

GAHC010046392020



2026:GAU-AS:12461

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

Case No. : WP(C)/1610/2020

AHMED HUSSAIN

S/O- LT. ABDUL MALLIK, R/O- VILL. CHARING PATHAR, P.O. CHARING, P.S.
MURAJHAR, DIST.- HOJAI, ASSAM, PIN- 782439.

VERSUS

THE UNION OF INDIA AND 6 ORS.

REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI. PIN- 110001

2:THE STATE OF ASSAM

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

HOME DEPTT.

DISPUR

GHY.-06.

3:THE DY. COMMISSIONER

HOJAI

DIST.- HOJAI

ASSAM

PIN- 782442.

4:THE ELECTION COMMISSION OF INDIA

NEW DELHI- 110001.

5:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS

ASSAM

GUWAHATI- 781005.

6:THE SUPDT. OF POLICE (B)

HOJAI
ASSAM.

7:THE OFFICER-IN-CHARGE
MURAJHAR POLICE STATION
DIST.-HOJAI
ASSAM
PIN- 782002

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

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

BEFORE

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Hon'ble MR. JUSTICE PRANJAL DAS

Advocate for the petitioner : Shri J.M. Sulaiman, Advocate.
Advocates for the respondents : Ms. D. Borpujari, CGC,
Shri N. Kalita, Advocate (on behalf of A.I.
Ali, SC, E.C.I.),
Shri G. Sarma, SC, Home Deptt. & NRC,
Shri P. Sarma, Addl. Sr. G.A., Assam.

Date on which judgment is reserved : 13.08.2026.

Date of pronouncement of judgment : 28.08.2026.

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 25.10.2019 passed by the learned Member, Foreigners' Tribunal, Nagaon Court No. 7th At Sankardev Nagar, Hojai in F.T. Case No. F.T./L/Case No. 1296/2016 arising out of SP's Case No. 731/2012. 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), Hojai, against the petitioner giving rise to the aforesaid F.T. Case No. F.T./L/Case No. 1296/2016.
- (ii) As per requirement u/s 9 of the Foreigner's Act, 1946, to prove that the proceedee is not a foreigner, the petitioner had filed the written statement on 13.03.2019 along with certain documents and adduced evidence through three numbers of DWs, namely, himself, his mother and maternal uncle.
- (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 J.M. Sulaiman, learned counsel for the petitioner. We have also heard Shri G. Sarma, learned Standing Counsel, Home Department; Shri P. Sarma, learned G.A., Assam; Shri N. Kalita, learned counsel appearing on instructions of A.I. Ali, learned Standing Counsel, Election Commission of India and Ms. D. Borpujari, learned C.G.C. We have also carefully examined the records which were requisitioned vide an order dated 28.10.2021.

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 the following documentary evidence:-

- (i) Ext-1 is the voter certified copy of 1965,
- (ii) Ext-2 is the voter certified copy of 1970,
- (iii) Ext-3 is the voter certified copy of 1977,
- (iv) Ext-4 is the voter certified copy of 2005,
- (v) Ext-5 is the voter certified copy of 2005,
- (vi) Ext-6 is the voter certified copy of 2010,
- (vii) Ext-7 is the voter certified copy of 2016,
- (viii) Ext-8 is the Photo copy of Elector Identity Card,
- (ix) Ext-9 Photo copy Elector Identity Card of OP's mother,
- (x) Ext-10 is the Transfer Certificate of Nur Nagar LP School,
- (xi) Ext-11 is the residency certificate issued by the Gaon Burah,
- (xii) Ext-12 is the Revenue paid receipt,

(xiii) Ext-13 is the Original Passport,

(xiv) Ext-14 is the Affidavit in respect of the name and year of birth of OP's grandfather and

(xv) Ext-15 is the Sale Deed.

5. The learned counsel for the petitioner has submitted that in the voters list of the year 1965, the name of his father Abdul Malik figures. The said voters list is however of Katigorah and it is contended that his father is originally from Barak Valley and subsequently shifted to Jamunamukh in the district of Nagaon. Reliance has also been placed on the voters list of 1970 and 1977 containing the name of his father. The petitioner has relied upon the voters list of 2005 in which, his name figures. The said voters list mentions the village as Charing Pathar in the district of Nagaon. His name has also figured in the voters list of 2010 which is relied upon.

6. The learned counsel for the petitioner has submitted that evidence was adduced by the petitioner himself as DW1, his mother as DW2 and his maternal uncle as DW3. DW2 had stated that her husband, Abdul Malik had expired 13 years back and the deposition was recorded on 01.04.2019. DW3, the maternal uncle had stated that the father of the petitioner was 65 years of age at the time of his expiry and the petitioner is living with him since the time he was aged about 4 years. The petitioner has relied upon the EPIC of his mother showing her to be the wife of Abdul Malik. Reliance has also been made upon a School Transfer certificate dated 15.07.2017 as per which, the date of birth of the petitioner was 03.03.1987 and he had left school while reading in Class-IV on 31.12.1997. He has also relied upon a Passport in the name of the petitioner,

the validity of which is for the period from 30.05.2013 to 29.05.2023.

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

9. The learned Standing Counsel, Home has further submitted that the written statement is the basic document which is supposed to lay down the foundation of the case of the proceedee and the written statement in the instant case is vague and the relevant facts have not been stated. There is no date of birth of the petitioner and there is no mention of any siblings. In this connection, he has relied upon the following observations made by the Hon'ble Supreme Court in

the case of ***Sarbananda Sonowal Vs. Union of India***, reported in **(2005) 5 SCC 665:-**

“17. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his 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. He has submitted that the voters list of 1965 containing the name of the projected father is wholly inconsistent with the voters lists of 1970 and 1977. Such inconsistencies are on the aspect of the name of the village, name of the grandfather and the age. He has also submitted that though a projection has been made that the petitioner along with his mother had shifted to his maternal

uncle's house, there is not even a single voters list of the petitioner with his mother. Further, DW3 who projected himself to be the maternal uncle has produced a voters list of 2005 wherein his age was 37 years. There is not a single voters list of the projected maternal uncle of prior period and there is no explanation. He also submits that the oral evidence of the DW2 and DW3 would not be relevant in absence of any documentary support. As regards the School Transfer certificate, Ext.-10, the same, apart from containing the State Emblem unauthorizedly, the author of the same was not examined and the same was issued after a considerable gap. In this regard, he has relied upon the case of ***Khudeja Khatoon Vs. Union of India & Ors.***, reported **2018 (3) GLT 347** and the following observations have been pressed into service:-

“13. Ext. B is a certificate dated 13.2.2016 issued by the Gaonburah certifying that Khudeja Khatoon was the wife of A. Matalib. This certificate also has got the State Emblem of India embossed on it and that too not as per the statutory format. For the reasons mentioned above, this certificate is also liable to be discarded. However, notwithstanding the same, even if we accept this certificate at its face value, it only certifies that Khudeja Khatoon was the wife of A. Matalib; thus no linkage is established with Jonab Ali; whom the petitioner claimed to be her father.

14. Ext. C is a certificate dated 13.2.2015 of the Gaonburah of Durabandhi village certifying that Khudeja Khatoon was the daughter of Lt. Jonab Ali. For the reasons mentioned above, this certificate was also not proved. Mere filing of a document or

marking of a document as exhibit is not enough. The certificate as well as the contents thereof would have to be proved, so also the truthfulness thereof, in accordance with law.”

11. In support of his submission that a document 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....”

12. He has also drawn the attention of this Court to the case of ***Nur Begum vs. Union of India and Ors.***, reported in **2020 (3) GLT 347** wherein certain observations regarding exercise of certiorari jurisdiction have been made which 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.”

13. He has also relied upon the case of the Hon’ble Supreme Court in ***Rupajan 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.

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

15. The learned counsel for the other respondents have supported the submissions made 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. They have 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 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.

16. 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.

17. 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."

18. 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 are 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."

19. 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.

20. 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.”

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

- (i) the date of birth,
- (ii) place of birth,
- (iii) name of the parents,
- (iv) their place of birth and citizenship.

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

22. So far as the voters list of 1965 is concerned, the name of the father of the petitioner has been stated to be Abdul Malik son of Ayub Ali which was from Katigorah. Though a submission has been made that there was a shifting to Jamunamukh, in the voters list of 1970, the name of the father has been written as Abdul Malik son of Aban Ali. In the said list, there is another name of one Anowar Bibi whom the learned counsel for the petitioner has stated to be his step mother. The step mother, however, is aged 37 years whereas the projected father is 35 years. Be that as it may, in the voters list of 1977, the name of the father has been written as Md. A. Malek son of Aban Ali. The first voters list in which the name of the petitioner’s figures is of the year 2005 which, however

does not contain the name of his parents but of certain other individuals. Similarly, in the voters list of 2010, the name of the petitioner figures with certain other individuals.

23. As regards the deposition, the DW2 is the projected mother Rejiya Begum who deposed that she had 6 children. However, in the written statement filed on 13.03.2019, there is no mention of any siblings. What is also important to note is that though DW3, the projected maternal uncle had deposed that the petitioner has been staying with him since the time he was aged 4 years, the voters list where the name of the petitioner appears, namely, 2005 and 2010, those do not contain the name of his projected mother though there are many other names. Further, there is not even a single voters list wherein the name of the projected mother appears along with the projected father and on the other hand, the name of one Anowara Bibi appears in the voters list of 1970 whom the petitioner has conveniently projected to be his step mother. Reliance upon the EPIC of the projected mother would be of no avail as EPIC is not a document to prove citizenship.

24. In so far the School Certificate 15.07.2017 is concerned, apart from the fact that the same was not proved by the author of the document or even any representative of the school, the same was admittedly issued after a gap of about two decades which will itself raise sufficient doubt on its genuinity.

25. As regards the Passport in the name of the petitioner, it is found that the same was not proved in accordance with law. No personnel from the passport office had adduced evidence regarding such issuance. It may be mentioned that the Passport was issued on 30.05.2013 whereas the Reference was initiated in

the year 2012.

26. We find force in the contention advanced by the learned Standing Counsel who has cited the case of ***Khudeja Khatoon*** (*supra*) and hold that the School Transfer Certificate, Ext.-10 would be of no avail to the petitioner. As regards oral evidence by DW2 and DW3, it is a settled law that such oral evidence without documentary support cannot be accepted as relevant evidence. We are of the opinion that taking into consideration the seriousness of the issue regarding influx of foreign nationals in the country, especially, the State of Assam, such yardstick would be in furtherance of the objective of the Foreigners Act. In this connection, the observations made by a Co-ordinate Bench in the case of ***Nur Begum*** (*supra*) may be referred which read as follows:

“6.The statement of DW-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 DW-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 DW-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.”

27. We are of the view that the petitioner as proceedee had failed to discharge his burden to prove his citizenship.

28. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 25.10.2019 passed by the learned Member, Foreigners’ Tribunal, Nagaon Court No. 7th At Sankardev Nagar, Hojai, in F.T. Case No. F.T./L/Case No. 1296/2016 arising out of SP’s Case No. 731/2012 does not call for any interference.

29. 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.

30. The records of the aforesaid FT case be returned to the concerned Foreigners Tribunal forthwith, along with a copy of this order.

31. While dismissing the writ petition on the grounds aforementioned, this Court is intrigued by the fact that a Passport has been claimed to have been issued in the name of the petitioner, being Passport No. K5157665. This Court fails to comprehend as to how such Passport could have been issued inasmuch as, prior to issuance of such Passport, which is effective from 30.05.2013, the present Reference was already pending. A mandatory pre-requisite for issuance of a Passport is a police verification. This Court fails to understand as to how a

favourable report could have been given in such police report when the aspect of the petitioner's citizenship itself was questioned by the Reference. Considering the seriousness of the matter where a proceedee facing a citizenship issue has been granted a Passport, this Court directs the Department of Home, Assam and the Director General of Police, Assam to cause an inquiry in the matter, cast responsibility and take appropriate step against the erring personnel. Action taken in this regard be intimated to the Registry of this Court expeditiously.

JUDGE

JUDGE

Comparing Assistant