

GAHC010063852019



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

Case No. : WP(C)/2641/2019

JAHURA KHATUN

D/O- LT. TUKKU MIYA @ SIRAJ UDDIN, W/O- SHAJAHAN ALI, R/O. VILL.-
DIGHIR PATHAR, P.S. BAGHBAR, DIST.- BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASHRI BHAWAN, TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.

DISPUR

GHY.-6.

3:THE SUPERINTENDENT OF POLICE (B)

BARPETA

P.O.

P.S. AND DIST.- BARPETA

ASSAM

PIN- 781301.

4:THE DY. COMMISSIONER

BARPETA

P.O.- BARPETA

DIST.- BARPETA

ASSAM

PIN- 781301.

5:THE STATE COORDINATOR NRC

BHANGAGARH
GHY.-5.

6:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

Advocate for the Petitioner : MR. A R SIKDAR, MR N AHMED,MR. S I TALUKDAR

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,SC, NRC,SC, ECI

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT

Date : 24-04-2026

For the petitioner	: Mr. A.R. Sikdar, Mr. N. Ahmed, Advocate
For respondents	: Mr. J. Payeng, Mr. P. Sarma, Mr. A.I. Ali, Ms. B. Sarma, Advocate.

Date on which judgment is reserved : 03.02.2026

Date of pronouncement of judgment : 24.04.2026

**Whether the pronouncement is of
the operative part of the judgment? : NO**

**Whether the full judgment has been
Pronounced : YES**

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC appearing for respondent No.1; Mr. J. Payeng, Advocate,

standing counsel for FT and Border matters, representing respondent nos. 2, 3 and 5; Mr. A.I. Ali, Advocate, learned standing counsel for Election Commission of India, respondent no.6; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate representing respondent no.4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Jahura Khatun, has challenged the opinion dated 12.07.2018, passed by the learned Member, Foreigners Tribunal No. 4th, Barpeta, Assam, in. F.T. Case No 135/2017, arising out of Ref. F.T. Case No. 1287(A) dated 09.07.98, thereby declaring her to be a foreigner, who had entered into Assam on or after 25.03.1971.

3. In her written statement the petitioner has stated that she is the wife of Shajahan Ali and is a bona fide citizen of India by birth and residing at Vill. Digir Pathar, Mouza- Mandia, P.S. Baghbar, District- Barpeta, Assam. The names of Tukku Miya @ Shiraj Uddin, her father and Moiran Nessa, her mother appeared in the voter list of 1966 and 1970 as voter of village- Dighir Pam, under 52 No. Baghbar LAC. Their names also appeared in the voter list of 1989 and 1997 from Village- Digirpam, under 45, No. Baghbar LAC, however, in the voter list of 1989, the name of her mother appeared as Mariam Khatun instead of Moiran Nessa. She had submitted certificates from the *Gaonburah* of her father's side and husband's side to show her linkage. Accordingly, the petitioner had prayed that she may be declared as an Indian citizen.

4. In support of her defence, the petitioner had examined 3 (three) witnesses, including herself (DW-1); Rafiqul Islam, *Gaonburah* of Charge No. 12 of Village- Digir Pam (DW-2); and Sukur Ali Ahmed, *Gaonburah* of Charge No.8 of Village No.2 Chasra and Digir Pathar (DW-3). The petitioner had

reiterated the statements made in her written statement and had exhibited the following documents:-

- a. *Certified copy of voters list of 1966 containing the names of Tukku Miya and Moiran Nessa (Ext.A);*
- b. *Certified copy of voters list of 1970 containing the names of Tukku Miya and Moiran Nessa (Ext.B);*
- c. *Certified copy of voters list of 1989 containing the names of Tukku Miya and Moriom Nessa (Ext.C);*
- d. *Certified copy of voters list of 1997 containing the names of Tukku Miya and Moiran Nessa (Ext.D),*
- e. *Certificate dated 16.01.2016, issued by Rafiqul Islam, Gaonburah of Charge No.12, Village- Digirpam, stating that Jahura Khatun, daughter of Late Tukku Miya (Siraj), village- Digirpam, is residing under his Charge No.12. It contains a foot note that the above noted lady is married with Shajahan Ali, son of Late Raham Ali of village- Digir Pathar (Ext.E); and*
- f. *Certificate dated 14.01.2016, issued by Sukur Ali Ahmed, Gaonburah of Charge No.8, Village- 2 No. Chasra and Digir Pathar, stating that Jahura Khatun, daughter of wife of Shajahan Ali of village- Digir Pathar, P.O. Nirala, Mouza- Mandia, District- Barpeta, is residing under his Charge No.8 of vill. Digir Pathar (Ext.F).*

5. The learned Tribunal upon appreciating the evidence had observed that the petitioner had not stated whether her parents were alive or dead. Ext.A to Ext.D, but none of the voters in those voter lists or any relatives appeared as witnesses to establish petitioner's link with the said voter lists. It was held that the *Gaonburah's* certificates (Ext.E and Ext.F) and evidence of the DW-2 and DW-3 only disclosed that they knew the petitioner from the year 1997 and observed that those two certificates were issued in the year 2016 after reference was registered. The learned Tribunal held that mere filing of some documents and picking up any name from such documents so as to establish relationship with the said person as father or mother or grandfather, grandmother does not amount to proof. Moreover, it was held that under the law of evidence, mere admission of documents marked as exhibit does not

make the document admissible in evidence unless the contents of documents are proved. Accordingly, it was held that the petitioner had failed to discharge her mandatory burden of proof as envisaged under Section 9 of the Foreigners Act, 1946. Accordingly, the petitioner was declared to be a foreigner who had illegally entered into India on or after 25.03.1971.

6. The learned counsel for the petitioner had submitted that the enquiry report of the Local Verification Officer was vague and not properly filled-up and therefore, there was lack of sufficient material before the learned Tribunal to declare the petitioner to be a foreigner. It has been submitted that the notice issued to the petitioner contained two charges, one of entering into India between 01.01.1966 to 24.03.1971 and the other was that she had entered into India after 25.03.1971 and accordingly, it was submitted that the petitioner was not specifically and clearly charged regarding the stream when she had entered into India and therefore, the learned Tribunal had rendered its opinion in a mechanical manner. In support of the said submission, the case of (i) *Sona Kha v. Union of India, 2021 (3) GLT 12*, and (ii) *Rafika Bibi v. Union of India & Ors., W.P.(C) 3330/2020, decided on 26.05.2025*.

7. It was also submitted that the voter list is a public document and therefore, not required to be proved by calling witness and in support of the said contention, the case of *Madamanchi Ramappa & Anr. v. Muthaluru Bojjappa, AIR 1963 SC 1633*, was cited.

8. Per contra, the learned standing counsel for the Border and FT matters has made her submission in support of the impugned opinion.

9. Thus, the following four points of determination arises out of the submissions made by the learned counsel for the petitioner in this case:-

- a. Whether on the ground that the enquiry report of the Local Verification Officer was vague and not properly filled-up, the reference was vitiated?
- b. Whether on the ground that the notice issued to the petitioner contained two charges, one of entering into India between 01.01.1966 to 24.03.1971 and the other was that she had entered into India after 25.03.1971, for which the charge against the petitioner was not clear, the impugned opinion is vitiated?
- c. Whether in light of Section 77 of the Evidence Act, 1872, the voter list was not required to be proved, being public document?
- d. Whether the impugned opinion called for interference?

Analysis of the evidence of the petitioner's side:

10. In this case, the petitioner had examined herself as DW-1. In her evidence-on-affidavit filed on 15.07.2016, the petitioner had reiterated the statements made in her written statement. In brief, her evidence was to the effect that she was born in the house of her parents about 42 years ago at Digir Pam under Baghbar P.S., under then District- Kamrup. The name of Tukku Miya @ Shiraj Uddin, her father and Moiran Nessa, her mother appeared in the voter list of 1966 and 1970 as voters of village- Dighir Pam, under 52 Baghbar LAC. But in the voter list of 1970 the name of her father was written as Tubaku Miya. Their names also appear in the voter list of 1989 and 1997 from Village- Digir Pam, under 45, Baghbar LAC, however, in the voter list of 1989, the name of her mother appears as Mariam Khatun instead of Moiran Nessa. She had also stated that she is a citizen of India by birth and the case was registered against her without verification of her documents and she was never given any notice to

produce documents. She had exhibited the documents morefully referred in paragraph 4 above. In her examination by the learned Tribunal, the petitioner (DW-1) had stated that her marriage with Shajahan Ali of village- Digir Pathar under Baghbar P.S. was solemnized about 20/21 years ago and that she was an Indian citizen by birth and in that regard, she had submitted documents before the learned Tribunal and that a false case was registered against her.

11. Now coming to the pleadings of the petitioner, she has not disclosed (i) the names of her grandparents; (ii) siblings of her father; (iii) her own siblings; (iv) her relation, if any, with the voters (other than her projected parents) whose names appear in the four exhibited voter's lists (Ext.A to Ext.D); (v) whether her parents were alive , or if they had died, at least the year of their death; (vi) about the whereabouts of her projected parents between 1970 and 1989, which was otherwise required to show their continuous stay in the Country, as required under Section 6A (2)(b) of the Citizenship Act, 1955; and (vii) about her own children.

12. In the aforesaid context, it may be mentioned that the voter list of 1966 and 1970 (Ext.A and Ext.B) disclosed names of three voters. The voter list of 1989 and 1997 (Ext.C and Ext.D) disclosed the names of 5 voters. However, apart from referring to her parents, the petitioner has not disclosed about her relationship with other voters.

13. In the aforesaid context, it may be mentioned that in the case of *Rashminara Begum v. Union of India & Ors.*, 2017 (4) GLT 346, this Court had held that material facts pleaded would have to be proved by adducing cogent and admissible evidence. The said view was also endorsed by this Court in the case of *Saru Sheikh v. Union of India & Ors.*, (2017) 4 GLR 295. In the case of *Ayesha Khatun v. Union of India & Ors.*, (2017) 3 GLR 820, and *Jehirul Islam v.*

Union of India & Ors., (2017) 5 GLR 670, this Court had held that failure to disclose material facts would lead to adverse presumption.

14. In the case of *Ramila Khatun v. Union of India & Ors., 2018 (4) GLT 373*, this court, while dealing with written statement in a proceeding before the Foreigners Tribunal, had laid down four legal propositions, viz., (i) it was held that it is trite law that documentary evidence will have to be proved on the basis of record and contemporaneous record must substantiate and prove the contents of the document; (ii) Proof of document is one thing and proof of contents is another and it was further held that not only the document has to be proved but the contents would also have to be proved; (iii) that apart, the truthfulness of the contents of the document would also have to be established from the record; and (iv) that a document or contents of a document cannot be proved on the basis of personal knowledge.

15. In his examination-in-chief, Rafiqul Islam, the *Gaonburah* of Digir Pam (DW-2), had stated that he was working as *Gaonburah* of Digir Pam village since 2012. Ext.1 is the identity card. Ext.1(1) is the signature of Circle Officer and Ext.1(2) is his signature. He had stated that he knew the petitioner since his childhood. She resides in village- Digirpam. Her father's name is Tukku Miya She married with one Shajahan, resident of Digir Pathar. He had stated that he had issued Ext.E certificate and Ext.E(1) is his signature.

16. In his examination-in-chief, Sukur Ali Ahmed, the *Gaonburah* (DW-3), had stated that he was working as *Gaonburah* of No.2 Chasra, Digir Pathar village since 2012. Ext.2 is the identity card. Ext.2(1) is the signature of Circle Officer and Ext.2(2) was his signature. On a further query of the learned Tribunal, he had stated that he knew the petitioner since 20/22 years. She resides in village- Digirpathar. Her husband's name is Shajahan Ali. In this case,

he had issued a certificate. Ext.F is the said certificate and Ext.F(1) was his signature.

17. Thus, from the evidence of DW-2 and DW-3, it is evident that they have not disclosed about the entries made in their respective certificates i.e. Ext.E and Ext.F. The said witnesses did not give any statement that they knew the projected father of the petitioner. The said DW-2 and DW-3, thus, deposed on the basis of their personal knowledge and not out of record. The DW-2 and DW-3 did not refer to entries made in any of the voter lists i.e. Ext.A to Ext.D.

18. Therefore, if the two certificates of the *Gaonburah* (DW-2 and DW-3) are excluded, there is no link of the petitioner with her projected parents.

19. If there are no pleadings about the existence of petitioner's parents after 1997, it would mean that Sukur Ali Ahmed, the *Gaonburah* (DW-3) did not have personal knowledge of the petitioner's projected parents. Similarly, Rafiqul Islam, *Gaonburah* (DW-2), was aged 29 years as on 08.05.2017, when his evidence was recorded. Therefore, his year of birth would be about the year 1988. Therefore, neither of them had personal knowledge about the projected parents of the petitioner, nor he claimed personal acquaintance with the projected parents of the petitioner. Thus, by a mere statement of DW-2 that the name of father of the petitioner is Tukku Miya, is not by personal knowledge but is hearsay evidence.

20. In this regard, it would be appropriate to refer to the case of *Nur Begum v. Union of India & Ors., 2020 (3) GLT 347*. In the said case, the projected mother of the proceedee of that case had appeared and gave evidence before the learned Foreigners Tribunal. The relevant paragraph 6

thereof is quoted below:-

6. *The statement of D.W. 2 i.e. Jahurun Begum, who claimed to be the mother of the petitioner, cannot be relied upon in the absence of any documents showing her relationship, either to the projected grandfather, father or to the petitioner herself. Oral testimony of D.W. 2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. Surprisingly, the petitioner failed to produce a single voter list in her name even until the age of 50 years. We would reiterate that in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of D.W. 2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected grandfather, grandmother and father. The petitioner utterly failed to prove her linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents.*

21. For the same legal proposition, paragraph 7 of the case of *Asia Khatoon v. Union of India & Ors., W.P.(C) No. 4020/2017, decided on 21.11.2019*, is quoted below:-

7. *As the primary issue in 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, the relevant facts being especially within the knowledge of the proceedee, therefore, the burden of proving citizenship absolutely rests upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872. This is mandated under section 9 of the aforesaid Act, 1946. In the instant case and as observed above, the petitioner not only failed to discharge the burden but also utterly failed to make proof of the most crucial aspect, that is, in establishing linkage to her projected father and/or the grandfather.*

Second point of determination:

22. The second point of determination is as to whether on the ground that the notice issued to the petitioner contained two charges, one of entering into India between 01.01.1966 to 24.03.1971 and the other was that

she had entered into India after 25.03.1971, for which the charge against the petitioner was not clear, the impugned opinion is vitiated, is taken up now.

23. In this case, on the basis of the report from the Electoral Registration Officer of the 45 Baghbar LAC, the Superintendent of Police (Border), Barpeta had registered IM(D)T Doubtful Case No. 1287(A) dated 09.07.1998. The Superintendent of Police (Border), Barpeta had submitted the reference before the erstwhile Illegal Migrants (Determination) Tribunal, Barpeta [hereinafter referred to as IM(D)T for short] for determination of the reference. In brief, this fact is reflected in paragraph 1 of the impugned opinion. The learned Tribunal's record reveals that the Superintendent of Police (Border), Barpeta, while sending the reference, had made an endorsement at the foot of Form- VII that "*Annexure-B of the ERO is considered as a ground for considering the person as an illegal migrant.*"

24. However, while issuing notice, the learned Tribunal had failed to strike the period of entry "between 01.01.1966 and 24.03.1971" and "after 25.03.1971". It is not the case of the petitioner that she was born "between 01.01.1966 and 24.03.1971". Thus, she could only be an illegal migrant after 25.03.1971.

25. Under the Foreigners Act, 1946, the reference can only be made as to whether or not a person is a foreigner within the meaning of Section 2(a) of the Foreigners Act, 1946. Upon reading Order 2(1) of the Foreigners (Tribunals) Order, 1964, it is discernible that a reference is made to a Tribunal for its opinion whether a person is a foreigner within the meaning of Section 2(a) of the Foreigners Act, 1946. Thus, if no reference is made, the Foreigners Tribunals cannot assume jurisdiction, but only after the reference is made, the Tribunal would have to confine itself to the terms of reference and render its

opinion. This Court in the case of *Aziz Miya @ Md. Aziz Mia v. Union of India & Ors., 2023 (4) GLT 246*, had held that the provisions of Order 2 of the Foreigners (Tribunals) Order, 1964 make it explicit that it is the Superintendent of Police (Border) who would be the authority to take a decision based upon the report of the inquiry or any further materials that may be available as to whether a person concerned is required to be referred to a Tribunal for its opinion as to whether he is a foreigner or not.

26. As regards, non-mentioning and/or wrong mentioning of the stream when the suspected foreigner had entered illegally into India (Assam), it would be appropriate to refer to the decision of this Court in the case of *Ananda Ghosh v. Union of India & Ors., 2017 (2) GLT 996*, which is quoted below:-

10. Question for consideration is whether such a finding of the Tribunal would stand vitiated by non-mentioning in the two notices issued to the petitioner that the allegation against him was of being a foreigner who had illegally entered into India (Assam) after 25.03.1971?

11. As already noticed above, the reference made by the Superintendent of Police to the Tribunal was specific. Petitioner was a Bangladeshi national who had illegally entered into India (Assam) after 03.25.1971. Prima facie, it was the mistake of the Tribunal not to have specifically mentioned this in the two notices issued to the petitioner. However, from the materials on record. Tribunal came to the conclusion and thereafter rendered its opinion that petitioner was a foreigner who had illegally entered into India (Assam) after 25.03.1971. The reference was answered accordingly.

12. In a recent decision of this Court in the case of Mustt. Abiran Nessa Vs. Union of India (WA 200/2016), decided on 27.3.17, it has been held that wrong mentioning of the foreigners stream as classified under Section 6A of the Citizenship Act. 1955 to which the noticee belongs would not vitiate the proceeding before the Tribunal or consequential order passed by the Tribunal if the materials on record discloses that the noticee actually belongs to the stream of foreigners which has been ultimately held to be so by the

Tribunal. Wrong mentioning of the stream of foreigners to which the noticee belongs contrary to the reference made by the State would not vitiate the order passed by the Tribunal and would not confer any undue advantage to a proceedee or enable a proceedee to improve his status. It was held as follows:-

"10. Thus, materials on record, as found by the learned Single Judge, disclosed that appellant was a foreigner who had illegally entered into India (Assam) from the specified territory after 25.03.1971. The reference was also made accordingly.

11. It is trite that non-mentioning or wrong mentioning of a provision would not invalidate an order if such an order can be traced to a valid source. In such a situation, Court would examine whether the order in question has any legal sanctity and whether it can be traced to a valid source of power. If it can be traced to a valid source of law, wrong mentioning of the provision of law in the order impugned would be immaterial.

12. By applying the same analogy, it can also be said that wrong mentioning of the foreigners stream as classified under Section of the Citizenship Act, 1955, as amended, to which the noticee belongs would not vitiate the proceeding or the consequential order passed by the Tribunal if materials on record disclose that the notices actually belongs to the stream of foreigners, which has been ultimately held to be so by the Tribunal. Such wrong mentioning contrary to the materials on record or contrary to the reference made would not confer any undue advantage to a proceedee or enable a proceedee to improve his/her status. Therefore, on this count, we cannot condemn the order passed by the Tribunal which has been rightly affirmed by the learned Single Judge.

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."

27. In the same context, it would be relevant to quote paragraph nos. 10, 12, 13 and 21 of the case of *Rukia Begum Barbhuiya v. Union of India & Ors.*, 2023 (1) GLT 1208.

10. A reading of Rule 2(1) of the Foreigners Tribunal Order 1964 makes it discernible that the Central Government may by order, refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946 to a Tribunal constituted for the purpose. The statutory provision of Rule 2(1) makes it explicit that the reference to be made by a Tribunal would be the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946. Section 2(a) of the Foreigners Act 1946 defines foreigner to mean a person who is not a citizen of India. In other words, going by the meaning given to the expression foreigner under Section 2(a) of the Foreigners Act 1946 a reference made to the Tribunal would be as to whether the person concerned is a citizen of India or he is not a citizen of India.

12. A reading of the provisions of Section 6 A makes it explicit that it is a special provision as to citizenship of persons covered by the Assam Accord and the core provisions of Section 6 A are that a person who may have entered the State of Assam from the specified territory prior to 01.01.1966 shall be deemed to be a citizen of India from the 1st day of January. 1966. The further provision is that such persons who entered the State of Assam from the specified territory after 01.01.1966. but before 25.03.1971 from the specified territory, and has been detected to be a foreigner, shall register himself with the Foreigners Registering Authority of the district concerned and upon having been registered shall be debarred of any voting rights for a period of ten years, but otherwise retaining all such other rights that a citizen of India may be bestowed with under the provisions and further that upon expiry of the period of ten years, even the voting rights would be restored back. In s persons, who had entered the State of Assam from the specified territory on or after 25.3.1971, such persons are to be declared as foreigners.

13. In view of the provisions of Section & A of the Citizenship Act 1955. Clause 2(1) of the Foreigners Tribunal Order 1964 would now have to be understood that once a reference is made, the reference would be whether the person concerned is or is not a foreigner, meaning

thereby, whether the person concerned is a foreigner, who had entered the State of Assam from the specified territory on or after 25.03.1971 or he is a person who belongs to any of the other categories ie, a person who entered the State of Assam from the specified territory before 01.01.1966 or between 01.01.1966 and 25.03.1971. No other meaning can be attributed to the reference under Clause 2(1) of the Foreigners Tribunal Order 1964 i.e. whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946. We further take note that even if a reference is made by setting up a question whether the person had entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971, the reference would have to be understood to be a reference under Clause 2(1) of the Foreigners Tribunal Order 1964 ie., as to whether he is a foreigner or not. If the reference is worded whether the person concerned, is a person who had entered the State of Assam from the specified territory between 1.1.1966 and 25.03.1971, in order to arrive at any such conclusion that the reference itself is faulty inasmuch as the decision of the Tribunal upon the materials on record would be that the person concerned had entered the State of Assam from the specified territory on or after 25.03.1971, in such circumstance, the only situation that can be envisaged is that the Tribunal first arrives at a conclusion of its own that the person concerned had entered the State of Assam from the specified territory on or after 25.03.1971, meaning thereby that the reference itself had been answered by the Tribunal. After having answered the reference, it would be an inconceivable situation that merely because the reference is worded whether the person had entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971 it has to be referred back to the referral authority to make a fair reference now putting up a question whether the person concerned had entered the State of Assam on or after 25.03.1971. In such situation, as the matter would have to be referred back only after a final decision has been arrived at and now if the reference is again made with a corrected expression in the questions framed, the same may lead to further complications that the subsequent reference would be barred by the principles of res judicata inasmuch as it would be a subsequent reference on the same issue between the same set of parties where an earlier decision had already been arrived at. It is noticed that in Falani Bibi (supra) the aforesaid aspect of the further implication of a corrected reference being again made had not been gone into and from such point of view, it can be said that the view taken therein would be per inquiriam of the further consequences of a fresh reference being made.

21. We further add that going by the statutory provisions of Clause 2(1) of the Foreigners Tribunal Order 1964 any reference would have to be understood to be a reference to the Tribunal on the question whether the person so referred is a foreigner or not within the meaning of Foreigners Act, 1946, where again foreigner is given the meaning of a person who is not a citizen and again where a citizen is defined under the Citizenship Act 1955."

28. In light of above, the decision of this Court in the case of Rafika

Bibi @ Rafika Khatun (supra), cited by the learned counsel for the petitioner appears to have been passed in ignorance of the earlier precedent of this Court in the case of *Ananda Ghosh (supra)*, *Rukia Begum Barbhuiya (supra)*, *Safiqul Islam @ Md. Abikul Islam v. Union of India & Ors., 2019 (4) GLT 55* and therefore, in respect of this case, the decision in the case of *Rafika Bibi @ Rafika Khatun (supra)* [where one of us (*K.R. Surana, J*) was the Member of the Bench], would not be a binding precedent in respect of the point urged.

29. The learned counsel, apart from citing the case of *Aziz Miya @ Md. Aziz Mia (supra)*, had also cited the case of *Sona Kha v. Union of India & Ors., 2021 (3) GLT 12: (2021) 4 GLR 200*. In the case of *Sona Kha (supra)*, the reference did not allege the petitioner therein to be an illegal migrant. Rather, the Enquiry Report was to the effect that the petitioner in the said case was not an illegal migrant and yet, the Superintendent of Police (Border), Baksa, had forwarded the case to the Foreigners Tribunal, Baksa, Tamulpur. Under such circumstances, this Court had held that the learned Tribunal would have to satisfy itself about the existence of grounds before proceeding to consider the case on merits about the citizenship. The case in hand is, thus, distinguishable.

30. Accordingly, the second point of determination is answered by holding that the Superintendent of Police (Border), in this case, while making a reference before the Foreigners Tribunal, had clearly suspected the petitioner to be an illegal migrant. Therefore, a mere omission by the learned Tribunal, while issuing notice, in failing to strike out one of the two charges, of entering into India between 01.01.1966 to 24.03.1971 and the other that she had entered into India after 25.03.1971, would not make the charge against the petitioner to be not clear or ambiguous. Thus, the impugned opinion is not found to be vitiated on that count. Thus, the point of determination is answered in the

negative and against the petitioner.

First point of determination:

31. The first point of determination is as to whether on the ground that the enquiry report of the Local Verification Officer was vague and not properly filled up, the reference was vitiated, is taken up first.

32. It is common knowledge that a culprit would ordinarily not admit his guilt and similarly, it cannot be expected that an illegal foreigner/ migrant would admit that he is a foreigner and would voluntarily disclose about his address in Bangladesh. The Court cannot lose sight of the fact that the Election Commission of India requisitions the serviced of various Government Servants for enumeration and verification duties. The said officers are not trained in a manner in which the police are trained for investigation. Therefore, when Verification Officers put queries to the disputed voters, and those queries are not answered and no supporting documents are produced by the suspect, the Court cannot reject the enquiry report merely because no reply was given by the suspect and no documents were produced by the suspected illegal migrant. Under such circumstances, as per Section 9 of the Foreigners Act, 1946, the burden of proof is on the suspected illegal migrant to prove that he is not a foreigner but an Indian.

33. It may be mentioned herein that by virtue of the judgment and order passed by the Supreme Court of India in the case of *Sarbananda Sonowal (supra)*, all the proceedings that were then pending before the erstwhile IM(D)Ts, were transferred to the Foreigners Tribunal having jurisdiction. The transferred reference was received by the jurisdictional Foreigners Tribunal- 5th, Barpeta, where it was registered as F.T Case No. 366/2015. Therefore, as

evident from the decision of the Supreme Court of India, in the case of *Sarbananda Sonowal (supra)*, the instant case was transferred from IM(D)T to the Foreigners Tribunal, no further determination can be made by this Court regarding making of and/or registration of the reference.

34. The learned counsel for the petitioner has not been able to show that the petitioner had made any attempt to establish before the learned Foreigners Tribunal that the investigation was not proper. Moreover, in this case, the petitioner had participated in the proceedings without any demur and therefore, subjected herself to the jurisdiction of the said learned Foreigners Tribunal and therefore, it would be impermissible for the petitioner to now claim that the reference was not properly made.

35. The said action by the Electoral Registration Officer is initiated under the Representation of the People Act, 1950, after the draft electoral roll is prepared and the Electoral Registration Officer has reasons to suspect that a voter, whose name appears in the draft, is an illegal migrant and/or a foreigner.

36. Be that as it may, in the case of *Shukurjan Nessa @ Sukurjan v Union of India & Ors., W.P.(C) 245/2019, decided on 28.02.2025*, the reference by the Electoral Registration Officer has been dealt with. In the said case, the issue relating to the reference made at the instance of the Electoral Registration Officer (ERO for short) has been clarified. The relevant part of the said judgment and order is extracted hereinbelow:-

14. *The point raised by the learned counsel for the petitioner that the reference was blank and not properly filled up and therefore, the grounds of suspecting the petitioner to be a foreigner has not been furnished to her is taken up first.*

15. *In this case, the reference was made by the Superintendent of Police (Border), Barpeta, on receipt of communication dated 16.03.1998, issued by the Electoral Registration Officer, 44 No. Jania L.A.C., which is accompanied with a*

three page Local Verification Report (Annexure-A) by one Sri Khagen Kalita, J.E. In the said LVO Report dated 17.10.1997, it has been mentioned at two places to the effect that no documents produced during field verification.

16. Therefore, this is not a case where any enquiry was made under the provisions of Foreigners Act, 1946 or Rules framed thereunder, where investigation is done under the authority of the Superintendent of Police (Border). The jurisdictional Superintendent of Police (Border) is the prescribed authority to make reference before the Illegal Migrants (Determination) Tribunal constituted under the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983 and Rules framed thereunder.

17. There is an important facet, which is contained in the judgment and order of this Court in the case of Sayam Uddin (*supra*), which must be referred to. We are in respectful agreement with the said judgment and therefore, paragraphs 11 to 22 thereof are quoted below:-

11. In the year 1997, Election Commission of India had undertaken an intensive revision of electoral rolls in the State of Assam as apprehensions were expressed from various quarters that the electoral rolls were infested with the names of foreigners/illegal migrants. In the course of this exercise citizenship status of as many as 3,13,046 persons whose names were in the draft voters lists were found to be doubtful and accordingly they were marked as doubtful "D" voters in the electoral rolls after local verification.

12. Legality of this exercise was challenged before this Court in HRA Choudhury Vs Election Commission of India, reported in 2002 (1) GLT 1. The challenge made was rejected by a Division Bench of this Court. In HRA Choudhury (*supra*) this Court examined the guidelines dated 17.07.1997 of the Election Commission of India laying down the procedure to carry out the exercise.

12.1. As per paragraph 3.8 of the guidelines the Electoral Registration Officer was required to consider the verification report received from the Local Verification Officer. If he was satisfied on such report and such other material/information as may be available about the eligibility of a person, he should allow his name to continue on the electoral roll. Where, however, he was not so satisfied and had reasonable doubt about the citizenship of any person, he was required to refer such doubtful cases to the competent authority under the then Illegal Migrants (Determination by Tribunals) Act, 1983 or the Foreigners Act, 1946 as the case may be. For convenience of the Electoral Registration Officers, Election Commission devised proformas.

12.2. As per paragraph 3.9, after the case of a person was referred by the Electoral Registration Officer to the competent authority, he should wait for the decision of the relevant Tribunal in relation to that person and act

according to such decision.

12.3. *As per paragraph 3.10, where the relevant Tribunal decided that any such person was not a citizen of India, Electoral Registration Officer should proceed under Rule 21 A of the Registration of Electors Rolls, 1960 to have the name of such person deleted from the electoral roll before it was finally published.*

12.4. *This Court in HRA Choudhury (supra) held that such guidelines and decision of the Election Commission were in accordance with Article 324 of the Constitution of India besides conforming to the principles of natural justice. It was held that such guidelines cannot be held to be arbitrary or vitiated by mala fide or partiality.*

13. *At this stage, it may be mentioned that the Illegal Migrants (Determination by Tribunals) Act, 1983 is no longer in existence, the same having been declared unconstitutional by the Supreme Court in Sarbananda Sonowal Vs Union of India reported in (2005) 5 SCC 665. Therefore, in so far paragraph 3.8 of the guidelines dated 17.07.1997 is concerned, the reference would be under the Foreigners Act, 1946.*

14. *The above exercise was repeated in the year 2005 with the Election Commission of India again going for intensive revision of electoral rolls in the State of Assam taking 01.01.2005 as the qualifying date. In this connection, guidelines dated 17.06.2004 were issued by the Election Commission of India. Paragraph 2.2 of the guidelines dealt with "D" voters. It was mentioned that the guidelines issued in 1997 would be followed while dealing with such category of persons. Paragraph 8 dealt with verification by Electoral Registration Officers. It laid down the procedure while carrying out such verification including verification by Local Verification Officer. As per paragraph 8.6, Local Verification Officer would conduct the verification by making an on the spot visit and the person concerned could adduce any one or more of the documents mentioned therein in support of his claim as a citizen of India. After due verification, the Local Verification Officer was required to submit his report in the prescribed format. Under paragraph 8.8, Electoral Registration Officer on receipt of the verification report from the Local Verification Officer should consider the same. Where he was satisfied about the eligibility of a person, he should allow the name of such person to continue on the electoral roll but where he was not so satisfied and had reasonable doubt about the citizenship of any person he should refer such doubtful cases to the competent authority under the then Illegal Migrants (Determination by Tribunals) Act, 1983 or the Foreigners Act, 1946 in a prepared format (Annexure-B to the guidelines dated 17.06.2004) to the competent authority for making reference to the Tribunal and await the*

decision of such Tribunal.

15. *As pointed out by Mr. Barua, in Mameja Khatun (supra) a Single Bench of this Court directed that "D" voters should not be allowed to cast their votes with the clarification that "D" voters would include persons whose names were included in the electoral rolls but their citizenship was doubted or disputed and also those whose cases were pending before the Foreigners Tribunals. This decision of the learned Single Bench was confirmed by the Division Bench in Writ Appeal No. 114/2011 (State Vs Mameja Khatun). By the judgment and order dated 13.10.2015, the Division Bench directed Election Commission of India and other authorities to implement the directions of the Single Bench in letter and spirit.*

16. *At this stage, it may also be mentioned that in WP(C) No. 274/2009 filed by Assam Public Works which is pending before the Supreme Court of India wherein NRC updation exercise in the State of Assam is being monitored by the Supreme Court of India, on 25.10.2013, Supreme Court clarified that as far as persons in the "D" list are concerned, undoubtedly they were doubtful voters and therefore their names could not be included unless the NRC is updated and unless the Foreigners Tribunals declared them to be Indian citizens.*

17. *The Foreigners Act, 1946 is an act to confer upon the Central Government certain powers in respect of foreigners. This Act provides for the exercise of certain powers by the Central Government in respect of the entry of foreigners into India; their presence in India and their departure therefrom. Section 2 (a) defines a "foreigner" to mean a person who is not a citizen of India. Section 3 confers power to the Central Government to make orders making provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or their continued presence therein.*

17.1. *In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946, Central Government made the Foreigners (Tribunals) Order, 1964. As per order 2 (1), the Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose for its opinion.*

18. *Ministry of Home Affairs, Govt. of India had issued notification dated 19.04.1958 in exercise of powers conferred by Clause-(1) of Article 258 of the Constitution of India whereby the President with the consent of the State Government concerned entrusted to the Governments of each of the States*

mentioned therein including the State of Assam the functions of the Central Government in making orders of the nature specified in Section 3 of the Foreigners Act, 1946. Another notification dated 17.02.1976 was issued by the Government of India, Ministry of Home Affairs in the exercise of the powers conferred by Article 258 (1) of the Constitution entrusting the Superintendents of Police and Deputy Commissioners (In-charge of Police) under the Government of Assam the functions of the Central Government in making orders of the nature specified in Section 3 of the Foreigners Act, 1946 within their respective jurisdictions subject to the conditions mentioned therein which included the condition that exercise of such functions would be in respect of nationals of Bangladesh and that while exercising such functions, Superintendents of Police and Deputy Commissioners (In-charge of Police) shall comply with such general or special directions as the Government of Assam or the Central Government may issue from time to time.

19. Article 258 of the Constitution deals with power of the Union to confer powers etc on States in certain cases. Clause (1) of Article 258 starts with a non-obstante clause. It says that notwithstanding anything in the Constitution, President may with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends. Clause (3) provides for making of payment by the Government of India to the State concerned such sum as may be agreed upon or in default of agreement through arbitration in respect of any extra-cost of administration incurred by the State in connection with the exercise of powers and duties of the Government of India conferred or imposed upon a State Government.

20. Thus, under the Central Government notifications dated 19.04.1958 and 17.02.1976, Government of Assam, Superintendents of Police and Deputy Commissioners (In-charge of Police) have been delegated the power to make reference to the Foreigners Tribunal under order 2 (1) of the Foreigners (Tribunals) Order, 1964 to seek opinion as to whether the proceedee is a foreigner or not within the meaning of the Foreigners Act, 1946.

21. Thus from the above, what transpires is that there are two categories of "D" voters:- (i). those who were marked as "D" voters in the electoral roll by the Electoral Registration Officer following enquiry by Local Verification Officer; and (ii). those whose references are pending before the Foreigners Tribunals.

22. In so far Electoral Registration Officer is concerned the exercise undertaken by him while marking a person as a "D" voter in the electoral roll

is a quasi judicial exercise. If he holds the view after examining the enquiry report of the Local Verification Officer that the concerned person is not a citizen of India he is required to forward the case of that person to the competent authority i.e., the Superintendent of Police. If it is so forwarded by the Electoral Registration Officer, the jurisdictional Superintendent of Police has to make a reference to the competent Foreigners Tribunals under order 2(1) of the Foreigners (Tribunals) Order, 1964 based on the report received from the Electoral Registration Officer. Question of making further enquiry by the Superintendent of Police in such a case would not arise because enquiry has already been made by the Electoral Registration Officer by exercising quasi judicial powers and the Superintendent of Police cannot sit over such decision of the Electoral Registration Officer. He has to forward the same by making the reference to the competent Foreigners Tribunal for its opinion.

17. *The said judgment by the learned Single Judge has stood affirmed by the virtue of judgment and order dated 29.07.2019, passed by the Division Bench of this Court in the case of Sayam Uddin v. The Union of India & Ors., W.A. 170/2019.*

18. *The learned counsel for the petitioner had cited the case of Moslem Mondal (supra) and Amina Khatun (supra) to support his contention that if LVO report is blank, the reference is vitiated. In this regard, it would be relevant to mention that as per the contents of para-10 of the case of Moslem Mondal (supra), the Superintendent of Police, Barpeta, suspecting the respondent therein as illegal migrant within the meaning of the Illegal Migrants (Determination by Tribunals) Act, 1983, made a reference under Section 8 (1) of the said Act read with Rule 9 (A) of the Rules framed thereunder and accordingly, Case No. 1311/2003 was registered before the IM(D)T, Barpeta and the said proceeding was subsequently transferred to the Foreigners Tribunal and registered as F.T. Case No. 243/2006. Therefore, in the said case, reference was not made by Electoral Registration Officer (EVO for short). Hence, the decision of Moslem Mondal (supra), being distinguishable on facts, is not found to help the petitioner in any manner.*

19. *However, in the case of Amina Khatun (supra), which was decided on 28.04.2022, the reference was made by the Superintendent of Police (Border), based on LVO by the ERO. But when the said writ petition was being heard and decided by a Coordinate Bench, it appears that the previous decision of the learned Single Judge of this Court in the case of Sayam Uddin v. The Union of India & Ors., 2019 (4) GLT 456, as affirmed by the Division Bench of this Court in the case of Sayam Uddin v. Union of India & Ors., W.A. 170/2019, decided on 29.07.2019, were not brought to the notice of this Court. Therefore, under such circumstances, the Court is of the considered opinion that under the well settled principles of stare decisis, the decision in the case of Amina Khatun (supra) would be per incurium. Accordingly, the decision rendered in the case of Amina Khatun*

(supra) will also not be of any help to the petitioner.

20. *In the present case, the proceedings which were hitherto pending before the Illegal Migrants (Determination) Tribunals were transferred by the Supreme Court of India to the Foreigners Tribunal vide directions issued in the case of Sarbananda Sonowal (supra). The said fact has been stated in para-1 of the impugned opinion. Hence, this Court would refrain from making any observations on the LVO Report in this case because the Foreigners Tribunals would have no power or jurisdiction to remand the reference back to the Superintendent of Police (Border) for a fresh enquiry by the LVO/ERO.*

21. *Therefore, the challenge to the proceeding before the learned Foreigners Tribunal on the ground that certain paragraphs and/or columns of the Local Verification Officer's (LVO) Report, as forwarded by the Electoral Registration Officer (ERO) were left blank, is held to be not maintainable on facts and in law morefully referred to hereinbefore. The point of determination no. (i) is answered accordingly."*

37. As stated hereinbefore, in this case, the petitioner did not take any such plea in the written statement. As such a plea had not been raised before the learned Tribunal, there was no occasion for the learned Tribunal to provide any further material to the petitioner. In this case, the petitioner was aware that she had failed to produce any material in support of her defence of not being an illegal migrant/ foreigner when the enquiry was made. This is evident from the fact that against column nos. 3 to 16 of Format-A, which is the "Format for Verification Officer's Report" dated 26.09.1997, the Verification Officer has recorded a note stating that – "No documents produced." The said Annexure-A also has the signature and rubber stamp of the "Gaonburah of Charge No.8, Village- 2 No. Chasra and Digir Pathar". The petitioner had examined the said *Gaonburah* as DW-3, but he was not asked anything on the "Format for Verification Officer's Report". Therefore, at this stage, when the Court is exercising certiorari jurisdiction, it is only permissible to examine if the opinion expressed by the learned Foreigners Tribunal is vitiated on account of perversity. Without raising such plea before the learned Tribunal, the State

cannot be non-suited on such plea taken for the first time before this Court. If one needs any authority on the point of the extent of power that can be exercised under certiorari jurisdiction, 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.”

38. Thus, the said plea that the petitioner was not served with the grounds of suspecting her to be a foreigner and that the verification form was not properly filled-up are both repelled and rejected. The first point of determination is accordingly, answered in the negative and against the petitioner.

Third point of determination:

39. The third point of determination is as to whether in light of Section 77 of the Evidence Act, 1872, the voter list was not required to be proved, being public document is taken up now.

40. Section 77 of the Evidence Act, 1872, reads as follows:-

77. Proof of documents by production of certified copies.- Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

41. Thus, the provision of Section 77 of the Evidence Act, 1872, merely provides for the production of certified copies to prove the contents of a public document. There is no quarrel with the said statutory provision. However, by producing certified copies of the voter's lists as Ext.A to Ext.D, it cannot be held that the petitioner has been able to establish her link with the persons whose names appear in those voter's lists so as to establish her Indian citizenship. It has been held by the Supreme Court of India in the case of *LIC of India v. Ram Pal Singh Bisen*, (2010) 4 SCC 491: (2010) 0 Supreme(SC) 234, that admission of a document in evidence does not amount to proof. In other words, mere marking of a document as exhibit does not amount to dispensing with its mode and manner of proof. The contents of the documents have to be proved in accordance with law. The effect of Section 77 of the Evidence Act, 1872 is that if a proceedee relies on voter list, only a certified copy of such voter list would be admissible and thus, filing of uncertified copy of the electoral roll would not be admissible in evidence. The Supreme Court of India, in the case of *Appaiya v. Andimuthu @ Thengapandi*, (2023) 0 Supreme(SC) 974: 2023 INSC 835, has held to the effect that "... As per Section 77 of the Evidence Act such certified copies may be produced in proof of the contents of the public

document concerned." It may be mentioned that the learned counsel for the petitioner has not produced any authority in law to show that once a certified copy of a public record is produced and marked as exhibit, the proof of contents of the document is dispensed with. Thus, the reliance of the learned counsel on Section 77 of the Evidence Act, 1872, in the context in which submissions were made, appears to be somewhat misplaced.

42. Therefore, the third point of determination is answered in the negative and against the petitioner by holding that the provision of Section 77 of the Evidence Act, 1872 only enables a proceedee to produce only a certified copy of such voter list on which he/she relies, which would be admissible and thus, filing of an uncertified copy of the electoral roll would not be admissible in evidence, however, a mere production of certified copy of voter list would not amount to dispensing with the proof of the contents of such certified copies.

Fourth point of determination:

43. The fourth point of determination is as to whether the impugned opinion called for interference.

44. In *Aziz Miya @ Md. Aziz Mia (supra)*, it has been held that a mere claim by a suspected person by referring to a voters' list claiming a person therein to be his father is not conclusive proof and that by doing so, it cannot be said that the person has discharged the burden to prove that he is not a foreigner. This is because there is also a further requirement to prove that the person who is reflected in the voters' list relied upon, is actually the father of the person who makes the claim. The claim will have to be substantiated with further material/materials acceptable in law. In this case, it does not appear that the petitioner had discharged her part of the burden to show that she is the

daughter of the persons whose names appear in the exhibited voters list (Ext.A to Ext.D) through any other supporting cogent and admissible evidence.

45. In light of the discussions above, this Court does not find that the impugned opinion rendered by the learned Tribunal is vitiated by any jurisdictional error or that there was any failure in giving opportunity of hearing to the petitioner. The petitioner has not been able to show that the learned Tribunal had failed to consider any pleadings or evidence or had taken into consideration any extraneous materials to render its opinion. This is not a case where the learned Tribunal had refused to admit admissible evidence or that its finding is *de hors* the evidence on record. Therefore, as the Court is exercising supervisory jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned tribunal with the view of the Court. The relevant part of the order passed by the Supreme Court of India in the case of *Bikartan Das (supra)* on the point of certiorari jurisdiction has been quoted hereinbefore.

46. Thus, the opinion dated 12.07.2018, passed by the learned Member, Foreigners Tribunal No. 4th, Barpeta, Assam, in. F.T. Case No 135/2017, arising out of Ref. F.T. Case No. 1287(A) dated 09.07.98, thereby declaring the petitioner, namely, Jahura Khatun, to be a foreigner, who had entered into Assam on or after 25.03.1971, does not call for any interference in this writ petition. Hence, this writ petition fails on all counts and the same is dismissed.

47. The consequences of the said opinion shall follow.

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

49. The Registry shall return back the Tribunal's records along with a copy of this order so that the said learned Tribunal would make it a part of the

record for future reference.

50. The learned standing counsel for FT and Border matters shall send a downloaded copy of this order to the Home & Political (B) Department.

JUDGE.

JUDGE.

Comparing Assistant