

GAHC010288152025



2026:GAU-AS:2776-DB

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

Case No. : WP(C)/889/2026

MD AIOB ALI ALIAS AYUB ALI
S/O-LATE LOKMAN ALI, R/O- VILL- NEGERIBILL, P.O AND P.S- MERAPANI,
DIST-GOLAGHAT, ASSAM, PIN- 785705

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI

3:THE STATE OF ASSAM
REPRESENTED BY THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE ASSAM STATE COORDINATOR OF NRC
BHANGAGARH
GUWAHATI-781005

5:THE DISTRICT COMMISSIONER
GOLAGHAT
DISTRICT-GOLAGHAT
ASSAM
PIN-7834121.

6:THE SUPERINTENDENT OF POLICE (B)
GOLAGHAT

DISTRICT-GOLAGHAT
ASSAM
PIN7834121

Advocate for the Petitioner : MR. S A AHMED, MR. F A AHMED, MS. K DAS

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

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

ORDER

Date : 24.02.2026
(K.R. Surana, J)

Heard Mr. S.A. Ahmed, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC for respondent no.1; Mr. A.I. Ali, learned standing counsel for respondent no.2; Mr. G. Sarma, learned standing counsel for the respondent nos. 3, 4 and 6; Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Aiob Ali @ Ayub Ali, has assailed the impugned *ex parte* opinion dated 26.02.2021, passed by the learned Member, Foreigners Tribunal, Jorhat, in Case No. FTG.341/2011, arising out of Enquiry No. 209/2007, by which he was declared to be a foreigner who had entered into India illegally from Bangladesh after 25.03.1971.

3. This writ petition was filed on 20.12.2025 to assail the *ex parte* opinion dated 26.02.2021, i.e. after there has been an extraordinary delay of 4 years, 9 months, 24 days (or 1758 days). Hence, the learned counsel for the

petitioner was heard on delay and laches on part of the petitioner to assail the *ex parte* opinion.

4. The learned counsel had submitted that in paragraph 4 of the writ petition, the petitioner has taken a stand that the notice was served on his son, but his son, who is a daily wage earner, went to Kerala after receiving the notice on 15.02.2020 for earning livelihood. Accordingly, without any knowledge of the proceeding, the petitioner did not appear and take steps, which resulted in the *ex parte* opinion against him. The petitioner came to know about the said *ex parte* opinion only on 25.05.2025, when the police came to his house and took him into custody. It has been submitted that as the whereabouts of the petitioner was not known, his son had filed W.P.(CrI.) No. 47/2025, and as the State had disclosed the whereabouts of the petitioner, the said writ petition was closed by order dated 18.08.2025, giving liberty to the petitioner to assail the said opinion. It was submitted that in the meanwhile the family members of the petitioner had collected certified copies of relevant documents on 02.06.2025. It was also submitted that the petitioner had filed W.P.(C) No. 6175/2025, to assail the said opinion, but the same had to be withdrawn due to technical mistakes, which was allowed by order dated 12.12.2025, with liberty to approach again. Accordingly, this writ petition was filed on 20.12.2025. It was submitted that the petitioner has all the documents to prove that he is a citizen of India. Accordingly, it has been submitted that the matter be remanded back to the learned Tribunal to enable the petitioner to contest the proceeding, which, if not allowed, would take away his citizenship right. It may be stated that the learned counsel for the petitioner had submitted that due to Covid-19 pandemic, the limitation has to be excluded from 15.03.2020 to 01.03.2022, owing to orders

passed from time to time by the Supreme Court of India, extending the period of limitation.

5. Per contra, the learned standing counsel for the FT, Border matters and NRC had submitted that the explanation given is vague, and not supported by any documents or any other cogent and reliable material.

6. The learned CGC and the learned Addl. Senior Govt. Advocate for the other appearing respondents have adopted the submissions made by the learned standing counsel for the FT, Border matters and NRC.

7. As per the contents of the impugned *ex parte* opinion dated 26.02.2021, the process server had served the notice dated 27.01.2020, to Ashikul Islam, son of the petitioner, who, on receipt of the notice had put his signature on the service report. It appears from the contents of the service report that the notice was served on the son of the petitioner through two police constables, namely, Const. Purnanda Sonowal and Const. Kanchan Phukan. The service report was then forwarded to the concerned Police Station, which in turn returned the service report to the Superintendent of Police (Border), Golaghat, who thereafter, returned it to the learned Tribunal. It is noticed from the copy of the order-sheet, annexed to the writ petition that the return of service report is recorded in the order dated 14.02.2020. Though the petitioner remained absent all throughout, the proceeding against the petitioner was adjourned on 14.02.2020, 24.02.2020, 03.03.2020, 13.03.2020, 25.03.2020, 25.06.2020, 19.09.2020, 24.12.2020 and 04.01.2021. Accordingly, by order dated 04.01.2021, the learned Tribunal had ordered the case to proceed *ex parte* against the petitioner. Nonetheless, the matter was adjourned on 18.01.2021, 22.01.2021, 05.02.2021, 11.02.2021 and 19.02.2021.

Accordingly, by order dated 19.02.2021, the case was fixed on 26.02.2021, for *ex parte* opinion. Resultantly, the *ex parte opinion* was passed on 26.02.2021.

8. As regards the submissions made by the learned counsel for the petitioner regarding extension of limitation due to the Covid-19 Pandemic, it may be stated that there is no period of limitation prescribed for filing a writ petition, but unless the petitioner demonstrates good and cogent reason, delay and laches would disentitle the petitioner to equitable relief, on the principle that delay defeats equity. If one needs any authority on the point, the decision of the Supreme Court of India in the case of *Mrinmoy Maity v. Chhanda Koley*, 2024 INSC 314: (2024) 0 Supreme(SC) 351, and *Chairman/Managing Director, U.P. Power Corporation Ltd. V. Ram Gopal*, (2020) 13 SCC 225: (2020) 0 Supreme(SC) 93 (Full Bench). In the later case, while approving the decision of the Supreme Court of India in the case of *P.S. Sadasivaswamy v. State of Tamil Nadu*, (1975) 1 SCC 152 and *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479, it was held to the effect that limitation does not strictly apply to a proceeding under Article 32 and 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time and the High Courts were cautioned by observing that prolonged delay of many years ought not to have been overlooked or condoned. Paragraph 16 thereof [as extracted from (2020) 0 Supreme(SC) 93] is quoted below:-

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere

opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu vs. State of Kerala, (2009) 2 SCC 479 this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

9. It is noted that the notice of the proceeding was served on Ashikul Islam, son of the petitioner. This fact is admitted in paragraphs 4 and 5 of the writ petition. However, the affidavit in support of this writ petition was signed and sworn by one Alim Hussain, aged 25 years on 19.12.2025, who claims to be another son of the petitioner, and the statements made in paragraphs 4 and 5 of the writ petition are verified to be true to his knowledge. Therefore, Alim Hussain, who is aware of the service of notice to Ashikul Hussain sometime in the month of February, 2020, also does not inform the petitioner that the Tribunal's notice was served on Ashikul Hussain. In this writ petition, the petitioner claims that he is BPL person. It is not believable that a village household of BPL strata of society would so easily forget Tribunal's summons served by two police personnel from the local police station. The petitioner has withheld, where in the State of Kerala, Ashikul Hussain, son of the petitioner was working and if he is a day labourer, then he must have been registered as contract labourer under the relevant law, or he must have been employed by someone under labour contract, but these relevant particulars are withheld from the Court for the reasons not disclosed in the writ petition. It is surprising that while most non-essential activities in the entire Country came to a stand-still, the said son of the petitioner continued his employment in the State of Kerala, even during Covid Pandemic period. Thus, the stand of the

petitioner regarding lack of knowledge of notice/ summons served by two police personnel to the son of the petitioner at his home is totally unbelievable.

10. Thus, except for an absolute vague statement that the son of the petitioner, after receiving notice from the Foreigners Tribunal through two police personnel from the local police station, no other good, cogent and acceptable reason has been assigned by the petitioner for his negligence in not appearing before the learned Tribunal. From the date of opinion, the petitioner has filed this writ petition after 4 years, 9 months, 24 days (i.e. 1758 days), as stated hereinbefore.

11. In this case, the delay and laches of the petitioner are in two phases. Firstly, after due service of notice in accordance with the provisions of Order 3(5)(c) of the Foreigners (Tribunals) Order, 1964, till passing of the opinion; and secondly, from 26.02.2021, the date of the impugned *ex parte* opinion till 20.12.2025, the date of filing of this writ petition. On both counts, the delay is not properly explained.

12. The notice of the proceeding was served on Ashikul Islam, an adult son of the petitioner, for which his other son, Alim Hussain, who was also a 20 year old adult in the year 2020, had personal knowledge. Thus, the petitioner is deemed to have due knowledge that he was being accused of being a foreigner who had illegally entered into India (Assam) from the specified territory and thus, not an Indian. Yet, the petitioner had not contested the proceeding.

13. It may also be mentioned that 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 only in exceptional cases, delay can be condoned. The said paragraph 46 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."

14. In respect of the legal proposition that delay and laches is fatal to 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."

15. 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.

16. Moreover, this Court, in the case of *Ajbahar Ali v. Union of India*, (2025) 0 Supreme (Gau) 763, had held to the effect that the plea of compliance with the 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. A similar opinion has also been expressed by this Court in the case of *Abu Bokkor Siddique v. Union of India*, 2019 (1) GLT 813.

17. 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, has 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.

18. In this case, the stand of the petitioner is that he was taken into custody on 25.05.2025. The learned counsel for the petitioner could not show as to which fundamental right of the petitioner would be violated if the *ex parte* opinion is not set aside. Rather, it is the interest of the Country which would suffer if persons who are declared illegal migrants are allowed to defeat the process of expulsion of detected illegal foreigners/migrants, by allowing such illegal migrants endless time to assail opinion passed by the learned Tribunals.

19. By showering sympathy in this particular case, this Court would be encouraging unscrupulous practice of not appearing before Courts and Tribunals, despite notice being duly served on an adult member of the family.

20. The Court is of the considered opinion that if such belated petitions are entertained after 4 years, 9 months, 24 days, all delays, irrespective of the number of days, will have to be condoned at the drop of the hat. It would also render the provisions of Order 3(8) and Order 3(14) of the Foreigners (Tribunals) Order, 1964 otiose.

21. It may also be stated that the learned counsel for the petitioner had submitted that the petitioner has all the documents to prove that he is an

Indian citizen. In the said context, this Court is reminded of the fact that this Court is exercising certiorari jurisdiction and thus, cannot act as a Court of original jurisdiction so as to convert itself to a Foreigners Tribunal and start examining and appreciating the documents annexed to writ petition, which were hitherto not presented before the learned Foreigners Tribunal. This Court is not exercising appellate jurisdiction. The petitioner has failed to show that the impugned opinion is vitiated by any error apparent on the face of the records. Accordingly, the Court is of the considered opinion that in exercise of certiorari jurisdiction under Article 226 of the Constitution of India, the High Court ought not to substitute its view over opinion of the learned Foreigners Tribunal, which is not found to be vitiated for any error whatsoever. If one needs any authority on the point, the decision of the Supreme Court of India in the case of *Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 INSC 733: (2023) 0 Supreme(SC) 763*, may be referred to. Paragraph 77 thereof is quoted below:-

"77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334 observed:

"26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest

injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

22. Thus, the challenge to the impugned *ex parte* opinion dated 26.02.2021, by the learned Member, Foreigners Tribunal, Jorhat, in Case No. FTG.341/2011, arising out of Enquiry No. 209/2007, by which Md. Aiob Ali @ Ayub Ali, was declared to be a foreigner who had entered into India illegally from Bangladesh after 25.03.1971, fails. Resultantly, this writ petition is dismissed at the "motion stage" without issuing notice upon the respondents. The consequences of the said opinion shall follow.

23. There shall be no order as to cost.

24. 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 Foreigners Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant