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2026:GAU-AS:14370-DB

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

Case No. : WP(C)/2572/2023

TARABHANU NESSA
W/O- AMIR CHAND,
(D/O- LATE FALU SK @ LATE KALU @ LATE KALU SK),
R/O- VILLAGE- BUDUCHAR,
P.S.- MATIA,
DISTRICT- GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA, SHASTRI BHAWAN,
TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE HOME DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM
PIN- 783101.

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
ASSAM
PIN- 783101.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR NRC
ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR, J A SIKDAR,MR. S I TALUKDAR

Advocate for the Respondent : DY.S.G.I., SC, ECI,SC, NRC,SC, F.T,GA, ASSAM

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 AR Sikdar

Advocates for the respondents : Shri J. Payeng, SC- Home Deptt. & NRC,
Shri P. Sarma, GA, Assam;
Shri A.I. Ali, SC-ECI.
Ms. J. Sarma, CGC.

Date on which judgment is reserved : **15.09.2026**

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 22.04.2022

passed by the learned Foreigners Tribunal 5th, Goalpara in Case No. FT/5/700/MA/18 (Reference FT Case No.1054/07). 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), Goalpara District, against the petitioner giving rise to the aforesaid FT/5/700/MA/18.

(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 11.02.2019 along with certain documentsand adduced evidence through 4 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 AR Sikdar, learned counsel for the petitioner. We have also heard Shri J. Payeng, learned Standing Counsel, Home Department& NRC;Shri P. Sarma, learned GA, Assam;Shri A.I. Ali, learned Standing Counsel, Election Commission of India and Ms. J. Sarma, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated 17.10.2021.

4. Shri Sikdar, 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 held the petitioner to be a citizen of India. In this regard, he has referred to the evidence adduced through 4 DWsand also the following documentary evidence:

(i) Ext-(i)– NRC copy of 1951;

(ii) Ext-(ii) –Sale deed;

(iii) Ext-(iii) – Voters List of 1966;

(iv) Ext-(iv) – Voters List of 1970;

(v) Ext-(v) – Voters List of 1979;

(vi) Ext-(vi) – Voters List of 1985;

(vii) Ext-(vii) – Voters List of 1997;

(viii) Ext-(viii) – Voters List of 2005;

(ix) Ext-(ix) – G.P. Certificate;

5. Shri Sikdar, learned counsel for the petitioner has submitted that in the written statement, all material disclosures were made. Reference has been made to an NRC of 1951 containing the name of her elder sister. He has relied upon the Voters List of 1966 containing name of her parents, brothers and sister-in-law and similar Voters Lists of 1970 and 1979. The name of the petitioner has also figured in the Voters List of 1985 which however is with her husband. She has also relied upon the similar Voters Lists with her husband of 1997 and 2005. Reliance has also been placed on a Panchayat Certificate dated 01.07.2015. It is contended that the said Certificate is proved by the Panchayat Secretary as DW4. The petitioner also relies upon her evidence as DW1, that of her elder sister as DW2 and nephew as DW3.

6. In support of his submission, he has relied upon the case of ***Sirajul***

Hoque Vs. State of Assam & Ors**.** reported in **2019 (5) SCC 534**wherein the Hon'ble Supreme Court has held that minor inconsistencies in the names in the Voters List may be overlooked if other aspects are consistent. Reliance has also been placed on the Division Bench judgment of this Court in the case of ***Moslem Mondal Vs. UoI*** reported in ***2010 (2) GLT 1*** and the Full Bench judgment in the name of the same parties reported in ***2013 (1) GLT 809***.

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 Payeng, the learned Standing Counsel, Home Department has categorically refuted the stand taken on behalf of the petitioner. Hesubmits 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. Hefurther 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 totally vague. There is no date or year of birth of the petitioner and there are no details of the family members. 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. 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. He has submitted that there is no mention in the written statement regarding the fate of the parents after 1979 and the Voters Lists having the name of the petitioner are not along with her parents but with her husband. The only document which has been relied upon by the petitioner to establish such a link is the Panchayat Certificate dated 01.07.2015. He has submitted that

such Certificate cannot establish citizenship and no contemporaneous records were proved. He has relied upon the case of the Hon'ble Supreme Court in ***Rupajan Begum Vs. Union of India*** reported in ***(2018) 1 SCC 579***. In support of his 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. …"*

11. He has also relied upon a judgment dated 04.04.2018 passed by this Court in ***WP(C)/317/2017 [Halim Khan Vs. UoI]*** and the following observations made in interpretation of the judgment in ***Rupajan*** (supra) have been pressed into service:

> "*Lastly, in Rupjan Begum Vs. Union of India, reported in (2018) 1 SCC 579, Supreme Court has clarified that Gaon Panchayat Certificate is basically for married woman and is used as a linkage document of such married woman. It has been clarified that such a certificate by no means is proof of citizenship. Such certificate has to be verified at two stages i.e., verification of the genuineness of the document and secondly, verification*

of the contents. There is nothing on record to show that such verification had taken place. Therefore, no reliance can be placed on Ext-3."

12. He has also drawn the attention of this Court to the case of ***Nur Begum Vs. Union of India*** reported in ***2020 (3) GLT 347*** wherein this Court has laid down that the aspect of oral evidence in foreigner case in the following terms:

"*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.*"

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

14. 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.

15. 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.

16. 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."

17. 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."

18. 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.

19. 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 Vs. Bikartan Das [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."

20. 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.

21. As regards the NRC of 1951 is concerned containing the name of the projected sister, the same is not a relevant material for establishing citizenship. So far as the Voters Lists of 1966, 1970 and 1979 are concerned, those by themselves would not prove the citizenship of the petitioner unless she is able to establish a link of herself with the persons in the said Voters List who are projected to be her family members. The Voters List of 1985 will not, by any stretch of imagination establish her link with her father as the said Voters List is with her husband and is of a later period than the cut-off date. We have also noticed in the said Voters List, the petitioner shown to be 30 years of age and therefore, there ought to have been Voters List of prior period containing her name along with her father and other family members. Subsequent, Voters Lists of 1997 and 2005 would not be relevant as those could not serve as link documents. So far as the reliance on the Panchayat Certificate dated 01.07.2015 is concerned, this Court finds force in the submission advanced by the learned Standing Counsel, Home Department who by relying upon the case of ***Rupajan Begum*** (supra), has submitted that such GP Certificate cannot establish citizenship. For ready reference, the relevant observations made by the Hon'ble Supreme Court are extracted hereinbelow:

"*15. The certificate issued by the G.P. Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and by no means establishes any claim of citizenship of the holder of the certificate. This is made clear in the illustrative list of documents itself by specifying the same to be only a supporting document. The certificate in question only enables its holder to establish a link between the holder and the person from whom legacy is claimed. It has been made clear in the several reports of the learned State Coordinator, NRC, Assam that a claim accompanied by such a certificate, without details of the legacy person, is to be discarded and in the event information as to the legacy person has been furnished, the certificate in question is to be used for the limited purpose of providing a linkage after due enquiry and verification.*

16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents,

as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

17. The above apart, from a conjoint reading of the provisions of the Assam Panchayat Act, 1994 i.e. Sections 19(1)(vi), 21 and 122, it would appear that directions for issuance of such certificate can come within the ambit of the jurisdiction of the authorities under the Act in which event the view taken by the High Court and the contentions advanced on behalf of the State that the said document is a 'private document' would be legally fragile."

22. We have also noted that the Panchayat Certificate contains a Disclaimer at the foot and would be valid only if accompanied by certain other documents which admittedly was not done in the present case. This Court finds force in the argument of the learned Standing Counsel that the Panchayat Certificate is only on the aspect of marriage which was in the year 1980 and has been obtained after an inordinate delay of more than 3 decades. He has also submitted that there is no mention of village "Buduchar" amongst the villages mentioned in the said Certificate of the Gaon Panchayat in which the petitioner claims to reside.

23. So far as the oral evidence is concerned, law is very clear that oral evidence alone cannot prove citizenship unless the same is corroborated and supported by cogent and relevant documentary evidence which are trustworthy. We also find force in the contention advanced by the learned Standing Counsel that the evidence of the projected sister DW2 would not be of any relevance in absence of a common Voters List with the petitioner to connect her with the projected father.

24. The cases relied upon by the petitioner would not come to the aid of the petitioner to buttress her case. As noted above, in the case of ***Sirajul Hoque*** (supra), the Hon'ble Supreme Court has held that minor inconsistencies may be overlooked if other aspects are consistent. The facts of the present case are not at all similar. As regards the principles laid down in the case of ***Moslem Mondal*** (supra), both the Division Bench and Full Bench, there is no dispute to the propositions and principles of law. However, in the instant case, the impugned opinion clearly appears to have been passed on the basis of relevant consideration.

25. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 22.04.2022 passed by the learned Foreigners Tribunal 5th, Goalpara in Case No. FT/5/700/MA/18 (Reference FT Case No.1054/07) does not call for any interference.

26. 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.

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

JUDGE **JUDGE**

Comparing Assistant