GAHC010081172023

2026:GAU-AS:14021-DB

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

Case No. : WP(C)/2633/2023

ABDUL HAMID @ ABDUL HAMID SK @ LALJI SK
D/O- SOFIUR MIYA, @ SOFIYAL HOQUE
R/O- VILLAGE DUMRADHA PART I,,

P.S- GAURIPUR,
DIST- DHUBRI, ASSAM.
PRESENTLY RESIDINGAT VILLAGE TIAMARI PART II,
P.O AND P.S- GAURIPUR,
DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR, GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD, EW DELHI-110001

4:THE OFFICE OF THE STATE COORDINATOR
OF NATIONAL REGISTER OF CITIZENS
ASSAM, BHANGAGARH
GUWAHATI-05, DIST- KAMRUP (M)

5:THE STANDING COUNSEL
SPL. F.T AND BORDER

6:THE DEPUTY COMMISSIONER
P.O P.S AND DIST- DHUBRI
ASSAM, PIN-783301

7:THE SUPERINTENDENT OF POLICE (B)
DHUBRI, ASSAM, PIN-783301

8:THE OFFICER IN CHARGE (BORDER)
GAURIPUR, DIST- DHUBRI
ASSAM, PIN-78333

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 A. M. Khan, Advocate.

Advocates for the respondents : Shri G. Sarma, SC- Home Deptt & NRC,
Shri P. Sarma, Addl. Sr. GA, Assam;
Shri N. Kalita, Advocate,
(On behalf of Shri A. I. Ali, SC, ECI).
Shri A. K. Dutta, CGC.

Date on which judgment is reserved : **14.09.2026**

Date of pronouncement of judgment : **22.09.2026**

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 07.06.2022

passed by the learned Member, Foreigners Tribunal No. 5, Dhubri in Case No. FT-5/GPR/34/2019 (reference R/D Voter Ref. No. 372/D/07 in FT Case No.7638/GPR/11). 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), Dhubri District, against the petitioner giving rise to the aforesaid Case No. FT-5/GPR/34/2019.

(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 02.07.2019 along with certain documents and adduced evidence through 4 (four) 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 him and accordingly, the opinion was rendered declaring the petitioner to be a foreign national post 25.03.1971.

3. We have heard Shri A. M. Khan, learned counsel for the petitioner. We have also heard Shri G. Sarma, 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 A. K. Dutta, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated

04.10.2023.

4. Shri Khan, 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 evidence adduced by the 4 DWs and also the following documentary evidence.

(i) Ext-A - School Leaving Certificate.
(ii) Ext-B - Electoral Roll of 1966.
(iii) Ext-C - Electoral Roll of 1970
(iv) Ext-D - Electoral Roll of 1977
(v) Ext-E - Electoral Roll of 1985.
(vi) Ext-F - Electoral Roll of 1997.
(vii) Ext-G - Electoral Roll of 2013.
(viii) Ext-H - Electoral Roll of 2015.
(ix) Ext-I - Elector photo Identity Card.
(x) Ext.-J - land documents of Final Khatian dtd. 19.05.1961.
(xi) Annexure-K - duplicate carbon copy of application for inclusion of voter/elector names.
(xii) Annexure-L - final voter list of 2005.
(xiii) Ext.-M - EPIC of father.

5. The learned counsel for the petitioner has submitted that in the written statement, all material disclosures were made. Reliance has been placed on the Voters Lists of the years 1966 and 1970 containing the names of his grandparents. He has also relied upon the Voters List of 1977 containing the names of his grandmother, parents and uncle. The next Voters List which has been relied upon is of the year 1985 containing the name of the father followed

by the Voters List of 1997 containing the names of his parents and the petitioner himself. He has also relied upon the Voters List of 2013 containing the names of his projected parents with himself and his brother. The next Voters List relied upon is of the year 2015 wherein the petitioner claims his name to have figured. He has also referred to a Voters List of the year 2005 which however is an uncertified copy. He has also relied upon a Khatian of the year 1961 having the name of his father at Sl. No. 4. He has also submitted that a Reference was initiated against his mother, who, vide opinion dated 09.01.2023 was declared as Indian citizen.

6. In support of his submission that discrepancy in the age may be overlooked, the learned counsel for the petitioner has placed reliance upon a judgment of this Court dated 10.12.2021 passed in WP(C)/5500/2018 [***Nayan Ali Vs Union of India***]. He has also relied upon another case on the same subject of discrepancy namely, WP(C)/4258/2013 [***Anwar Ali Vs Union of India***].

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,* Shri 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,

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 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. 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***:

> "*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.*"

10. He has submitted that though reliance has been placed on certain Voters Lists, there are gross discrepancies in the names, ages and name of village. It is also not the case that the petitioner had taken steps to correct such discrepancies. He has submitted that DW 2, the projected father has declared

his age to be 69 years while filing the evidence-in-chief before the learned Tribunal in the year 2019. However, his name in the Voters List had existed only from 1977. He has also pointed out that there is gross inconsistency in the age of the projected father in the various Voters Lists. As regard the School Certificate is concerned, he has submitted that though the same contains the name of his mother, the school register from which the certificate was made does not contain the name of the mother and accordingly the said School Certificate has been rightly discarded. He submits that in absence of the School Certificate, there is no documentary evidence worth its name to establish a link of the petitioner with the projected father.

11. In support of his submission that a document has to be treated as a whole, he has relied upon the case of ***Basiron Bibi Vs Union of India*** reported in ***2018 (1) GLT 372*** and following observations have been pressed into service:

> "***30.*** *Reliance placed in the case of Abdul Matali @ Mataleb (Md.) (supra), can be of no assistance to the petitioner inasmuch, as it has already been clarified by this Court in previous decisions that the said decision did not lay down any law and was a decision confined to the facts and circumstances of that case. Regarding discrepancies in the voters' lists which the petitioner contended were not her creation being entered into by officials of Election Commission and therefore should not be used adversely against the petitioner, such contention is without any substance. The voters' lists were adduced as evidence by the petitioner herself to prove her case that she was not a foreigner but a citizen of India. Petitioner cannot insist that only that portions of the voters' lists which are in her favour should be accepted and those portions going against her should be over-looked. This is not how a document put forward as a piece of evidence should be examined. The document has to be appreciated as a whole."*

12. He has also relied upon the case of ***Aziz Miya Vs Union of India*** reported in ***2023 (4) GLT 246*** and the following observations have been

referred:

> "*15. We are constrained to observe that a mere claim by a suspected person by referring to a voters' list claiming a person therein to be his father is not a conclusive proof and that by doing so, the person has discharged the burden that he is not a foreigner. This is because there is also a further requirement to prove that the person who is reflected in the voters' list relied upon is actually the father of the person who makes the claim the claim will have to be substantiated with further material/materials acceptable in law."*

13. 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 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."*

14. 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 document 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 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.

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 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."

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) 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.

23. So far as the Voters Lists of the years 1966 and 1970 are concerned, there is a discrepancy in the name of the grandfather from Maharuddin Sheikh to Saharuddin Sheikh. However, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Sirajul Hoque Vs. State of Assam & Ors*****.** reported in **2019** ***(5) SCC 534*** the same can be overlooked as other informations appear to be consistent. However, the said Voters Lists only pertain to the grandparents and uncle and unless a link of the petitioner is established with those Voters Lists, the same would be irrelevant. So far as the Voters List of 1977 is concerned, the name of the projected father of the petitioner is Safior Rahman which is also the case in the Voters List of 1985. However, in the Voters List of 1985, the other names including the name of the projected mother is missing. The age of the projected father is also inconsistent. However, in the next Voters List which is of the year 1997, the name of the father is completely different which is Safial Hoque. There is also an inordinate and unexplained gap in production of the next Voters List which is of the year 2013 and strangely the

name of the petitioner is completely different which is Lalji Sk. Similar is the situation in the Voters List of 2015 in which, the names of the other family members are also not reflected.

24. So far as the School Certificate is concerned, the same has been discarded by the learned Tribunal on the grounds that the same contains the name of the mother which was not there in the admission register produced by the DW 4, the Head Master. That apart, the learned Tribunal had taken into consideration the aspect of the inordinate delay of about 30 years in obtaining the said certificate. We are of the opinion that such materials to come to the finding are relevant and germane and would not require any interference.

25. So far as the Khatian of the year 1961 is concerned, though it contains the name of the projected father of the petitioner, Safior Rahman, no link is established from the said document with the petitioner. The deposition of DW 3, who is representative of the Settlement Office would not come to any aid of the petitioner towards his claim for citizenship. As regards the Voters List of 2005 is concerned, the same is an uncertified copy in which, the name of the petitioner has been prefixed with "D".

26. So far as the reliance upon the opinion rendered in respect of the projected mother of the petitioner, this Court is of the opinion that each Reference has to be decided on its own merits. This Court is of the view that when the principles of law has been laid down that in absence of a specific reference, a person cannot be declared as a foreigner on the sole basis that a family member has been declared as a foreigner, the corollary would be that mere declaration of a proceedee as an Indian citizen *per se* cannot be the sole basis of declaring a projected family member as Indian citizen. This Court also

finds force in the submission advanced by the learned Standing Counsel that there was not even a whisper by the petitioner regarding his mother's case in the Tribunal.

27. 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.

28. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 07.06.2022 passed by the learned Member, Foreigners Tribunal No. 5, Dhubri in Case No. FT-5/GPR/34/2019 (reference R/D Voter Ref. No. 372/D/07 in FT Case No.7638/GPR/11) 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 learned Tribunal be returned forthwith, along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant