GAHC010254942022

2025:GAU-AS:8164-DB

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

Case No. : WP(C)/8031/2022

GOBINDA SAHA @ CHANDRAHAS SAHA
S/O JOGESH SAHA, R/O CHOTA HAIBOR, P.S.-NAGAON (SADAR), DIST-NAGAON, ASSAM, PIN-782001

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, DEPARTMENT OF HOME AFFAIRS, NEW DELHI

2:ELECTION COMMISSION OF INDIA
NEW DELHI

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL (B) DEPARTMENT
DISPUR-781006

4:THE FOREIGNERS TRIBUNAL 1ST NAGAON
ASSAM
PIN-782001

5:THE SUPERINTENDENT OF POLICE (BORDER)
NAGAON
ASSAM
PIN-782001

6:THE DEPUTY COMMISSIONER
NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MR. B C DAS,

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MRS. JUSTICE MALASRI NANDI

For the petitioner	: Mr. B.C. Das, Advocate
For respondent No.1	: Ms. R. Devi, CGC.
For respondent No.2	: Mr. M. Islam, Advocate
For respondent Nos.3 to 5	: Ms. A. Verma, standing counsel.
For respondent No.6	: Mr. P. Sarmah, Govt. Advocate.
Date of hearing	: 26.05.2025.
Date of judgment	: 19.06.2025.

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J)

Heard Mr. B.C. Das, learned counsel for the petitioner. Also heard Ms. R. Devi, learned CGC for respondent no.1; Mr. M. Islam, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for respondent no.2; Ms. A. Verma, learned standing counsel for respondent nos. 3 to 5; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for respondent no.6.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 15.10.2022, passed by the learned Member, Foreigners Tribunal 1st, Nagaon, in F.T. Case No. 2541/2011, arising out of S.P(B) Ref. Case No. 130/98 (D), thereby answering

the reference against the petitioner, holding him to be a foreigner of post 25.03.1971, who has entered into India (Assam) from the specified territory of Bangladesh.

3) The petitioner, on receipt of the notice, initially failed to appear and take steps in the case and accordingly, an *ex parte* opinion dated 12.06.2015 was passed against the petitioner. The said *ex parte* opinion was set aside by this Court by order dated 29.05.2018, passed in W.P.(C) 3356/2018.

4) Accordingly, the petitioner had entered appearance in the case and submitted his written statement of defence as well as additional written statement. In support of his defence, the petitioner had examined himself as DW-1 and he had also six other witnesses, viz., (i) his son, namely, Sri Sankar Saha (DW-2); (ii) his second wife, Smt. Sandhya Rani Saha (DW-3); (iii) first wife Smt. Bakul Rani Saha (DW-4); (iv) Sri Lila Kanta Majumdar (DW-5);(v) Sri Trailakya Bordoloi, Senior Branch Manager, UCO Bank (DW-6); (vi) Dr. Paban Chandra Patar, SDM&HO, BPHC, Jhargaon, Morigaon (DW-7); and (vii) Sri Alokesh Das, holding Charge of D.D.C.S. in the Nagaon District Food and Civil Supplies Department.

5) The petitioner had examined himself as DW-1. By filing his evidence-on-affidavit, he had exhibited the following documents, viz., (i) certified copy of electoral roll of 1966 of 86 No. Bokani (SC) LAC (Ext.1); (ii) certified copy of electoral roll of 1970 of Lumding LAC (Ext.2); (iii) photocopy of electoral roll 2005 (~~Ext.3~~ struck-out); (iv)certificate dated 27.07.2015, issued by Circle Officer, Lanka Revenue Circle (Ext.4); (v) birth certificate of Sankar Saha (Ext.5); (vi) birth certificate of Abhijit Saha (Ext.6); (vii) PAN Card of Sandhya Rani Saha (Ext.7); (viii) elector photo identity card of Smt. Bakuli Saha (Ext.8);

(ix) certificate issued by *Gaonburah* of Jhargaon, Kisham, Manaha Mouza (Ext.9); (x) certificate issued by *Gaonburah* of Chotahaibor Kissamat (Ext.10); (xi) passbook of UCO Bank, Nagaon Branch in the joint name of the petitioner and Mrs. Sandhya Rani Saha (Ext.11); (xii) family ration card issued in the name of Sandhya Rani Saha (proved in original) (Ext.12); (xiii) his elector voter identity card (Ext.13); photocopy of electoral roll of 79 Jagiroad (SC) LAC for the year 2018 (Ext.14). Out of the said fourteen exhibits, the learned Member has not counter-signed Ext.3 and Ext.14. the DW-1 was cross-examined and discharged on 11.01.2019, but no reason is assigned why the said exhibits are not signed. Moreover, it may be mentioned that in the evidence-on-affidavit, the certified copy of electoral roll of 1970 is referred as Ext.2, however, the exhibited document is the certified copy of electoral roll of 1971.

6) Moreover, by filing his additional evidence-on-affidavit on 25.02.2020, the petitioner, as DW-1, has exhibited the following documents, viz., (a) certified copy of electoral roll of 1966 of 83 No. Bokani (SC) LAC of village- Jhargaon (Ext.14); (b) certified copy of electoral roll of 1989 of 79 No. Jagiraod LAC of village- Jhargaon (Ext.15); (c) certified copy of electoral roll of 1993 of 79 No. Jagiraod LAC of village- Jhargaon (Ext.16); (d) certified copy of electoral roll of 1997 of 79 No. Jagiraod LAC of village- Jhargaon (Ext.17); (d) certified copy of electoral roll of 2005 of 79 No. Jagiraod LAC of village- Jhargaon(Ext.18); (e) certified copy of electoral roll of 2018 of 79 No. Jagiraod LAC of village- Jhargaon (Ext.19); (f) affidavit sworn by the petitioner regarding his two names (Ext.20); (g) certified copy of electoral roll of 2010 of 79 No. Jagiraod LAC of village- Jhargaon(Ext.21).The said evidence-on-affidavit and the exhibited documents are available at pages 159 to 169 of the Tribunal's record.

7) Sri Sankar Saha, the son of the petitioner, who was cross-examined as DW-2, by filing his evidence-on- affidavit, has exhibited (i) his birth certificate (Ext.5); (ii) his elector photo identity card (Ext.15 and Ext.17); online obtained copy of voter list of 2011 of Barhampur LAC, Part-IV (Ext.15); online obtained copy of voter list of 2018 of Barhampur LAC, Part-IV (Ext.16).

8) Smt. Sandhya Rani Saha, projecting herself to be the second wife of the petitioner, had filed her evidence-on-affidavit sworn on 27.06.2018. She was cross-examined as DW-3. She had exhibited the following documents, which were already exhibited by the petitioner. Those exhibited documents are (i) electoral roll of 2005 of Jagiroad SC Constituency (~~Ext.3~~ struck-out); (ii) certificate by the Circle Officer (Ext.4); (iii) her PAN card (Ext.7); (iv) passbook of her joint bank account with the petitioner (Ext.11); (v) ration card (proved-in-original); (vi) online obtained copy of electoral roll of 2011 of Barhampur LAC (Ext.15); (vii) online obtained copy of electoral roll of 2018 of Barhampur LAC (Ext.16).

9) It may be mentioned that on a comparative reading of the evidence-on-affidavit of petitioner (DW-1) and Sandhya Rani Saha (DW-3), it is seen that the documents marked as Ext.15 and Ext.16 exhibited by the DW-3 does not tally with the documents marked as Ext.15 and Ext.16 by DW-1.

10) Smt. Bokuli Das, the projected wife of the petitioner, who was cross-examined as DW-4, by filing her evidence-on-affidavit, has exhibited electoral roll of 2005 of Jagiroad SC Constituency (~~Ext.3~~ struck-out); and her elector photo identity card (Ext.8).

11) Sri Abhijit Saha, the son of the petitioner, by filing his evidence-

on- affidavit, has exhibited his birth certificate (Ext.6); online obtained copy of voter list of 2011 of Barhampur LAC, Part-IV (Ext.15); online obtained copy of voter list of 2018 of Barhampur LAC, Part-IV (Ext.16); his elector photo identity card (Ext.18). There appears to be no record that the said Sri Abhijit Saha had presented himself for his cross-examination. However, it may also be mentioned that on a comparative reading of the evidence of the DW-1 and evidence-on-affidavit of Abhijit Saha, as per the documents exhibited by DW-1.

12) Sri Lila Kanta Mazumdar, Govt. *Gaonburah* of village- Jhargaon, who was examined as DW-5 had exhibited certificate issued by him [Ext.9 and his signature therein Ext.9(1)].

13) Sri Trailakya Bordoloi, who was examined as DW-6 had exhibited the UCO bank account opening form (Ext.19, proved in original).

14) Sri Paban Chandra Pator, the SDM&MO of BPHC, who was examined as DW-7, had exhibited the already exhibited Ext.5 birth certificate as Ext.21 and his signature thereon as Ext.21(1). He had also exhibited the already exhibited Ext.6 birth certificate as Ext.22 and his signature thereon as Ext.22(1). It may be mentioned herein that DW-1 had exhibited certified copy of electoral roll of 2010 as Ext.21. Therefore, it is seen that Ext.21 marked by DW-1 and Ext.21 marked by DW-7 are different documents.

15) The Tribunal's record reveal that on issuance of summons to witness to the Election Officer, Morigaon, the said authority had forwarded the authenticated copies of the electoral roll of 1966, 2018, 2010, 2005, 1997, 1993, 1989, 1989, vide letter dated 04.04.2022. The said forwarding letter and copies of authenticated electoral rolls are available at page 218 to 225 of the Tribunal's

records. The receipt of the above is recorded in the order dated 06.04.2022, passed by the said learned Tribunal.

16) It may be mentioned that in a stapled envelope available at page-93 of the Tribunal's record, some exhibited elector photo identity cards and PAN card of Sandhya Rani Saha has been kept. By red pen, it is mentioned on the said envelope- "Ext.13, Ext.15, Ext.17, Ext.18". However, it may be mentioned that the reference on the cover of the envelope regarding Ext.15, Ext.17 and Ext.18 is found to be contrary to the additional evidence-on-affidavit by DW-1. However, on opening the said envelope, it is found to contain PAN Card of Sandhya Rani Saha (Ext.7); Elector Photo Identity Card of Chandra has Saha (Ext.13); Elector Photo Identity Card of Sankar Saha (Ext.17); Elector Photo Identity Card of Abhijit Saha (Ext.18); and Aadhaar Card of Sandhya Rani Saha (M.Ext.1).

a. As per the evidence of Sri Sankar Saha, his Elector Photo Identity Card was exhibited as Ext.15 as well as Ext.17. He has also exhibited voter list of 2011 as Ext.15. However, as per additional evidence-on-affidavit of the petitioner (DW-1), certified copy of Electoral Roll of 1989 is Ext.15.

b. In her evidence-on-affidavit, Sandhya Rani Saha is not seen to have exhibited any document as "M.Ext.1".

c. As per evidence-on-affidavit by Abhijit Saha, his Elector Photo Identity Card is Ext.8, but as per additional evidence-on-affidavit by DW-1, Ext.18 is the Electoral Roll of 2005. As stated hereinbefore, the said witness was not produced for his cross-examination.

17) In the impugned opinion, the reference and discussions has

been made regarding the following exhibited documents, viz., electoral roll of 1966 (Ext.1, also exhibited by DW-1 as Ext.14); certified copy of electoral roll of 1971 (Ext.2); certificate by Circle Officer (Ext.4); birth certificate (Ext.5, also marked as Ext.21); birth certificate (Ext.6, also marked as Ext.22); *Gaonburah* certificate (Ext.9); *Gaonburah* certificate (Ext.10); bank pass book of joint account (Ext.11); bank account opening form (Ext.19); family ration card (Ext.12); electoral roll of 1989 (Ext.15); electoral roll of 1993 (Ext.16); electoral roll of 1997 (Ext.17); electoral roll of 2005 (Ext.18); electoral roll of 2018 (Ext.19); electoral roll of 2010 (Ext.21).

18) Thus, all the exhibited documents, with over-lapping as indicated hereinbefore, are not found to be have been referred and discussed by the learned Tribunal. Thus, it appears that the petitioner has not received the desired assistance of his learned counsel, who has failed to mark exhibits appropriately, moreover, the records are so haphazardly maintained by the learned Tribunal that it took more than 2 (two) hours for the Court, assisted by the private secretaries to trace-out the exhibited documents after comparing every exhibited document with the contents of the evidence-on-affidavit of DWs and cross-examination of DWs.

19) The evidence-on-affidavits of some witnesses are lying at page nos. 48 to 62 of the Tribunal's record. The form for recording deposition containing examination of a few DWs, and cross-examination of the DWs are lying in pages 65 to 76 of the record. Exhibit nos. 1 to Ext.16 are lying at pages 77 to 92, containing re-marking of Ext.3, Ext.14, Ext.15 and Ext.16 as Annexure-4, Annexure-1, Annexure-2, and Annexure-3. One part of the order-sheet are at pages 1 to 25 of the record. The other part of the order-sheet are

lying at pages 94 to 97 of the record. A stapled envelope available at page-93 of the Tribunal's record, contains five exhibited documents such as elector photo identity cards, PAN card, and Aadhaar Card, as referred hereinbefore. Additional written statement is available at page 149 to 153 of the record. Some exhibited documents are at page 161 to 172 of the record. Some other exhibited documents are at page 179 and 180 of the record. The above process of locating the order-sheets, pleadings, evidence and documents and comparing it with contents of evidence-on-affidavit has consumed a lot of time, which has compelled the Court to leave it to the authorities in the Home and Political (B) Department, as to whether the State would consider formal training to the Members and Superintendents of Foreigners Tribunal from the Judicial Academy, Assam and/or North-East Judicial Officers Training Institute, Guwahati of how to maintain case record.

20) Thus, having noted the discrepancies in the marking of exhibits, the same is found to have seriously vitiated the impugned opinion, as the resultant appreciation of the evidence of the DWs is also found to be vitiated by total non-application of judicial mind.

21) Therefore, the Court is inclined to pass the following:

O R D E R

a. The opinion dated 15.11.2022, passed by the learned Member, Foreigners Tribunal 1st, Nagaon, in F.T. Case No. 2541/2011 is set aside.

b. The matter is remanded back to the said learned Tribunal for a fresh decision in accordance with law.

c. The proceedings of F.T. Case No. 2541/2011, is restored to the file of the learned Member, Foreigners Tribunal 1st, Nagaon, with a direction to take up the proceeding from the stage of evidence of DWs.

d. The petitioner, namely, Sri Gobinda Saha @ Chandra has Saha, who is duly represented by his learned counsel in this writ petition, is directed to appear before the said learned Tribunal on or before 18.07.2025, without requirement of serving any notice of appearance to him and by producing a certified copy of this order, wait for further directions or order from the said learned Tribunal.

e. In the event the petitioner does not appear before the said learned Tribunal within the time allowed, it would be open to the said learned Tribunal to treat the petitioner as absent on call and decide the matter afresh in accordance with law.

f. As the evidence of the DWs has over-lapping marking of exhibits, the petitioner should be well advised as to the appropriate manner to put forth his evidence. Accordingly, if any such prayer is made by the petitioner, the same shall be considered by the learned Tribunal in accordance with law.

g. The Registry shall return back the Tribunal's record expeditiously.

h. Having seen the haphazard manner in which the records of Case No. FT 2451/2011 has been maintained, the Court is inclined to direct the Registry to transmit a copy of this order to the Commissioner and Secretary to the Govt. of Assam, Home and Political (B) Department to consider training programme for the learned Members and

Superintendents of the Foreigners Tribunals in the State on maintaining records.

i. The said authority is also requested to circulate a copy of this order to all the Foreigners Tribunals in the State.

j. This writ petition is allowed to the extent as indicated above, with remand of the matter back to the learned Tribunal for a fresh decision in accordance with law.

k. The parties are left to bear their own cost.

JUDGE **JUDGE**

Comparing Assistant