

GAHC010111272019



2026:GAU-AS:3836

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

Case No. : WP(C)/3330/2019

OBIRAN NESSA @ OBI NESSA @ ABIRAN NESSA
D/O- LT AMULYA FAKIR, W/O- MD. ALEK SK @ ALEF SK., VILL- BANDOR
KHOWA,, P.O. CHALCHALIA, P.S. SARBHOG, DIST- BARPETA, PIN- 781319

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, DEPTT. OF HOME, NEW
DELHI-1

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

3:THE DY. COMMISSIONER
BRPETA
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
PIN- 781301

5:THE ELECTION COMMISSION
GOVT. OF INDIA
NEW DELHI-1

6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION (NRC)
ASSAM
GHY-32

7:FOREIGNERS TRIBUNAL NO.11
BARPETA
REP. BY THE STANDING COUNSEL
FOREIGNERS TRIBUNAL
PIN- 78130

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

Advocate for the Respondent : ASSTT.S.G.I. (R1), SC, NRC (R6),SC, ELECTION COMMISSION.
(R5),SC, F.T (R2TO4AND7)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 16.03.2026
(K.R. Surana, J)

Heard Mr. A. Rashid, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC; Mr. G. Sarma, learned standing counsel for the FT & Border matters; Mr. A.I. Ali, learned standing counsel for the ECI; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for the State respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 18.04.2019, passed by the learned Member, Foreigners' Tribunal, Assam, Barpeta 11th, in Case No. (Bpt/11th) F.T 1318/2017, arising out of P.E. No. IM(D)T Case No. 684/04, by which the petitioner was declared to be a foreigner of post 25.03.1971 stream, by further holding that the petitioner had failed to discharge the burden of proof that she is not a foreigner, as mandated under Section 9 of the Foreigners Act, 1946.

3. In view of the order which is proposed to be passed, the contents of the written statement, the evidence-on-affidavit tendered by the petitioner and the discussion on the evidence on affidavit by the projected brother of the petitioner, Kurman Ali (DW-2), and the projected sister-in-law of the petitioner, Aimana (DW-3) are not discussed.

4. It would suffice to mention that on appearing before the learned Tribunal, the petitioner had filed the written statement and exhibited seven documents along with the evidence-on-affidavit being, (i) Electoral Roll of 1965 (Ext.1), (ii) Electoral Roll of 1970 (Ext.2), (iii) Electoral Roll of 1985 (Ext.3), (iv) Electoral Roll of 1985 (Ext.4), (v) Electoral Roll of 1989 (Ext.5), (vi) Certificate dated 21.05.2016 issued by the Gaonburah (Ext.6), and (vii) Certified copy of the opinion dated 08.12.2016 passed in respect of the petitioner by the learned Member, Foreigners, Tribunal No. 8th, Barpeta, in F.T. Case No. 73/2016, by which the petitioner was declared to be not a foreigner (Ext.7).

5. The learned Tribunal has briefly referred to the exhibits and its contents and without any discussion on any of the exhibited documents, summarized the appreciation of evidence, discussion and the decision as follows:

SUMMARY

1. *As per terms of the Reference, OP is the D/O Lt. Amulya Fakir and W/O Alek (Alef) Sk.*
2. *Nationality of the OP's deceased father is not known nor is his presence in Assam on or before 01-01-1966 proved.*
3. *Date of birth and place of birth in r/o OP's linkage persons as appear in Exts. 1 & 2, who are her two elder brothers and a sister-in-law also not proved; however, their presence in Assam prior to 01-01-1966 vide Ext-1 has been proved and therefore, they are deemed citizens of India U/S 6A(2) Citizenship Act 1955.*
4. *OP was 40 years old in 1985 and was therefore born some time in 1945 and was*

a major by 01-01-1966.

5. *OP's date of birth and place of birth or her presence in Assam on or before 01-01-1966 not proved.*
6. *OP's earliest recorded presence in Assam alongwith her son, Khalil Rahman and daughter-in-law, Jahanara Begum was 1985 vide Ext-3 which is a post 1971 period document.*
7. *OP has not discharged the burden of explaining as to why her name was not enrolled in the voters' lists at least of 1970, alongwith the names of her linkage persons or elsewhere separately.*
8. *On the premises no reliance can be placed on Ext-7.*
9. *In absence of documentary support, the evidence of all the DW's also stand rejected.*

6. The petitioner had exhibited as Ext.7, the previous opinion dated 08.12.2016, passed by the learned Member, Foreigners, Tribunal No. 8th, Barpeta, in F.T. Case No. 73/2016, the settled law that the principles of *res judicata* apply in the proceedings of the Foreigners' Tribunal, for which the decision of the Supreme Court of India in the case of *Abdul Kuddus v. Union of India*, (2019) 6 SCC 604 may be referred to. The said decision of the Supreme Court of India was followed by this Court in the case of *Jahir Ali v. Union of India*, (2021) 3 GLR 105: 2021 (2) GLT 596.

7. Under the circumstances, by merely observing that on the premises no reliance can be placed on Ext.7 is wholly unsustainable. Moreso, as the learned Tribunal, on the basis of Ext.1 has held that the presence of the petitioner's two elder brothers and sister-in-law are found in Ext.1, and therefore, they were deemed to be the citizens of India under Section 6A(2) of the Citizenship Act, 1955.

8. Accordingly, the ground on which Ext.7 was discarded is not based on a correct appreciation of the facts and law relating to *res judicata* as discussed

hereinbefore.

9. Accordingly, the impugned opinion dated 18.04.2019, passed by the learned Member, Foreigners' Tribunal, Assam, Barpeta 11th, in Case No. (Bpt/11th) F.T 1318/2017, arising out of P.E. No. IM(D)T Case No. 684/04 is found vitiated by incorrect appreciation of the Ext.7 for failure on part of the learned Tribunal to discuss Ext.7 under the principles of *res judicata*, which is squarely applicable in the proceedings of the Foreigners' Tribunal. Resultantly, the Court is inclined to pass the following orders:

- i. The impugned opinion dated 18.04.2019, passed by the learned Member, Foreigners' Tribunal, Assam, Barpeta 11th, in Case No. (Bpt/11th) F.T 1318/2017, arising out of P.E. No. IM(D)T Case No. 684/04 is hereby set aside.
- ii. The petitioner, who is duly represented by her learned counsel, is directed to appear before the learned Member, Foreigners' Tribunal, Assam, Barpeta 11th on 30.04.2026 without fail and by producing a certified copy of the order, await further orders from the said learned Tribunal.
- iii. It is made clear that if the petitioner does not appear before the said learned Tribunal shall have the liberty to treat the petitioner as absent on call and pass such order as may be deem fit and proper.

10. The writ petition stands partly allowed to the extent as indicated above.

11. There shall be no order as to cost.

12. The records are to be sent back expeditiously along with a copy of this order to the concerned Tribunal.

JUDGE

JUDGE

Comparing Assistant