GAHC010070672023

2026:GAU-AS:14369-DB

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

Case No. : WP(C)/1943/2023

CHAINA KHATUN
D/O- JALAL UDDIN AKAND @ JALAL UDDIN,
W/O- MOKADESH ALI,
VILL- PARERCHAR PART-II,
P.S- ABHAYAPURI,
DISTRICT- BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI.

4:THE STATE COORDINATOR
NRC
ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI- 781005.

5:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM.

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
ASSAM.

7:THE O/C
ABHAYAPURI POLICE STATION
BONGAIGAON

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the petitioner : Shri P. Rahman, Advocate.

Advocates for the respondents : Shri P.S. Bhattacharyya, CGC,
Shri A. I. Ali, SC, ECI,
Ms. A. Verma, SC- Home Deptt & NRC,
Shri P. Sarma, Addl. Sr. GA, Assam;

Date on which judgment is reserved : **17.09.2026**

Date of pronouncement of judgment : **25.09.2026**

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 19.10.2020 passed by the learned Member, Foreigners Tribunal Bongaigaon No. 2, Abhayapuri in FT Case No. BNGN/FT-2/APR/Case No.24/2016 (Ref. No. BNGN IMDT Case No. 301/2005). 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), Bongaigaon District, against the petitioner giving rise to the aforesaid FT Case No. BNGN/FT-2/APR/Case No.24/2016.

(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 25.05.2016 along with certain documents and adduced evidence through 2 (two) nos. of DWs.

(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 her and accordingly, the opinion was rendered declaring the petitioner to be a foreign national post 25.03.1971.

3. We have heard Shri P. Rahman, learned counsel for the petitioner. We have also heard Ms. A. Verma, learned Standing Counsel, Home Department & NRC; Shri P. Sarma, learned Addl. Senior Govt. Advocate, Assam, Shri N. Kalita, learned counsel appearing on behalf of Shri A. I. Ali, learned Standing Counsel, Election Commission of India and Shri K. Kalita, learned counsel appearing on behalf of Shri P.S. Bhattacharyya, learned CGC. It may be noted that this writ petition is pending at the motion stage since the year 2023 and had come up for consideration on a number of dates. Therefore, with the consent of the learned counsel for the parties, the matter was heard for disposal.

4. Shri Rahman, the learned counsel for the petitioner has submitted that the petitioner could prove her 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 evidence adduced by the 2 DWs and also the following documentary evidence.

(i) Ext-1 – Voter List of 1966.

(ii) Ext-2 - Voter List of 1970.

(iii) Ext-3 - Voter List of 1985.

(iv) Ext-4 - Voter List of 1989.

(v) Ext-5 - Voter List of 1997.

(vi) Ext-6 - Voter List of 2015.

(vii) Ext-7 - Electoral Photo ID.

(viii) Ext-8 - Voter List of 1997.

(ix) Ext-9 - Voter List of 2006.

(x) Ext.-10 - Voter List of 2008.

(xi) Ext.-11 - Voter List of 2011.

(xii) Ext.-12 - Voter List of 2016.

(xiii) Ext.-13 –PAN Card.

(xiv) Ext. 14 –Gift deed.

(xv) Ext. 15 –Gift deed.

(xvi) Ext. 16 –Pass book of SBI.

(xvii) Ext.17 –EPIC.

5. The learned counsel for the petitioner has submitted that in the written statement, all material disclosures were made. Reliance has been placed on a Gaon Panchayat Certificate dated 25.06.2015 and a School Transfer Certificate dated 11.04.2023 to establish a linkage of the petitioner with her father. The learned counsel has however candidly admitted that both the aforesaid two certificates were not exhibited or proved. Reliance has also been placed on the Voters List of the years 1997, 2006, 2008, 2011 and 2016 containing the name of the petitioner with her husband. He has also submitted that the case of the petitioner was proved by herself as DW 1 and by her father as DW 2.

6. 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.

7. *Per contra,* Ms. 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.

8. She 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 lacks details. 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***:

> "*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. Sometimes the place of birth of his grandparents 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.*"

9. She has submitted that there is not a single document to show the linkage of the petitioner with her father. As regards the GP Certificate, she submits that the same was not even mentioned in the written statement or evidence and has been sought to be introduced in the writ petition which is impermissible. She further submits that even for a duly exhibited Gaon Panchayat Certificate, the Hon'ble Supreme Court in ***Rupajan Begum vs. Union of India*** reported in ***(2018) 1 SCC 579,*** has laid down the principles with respect to the evidentiary value of such certificate. It has been laid down that a document has to be proved on two aspects, firstly, the authenticity of the same and secondly, the authenticity of the contents. Further, the certificate has a Disclaimer that it would be valid only if accompanied by the Legacy Data and in this regard, she has placed reliance upon the case of ***Monowara Bewa Vs. Union of India***, reported in ***2017 (2) GLT 143*** wherein the following observations have been made:

> "*68. As discussed above, Secretary of a Gaon Panchayat, in any case, cannot exercise any power or function beyond those assigned to a Gaon Panchayat under Section 19 of the 1994 Act. None of the provisions of the 1994 Act, 2002 Rules and the Assam Panchayat (Financial) Rules, 2002 provide for maintenance of a register relating to residents of any local area comprising the Gaon Panchayat. Therefore, the certificates that are being issued by the Gaon Panchayat Secretaries certifying residentship of the certificate holders within their jurisdictional area and counter-signed by the Block Development Officers are beyond the mandate of the 1994 Act and the Rules framed thereunder.*
>
> *72. Summing up, we hold that such a certificate has no statutory*

sanctity, being beyond the mandate of the 1994 Act and the Rules framed thereunder. We have already held that issuance of such certificates is contrary to the mandate of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, besides not being in the national interest."

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

11. The learned counsel for the other 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.

12. The rival submissions advanced in the Bar have been duly considered and the materials placed before this Court have been carefully perused.

13. 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 herein below-

> "*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.*"

14. 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.*"

15. 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.

16. 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."

17. 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) 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.

18. So far as the written statement is concerned, this Court finds force in the contention advanced on behalf of the respondents that the same is vague and there is no mention about the date or year of birth of the petitioner, name of the parents, siblings and only the name of her husband is mentioned. This Court has noticed that even in the verification accompanying the written statement, there is no mention about the name of the father of the petitioner. As regards the Voters Lists of 1997, 2006, 2008, 2011 and 2016, containing the name of the petitioner, those are not with the father/siblings but with her husband and therefore would not be relevant to establish a link with the father. The said Voters Lists containing the name of the petitioner are post the cut-off date and the year of birth of the petitioner appearing to be about 1979, establishment of such a link with the father is a *sine qua non* to claim citizenship. The only two documents which may be claimed as link documents are the GP Certificate dated 25.06.2015 and the School Transfer Certificate dated 11.04.2023. The learned State Counsel has raised an objection on the GP Certificate by contending that the same is inadmissible as evidence inasmuch as, the same contains the State Emblem. He has also cited certain case laws including the case of ***Rupajan Begum*** (supra) Even if a lenient view is taken regarding the said Certificate on the use of the State Emblem, i.e. in other words, notwithstanding the unauthorized use of such State Emblem which is illegal,

even the contents of the said Certificates have not been proved. It clearly appears that the certificate was not even exhibited before the learned Tribunal.

19. So far as the School Transfer Certificate is concerned, the same is dated 11.04.2023 and has been obtained after filing of this writ petition, pursuant to a liberty granted. Apart from the aspect of the absence of formally proving the document, a bare perusal of the same would show that the certificate is in the name of a completely different person, namely, "Sayena Begum" whereas the petitioner is "Chaina Khatoon". Even assuming that "Sayena" and "Chaina" have been misspelt, the surname is also different. We have also noticed that the certificate discloses the date of birth of the pupil as 02.04.1977 and this fact has not been uttered in the written statement. In fact, there is not even a whisper that the petitioner had attended the aforesaid school. In that view of the matter, the School Certificate is wholly unreliable. We find force in the contention advanced by the learned Standing Counsel that new documents cannot be introduced in the Writ Court which is exercising certiorari jurisdiction in examining the legality and validity of an opinion of the learned Foreigners Tribunal. We endorse the observations regarding exercise of Certiorari jurisdiction made by this Court in the case of ***Nur Begum vs. Union of India and Ors.*** reported in ***2020 (3) GLT 347*** which reads 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."

20. We are of the considered opinion that no link, worth its name has been able to be established by the petitioner with her father.

21. 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 her burden to prove her citizenship.

22. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 19.10.2020 passed by the learned Member, Foreigners Tribunal Bongaigaon No. 2, Abhayapuri in Ft Case No. BNGN/FT-2/APR/Case No. 24/2016 (Ref. No. BNGN IMDT Case No. 301/2005) does not call for any interference.

23. 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.

24. The copy of this order be communicated to the learned Tribunal.

JUDGE JUDGE

Comparing Assistant