GAHC010072272024

2026:GAU-AS:15549-DB

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

Case No. : WP(C)/2022/2024

GOBINDA MODAK
S/O- LATE SUDHANGSHU MODAK @ LATE SUDHANGSHU MODAK,
PERMANENT RESIDENT OF VILLAGE- BHOLARDABRI,
ALIPURDUAR JUNCTION,
MOUZA- BHOLARDABRI (UTTARANGSHO),
P.S.- ALIPURDUAR, DISTRICT- JALPAIGURI,
WEST BENGAL.
PRESENTLY RESIDING AT-
VILLAGE AND P.O.- PANCHMILE,
P.S.- TEZPUR, DISTRICT- SONITPUR, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH-
THE SECRETARY,
TO THE GOVERNMENT OF INDIA,
THE MINISTRY OF HOME AFFAIRS,
GRIHA MANTRALAYA, NEW DELHI.

2:THE STATE OF ASSAM
THROUGH-
THE SECRETARY

TO THE GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA

REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD

NEW DELHI- 110001.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI- 781005.

5:THE DISTRICT COMMISSIONER
SONITPUR
P.O.- TEZPUR
DISTRICT- SONITPUR

ASSAM
PIN CODE- 784001.

6:THE SUPERINTENDENT OF POLICE (BORDER)
SONITPUR
P.O.- TEZPUR
DISTRICT- SONITPUR

ASSAM
PIN CODE- 784001

Advocate for the Petitioner : MR. S C BISWAS, MS. J GHOSH,MS A BORAH,MS. U NANDA,MR. F A HASSAN

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

Date : 13.10.2026
(K.R. Surana, J)

Heard Mr. F.A. Hassan, learned counsel for the petitioner. Also heard Mr.

J.K. Goswami, learned CGC; Mr. G. Sharma, learned standing counsel for the FT and Border matters; Mr. A.I. Ali, learned standing counsel for the ECI; and Ms. R.B. Bora, learned Junior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 19.02.2024, passed by the learned Member, Foreigner's Tribunal-1, Tezpur, in Case No.F.T-D-6680/2012, arising out of S.P. Reference No. TZP(B)/06/2101, dated 12.12.06, by which the petitioner was declared as an illegal migrant.

3. On a perusal of the records it appears that the petitioner remained intermittently absent in the proceedings before the learned Tribunal and accordingly, on 10.10.2023, when the petitioner appeared before the learned Tribunal, he was allowed to go on fresh bail with a condition that he would appear before the learned Tribunal on the next date. On 11.12.2023, which was the next date fixed, the petitioner again did not appear before the learned Tribunal and the next date was fixed on 12.02.2024 and thereafter, the matter was closed and subsequently the opinion was passed on 19.02.2024 on failure of the petitioner to appear for cross-examination.

4. Although the default of the petitioner is on record, but in paragraph no. 12 of the impugned opinion, the learned Tribunal had recorded to the effect that the petitions filed by the learned counsel for the petitioner were rejected because the advocate had intentionally filed petitions and debarred the petitioner from being present before the learned Tribunal for cross-examination.

5. It appears from the record that no such observations was made in any of the orders passed by the learned Tribunal. However, in view of the said observations in paragraph no. 12 of the impugned opinion, it can only be

presumed that perhaps while granting bail, the petitioner may have made the said submissions before the learned Tribunal.

6. The learned standing counsel for the FT and Border matters has opposed the prayer for interference with the impugned opinion on the ground that the petitioner was consistently absent and despite the grant of bail by order dated 10.10.2023, he defaulted in appearing for cross-examination on the very next date fixed which was 11.12.2023.

7. It is observed that the petitioner has filed his written statement and has also filed his evidence-on-affidavit and he also filed the original documents which he intended to exhibit. Accordingly, in view of the observations made by the learned Tribunal in paragraph no.12 of the opinion dated 19.02.2024 that the advocate of the petitioner had debarred the petitioner from being present before the learned Tribunal for cross-examination, the Court is of the considered opinion that the petitioner deserves one chance to appear before the learned Tribunal to face cross-examination.

8. Accordingly, impugned opinion dated 19.02.2024, passed by the learned Member, Foreigner's Tribunal-1, Tezpur, is hereby set aside.

9. The matter is remanded back to the learned Member, Foreigner's Tribunal-1, Tezpur for giving one opportunity to the petitioner to appear for cross-examination. Accordingly, it is provided that the petitioner who is duly represented by his learned counsel shall appear before the said learned Tribunal within the outer time limit of 27.11.2026 and on the said date he shall be ready to face cross-examination by the Assistant Govt. Pleader or any other Govt. Advocate who would be appearing for the State.

10. It is made clear that if the petitioner defaults in appearing before the

learned Tribunal within the time limit of 27.11.2026, it would be permissible for the said learned Tribunal to close the matter and to pass fresh opinion.

11. It is also made clear that the Court has not set aside the impugned opinion 19.02.2024 on merit but only for giving the petitioner one opportunity to face cross-examination.

12. The Registry shall return back the Tribunals records expeditiously.

13. The writ petition is allowed and disposed of.

JUDGE **JUDGE**

Comparing Assistant