GAHC010060412019

2026:GAU-AS:6922

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

Case No. : WP(C)/1978/2019

SUFIA KHATUN
W/O- ANOWAR HUSSAIN, VILL- MONAKOCHA, P.S. KALGACHIA, DIST- BARPETA, ASSAM, PIN- 781319

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI-110001

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
BARPETA
DIST- BARPETA
PIN- 781301

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

5:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM, GHY-5

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA, DIST- BARPETA
PIN- 78130

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the petitioner : Shri A. M. Ahmed, Advocate.

Advocates for the respondents : Shri J. Payeng, SC- Home Deptt.
Shri G. Sarma, SC, NRC,
Shri P. Sarma, GA, Assam;
Shri N. Kalita
(on behalf of Shri A. I. Ali, SC, ECI).
Shri S. S. Roy, CGC.

Date on which judgment is reserved : 12.05.2026

Date of pronouncement of judgment : **20.05.2026**

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

(S.K. Medhi, J.)

The extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this application under Article 226 of the Constitution of India by putting to challenge the opinion rendered vide impugned order dated 19.01.2019 passed by the learned Foreigners Tribunal no. 5th, Barpeta, Assam in F.T. (5th) Case No. 468/2016 arising out of Ref. IM(D)T Case No. 6635(A)/98. By the

impugned judgment, the petitioner, who was the proceedee before the learned Tribunal, has been declared to be a foreigner post 25.03.1971.

2. The facts of the case may be put in a nutshell as follows:

(i) A reference was made by the Superintendent of Police (B), Barpeta District, against the petitioner giving rise to the aforesaid F.T. (5th) Case No. 468/2016.

(ii) As per requirement u/s 9 of the Foreigner's Act, 1946 to prove that the proceedee is not a foreigner, the petitioner had filed the written statement on 03.04.2017 along with certain documents and adduced evidence.

(iii) The learned Tribunal, after considering the facts and circumstances and taking into account of the provisions of Section 9 of the Foreigners' Act, 1946 had come to a finding that the petitioner, as opposite party, had failed to discharge the burden cast upon her and accordingly, the opinion was rendered declaring the petitioner to be a foreign national post 25.03.1971.

3. We have heard Shri A. M. Ahmed, learned counsel for the petitioner. We have also heard Shri J. Payeng, learned Standing Counsel, Home Department; Shri G. Sarma, learned Standing Counsel, NRC; Shri P. Sarma, learned GA, Assam, Shri N. Kalita, learned counsel appearing on behalf of Shri A. I. Ali, learned Standing Counsel, Election Commission of India and Shri S. S. Roy, learned CGC. We have also carefully examined the records which were requisitioned vide order dated 29.03.2019.

4. Shri Ahmed, the learned counsel for the petitioner has submitted that the petitioner could prove her case with cogent evidence and in view of the fact that

there was no rebuttal evidence, the learned Tribunal should have accepted the said proof and accordingly hold the petitioner to be a citizen of India. In this regard, he has referred to the evidence of the 3 nos. of DWs and also the following documentary evidence.

(i) Ext-A - Photocopy of certified voter list 1966.
(ii) Ext-B - Photocopy of certified voter list 1970.
(iii) Ext-C - Photocopy of certified voter list 1997.
(iv) Ext-D - certificate of Gaonburah of vill-Balikuri Nonke.
(v) Ext-E - linkage certificate of Gaon Panchayat.
(vi) Ext-F - name correction affidavit.
(vii) Ext-G - Xerox copy of voter ID in the name of Anowar Husen.
(viii) Annexure-I - photocopy of Voter list 2010
(ix) Annexure-II - photocopy of Voter List 1989
(x) Annexure-III - photocopy of Voter list 1997.

5. The learned counsel for the petitioner at the outset has questioned the proceeding on the ground that the enquiry report is incomplete. He has also submitted that while the notice had mentioned the stream as 1966-1971, the learned Tribunal had acted illegally in declaring the petitioner a foreigner post 1971. On merits, he has submitted that in the written statement, all material disclosures were made. He has referred to the Voters Lists of 1966 and 1970 containing the names of his grandmother and parents. The next Voters List is however of the year 1997 containing the names of the projected parents and two others. He has contended that the petitioner got married before 1989. He has also referred to certain Voters Lists of the years 1989, 2010 and 2017 which however were not proved in the Tribunal in accordance with law.

6. The petitioner has also relied upon a certificate dated 10.01.2017 issued by

the Gaonburah and the same was proved by the Gaonburah as DW 3. The petitioner has also relied upon the evidence of DW 2 her projected brother – Anowar Husen and has submitted that the same would support her claim towards citizenship.

7. In support of his submissions, the learned counsel for the petitioner had relied upon the judgment of the Hon'ble Full Bench in the case of ***State of Assam Vs Moslem Mondal*** reported in ***2013 (1) GLT 809*** and has contended that the enquiry preceding the Reference was not in accordance with law. Reliance has also been placed in the case of ***Amina Khatun Vs State of Assam*** reported in ***2022 (4) GLT 102*** in the said aspect. The learned counsel has also relied upon the case of ***Karim Ali Vs State of Assam*** reported in ***2022 (3) GLT 816*** on the aspect of evidence by near relatives. Assailing the role of the learned Tribunal in putting questions, the learned counsel has relied upon the case of ***Sahjahan Ali Vs State of Assam*** reported in ***2025 (1) GLT 975***. He has submitted that the learned Tribunal had exceeded jurisdiction by cross examining the witness. On lack of rebuttal evidence, the learned counsel has relied upon the case of ***Abdul Khalique vs State of Assam*** reported in ***2013 (1) GLT 941***.

8. The learned counsel accordingly submits that in view of the availability of the aforesaid materials, the impugned opinion could not have been rendered against the petitioner and therefore, the same requires interference.

9. *Per contra,* Shri Payeng, the learned Standing Counsel, Home Department has categorically refuted the stand taken on behalf of the petitioner. He submits that a proceeding under the ***Foreigners Act, 1946*** and the ***Foreigners***

(Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not. Therefore, the relevant facts are especially within the knowledge of the proceedee and accordingly, the burden of proving citizenship rests absolutely upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872 and this is mandated under Section 9 of the aforesaid Act, 1946. However, in the instant case, the petitioner utterly failed to discharge the burden. It is also submitted that rebuttal evidence is not mandatory in every case and would be given only if necessary. He further submits that the evidence of a proceedee has to be cogent, relevant, which inspire confidence and acceptable and only thereafter, the question of adducing rebuttal evidence may come in.

10. The learning Standing Counsel has further submitted that the written statement is the basic document which is supposed to lay down the foundation of the case of the proceeding and the written statement in the instant case lacks details and is totally vague. There is no date or year of the births of the petitioner and there is no details of the family members. In this connection, he has relied upon the following observations made by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal vs. Union of India*** reported in***(2005) 5 SCC 665***:

> "*17. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6-A(1) (d) of the Citizenship Act. All these facts would necessarily be within the*

personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

11. On the submissions made on behalf of the petitioner assailing the LVO Report and the aspect of reliance upon the case of ***Moslem Mondal*** (supra) the learned Standing Counsel has submitted that the observations relied upon is on the aspect of an enquiry made by the police and not on the report by an LVO. He has further submitted that the issue has been settled by the Division Bench in the case of ***Sayam Uddin Vs Union of India*** in WA/170/2019 vide judgment and order dated 29.07.2019 affirming the views of the learned Single Judge in which a detailed exposition of the law has been made. The said view has been reiterated in the case of ***Shukurjan Nessa @ Sukurjan Vs State of Assam*** reported in ***2025 (2) GLT 105***. He has also submitted that the opinion expressed in the case of ***Amina Khatun*** (supra) is *per incuriam* inasmuch as in the present case, the Tribunal had assumed jurisdiction as per the judgment of the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal*** (supra) whereby all pending cases were transferred to the Foreigners Tribunals.

12. The learned Standing Counsel has submitted that the only documentary evidence worth is name to establish a link is the certificate by the Gaonburah.

However, the same has not been proved in accordance with law as admittedly the register and the contemporaneous records were not proved by the said Gaonburah. He has also submitted that the Gaonburah is admittedly aged about 35 years on the date of adducing evidence and the certificate pertains to a period of 1971 when he was not even born. In this regard, he has relied upon the case of ***Abdul Kuddus Vs State of Assam*** [WP(C)/1073/2016 disposed of 07.05.2018].

13. On the aspect of the stream mentioned in the notice and the impugned opinion, the learned Standing Counsel has relied upon the case of ***Ananda Ghosh Vs Union of India*** reported in ***2017 (2) GLT 996*** and the following observations has been pressed into service:

> "*13. Having regard to the above, we have no hesitation to hold that when the reference was as to whether petitioner was a foreigner belonging to the post 25.03.1971 stream, non-mentioning of the same or wrong-mentioning of the stream of foreigners to which the petitioner belongs in the notices would not vitiate the ultimate conclusion reached by the Tribunal that petitioner was a foreigner of post 25.03.1971 stream. Since the reference was answered in favour of the State, it ought to be and has rightly been answered in the above manner. As a matter of fact, this issue was not even raised by the petitioner in his written statement possibly because he was fully aware that the allegation against him was of being a foreigner belonging to the post 25.03.1971 stream. Therefore, this ground urged on behalf of the petitioner stands rejected. However, before moving on to the next ground, we would like to observe that the Tribunal ought to have been careful while issuing the notices. We hope and expect that such mistakes would not be repeated in future.*"

14. In support of his submission that a certificate has to be proved from

contemporaneous records, the learned Standing Counsel has relied upon the judgment passed in the case of ***Romila Khatun vs. Union of India*** reported in ***2018 (4) GLT 373*** and the following observations have been pressed into service.

> "***20.*** *It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. …"*

15. He has also drawn the attention of this Court to the case of ***Nur Begum vs. Union of India and Ors.*** reported in ***2020 (3) GLT 347*** wherein certain observations regarding exercise of Certiorari jurisdiction have been made which reads as follows:

> "*9. On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the*

Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion."

16. He has also relied upon the case of the Hon'ble Supreme Court in ***Rupjan Begum vs. Union of India*** reported in***(2018) 1 SCC 579,*** wherein it has been laid down that a certificate has to be proved on two aspects, firstly, the authenticity of the same and secondly, the authenticity of the contents.

17. The learned Standing Counsel has accordingly submitted that the writ petition be dismissed and the interim order be vacated.

18. The learned counsel for the rest of the respondents have supported the submissions advanced on behalf of the Home Deptt. & NRC and have prayed for dismissal of the writ petition. They have submitted that this Court in exercise of its Certiorari jurisdiction does not act as an Appellate Court and it is only the decision making process which can be the subject matter of scrutiny. It is also submitted that there is no procedural impropriety or illegality in the decision making process and therefore, the instant petition is liable to be dismissed.

19. The rival submissions made have been duly considered and the materials placed before this Court including the records of the Tribunal have been carefully perused.

20. With regard to the aspect of burden of proof as laid down in Section 9 of the Act of 1946, the law is well settled that the burden of proof that a proceedee is an Indian citizen is always on the said proceedee and never shifts. In the said Section, there is *non-obstante* clause that the provisions of the

Indian Evidence Act would not be applicable. For ready reference, Section 9 is extracted hereinbelow-

> "*9. Burden of proof.—If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.*"

21. In this connection, the observations of the Hon'ble Supreme Court in the case of ***Fateh Mohd. Vs. Delhi Administration [AIR 1963 SC 1035]*** which followed the principles laid down by the Constitutional Bench in the case of ***Ghaus Mohammad Vs. Union of India [AIR 1961 SC 1526]*** in the context of Foreigners Act, 1946 would be relevant which is extracted hereinbelow-

> "*22. This Act confers wide ranging powers to deal with all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including their arrest, detention and confinement. The most important provision is Section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person. Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person. In Union of India v. Ghaus Mohd. the Chief Commissioner of Delhi served an order on Ghaus Mohammad to leave India within three days as he*

was a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. In appeal the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent."

22. Before embarking to adjudicate the issue involved *vis-a-vis* the submissions and the materials on record, we are reminded that a Writ Court in exercise of jurisdiction under Article 226 of the Constitution of India would confine its powers to examine the decision making process only. Further, the present case pertains to a proceeding of a Tribunal which has given its findings based on the facts. It is trite law that findings of facts are not liable to be interfered with by a Writ Court under its certiorari jurisdiction.

23. Law is well settled in this field. The Hon'ble Supreme Court, after discussing the previous case laws on the jurisdiction of a Writ Court *qua* the writ of certiorari, in the recent decision of ***Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors [Civil Appeal No. 3339 of 2023]*** has laid down as follows:

"*49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.*

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or

reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

24. In the instant case, the written statement is vague and apparently, has not met the requirements, as laid down by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal*** (supra). There is a requirement to disclose the following:

(i) date of birth,

(ii) place of birth,

(iii) name of the parents,

(iv) their place of birth and citizenship.

Further, there may be a requirement to give the details of the grandparents. It has been stated that all these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State.

25. As regards the Voters Lists relied upon by the petitioner, the first two are of the years 1966 and 1970 which contain the names of the grandmother and projected parents. However, the next Voters List is of the year 1997, i.e. after a long inordinate gap of more than 25 years. There is no explanation at all with regard to the same. Moreover, in the Voters List of the year 1997, there is a change in the name of the projected mother from Aymona Nessa to Aymona Khatun. There is no explanation as to why there is not a single Voters List of the petitioner with her projected parents even assuming that the petitioner got married in the year 1989, as claimed. It may be mentioned that from materials available on records, the year of birth of the petitioner can be deduced to be 1970.

26. We also find sufficient force in the submission advanced on behalf of the respondents that the written statement has not disclosed the materials particulars which is a mandatory requirement in a matter of this nature. There is no disclosure of the date of birth and the same is not supported by acceptable and cogent documentary evidence which have been proved in accordance with law.

27. As regards the Gaonburah Certificate read with the evidence of DW 3, the records would reveal that the said certificate cannot be regarded as an

admissible piece of evidence, more particularly for the purpose of determination of one's citizenship. The DW 3 in his cross examination had made some startling revelation and the same are extracted herein below:

> *"I have been working as a Gaonburah of village Balikuri Non-K since 2010. OP's brother Abul Hussen verbally requested me for issuance of a certificate in the name of OP and accordingly I have issued the said certificate."*

28. So far as the evidence of the projected brother - Anowar Husen as DW 2 is concerned, we find that his version is not consistent with the other materials on record, more particularly the written statement and the evidence of the proceedee as DW 1. In the reply to the clarificatory questions put by the learned Tribunal, DW 2 had stated that there were in total 9 siblings. However, in the written statement, there is a mention of only two brothers by the petitioner.

29. With regard to the submissions advanced on the LVO report, the issue is no longer *res integra.* In fact, the entire facet has been discussed and answered in details by this Court in the case of ***Sayam Uddin vs. Union of India & Ors.*** reported in ***2019 (4) GLT 456*** which has also been upheld by the Hon'ble Division Bench in WA/170/2019 vide judgment and order dated 29.07.2019. The said view has been reiterated in the case of ***Shukurjan Nessa*** *(supra).* While endorsing the aforesaid view, we are also of the opinion that non furnishing of details in the LVO report would not cause any prejudice to a proceedee in defending a Reference in the Foreigners Tribunal. It needs to be kept in mind that the said procedure was adopted in view of the unabated influx of foreigner nationals causing a threat to the national security. We also find force in the contention of Shri Payeng, learned SC that the observations of the Full Bench in ***Moslem Mondal*** (supra) would not be applicable as the said observations were

on police enquiry and not on the report of LVO. As observed above, the Tribunal assumed jurisdiction upon the direction of the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal*** (supra). With regard to the arguments advanced on the stream, the law has been settled in the case of ***Ananda Ghosh*** (supra). It has been laid down that non-mentioning of the same or wrong-mentioning of the stream of foreigners to which the petitioner belongs in the notices would not vitiate the ultimate conclusion reached by the Tribunal that petitioner was a foreigner of post 25.03.1971 stream.

30. We are also unable to accede to the submission that there has been cross examination by the learned Tribunal. A bare perusal of the impugned opinion would show that the State was unrepresented. There is also a mandate in law to complete the proceedings within a time frame of 60 days. Under such circumstances, the learned Tribunal was within its jurisdiction to put certain clarificatory questions so that the truth triumphs. In this regard, one may gainfully refer to the provisions of Section 165 of the Evidence Act which read as follows:

> "***165. Judge's power to put questions or order production.***
>
> *The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any question: Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved :Provided also that this section shall not authorise any Judge to compel any witness to answer any*

question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document , except in the cases hereinbefore excepted."

31. In the case of ***Bijoy Das vs UOI*** reported in ***2018 (3) GLT 118,*** this Court has laid down that in proceedings of this nature, oral evidence alone would not be enough and such evidence is required to be supported and corroborated by documentary evidence and contemporaneous records. However, in this case, the same has not been able to be done by the petitioner.

32. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 19.01.2019 passed by the learned Foreigners Tribunal 5th, Barpeta, Assam in F.T. (5th) Case No. 468/2016 arising out of Ref. IM(D)T Case No. 6635 (A)/98 does not call for any interference.

33. The writ petition accordingly stands dismissed. Interim order passed earlier stands vacated. The actions consequent upon the opinion rendered by the learned Tribunal would follow in accordance with law.

34. The records of the learned Tribunal be returned forthwith, along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant