

GAHC010019292019



2026:GAU-AS:4577

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

Case No. : WP(C)/1486/2019

SABIYA BEGUM

W/O- MONAFAT @ Malfat Ali, D/O- Late Shaizddin, Vill. Agdia
Pather, P.S. Sarthebari, Dist. Barpeta (Assam). PIN- 781316.

VERSUS

THE UNION OF INDIA AND 6 ORS.

Rep. by the Secretary to the Govt. of India, Deptt. of Home, New
Delhi-1.

2:THE STATE OF ASSAM

Rep. by the Secretary to the Govt. of Assam
Deptt. of Home
Dispur
Guwahati-6.

3:THE DEPUTY COMMISSIONER

Barpeta
PIN- 781301.

4:THE SUPERINTENDENT OF POLICE (BORDER)

Barpeta
PIN- 781301.

5:THE ELECTION COMMISSION

Govt. of India
New Delhi-1.

6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION (NRC)
Assam

GUWAHATI-32.

7:THE FOREIGNERS TRIBUNAL NO. 3
BARPETA
REP. BY THE STANDING COUNSEL OF THE TRIBUNAL
PIN- 781301

Advocate for the Petitioner : MR. A ROSHID, MS. M R DEVI

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,MR J PAYENG,SC, NRC,MS. A VERMA,MR.
D BARUAH,SC, ECI

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

For the petitioner : Ms. T. Begum, Advocate
For the Union of India : Mr. S.K. Medhi, CGC.
For the FT and Border matters : Mr. G. Sarma, standing counsel.
For NRC : Mr. J. Payeng, standing counsel.
For ECI : Mr. A.I. Ali, standing counsel
For the State respondents : Mr. P. Sarmah, Senior Govt. Adv.

Date on which judgment is reserved : **08.01.2026.**

Date of pronouncement of judgment : **30.03.2026**

**Whether the pronouncement is of
the operative part of the judgment?** : **No.**

**Whether the full judgment has been
Pronounced?** : **Yes.**

JUDGMENT & ORDER

(CAV)

(K.R. Surana, J)

Heard Ms. T. Begum, learned counsel for the petitioner. Also heard Mr. S.K. Medhi, learned CGC; Mr. G. Sarma, learned standing counsel for the FT and

Border matters; Mr. J. Payeng, learned standing counsel for the NRC; and Mr. P. Sarmah, learned Govt. Advocate for the State respondent are present.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Sabiya Begum, has assailed the opinion dated 10.08.2018, passed by the learned Member, Foreigners' Tribunal- III, Barpeta, in FT Case No. 805(III) of 2013, arising out of Ref. IMDT Case No. 5734/98, by which the petitioner was declared to be a foreigner of the post 25.03.1971 by holding that the petitioner has failed to prove her linkage with her projected parents.

3. In view of the order proposed to be passed, the pleadings in the written statement and the evidence of the petitioner have not been discussed.

4. It would suffice to mention that in support of her defence, the petitioner had filed her evidence-on-affidavit as OPW-1 on 07.06.2017. As per order dated 12.07.2017, she was examined by the learned Tribunal and discharged, keeping her further examination reserved at her instance. As per order dated 21.09.2017, the petitioner had filed additional evidence-on-affidavit. As per order dated 03.08.2017, the petitioner was again examined and discharged and moreover, on the same date, Sri Banamali Boro, the *Gaonburah* of village- Hahchara, was also examined as OPW-2, cross-examined and discharged. As per order dated 22.06.2018, Sahera Khatun was examined as OPW-3, cross-examined and discharged, but the records show that the OPW-3 had filed her evidence-on-affidavit on 22.06.2018. She was examined on oath on 22.06.2018, but the record does not show that she was cross-examined. Similarly, it is seen that OPW-1 was examined and further examined and thereafter, she had answered to the Tribunal's queries, but her cross-examination is not found on record. Only there is record of cross-examination of

OPW-2.

5. Be that as it may, the following documents were exhibited by the petitioner:-

As per evidence-on-affidavit:

- a. *Voters list of 1965 (Ext.A).*
- b. *Voters list of 1997 (Ext.B).*
- c. *Electoral Photo Voter Identity Card of mother (Ext.C).*
- d. *Certificate of Village Gaonburah of Village Hasara (Ext.D).*
- e. *Certificate of Village Gaonburah of Village Agdia Pathar (Ext.E) (however, the sub-paragraph reflecting Ext.E is struck of by red ink).*
- f. *Annual Khiraj Patta (Ext.F).*
- g. *Voters list of 1989 [Ext.E (sic.) inserted by hand writing]*

6. On going through the Tribunal's record, (i) *Voters list of 1965 (Ext.A)*; (ii) *voters list of 1970 (Ext.B)* is a photocopy but does not contain marking as an exhibit; (iii) EPIC (Ext.C), which is a photocopy, but compared with original and marked as an exhibit; (iv) *Gaonburah's* certificate of Hahchara – original document (Ext.D); (v) Annual Khiraj Patta (Ext.E), photocopy containing marking as an exhibit. It is noted that in the evidence-on-affidavit of DW-1, Ext.E has been struck out, Ext.F was converted to Ext.E, voters list of 1989 is inserted as Ext.F. All such changes are made by handwriting. However, there is no observation in the order-sheet, allowing changes to be made in the evidence-on-affidavit. As per the order dated 25.09.2018, on a prayer made by the petitioner, original/ verified copy of voters list of 1997, 1970, 1965, 1989 and land document were returned.

7. Thus, there is a mismatch in the record and order-sheet regarding cross-examination of OPW-1 and OPW-3, as there is no material on record showing cross-examination of the said witnesses. Thus, the learned

Tribunal appears to have treated the oral examination-in-chief of OPW-1 and OPW-3 as cross-examination. Moreover, the marking of exhibits is not in accordance with the evidence-on-affidavit, with no explanation in the order-sheet.

8. Thus, the record of the Tribunal in respect of this case at hand is found to have not been properly maintained. The same, in the considered opinion of the Court, has vitiated the proceedings as it is not possible to appreciate the evidence.

9. Resultantly, the impugned opinion dated 10.08.2018, passed by the learned Member, Foreigners' Tribunal- III, Barpeta, in FT Case No. 805(III) of 2013, arising out of Ref. IMDT Case No. 5734/98, is set aside.

10. Consequently, the matter is remanded back to the said learned Tribunal for a fresh hearing, if required, by re-examining the witnesses. The learned Tribunal is directed to ensure that the exhibits are marked in accordance with the evidence tendered by the witnesses. If the petitioner seeks return of the exhibits, the learned Tribunal shall retain the compared with original copies on record. The learned Tribunal is further directed that shall record the reason in its order as to why after evidence-on-affidavit is filed, examination-in-chief of any particular witness is required. It shall also record who had done the cross-examination of witnesses and if the Tribunal has put questions to the witnesses, it shall be clearly mentioned. The learned Tribunal shall record in the order-sheet everything that has happened in the proceeding, specifically, when the case is in evidence and hearing stage. Thereafter, the learned Tribunal shall pronounce a fresh opinion in accordance with law.

11. The proceeding of FT Case No. 805(III) of 2013, is restored to

the file of the learned Member, Foreigners' Tribunal- III, Barpeta, for a fresh hearing and opinion.

12. The petitioner, who is represented by her learned counsel before this Court, is directed to appear before the learned Member, Foreigners' Tribunal- III, Barpeta, in connection with FT Case No. 805(III) of 2013 on or before 30.04.2026, and by producing a certified copy of this order, seek further orders from the said learned Tribunal.

13. The learned Tribunal shall make all endeavour to dispose of the reference within 60 days from the date of first appearance and/or 30.04.2026, as the case may be, which is as prescribed in Order 3(14) of the Foreigners (Tribunals) Order, 1964.

14. It is also provided that in the event the petitioner fails to appear within the time allowed, it would be permissible for the said learned Tribunal, to treat the petitioner as absent on call and decide the reference in accordance with law.

15. This writ petition is allowed to the extent as indicated above, by ordering remand.

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

17. The Registry shall return back the records as expeditiously as possible.

JUDGE

JUDGE

Comparing Assistant

**Munna
Kumar**

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Kumar
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