

GAHC010211762025



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

Case No. : W.P.(Crl.)/81/2025

FARID ALI
SON OF MAHIB ALI, VILLAGE- BARPATHAR, P.S. BARPPATHAR, DIST.-
GOLAGHAT, ASSAM, PIN- 785602

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI, PIN- 781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI
PIN- 781006

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI
PIN- 781007

4:THE DISTRICT COMMISSIONER
DIST. GOLAGHAT
ASSAM
PIN- 785621

5:THE SUPERINTENDENT OF POLICE
GOLAGHAT
DISTRICT- GOLAGHAT
ASSAM
PIN- 785621

6:THE SPECIAL DIRECTOR GENERAL OF POLICE (BORDER)
ASSAM
ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI
PIN- 781007

7:THE OFFICER-IN-CHARGE
GOLAGHAT POLICE STATION
DIIST. GOLAGHAT
ASSAM
PIN- 785621

8:THE UNION OF INDIA
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS
NEW DELHI-110001

Advocate for the Petitioner : MR. A M AHMED, MRS S RAHANA,B DAS,P. GHOSH

Advocate for the Respondent : GA, ASSAM, MR M R ADHIKARI, CGC,MS. A VERMA, FT & BORDER,MR. S S ROY (C.G.C)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 23.04.2026
(K.R Surana, J)

Heard, Mr. A.M. Ahmed, learned Counsel for the petitioner. Also heard, Mr. S.S. Roy, learned CGC appearing for respondent no.8, Ms. A. Verma, learned Standing Counsel for the FT and Border matters appearing for respondent no. 1,2,3, 5, 6 and 7 and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for respondent no.4. are present.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing the

respondents to produce Md. Mahib Ali, the projected father of the petitioner, namely, Farid Ali. By an *ex parte* opinion dated 22.06.2012, passed by the learned Member, Foreigner's Tribunal, Golaghat, in Case No. FTG. 519/07, corresponding to IM(D)T Police Case No.67/04, Md. Mahib Ali was declared to be foreigner of post 25.03.1971 stream.

3. The case projected by the petitioner is that his father Mahib Ali was illegally taken into custody and detained since 24.05.2025 by the police personnel from Golaghat from his residence without communicating to the petitioner the grounds of arrest and without service of any notice and since then the whereabouts of the father of the petitioner is not known. It is projected that the family members of the petitioner approached the concerned respondent authorities' nos. 5 and 7, filed in the Superintendent of Police, Golaghat and the Officer in Charge of Golaghat, Police Station to know about the whereabouts of the detained person but no reply was given. Accordingly, appending that something wrong has happened to the detained person and is not safe the present writ petition to the nature of grievous corpus has been filed of production of said detained person.

4. It is also projected that after the father of the petitioner was taken into custody, the petitioner and his family members came to know that an *ex-parte* opinion dated 22.06.2012 was passed by the learned member, Foreigner's Tribunal, Golaghat in case no. 519/07, corresponding to IM(D)T Police Case No. 67/04.

5. This writ petition was filed on 15.09.2025 owing to certain defects the reporting could only be done 02.12.2025 and thereafter, the matter was listed on 03.12.2025 and the learned Counsel for the petitioner was required to serve copies of the writ petition to the learned Counsel for the F.T. and Border matters

and accordingly, when the matter was listed on 05.12.2025, the Court requested the learned Standing Counsel for the F.T. matters to inquire about the whereabouts of the father of the petitioner and to inform the Court. When the matter was listed on 10.12.2025, the learned Standing Counsel for the F.T. and Border matters produced a copy of the written instructions dated 09.12.2025 informing that the detained foreign national namely Md. Mahib Ali against whom opinion dated 22.06.2012 was passed and handed over to the Border Security Force, Sector Headquarter, Panbari on 26.05.2025. Accordingly, we had requested the learned CGC to obtain instructions on 15.12.2025, when the matter was listed, the learned CGC has informed the Court that pursuant to the said opinion, the said declared foreign national was sent back to Bangladesh. Accordingly, the matter was adjourned to the Hon'ble learned Counsel for the petitioner to obtain instructions. On 28.01.2026, when the matter was listed, the learned CGC has prayed for two weeks time to obtain instructions, in the meantime, pursuant to order dated 17.02.2026 passed in I.A.(Civil)/438/2026, the funeral of India was impleaded as respondent no.8., accordingly, the matter was ordered to be listed after the immediate cost title was filed. Thereafter, the matter was listed on 06.04.2026 and the learned CGC was directed to obtain instructions to how the declared foreign national namely Mahib Ali was sent to Bangladesh.

6. Accordingly, the learned CGC has produced copy of written instructions dated 20.04.2026, inter alia stating that the declared foreign national namely Md. Mahib Ali son of late Darajuddin Ali, whose name is mentioned at serial no. 39 of the enclosed list was sent back to Bangladesh from the area of responsibility of 157 Battalion, BSF of the intervening night of 26/27 May, 2025.

7. On the request of the Court, the learned CGC has obtained telephonic

instructions stating that the declared foreign national has been sent to a location in or around Katibari in the district of Coochbehar, West Bengal.

8. The learned Counsel for the petitioner has submitted that the action of sending back the detected foreign national to Bangladesh is questionable as there is no extradition treaty between India and Bangladesh to send back the declared foreign nationals, it is submitted that the petitioner's appearance is necessary in view of the safety and well being and health condition of his father. It is also questioned as to whether the authorities in Bangladesh have accepted the father of the petitioner as being in their territory.

9. The learned CGC, State and Departmental counsel have made their respective submissions to oppose the prayer made in this writ petition.

10. In this regard, the Court of the considered opinion that as the petitioner was declared to be foreign national vide opinion dated 22.06.2012 passed by the learned member, Foreigner's Tribunal, Golaghat in case no. 519/07, corresponding to IM(D)T Police Case No. 67/04, his status that would be that of the declared foreign national. The said opinion has attained finality. Accordingly, irrespective of whether there is any agreement or not between two Countries to send back the declared foreign national, but the Govt. of India would have the power and authorities to send back the declared foreign national out of the Country. In this case, the instructions are to the effect that the father of the petitioner was sent back to Bangladesh from a location near Katibari in the district of Coochbehar, West Bengal.

11. It is perhaps an appropriate moment to refer to a historical background of the foreigners' issue plaguing the State of Assam, which, as per media reports, is altering the demography of the State. This led to a long-drawn students' agitation. The influx has been equated to external invasion. In this regard, one

may refer to paragraph nos. 2, 4, 17, 18, 21 to 26, 32, 34, 46, 56, 59, 63 and 82 of the case of *Sarbananda Sonowal v. Union of India & Ors., (2005) 5 SCC 665*, which was decided by the Full Bench of the Supreme Court of India.

12. Thus, the Government has a duty to preserve the unity and integrity of the Country and as unabated influx from the specified territory of Bangladesh has been equated to an act of aggression, it may be stated that it is perhaps a wrong perception in a section media report projecting that a religious persecution is going on in the State of Assam, which appears to be an example of misinformation warfare being carried out against the Country in general and the State of Assam in particular.

13. As regards the submission by the learned counsel for the petitioner that the manner in which the father of the petitioner has been send to Bangladesh, is violative of right to life guaranteed under Article 21 and 22 of the Constitution of India.

14. In this regard, it would be appropriate to refer to the decision of the Constitution Bench decision of the Supreme Court of India in the case of *Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta & Ors., (1955) 1 SCC 167*, may be referred to. The said case is one under Section 3(1)(b) of the Preventive Detention Act, 1950. In that case, a German National was taken into preventive detention in order to make arrangement of his expulsion from India, which required satisfaction to be recorded by the competent authority under Section 3(1)(b) of the said Act. While deciding the issue, reference was made to the provisions of the Foreigners Act, 1946, but it was not the subject matter of adjudication. It would be appropriate to quote paragraphs 34 to 37, 40 and 41 thereof hereinbelow: -

34. Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India, among them, the right "to move freely throughout the territory of India"

and "to reside and settle in any part of India" subject only to laws that impose reasonable restrictions on the exercise of those rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land. This is conferred by Art. 21 which is in the following terms:-

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

35. Entries 9, 10, 17, 18, and 19 in the Union List confer wide powers on the Centre to make laws about, among other things, admission into and expulsion from India, about extradition and aliens and about preventive detention connected with foreign affairs. Therefore, the right to make laws about the extradition of aliens and about their expulsion from the land is expressly conferred; also, it is to be observed that extradition and expulsion are contained in separate entries indicating that though they may overlap in certain aspects, they are different and distinct subjects. And that brings us to the Foreigners Act which deals, among other things, with expulsion and the Extradition Act which regulates extradition.

36. The Foreigners Act confers the point to expel foreigners from India. It would be the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.

37. The law of extradition is quite different. Because of treaty obligations it confers a right on certain countries (not all) to ask that persons who are alleged to have committed certain specified offences on the territory or who have already been convicted of those offences by their courts, be handed over to them in custody for prosecution or punishment. But despite that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.

* * *

39. The Extradition Act is really a special branch of the law of Criminal Procedure. It deals with criminals and those accused of certain crimes. The Foreigners Act is not directly concerned with criminals or crime though the fact that a foreigner has committed offences, or is suspected of that, may be a good ground for regarding him as undesirable. Therefore, under the Extradition Act warrants or summons must be issued; there must be a magisterial enquiry and when there is an arrest it is penal in character; and- and this is the most important distinction of all - when the person to be extradited leaves India he does not leave the country a free man. The police in India hand him over to the police of the requisitioning State and he remains in custody throughout.

40. In the case of expulsion, no idea of punishment is involved, at any rate, in theory, and if a man is prepared to leave voluntarily he can ordinarily go as and when he pleases. But the right is not his. Under the Indian law, the matter is left to the unfettered discretion at the Union Government and that Government can prescribe the route and the port or place of departure and can place him on a particular ship or plane. [See Ss. 3(2)(b) and 6, Foreigners Act]. Whether the Captain of a foreign ship or plane can be compelled to take a passenger he does not want or to follow a particular route is a matter that does not arise and we express no opinion on it. But assuming that he is willing to do so, the right of the Government to make the order vis-à-vis the man expelled is absolute.

41. This may not be the law in all countries. Oppenheim, for example, says that in

England, until December 1919, the British Government had

"no power to expel even the most dangerous alien without the recommendation of a court, or without an Act of Parliament making provision for such expulsion, except during war or on an occasion of imminent national danger or great emergency" (Openheim's International Law, Vol. I, 7th edition, page 631).

But that is immaterial, for the law in each country is different and we are concerned with the law as it obtains in our land. Here the matter of expulsion has to be viewed from three points of view: (1) does the Constitution permit the making of such a law? (2) does it place any limits on such laws? and (3) is there in fact any law on this topic in India and if so, what does it enact? We have already examined the law making power in this behalf and its scope, and as to the third question the law on this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel. But there is this distinction. If the order is one of expulsion, as opposed to extradition, then the person expelled leaves India a free man.

It is true he may be apprehended the moment he leaves, by some other power and consequently, in some cases, this would be small consolation to him, but in most cases the distinction is substantial, for the right of a foreign power to arrest except in its own territory and on its own boats is not unlimited. But however that may be, so far as India is concerned, there must be an order of release if he is in preventive custody and though he may be conducted to the frontier under detention he must be permitted to leave a free man and cannot be handed over under arrest.

15. Thus, the said decision of *Hans Muller of Nurenborg (supra)*, confirms and reaffirms the absolute and unfettered power of the Government to order expulsion of a declared foreign national.

16. It may be stated that in the rest of the Country, except the State of Assam, it is the Executive, who can order expulsion of a foreigner. However, in respect of persons who have entered into the territory of India (Assam) from the specified territory (which includes erstwhile East Pakistan before 25.03.1971 and Bangladesh after 25.03.1971), they are subjected to proceeding before the jurisdictional Foreigners Tribunal. Only pursuant to opinion rendered by such Tribunals, the declared foreign national are subjected to expulsion.

17. In the case of *Sarbananda Sonowal (supra)*, it has been observed that the State of Assam is facing external aggression and reference has been made to the excerpts from the book titled "Eastern Pakistan; its population & economics". The author of the said

book is Sheikh Mujibur Rahman. In the said book it is observed as follows:

"Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan must include Assam to be financially and economically strong."

18. It was urged by the learned counsel for the petitioner that there is no extradition treaty and/or any agreement between the Govt. of India and the Bangladesh Government by which a "declared foreign national", who has entered into Assam illegally after 25.03.1971 can be sent back. In this regard, the Court if of the considered opinion that whether or not there is any agreement with any other Country, the State has unfettered power to cause expulsion of a declared foreign national.

19. Moreover, in the event a "declared foreign national" cannot be expelled due to any reason whatsoever, the State can prevent a declared foreign national from getting employment, purchase land and keep such "declared foreign national" in the holding areas as internees as per Section 4 of the Foreigners Act, 1946. In the considered opinion of the Court, the appropriate Government may explore if a policy could be made so as to compel a declared foreign national, who are kept as internee in the holding area, to be made to compulsorily work to pay for their stay and food because only if the declared foreign national do not have food security, that the illegal influx can be discouraged.

20. The taking of a declared foreign national into custody cannot be equated to arrest as is understood under Criminal Procedure Code and/or Bharatiya Nagarik Suraksha Sanhita, which confers certain procedural safeguards for citizens of India, who are arrested in connection with some criminal offence. Such procedural safeguards are exclusively reserved for the citizens of India and cannot be made available to a declared foreign national. When the issue of unabated influx from the specified territory is leading to demographic changes in the State, which may not be seriously impacting or affecting the rest of the Country, but is leading to widespread civil discontent in the State

of Assam, it would not be permissible for constitutional safeguards available for the “citizens” of the Country to be extended to a “declared foreign national”. The learned counsel for the petitioner has failed to show any provision under any law in force that a declared foreign national, after being taken into custody, must mandatorily be produced before the Magistrate or the same has to be notified to the immediate family members. The learned counsel for the petitioner has not been able to show that the Foreigners Act, 1946 and the adjudicatory process under the Foreigners (Tribunal) Orders, 1964 is a proceeding before a Magistrate and/or Court of Criminal jurisdiction. In the considered opinion of the Court, the procedure for detection of a foreigner by the Border Police and consequential declaration of persons as illegal foreign national is not a proceeding before under any criminal law in force in the Country. In this regard, the observations of the Supreme Court of India in paragraph 39 of the case of *Hans Muller of Nurenburg (supra)*, quoted hereinbefore may be referred to.

21. In the considered opinion of the Court, it is not open to a declared foreign national, whose declaration is made by a Foreigners Tribunal in the State of Assam to maintain a claim that his/her custody is illegal and vitiated by non-service of grounds of arrest, as envisaged under Article 22 of the Constitution of India and/or under Section 50 Cr.P.C., as declaration of an illegal foreigner under the Foreigners (Tribunals) Order, 1964 does not have any criminal consequences, or the notice envisaged under Section 35 and 47 of the BNSS, 2023 was required to be served.

22. Thus, the Court is unable to accept that any legal and fundamental right under Article 14, 16, 18, 21, 22 of the Constitution of India is available to a “declared foreign national”. Therefore, it cannot be accepted that any fundamental right of the father of the petitioner was violated. A “declared foreign national” cannot be said to have any fundamental right in India to move freely or to reside at any place of his/her choice or to carry out any vocation, trade or calling of his/her choice. What is guaranteed under the Constitution of India, which would be available even to a declared foreign national, is

the right to life, without any right to any right as to move or reside freely within the Country or to carry out any vocation, trade or calling as the declared foreign national may so desire. When the issue of unabated influx from the specified territory is leading to demographic changes in the State, which may not be seriously impacting or affecting the rest of the Country, but is leading to widespread civil discontent in the State of Assam, it would not be permissible for constitutional safeguards available for the “citizens” of the Country to be extended to a “declared foreign national” like the projected mother of the petitioner. If any right, other than a right to life, of a declared foreign national is reserved, it would amount to give special premium to the declared foreign national.

23. It may be mentioned that a foreign national whose entry into India was lawful, but was found to be illegally over-staying in India, such persons are liable to be deported. However, in this case, the father of the petitioner, who was a declared foreign national, was expelled as an illegal migrant i.e. as a person who had illegally entered into India (Assam) from the specified territory after the cut-off date of 25.03.1971. In this regard, the observations made in paragraph 74 to 79 of the case of *Sarbananda Sonowal (supra)* may be referred to.

24. The learned counsel for the petitioner had expressed anxiety by the about the health and wellbeing of the declared foreign national. In this regard, as the instruction produced that Md. Mahib Ali, the father of the petitioner, who is a declared foreign national has been sent back to Bangladesh, it would be impossible for the respondent authorities to obtain any such information.

25. Therefore, on all counts, this writ petition fails and is thus, dismissed.

26. If the petitioner approaches any Court having jurisdiction, the said learned Court me hear the matter without being influenced by the contents of this order.

27. There shall be no order as to cost(s).

28. The learned standing counsel for the FT, Border and FT matters shall transmit a copy of this order to the learned Member, Foreigners Tribunal -Golaghat, to be made a part of record of Case No. FTG.519/2007, corresponding to IM(D)T Police Case No. 67/04, disposed of by opinion dated 22.06.2012.

JUDGE

JUDGE

Comparing Assistant