GAHC010130382019

2026:GAU-AS:7086

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

Case No. : WP(C)/4272/2019

DABIR RAHMAN @ DABIBUR RAHMAN
S/O- LT JASIM UDDIN @ JASI SHEIKH, VILL- GASBARI, P.S. SIPAJHAR,
DIST- DARRANG, ASSAM, PIN- 784145

VERSUS

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

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

3:THE DY. COMMISSIONER
DARRANG
DIST- DHUBRI
PIN- 784145

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

5:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
GHY-5

6:THE SUPERINTENDENT OF POLICE (B)
DARRANG
DIST. DARRANG

PIN- 78414

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. J M SULAIMAN,MR. A MATIN,MRS H AHMED

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

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the petitioner : Shri JM Sulaiman

Advocates for the respondents : Ms. A. Verma, SC- Home Deptt. & NRC,
Shri P. Sarma, GA, Assam;
Shri N. Kalita, for ECI.
Ms. B. Sarma, CGC.

Date on which judgment is reserved : **13.05.2026**

Date of pronouncement of judgment : **21.05.2026**

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

(S.K. Medhi, J.)

The extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this application under Article 226 of the Constitution of India by putting to challenge the opinion rendered vide impugned order dated 21.07.2018 passed by the learned Foreigners Tribunal No.4th, Darrang, Mangaldai in F.T. 4th Case No. 83/SPR/2017 and FT Case No.5022/2011 (Ref. FT Case No.1193 dated

15.12.2010). By the impugned judgment, the petitioner, who was the proceedee before the learned Tribunal, has been declared to be a foreigner post 25.03.1971.

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

(i) A reference was made by the Superintendent of Police (B), Darrang District, against the petitioner giving rise to the aforesaid F.T. 4th Case No. 83/SPR/2017 and FT Case No.5022/2011.

(ii) As per requirement u/s 9 of the Foreigner's Act, 1946 to prove that the proceedee is not a foreigner, the petitioner had filed the written statement on 08.03.2018 along with certain documents and had also adduced evidence.

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

3. We have heard Shri JM Sulaiman, learned counsel for the petitioner. We have also heard Ms. A. Verma, learned Standing Counsel, Home Department & NRC; Shri P. Sarma, learned GA, Assam, Shri N. Kalita, learned counsel on behalf of Shri A.I. Ali, learned Standing Counsel, Election Commission of India and Ms. B. Sarma, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated 21.08.2019.

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

that there was no rebuttal evidence, the learned Tribunal should have accepted the said proof and accordingly hold the petitioner to be a citizen of India. In this regard, he has referred to his evidence adduced as DW1 and also the following documents:

(i) Ext-1 - Xerox copy of Voter List of 2018;
(ii) Ext-2 - Xerox copy of voter ID.
(iii) Ext-3 - certified copy of Voter List of 1997;
(iv) Ext-4 - Legacy Data Code 120-0037-2518;
(v) Ext-5 - certified copy of Voter List of 1966;
(vi) Ext-6 - certified copy of Voter List of 1971;
(vii) Ext-7 - Gaonburah Certificate;
(viii) Ext-8 - NRC application acknowledgment receipt.

5. The learned counsel has submitted that in the written statement, all material disclosures were made. He has submitted that in the Voters List of 1966, name of his parents were enlisted, namely, Jasi Seikh (father) and Moujan Nessa (mother). The next Voter List is of the year 1971 and it is contended that the same contains the name of his parents, namely, Jasimuddin (father) and Matujan (mother) along with her brother, Tabibar Rahman. Reference have also been made to the Voters Lists of 1989 and 1993. The next Voters List is of the year 1997 containing the name of the petitioner and his wife followed by the Voters List of 2018.

6. The learned counsel for the petitioner has relied upon a Gaonburah Certificate dated 29.06.2012 and has contended that the linkage has been proved with his father.

7. The learned counsel accordingly submits that in view of the availability of

the aforesaid materials, the impugned opinion could not have been rendered against the petitioner and therefore, the same requires interference.

8. *Per contra,* Ms. A. Verma, the learned Standing Counsel, Home Department has categorically refuted the stand taken on behalf of the petitioner. She submits that a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not. Therefore, the relevant facts are especially within the knowledge of the proceedee and accordingly, the burden of proving citizenship rests absolutely upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872 and this is mandated under Section 9 of the aforesaid Act, 1946. However, in the instant case, the petitioner utterly failed to discharge the burden. It is also submitted that rebuttal evidence is not mandatory in every case and would be given only if necessary. She further submits that the evidence of a proceedee has to be cogent, relevant, which inspire confidence and acceptable and only thereafter, the question of adducing rebuttal evidence may come in.

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

> "*17. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country.*

In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like under Section 6-A(1) (d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

10. She has also relied upon the case of ***Rashminara Begum Vs. UoI*** reported in ***2017 (4) GLT 346*** in the context of a written statement.

11. The learned Standing Counsel has submitted that there is not a single document which would establish the citizenship of the petitioner. The Voters List of 1997 would show that the petitioner was 45 years of age at that time and there is no Voter List of previous years containing his name. No link could be established with his projected father and the certificate issued by the Gaonburah, by no means, could be deemed as a proof of citizenship, more so, when the Gaonburah himself has not been examined. She has submitted that use of national emblem on such certificate is unauthorized.

12. In support of her submission that a certificate has to be proved from contemporaneous records, the learned Standing Counsel has relied upon the

judgment passed in the case of ***Romila Khatun Vs. Union of India*** reported in ***2018 (4) GLT 373*** and the following observations have been pressed into service:

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

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

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

to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion."

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

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

16. The learned counsel for the rest of the respondents have supported the submissions advanced on behalf of the Home Deptt. & NRC and have prayed for dismissal of the writ petition. They have submitted that this Court in exercise of its Certiorari jurisdiction does not act as an Appellate Court and it is only the decision making process which can be the subject matter of scrutiny. It is submitted that there is no procedural impropriety or illegality in the decision making process and therefore, the instant petition is liable to be dismissed. They have further submitted that the procedure adopted for adjudication of a reference by a Foreigners Tribunal is summary in nature and there is also a time frame for completion. It is also submitted that there is a question of national security by the unabated influx of foreign nationals and before any action is taken, the proceedee is given an opportunity whereby he or she is required to prove the citizenship through cogent, credible and acceptable evidence.

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

18. With regard to the aspect of burden of proof as laid down in Section 9 of the Act of 1946, the law is well settled that the burden of proof that a proceedee is an Indian citizen is always on the said proceedee and never shifts. In the said Section, there is *non-obstante* clause that the provisions of the Indian Evidence Act would not be applicable. For ready reference, Section 9 is extracted hereinbelow-

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

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

> "*22. This Act confers wide ranging powers to deal with all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including their arrest, detention and confinement. The most important provision is Section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person.*

Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person. In Union of India v. Ghaus Mohd. the Chief Commissioner of Delhi served an order on Ghaus Mohammad to leave India within three days as he was a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. In appeal the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent."

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

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

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

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

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

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

disclose the following:

(i) his date of birth;

(ii) place of birth;

(iii) name of his parents;

(iv) their place of birth and citizenship.

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

23. So far as the Voters Lists of 1966 and 1971 are concerned, apart from the fact that the same would not serve as link documents, it is found that there are lots of inconsistencies. In the Voter List of 1966, the names of the parents were Jasi Seikh (father) and Moujan Nessa (mother) and the village was Bhelenganari Part No.54. On the other hand, in the Voter List of 1971, the names are Jasimuddin (father) and Matujan (mother), there is also a change in the village to No.3 Nangli Char. Further, though the same contains the name of a projected brother, Tabibar Rahman, it is seen that the said projected brother was 27 years of age in 1971 and therefore, it was necessary for his name to be featured in the earlier Voters List especially, in the List of 1966 along with his parents. Though the Voters Lists of 1989 and 1993 have been referred, those have not been exhibited.

24. The Voters List which has been exhibited with the name of the petitioner is of the year 1997 wherein his age has been depicted as 45 years and his father's name as Jashim. The name of the village is also different which is Puthimari Chapori (PT). What is intriguing is the fact that though in 1997, the

petitioner was aged 45 years why Voters List of earlier years did not contain his name and have not been proved. As regards the Voters List of 2018, the same is not a certified copy. It is also noted that there is inordinate and unexplained delay in the Voters List produced and exhibited. As noted above, the first Voters List wherein the name of the petitioner finds place is of the year 1997 and the previous Voters List which has been relied upon is of the year 1971 and the huge gap of more than 25 years remains unexplained. Even thereafter, the Voters List produced, though uncertified is of the year, 2018 which is after a gap of about two decades.

25. So far as the Gaonburah Certificate dated 29.06.2012 is concerned, apart from the fact that there is unauthorized use of the National Emblem, the Certificate itself was not proved by the Gaonburah which is required under the law. Therefore, the same cannot be construed as proof. We also find force in the contention advanced on behalf of the respondents that the written statement is vague and we endorse the requirement of law as laid down earlier in the case of ***Rashminara Begum*** (supra), which is reproduced hereunder:

> "***25.*** *Written statement is the basic statement of defence of a proceedee before the Foreigners Tribunal. Keeping in mind the mandate of Section 9 of the Foreigners Act,1946, it is incumbent upon the proceedee to disclose at the first instance itself i.e., in his written statement all relevant facts specially within his knowledge having a material bearing on his claim to citizenship of India. Material facts pleaded in the written statement are thereafter required to be proved by adducing cogent and reliable evidence. It is also trite that a party cannot traverse beyond the pleadings made in the written statement."*

26. In the case of ***Bijoy Das Vs. UOI*** reported in***2018 (3) GLT 118,*** this Court

has laid down that in proceedings of this nature, oral evidence alone would not be enough and such evidence is required to be supported and corroborated by documentary evidence and contemporaneous records. However, in this case, the same has not been able to be done by the petitioner. We are of the view that the petitioner as proceedee had failed to discharge his burden to prove his citizenship.

27. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 21.07.2018 passed by the learned Foreigners Tribunal No.4th, Darrang, Mangaldai in F.T. 4th Case No. 83/SPR/2017 and FT Case No.5022/2011 (Ref. FT Case No.1193 dated 15.12.2010) does not call for any interference.

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

29. The records be returned to the concerned Foreigners Tribunal forthwith, along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant