions which have been placed on record and marked with the letter 'X'. From a perusal of the said instructions, it appears that a communication bearing No.NZEL.35/2011 dated 30.03.2011 was issued to the Electoral Registration Officer, 25 Golakganj LAC and in terms with the order passed by the learned Coordinate Bench of this Court in WP(C)No.1334/2009 dated 23.03.2011, the petitioner's name was marked with the letter 'D'.

8. This Court had enquired with Mr. AI Ali, the learned Standing Counsel for the Election Commission of India as to whether it is not the mandate of law that upon an adjudication made by the Foreigners Tribunal that a person is a foreigner, his name in the voter's list is required to be deleted. The learned Standing Counsel apprised this Court that the Electoral Officer must not be aware of the order dated 22.01.2019 and it is under such circumstances the name of the petitioner continues to remain in the electoral rolls.

9. Mr. DP Chaliha, the learned Senior Counsel appearing on behalf of the petitioner, on the other hand, submitted that it is unthinkable that by a common order, the concerned Foreigners Tribunal had decided 16 proceedings. The learned Senior Counsel further submitted that such procedure adopted is contrary to the *Foreigners (Tribunals) Order, 1964*. In addition to that, the learned Senior Counsel also drew the attention of this Court that the said proceedings was decided against the petitioner *ex-parte* without effecting notice.

10. This Court having taken into consideration the above is of the opinion that till the order dated 22.01.2019 remains, no orders can be passed in the instant proceedings for removing 'D' voter mark against the name of the petitioner in the electoral rolls. In that view of the matter, the relief so sought for cannot be granted.

11. Before parting with the records, this Court observes that taking into account that the proceedings before the Foreigners Tribunal, Jorhat had proceeded ex-parte against the petitioner and, that too, at a place where the petitioner is not the resident, liberty is given to the petitioner to challenge the order dated 22.01.2019 passed in Case No. FT/SVR/3468/2004, if so advised.

12. With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant