

GAHC010257582025



2026:GAU-AS:2683-DB

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

Case No. : WP(C)/6928/2025

MUSSTT. RAKIBA KHATOON
W/O- LATE MAZID ALI, D/O- LATE MD. AHMED HUSSAIN, PERMANENT
RESIDENT OF VILL.- KAKAJAN, P.S. TEOK, DIST. JORHAT, ASSAM AND
PRESENT RESIDENT OF VILL.- MATIKHULA, P.S. BARPATTHAR, DIST.
GOLAGHAT, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-110001.

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

3:THE DISTRICT COMMISSIONER
JORHAT
DIST. JORHAT
ASSAM
PIN- 785001.

4:THE SUPERINTENDENT OF POLICE (B)
JORHAT
JORHAT
ASSAM
PIN- 785001.

5:THE OFFICER-IN-CHARGE
TEOK POLICE STATION

DIST. JORHAT
ASSAM
PIN- 785001.

6:THE STATE COORDINATOR OF NATIONAL REGISTRAR OF CITIZENS
ASSAM
ACHYUT PLAZA
1ST FLOOR
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005.

7:ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

Advocate for the Petitioner : MR. K BORUAH, MR. M ALAM,MS. P BORAH,MS. M BHUYAN

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

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

ORDER

Date : 23.02.2026
(K.R. Surana, J)

Heard Mr. K. Boruah, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC; Mr. G. Sarma, learned standing counsel for the FT and Border matters; Ms. S. Katakey, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Musstt. Rakiba Khatoon, has assailed the impugned *ex parte* opinion dated 28.02.2022, passed by the learned Member,

Foreigners' Tribunal, Jorhat, in Case No. FTG.68/2010, arising out of S.P.'s Enquiry No. 342/2004, which was passed with 10 (ten) other references, by which the petitioner was declared as an illegal migrant of post 25.03.1971 stream.

3. Pursuant to the order dated 30.01.2026, records of the Tribunal is received.

4. On perusal of the same, it appears that the process servers have not served the notice upon the petitioner at her last known address as per the requirement of any of the clauses of Order 3 of the Foreigners (Tribunals) Order, 1964.

5. The learned standing counsel for the FT and Border matters has opposed the challenge to the impugned *ex parte* opinion. The records reveal that the learned Tribunal, in total ignorance of the process server's report, which states that the notice could not be served on the proceedee, has recorded in paragraph 3 of the impugned *ex parte* opinion that the notices issued to the proceedee are displayed/pasted at the conspicuous place of the last place of their residence, i.e. outer part of the house where the proceedee had used to stay earlier.

6. As the process server's report dated 24.01.2022, which is a primary proof of service clearly states that the notice could not be served as the petitioner could not be located and even the Gaonburah was not aware of the whereabouts of the petitioner, the contents of paragraph 3 of the impugned *ex parte* opinion dated 28.02.2022, insofar as it relates to the petitioner, are totally incorrect, which has vitiated the said *ex parte* opinion.

7. Resultantly, the impugned *ex parte* opinion dated 28.02.2022 is not

sustainable on facts and in law as the notice was not duly served in accordance with the provisions of Order 3 of the Foreigners (Tribunals) Order, 1964.

8. Accordingly, the impugned *ex parte* opinion dated 28.02.2022, passed by the learned Member, Foreigners' Tribunal, Jorhat, in Case No. FTG.68/2010, arising out of S.P.'s Enquiry No. 342/2004 is hereby set aside.

9. The petitioner, who is duly represented by the learned counsel, shall appear before the learned Member, Foreigners' Tribunal, Jorhat within the outer time limit of 27.03.2026 and by producing a certified copy of this order, file her written statement along with the documents on which the petitioner intends to rely upon.

10. It would be open to the learned Tribunal to pass appropriate orders enabling the petitioner to take bail to its satisfaction.

11. It is made clear that if the petitioner fails to appear within the time allowed, it would be open to the learned Tribunal to treat the petitioner absent on call and pass appropriate orders as per law. The said learned Tribunal shall make an endeavour to dispose of the matter within the time as prescribed by Order 3 (14) of the Foreigners (Tribunals) Order, 1964.

12. The Registry shall send back the records expeditiously to the learned Tribunal along with a copy of this order to make it a part of the records.

13. This writ petition stands allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant