

GAHC010249002025



2026:GAU-AS:4059

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

Case No. : WP(C)/1544/2026

BHAIROBI KHATUN
DAUGHTER OF- KAYUM ANSARI .
RESIDENT OF- VILLAGE- KHARBARI, P.O AND P.S.- SOOTIA, DIST.-
SONITPUR, ASSAM, PIN- 784175

VERSUS

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

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

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY ITS COMMISSIONER
NEW DELHI
PIN - 110001.

4:THE STATE CO- ORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI-05

5:THE SUPERINTENDENT OF POLICE (B)
TEZPUR
ASSA

Advocate for the Petitioner : MS R SAHIN, MS. D PATHAK,MR. R DE

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

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

ORDER

Date : 18.03.2026

(K.R. Surana, J)

Heard Mr. R. De, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC; Ms. S. Katakya, learned standing counsel for the ECI; Mr. G. Sarma, learned standing counsel for the FT and NRC; and Ms. R.B Bora, learned Junior Govt. Advocate for the State respondent.

2. The petitioner in this writ petition is Bhairabi Khatun. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 23.10.2018, passed by the learned Member, Foreigners Tribunal (2nd), Sonitpur, Tezpur in F.T.(DC) Case No. 111/2008, arising out of S.P. Case No. 713/98, thereby declaring Md. Kayam Ansari the father of the petitioner, to be a foreigner of post 25.03.1971 stream.

3. After registration of a foreigners case, before the Foreigners Tribunal (2nd), Sonitpur, Tezpur, being D.C. Case No. 111/08, against Md. Kayam

Ansari (spelt also as Kayam Anchari), the father of the petitioner, the petitioner's father failed to appear before the learned Tribunal. Accordingly, the matter was heard and decided *ex parte* and opinion dated 11.02.2013, was passed declaring, the father of the petitioner as foreigner.

4. Thereafter, the petitioner's brother, namely, Samsuddin Ansari had approached this Court and filed a writ petition, which was numbered as WP(C) No. 2203/2014. This Court, by order dated 05.11.2014, passed in WP(C) No.2203/2014, was pleased to direct that the father of the petitioner be released on bail. The writ petition was disposed of by order dated 18.01.2018, allowing the father of the petitioner to appear before the learned Tribunal for further trial. Thereafter, while disposing of the writ petition, this Court had directed the petitioner's father to appear before the learned Tribunal on 12.02.2018 at 10:30 A.M whereafter, the Tribunal was to proceed with the reference in accordance with law from the stage of evidence and conclude the same within 60 (sixty) days from the date of appearance.

5. Despite the order dated 18.01.2018, passed in WP(C)/2203/2014, the petitioner's father did not appear before the said learned Tribunal for 9 (nine) months, 6 (six) days (or 279 days) in total disregard and/or disobedience to the order dated 18.01.2018, passed by this Court and had again miserably failed to discharge his burden of proof under Section 9 of the Foreigner Act, 1946, to show that he is not a foreigner, but an Indian.

6. It is seen from the order sheet of the learned Tribunal records that from 25.08.2011 to 02.04.2012, the father of the petitioner was present through his learned counsel and on 11.09.2012, the father of the petitioner had filed his written statement. As per order dated 13.12.2012, the Tribunal has recorded that the petitioner's father has filed his written statement but no

documents were annexed therewith. Thereafter, he remained absent regularly. Thus, the contents of the written statement filed by the father of the petitioner were never proved in spite of this Court's order dated 18.01.2018

7. Therefore, in the said case the father of the petitioner has failed to discharge his burden under Section 9 of the Foreigners Act, 1946, for which one opportunity that was granted by this Court vide order dated 18.01.2018, was lost.

8. Accordingly, the Court does not find any reason to interfere with the opinion expressed by the learned Tribunal. The father of the petitioner was very much aware that he is to answer the accusation that he was not an Indian but an illegal migrant from Bangladesh, who is alleged to have entered illegally after 25.03.1971. Yet, he did not participate in the proceedings before the learned Tribunal. Thereafter, this Court by the order dated 18.01.2018, gave one further opportunity to participate in the trial which he had not availed. To overcome the wilful and deliberate default for not appearing before the learned Tribunal on 12.02.2018 at 10.30 AM, the petitioner has now projected that her father did not have any knowledge of the said directions and the petitioner has accused the learned Advocates of her father of not communicating the order to her father. The said statement made in paragraph no.6 of the writ petition is not supported by a proper verification in the affidavit sworn and filed in support of the writ petition. The said allegation as made in paragraph no. 6 of the writ petition is neither verified to be true to the petitioner's knowledge, nor verified to be true to the record.

9. It is not the case of the petitioner that between 18.01.2018, the date when this Court had disposed of WP(C)/2203/2014 and 11.03.2026, when this present writ petition was filed, the father of the petitioner, or any other

family member had asked the learned counsel family member had asked the learned counsel engaged in WP(C)/2203/2014 about the order, but a false or misleading statement was given. Thus, it is evident that the father of the petitioner is clearly in default in contacting his engaged learned counsel and to know about the order passed in WP(C)/2203/2014.

10. Thus, if *ex parte* opinion is interfered with, on such vague statement, the authenticity of which is not supported by the verification in the affidavit sworn on 07.11.2025, to support the writ petition filed on 11.03.2026, it would mean that even on a drop of a hat, and without any worthwhile explanation, each and every *ex parte* opinion has to be set aside, rendering the statutory provision of order 3 (14) of the Foreigners (Tribunal) Order, 1964 as otiose.

11. Therefore, in light of the discussions above, this writ petition fails on merit. The opinion is not found to be vitiated for any reason whatsoever and cannot be held to be incorrect or perverse.

12. Thus, no interference is called for in respect of the opinion dated 23.10.2018, passed by the learned Member, Foreigners Tribunal No. (2nd), Sonitpur, Tezpur in F.T. (DC) Case No. 111/2008, arising out of S.P. Case No. 713/98. The consequences of the said opinion shall follow.

13. The writ petition is hereby dismissed at the motion stage without issuance of notice on the respondents.

14. There shall be no order as to cost.

15. 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 Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant