GAHC010250332019

2026:GAU-AS:5618

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

Case No. : WP(C)/7748/2019

TARA BHANU
W/O- LT NIZAM UDDIN, D/O- LT TAZU SHEIKH, R/O- VILL- APRUPI, P.S. KALGACHIA, DIST- BARPETA (ASSAM)

VERSUS

UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, 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
ASSAM
781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM
781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)

ASSAM
GHY-0

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

For the petitioner : Mr. A.H.M.R. Choudhury.

For the respondents : Mr. K.K. Parasar, CGC,
: Mr. A.I. Ali, SC, ECI
: Ms. A. Verma, SC, FT & NRC

For the State respondent : Mr. P. Sarmah, Addl. Sr. G.A.

Date on which judgment is reserved : 07.04.2026

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.H.M.R. Choudhury, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned CGC appearing for respondent No.1; Ms. A. Verma, Advocate, standing counsel for FT and Border matters, representing respondent nos. 2, 4 and 6; Mr. A.I. Ali, Advocate, standing counsel for Election Commission of India, respondent no.5; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate representing respondent no.3.

2. By filing this writ petition under Article 226 of the Constitution

of India, the petitioner, namely, Tara Bhanu, has challenged the opinion dated 12.06.2019 passed by the learned Member, Foreigners Tribunal- 5th, Barpeta, Assam, in Case No. F.T.(5th) 366/2015, arising out of Ref. IMDT Case No. 11275/98, thereby declaring her to be a foreigner, having entered into Assam after 25.03.1971.

3. The petitioner has projected in her written statement that the case was instituted against her without proper investigation. She was born and had grown up in village- Khudrakhuwa, Mouza- Titapani, P.S. Baghbar, Dist. Barpeta, Assam. One Jafer @ Jafar Ali @ Mujafar Ali, is her grandfather and Taju Sheikh, whose name appeared in the NRC of 1951 and in the voter list of 1966, 1970 and 1997, is her father. On attaining marriageable age, she was married to Nizam Uddin, son of Abdul Karim, resident of Khudrakhuwa, Mouza- Titapani, P.S. Baghbar, Dist. Barpeta, Assam. The name of her father appeared in the revenue paying receipt dated 30.10.1983, of land covered by Patta No. 64 of village- Khudrakhuwa, Mouza- Titapani. Her own name appeared in the voter list of 1985 in village- Khudrakhuwa, under Jania LAC. The petitioner's husband along with his family had shifted from village- Khudrakhuwa to village- Aprupi before 1997 and she was marked as 'D' voter in the electoral roll of 1997 of village- Aprupi and in subsequent voter lists also. She has been given link certificate by the Secretary of 57 No. Isabpur *Gaon Panchayat*, countersigned by the Block Development Officer. Two certificates have been given by the *Gaonburah* of Khudrakhuwa and Aprupi village, in respect of her father and husband as permanent resident of those villages. Accordingly, the petitioner had prayed to declare her as an Indian citizen and to drop the proceeding against her.

4. In support of her defence, the petitioner had examined herself as DW-1. She had also examined Mokbul Hussain, *Gaonburah* of Aprupi village as DW-2 and one Akbar Ali, claiming to be the brother of the petitioner as DW-3.

5. In her evidence-on-affidavit filed on 26.02.2016, the petitioner had reiterated the statements made in her written statement and exhibited the following documents, viz., (1) certified copy of voter list of 1966 (Ext.A); (2) certified copy of voter list of 1970 (Ext.B); (3) certified copy of voter list of 1997 (Ext.C); (4) Revenue paid receipt dated 30.10.1983 of land vide Patta No. 64 of village- Khudrakhuwa (Ext.D); (5) Certificate issued by Secretary of 57 No. Isabpur Gaon Panchayat (Ext.E); (6) certificate issued by *Gaonburah* of village- Aprupi (Ext.F). It may be mentioned that the NRC details of 1951 of Taru Seikh, projected father of the petitioner, were annexed to the evidence-on-affidavit as Annexure-1. In reply to the Tribunal's query on 14.09.2018, the petitioner had stated that her parents were not alive and they had died after her marriage. She has five children. After the birth of her fourth child, her father had died. Her father had been living with her brother till his death.

6. On 18.11.2017, the petitioner had examined Mokbul Hussain, *Gaonburah* of Aprupi village as DW-2. In his examination-in-chief, DW-2 had stated that he had known Tara Bhanu of this case for 15 years, who resides in Aprupi village. He was the *Gaonburah* of Aprupi village. Tara Bhanu's husband is Nizam Uddin. He had admitted issuing a certificate (Ext.F) and Ext.F(1) was his signature. He had stated that he had come with his identity card to prove being a *Gaonburah*. In response to the Tribunal's queries, DW-2 had stated that his age was 24 years. The length of his *Gaonburahship* was 3 years 9 months. He had stated that the population of Aprupi village was 2840. He maintained a

register 3 years back. He did not maintain a register of births and deaths. He had stated that the petitioner was born in village- Khudrakhuwa. He was the *Gaonburah* of village- Aprupi and Tara Bhanu was married in this Aprupi village. He had known the petitioner after she came to his village by way of marriage. He had denied that he had come to depose falsely.

7. Akbar Ali, who was examined as DW-3 had stated in his evidence-on-affidavit filed on 14.12.2017, that he was the brother of Tara Bhanu. He was an inhabitant of village- Khudrakhuwa. He and his sister were born and grew up in village- Khudrakhuwa. The name of his grandfather is Jafar @ Jafar Ali @ Majafar Miya. He had stated that on attaining marriageable age, his sister was given marriage to Nizam Uddin, son of Abdul Karim of village- Khandrakhuwa (*sic.*). He had stated that the name of his father Taju Sheikh @ Taju Miya and step-mother Akatan Nessa appeared in the voter list of 1966 of village- Namberpara Part-III under Abhayapuri LAC (Ext.A). The name of his father, Taju Sheikh @ Taju Miya and mother, Somari Nessa @ Somari Khatun appeared in the voter lists of 1970 (Ext.B) and 1997 (Ext.C) of village- Khudrakhuwa under Jania LAC. The name of his father appeared in land revenue paid receipt dated 30.10.1983 (Ext.D). The name of his sister appeared in the voter list of 1985 of village- Khudrakhuwa (Ext.E). He had also referred to link certificate by the Secretary of Isabpur Gaon Panchayat (Ext.F) and certificate by *Gaonburah* (Ext.G and Ext.H). He had stated that his own name appeared in the voter list of 1997 (Ext.C) and he had also exhibited his Elector Photo Identity Card (EPIC) (Ext.G). He had also stated that the actual name of his father is Taju Miya and he is also known as Taju Sheikh, which is written in the voter lists of 1970 and 1997 and also known as Taju, which is written in the voter lists of 1970, 1997 and 2010 and in EPIC against his mother and his own

name. The actual age of his father in the year 1970 and 1997 was 37 and 64 years, but in the voter list of 1970 and 1997, his age was wrongly, written as 45 and 70 years. He had stated that he and his sister were Indian. On 14.09.2018, in reply to the Court query, DW-3 had stated that he was 65 years old and he had been casting his vote since 1985. He only has one sister. His parents had been living with him till their death. His father had died 17/18 years ago. His mother had died three years before his father's death.

8. On 29.09.2018, the petitioner had examined Safiur Rahman, Secretary of *Isabpur* Gaon Panchayat as DW-4. In his examination-in-chief, PW-4 had stated that he was working in the said post for the last 7 (seven) years. He had issued a certificate in the name of the petitioner, Tara Bhanu. Her father's name is Taju Sheikh and mother's name is Somari Khatun of village- Khudrakhuwa. Tara Bhanu got married with Najim Uddin of village- Aprupi. The petitioner's brother Akbari (*sic*.) Ali had applied for a certificate along with some documents and accordingly, he had issued the said certificate. The *Gaonburah* of Khudrakhuwa had identified Tara Bhanu before issuing the said certificate. In his reply to the Tribunal's query, DW-4 had stated that he is the Secretary of village- Hatchara, Muhia, Khudrakhuwa, Isabpur and Manikpur. He had stated that he personally does not know the petitioner. The *Gaonburah* of Khudrakhuwa had identified Tara Bhanu and after receiving their application, he had issued the said certificate in the name of the petitioner.

9. The learned counsel for the petitioner had submitted that the learned Tribunal had not appreciated the pleadings and evidence correctly and had not applied its judicial mind. It was submitted that on the ground that the voter list of 1997 contained the name of one Samad Ali, son of Taju Sheikh, the entire evidence was disbelieved and discarded. It was submitted that Akbar Ali

was the elder brother of the petitioner and Samad Ali was the younger brother of the petitioner. However, when questions were put to her, being illiterate, she was totally confused and replied under a misunderstanding that she had one brother. The learned counsel for the petitioner has placed reliance on the *jamabandi* to project that the landed property of the petitioner's father was inherited by Akbar Ali and Samad Ali, i.e. both the brothers of the petitioner. It has been submitted that the petitioner was a citizen of India and therefore, the impugned opinion be interfered with.

10. Per contra, the learned standing counsel for the FT and Border matters has made his submissions in support of the impugned opinion.

11. It may be stated that the petitioner has relied on certificate dated 16.02.2017, issued by the *Gaonburah* (Ext.F). The said document is inadmissible in evidence because of use of the State Emblem of Lion Pillar of Asoka, which DW-2 is not authorized to use. In this regard, reference may be made to the decision of this Court in the case of *Sajeda Khatun v. Union of India & Ors., 2018 (4) GLT 696*, where it has been held that *Gaonburah's* certificate contains the State Emblem, which he is not authorized to use under Rule 10(2) of the State Emblem of India (Regulation of use) Rules, 2007 framed under the State Emblem of India (Prohibition of Improper Use) Act, 2005 and it was further held that such unauthorized use of the State Emblem has rendered the certificate wholly inadmissible in evidence. In any case, the said certificate does not contain the name of the village and at the *nota bene* appended to the said certificate, it has been stated to the effect that "*In the voter list of 2017, 'D' is seen under serial no. 1029, house no. 225, … (illegible) no. 104 against the name of the said person*." Thus, the voter list of the petitioner has 'D' i.e. doubtful voter mark. It must be mentioned that Annexure-13 to the writ petition

is the photocopy of the *Gaonburah's* certificate (Ext.F), but in the English translated copy thereof, the petitioner has omitted to translate the said *nota bene"* or remark, which is nothing but a serious attempt by the learned counsel for the petitioner to mislead the Court, which is strongly deprecated, because the learned counsel was certified the said translation to be a true copy.

12. Similarly, the entire text of Annexure-12, which is a photocopy of the certificate dated 24.07.2015 (Ext.E), issued by the Secretary of 57 No. Isabpur Gaon Panchayat has not been typed out by the learned counsel for the petitioner. The disclaimer part that had been withheld in the typed copy is extracted below:-

> "*DISCLAIMER*
>
> *It may be added that this certificate shall be accepted only as a supporting document for establishing linkage with the parent(s) of the aforementioned person, for whom the certificate is issued. This document shall be valid only if accompanied by Legacy Data or any of the other admissible documents issued for the person with whom linkage is claimed for inclusion in updated NRC*."

13. Thus, certificate issued by the Panchayat Secretary (Ext.E) is valid only if accompanied by other valid documents and moreover, the said certificate is only for inclusion of names in updated NRC. Thus, by no stretch of imagination, the said certificate can constitute proof of citizenship. Therefore, in the absence of any documentary evidence to link the petitioner with her projected father, the said Ext.E is of no help to the petitioner. Hence, if the disclaimer is not read, there is every likelihood that the Court would be misled by the contents of the said Ext.E. The said typed copy is also certified to be true by the learned counsel for the petitioner and such unscrupulous practice by the learned counsel for the petitioner is strongly deprecated.

14. It may be stated that for an attempt to mislead the Court, the

Court would ordinarily have dismissed the writ petition in limine. However, as the valuable claim of citizenship is involved, the Court is inclined to appreciate the pleadings and evidence on record.

15. On a careful examination of the Tribunal's records, it is seen that in her written statement, the petitioner had only disclosed the names of three persons, being (1) Jafer @ Jafar Ali @ Mujafar Ali, projected grandfather; (2) Taju Sheik, projected father; and (3) Nizam Uddin, husband. The petitioner had not disclosed (i) the names of the siblings of her grandfather; (ii) names of the siblings of her father; (iii) her own siblings; (iv) the name of her mother; (v) the year of her birth; (vi) the year of the death of her father, (vii) year of death of her mother; and (viii) the names of voters whose name appeared in the exhibited voters list and the relationship of the petitioner with those voters.

16. 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.

17. Thus, as the petitioner had not disclosed material facts, the sudden appearance of Akbar Ali, as the projected brother of the petitioner to give evidence as DW-3 does not inspire the confidence of the Court on the truthfulness or admissibility of his evidence.

18. The petitioner had not disclosed the name of Samad Ali, son of

Taju Sheikh, whose name appeared in the voters list of 1997. However, after adverse observations had been made by the learned Tribunal in the impugned opinion, the petitioner had stated in paragraph 14 of this writ petition that the petitioner was puzzled with the question of the learned Tribunal as to how many brothers she had and her reply that she had one brother was a misunderstanding. This is not how evidence can be appreciated by this Court in exercise of certiorari jurisdiction. It cannot be accepted that an illiterate woman will not be able to state how many brothers or siblings she has. The petitioner had not disclosed about any siblings in her written statement and in her evidence-on-affidavit. As mentioned hereinbefore, the petitioner (as DW-1) had filed her evidence-on-affidavit was filed on 26.02.2016.

19. The petitioner's projected brother, Akbar Ali, had filed his evidence-on-affidavit as DW-3 on 14.12.2017 but the existence of Samad Ali, as his brother was also not disclosed. Rather, on 14.09.2018, while replying to the learned Tribunal's query, DW-3 had specifically stated that he had only one sister.

20. In the considered opinion of the Court, the non disclosure of the family by the 4 (four) witnesses examined by the petitioner would lead to the only presumption that the petitioner had failed to prove her family and in the process, could not connect her with her projected father, whose name appears in the voter lists of 1966, 1970 and 1997.

21. The two names appearing in voter list of 1966 (Ext.A) are (1) Taju Miya, son of Mojafar Miya, and (2) Akaton Nessa, wife of Taju, who were residents of village- Numberpara Part-III. However, the names of two voters in the voter list of 1970 (Ext.B) were (1) Taju Sheikh, son of Jafarali, and (2) Sumari Sheikh, wife of Taju and they were voters of village- Khudrakhowa.

There is no pleading or evidence as to what happened to Akaton Nessa, the voter in the voters list of 1966. Thus, it would be difficult to believe that Taju Miya, son of Mojafar Miya, voter in 1966 of village- Numberpara Part-III is the same person who became Taju Sheikh, son of Jafarali in the voter list of 1970 of village- Khudrakhowa. Neither the petitioner as DW-1 nor the DW-3 had given the exact year of death of their father. If the statement of the DW-3 in his reply to the Tribunal's queries is considered then his father had died in or about the year 2000-2001. However, the name of his projected father appears only in the voter lists of 1966, 1970 and 1997, with no explanation where he was for 27 years between 1970 and 1997. Apart from Ext.B and Ext.C of village-Khudrakhowa, the petitioner has not exhibited any voter list of her projected father to show his continuous stay in India, which is the requirement of Section 6-A (3) (b) of the Citizenship Act, 1955.

22. The submission that it is common amongst Muslim community to have several aliases cannot be a generally accepted presumption. It may be acceptable that a person may add a prefix to his name like Haji, Moulavi, etc. It may perhaps be acceptable that one may have an alias, but this is not how persons change their identity in voter's list after changing address to another village, that too, after having a different wife, as is sought to be portrayed in the case of the projected father of the petitioner.

23. In the opinion of the Court, if the Foreigners Tribunals start accepting the projection that 'A' of village- 'X' has become 'B' in village- 'Y' and then has become 'C' in village- 'Z', it would be impossible to detect and expel an illegal foreigner and/or migrant. Moreover, acceptance of such a plea would frustrate the very purpose of Section 9 of the Foreigners Act, 1946, which casts the burden of proof on the proceedee or suspected illegal migrant.

24. In this case, except for the evidence by DW-1, DW-2 DW-3 and DW-4, in their respective evidence-on-affidavit and/or examination-in-chief, there is not a single document where the name of the petitioner appears with her parents. As the petitioner has not disclosed about her family, her father's family or about the family of her parental grandfather, reliance cannot be placed solely on the testimony of DW-2, DW-3 and DW-4 as a proof that the petitioner is a citizen of India.

25. In this regard, it would be relevant to refer to the case of *Nur Begum v. Union of India & Ors., 2020 (3) GLT 347*. 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*.

26. 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.*

27. The petitioner has relied on the land revenue paid receipt of 30.10.1983 (Ext.D) in the name of Md. Taju Sheikh, projecting him to be her father. The said document is a post 25.03.1971 document and in her evidence, and in the evidence of DW-3, the petitioner has not linked the said Ext.D with any land owned by Md. Taju Sheikh.

28. Moreover, it is seen that as per paragraph 7 of the impugned opinion, the learned Tribunal had rejected the land revenue receipt (Ext.D) because it was not readable. In the record, the said Ext.D is a photocopy, which was "compared with the original" copy. However, in this writ petition, the petitioner has not annexed a readable copy of Ext.D and the learned counsel for the petitioner could not show the original of Ext.D when asked for.

29. One of the submissions of the learned counsel for the petitioner was that the enquiry against the petitioner was not proper. In this regard, it is seen that in the summons the petitioner was informed as to why under Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964, she should not be declared to be a foreigner of post 23.03.1971. Thus, it cannot be said that the petitioner was not informed about the grounds of suspecting her to be a foreigner.

30. In this case, on the basis of a report from the Electoral Registration Officer of the 44 Jania LAC, IM(D)T Doubtful Case No. 11275/98 was registered by the Superintendent of Police (Border), Barpeta, which was

submitted before the erstwhile Illegal Migrants (Determination) Tribunal, Nagaon [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 Tribunal's record reveals that the Superintendent of Police (Border), Barpeta, while sending the reference, had made an endorsement that "Annexure-B of the ERO is considered as a ground for considering the person as I.M." Here I.M. is an abbreviation of "illegal migrant". In the aforesaid context, 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 v. Union of India, (2005) 5 SCC 665*, 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.

31. 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. 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.

32. In this regard, it would be relevant to quote below paragraph nos. 22, 24 to 26, 29, 51, 56, 62 of the case of *Sarbananda Sonowal v. Union of*

India, (2005) 5 SCC 665.

> ***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 his 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 (UOI) Vs. Ghaus Mohammad, , 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 u/s 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.*
>
> ***24.*** *It needs to be emphasized that the general rule in the leading democracies of the world is that where a person claims to be a citizen of a particular country, the burden is upon him to prove that he is a citizen of that country. In United Kingdom, the relevant provision is contained in the Immigration Act, 1971 and sub-Section (1), (8) and (9) of Section 3 thereof read as under:*
>
>> *"3. - General provisions for regulation and control. - (1) Except as otherwise provided by or under this Act, where a person is not a British citizen*
>> *(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under this Act;*
>> *(b) he may be given leave to enter the United Kingdom (or when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;*
>> *(c) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both.*
>> *xxx xxx xxx xxx*
>> *(8) When any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.*
>> *(9) A person seeking to enter the United Kingdom and claiming to have the*

right of abode there shall prove that he has that right by means of either -m
(a) a United Kingdom passport describing him as a British citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; or
(b) a certificate of entitlement."

25. *Somewhat similar provision is contained in Immigration and Nationality Act of USA and Section 291 places the burden of proof upon the person concerned in any removal proceeding. Section 318 provides that no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of the Act and the burden of proof shall be upon such person to show that he entered the United States lawfully. The Immigration and Refugee Protection Act, 2001 of Canada contains a provision of placing the burden upon the concerned person to establish his right to have a permanent residence in the said country. Section 188 of the Migration Act, 1958 of Australia provides that an officer may require a person whom the officer knows or suspects is a non-citizen to (a) show the officer evidence of being a lawful non-citizen; or (b) show the officer evidence of the person's identity.*

26. *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. Some times the place of birth of his grand parents may also be relevant like u/s 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.*

29. *In State of West Bengal Vs. Mir Mohammad Omar and Others etc., , it was held that the legislature engrafted special rule in Section 106 of the Evidence Act to meet certain exceptional cases in which not only it would be impossible but disproportionately difficult for the prosecution to establish such facts which are specially and exceptionally within the exclusive knowledge of the accused and which he could prove without difficulty or inconvenience. This principle was reiterated in Sanjay @ Kaka Vs. The State (NCC.T. of Delhi), and Ezhil and Others*

Vs. State of Tamil Nadu.

51. *The foremost duty of the Central Government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure. The Government has also a duty to prevent any internal disturbance and maintain law and order. Kautilya in his masterly work "The Arthashastra" has said that a King had two responsibilities to his state, one internal and one external, for which he needed an army. One of the main responsibilities was Raksha or protection of the state from external aggression. The defense of the realm, a constant preoccupation for the king, consisted not only of the physical defense of the kingdom but also the prevention of treachery, revolts and rebellion. The physical defensive measures were the frontier posts to prevent the entry of undesirable aliens and forts in various parts of the country. (Arthashastra by Kautilya - translated by Shri L.N. Rangarajan, who was in Indian Foreign Service and ambassador of India in several countries - published by Penguin Books - 1992 Edn. - page 676). The very first entry, namely, Entry 1 of List I of the Seventh Schedule is "Defense of India and every part thereof including preparation for defense and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization". In fact entries 1 to 4 of List I of Seventh Schedule mainly deal with armed forces. Article 355 of the Constitution of India reads as under:-*

> *355. Duty of the Union to protect States against external aggression and internal disturbance. - It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."*
>
> *The word "aggression" is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, "an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes."*
>
> *The word "aggression" is not to be confused only with "war". Though war would be included within the ambit and scope of the word "aggression" but it comprises many other acts which cannot be termed as war. In Kawasaki v. Bantahm S.S. Company 1938 (3) All ER 80, the following definition of "war" as given in Hall on International Law has been quoted with approval :-*
>
> *"When differences between States reach a point at which both parties resort to force, or one of them does acts of violence, which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the*

> *combatants may use regulated violence against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant."*

56. *There was a large scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak war. On 3rd November, 1971, one month before the actual commencement of the war, Dr. Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said :-*

> *"................The first consideration, in the view of the Indian Delegation, is that aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms.. We would accordingly support the categorical view expressed by the distinguished delegate of Burma, the U.K. and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous.*
>
> *...*
>
> *For example, there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence, I am afraid, Mr. Chairman, it would have to be categorized as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order.. What I wish to convey, Mr. Chairman, is the complexity of the problem which does not permit of a fou r-line definition of aggression much less an ad-interim declaration on it."*

62. *The very first sentence of the Statement of Objects and Reasons of the IMDT Act says "the influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North- Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region." It further says that "continuance of these persons in India has given rise to serious problems." The Preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India." The Governor of Assam in his report dated 8th November, 1998 sent to the President of*

India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. Pakistan's I.S.I. is very active in Bangladesh supporting militants in Assam. Muslim militant organizations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of Deputy Chief of the Army Staff and is very well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people in Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources."

33. The learned counsel for the petitioner has not been able to show that the petitioner had made any attempt to establish before the 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.

34. The said action by the Electoral Registration Officer was initiated

under the Representation of the People Act, 1950, after draft electoral roll was prepared and the Electoral Registration Officer had reasons to suspect that a voter, whose name appears in the draft, is an illegal migrant and/or a foreigner.

35. 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 Electoral Registration Officer has been dealt with. In the said case, the issue relating to 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 are 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."*

36. As stated hereinbefore, in this case, the petitioner did not take any such plea in the written statement. Had such a plea been raised before the

learned Tribunal, the learned Tribunal would have provided the petitioner the relevant material. In this case, the petitioner was aware that he had failed to produce any material in support of her defence of not being an illegal migrant/ foreigner when the enquiry was made. 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 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.*"

37. Thus, the said plea that the petitioner was not served with the grounds of suspecting her to be a foreigner is repelled and rejected.

38. In this case, if from the exhibited documents, Ext.E, issued by DW-4 and Ext.F, issued by DW-2, are excluded, there is no other documentary evidence to link the petitioner with her projected father.

39. Thus, in light of the discussions above, the Court does not find any fault with the finding recorded by the learned Tribunal that the petitioner has failed to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove that she is not a foreigner and/or illegal migrant, but an Indian citizen.

40. The impugned opinion rendered by the learned Tribunal is not found to be vitiated by any jurisdictional error nor that there was any failure in giving an opportunity of hearing to the petitioner. Therefore, as the Court is exercising certiorari jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned Tribunal with any other view of the Court. This is not a case where the learned Tribunal had refused to admit admissible evidence or that its finding is *dehors* the evidence on record.

41. Hence, this writ petition fails and the same is dismissed, leaving the parties to bear their own cost.

42. The consequences of the opinion dated 12.06.2019 passed by the learned Member, Foreigners Tribunal- 5th, Barpeta, Assam, in Case No. F.T. (5th) 366/2015, arising out of Ref. IMDT Case No. 11275/98, thereby declaring the petitioner, namely, Tara Bhanu, to be a foreigner, having entered into Assam after 25.03.1971, shall follow as no interference with the same is called for.

43. The Registry shall return back the Tribunal's records along with a copy of this order to be made a part of the records by the learned Tribunal for

future reference.

44. Before parting with the records, the learned counsel for the petitioner is put to notice that if the practice of withholding any part of the document in typed copy or translated copy is brought to the notice of the Court, appropriate steps as permissible in law would be taken.

JUDGE **JUDGE**.

Munna Kumar Digitally signed by Munna Kumar Date: 2026.04.24 11:49:18 +05'30'

Comparing Assistant **(Private Secretary)**