GAHC010184382022

2026:GAU-AS:15643-DB

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

Case No. : WP(C)/6051/2022

AKLIMA BEGUM
D/O- ABID ALI SHEIKH @ LATE ABED ALI,
W/O- JABBAR SHEIKH,
R/O- VILLAGE AMLOKHI DOLONI,
P.O AND P.S- HALEM,
DIST- SONITPUR (NEW BISWANATH) , ASSAM

VERSUS

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

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

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

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

5:THE DEPUTY COMMISSIONER
BISWANATH
DIST- BISWANATH
ASSAM
PIN-7984176
ASSAM
PIN-784001

6:THE SUPERINTENDENT OF POLICE (B)
BISWANATH
DIST- BISWANATH
ASSAM
PIN-7984176
ASSAM
PIN-78400

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE PRANJAL DAS

For the petitioner : Mr. S.C. Biswas, Mr. F.A. Hasan, Advocate.
For respondents : Mr. B. Sharma, CGC.
: Mr. G. Sarma, SC, FT & Border.
: Mr. P. Sarmah, Addl. Sr. Govt. Advocate.
: Mr. A.I. Ali, SC, ECI.

Date on which judgment is reserved : 08.10.2026

Date of pronouncement of judgment : 14.10.2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J.)

Heard Mr. S.C. Biswas and Mr. F.A. Hassan, learned counsel for the petitioner. Also heard Mr. G. Sharma, learned standing counsel for FT and Border matters; Mr. N. Kalita, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for ECI; Mr. B. Sharma, learned CGC for the Union of India; and Mr. P. Sarmah, learned Addl. Senior Government Advocate for the State.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Aklima Begum, has assailed the opinion 30.06.2022 passed by the learned Member, Foreigners' Tribunal 4th, Tezpur at Gohpur in F.T. (T-4)/GPR. Case No. 1058/2016 [arising out of S.P. Ref. Case No. – Tz(B)/98/567/GPR LAC/ dated 06.04.1998; ERO. Ref. No.-BNE.25/97/8/ dated 18.11.1997: D.C. Case No.2090/2013], by which she was declared to be a foreigner of post 25.03.1971 stream.

3) Assailing the impugned opinion, the learned counsel for the petitioner has submitted that the verification report on the basis of which the reference was made was blank and therefore, it was submitted that the learned Tribunal could not have examined the records beyond the scope of reference. It has been submitted that the exhibited documents were not properly appreciated by the learned Tribunal and accordingly, the impugned opinion is not sustainable. It was further submitted that the records were casually dealt with by the learned Tribunal as the exhibited documents do not contain the seal and signature of the learned Tribunal. It was submitted that the LVO Report was

blank and not properly filled-up and therefore, the investigation was not proper, which vitiates the reference.

4) In support of his submissions, the learned counsel for the petitioner had cited the following cases, viz., (i) *Rafiq and Anr. v. Munshilal and Anr., (1981) 2 SCC 788*, (ii)*Sona Kha v. Sona Khan v. Union of India & Ors., 2021 (3) GLT 12*, (iii) *Santosh Das v. Union of India & Ors., 2017 (2) GLT 1065*, (iv)*Thatithoi Chiru & Ors. v. Ningampao Kabui (deceased, by LRs) & Ors., AIR 1989 Gau 7*.

5) Per contra, the learned standing counsel for the FT and Border matters has made his submissions in support of the impugned opinion. In support of his submissions, the learned standing counsel for the Border and FT matters has cited the case of *Shukurjan Nessa @ Sukurjan v. The Union of India & Ors., W.P.(C) 245/2019, decided on 28.02.2025*.

6) Considered the submissions and perused the records of the learned Tribunal, which was called for and received.

7) On perusal of the Tribunal's records, it appears that on receipt of notice of the proceedings, the petitioner appeared before the learned Tribunal and had she had filed her written statement as well as her evidence-on-affidavit on 21.01.2020. She was cross-examined on 05.02.2020. It may be stated that on 25.02.2020, the petitioner had examined one Manowar Hussain as DW-2, who had projected himself to be the brother of the petitioner and he was cross-examined and discharged. The records reveal that on four occasions, the learned Tribunal had fixed the matter for argument. Ultimately, the matter was fixed on 22.04.2022 for passing of the opinion after hearing the learned Assistant Govt. Pleader. However, on 20.04.2022, the petitioner appeared before

the learned Tribunal and filed her additional written statement as well as her additional evidence-on- affidavit on 20.04.2022 and the learned Asst. Govt. Pleader had cross-examined the petitioner on the same date and the matter was re-fixed on 22.04.2022 for passing the opinion.

8) However, the opinion could not be delivered on 22.04.2022 and the matter was again taken up on 18.06.2022 and on the said day, on a prayer made by the petitioner, the petitioner was permitted to examine 2 (two) more witnesses. Accordingly, on 18.06.2022, the petitioner had examined Mohammed Akbar Hussain, the projected brother of the petitioner as DW-3, as well as one Jigna Ram Sarmah, the LDA in Deputy Registrar's Office as DW-4. The said DW-3 and DW-4 were cross-examined on the same day and discharged. Accordingly, the matter was fixed on 30.06.2022 for passing final opinion.

9) It may be stated that in her written statement, the petitioner, apart from usual denial, had stated that she is the daughter of Abed Ali and Raju Bala Khatun; she was born at village town Kasalukhua Panigaon, Mouza-Town, P.S.Sadar, District-Nagaon, Assam. She had stated that the name of her father is recorded in the voter details of 1966 and her mother's name is recorded in the voter list of 1971 and they were permanent of the same village. She stated that she was casting her vote and her voter details is recorded in the voter list of Ward No. 20, Shankardev Path, P.S. Nagaon Sadar, in the district of Nagaon and according to her PAN card, her date of birth is 01.10.1971. She had stated that she was presently living with her husband at Amlokhi Doloni, Mouza-P.O. and P.S.-Halem, district-Biswanath, Assam, for her husband's business purpose. The petitioner had also referred to the voter list of 1966 and 1971 of the petitioner and her family members; her Voter identity card; her PAN card and legacy data in the name of the father of the petitioner. In her additional

written statement filed on 20.04.2022, the petitioner had stated that her father's name is Md. Abed Ali, resident of village-Panigaon, Mouza-Nagaon, P.S. Nagaon Sadar, District- Nagaon. The name of her husband is Md. Jabbar Seikh, resident of village No.1, Mullapatti, Mouza-Kachamari, P.S.- Nagaon Sadar, District- Nagaon. She had also stated that the information referred hereinbefore are in Kabin nama (marriage certificate under Muslim Marriage Act) dated 15.02.1989 of Md. Jabbar Seikh and Aklima Begum.

10) The statements made by the petitioner in her written statement were reiterated in her evidence-on- affidavit and the statements made in her additional written statement were reiterated in her additional evidence- on-affidavit. The petitioner had exhibited the following documents, viz., (a) certified copy of voter list of 1966 and 1971 in the name of her father and mother (Ext.i); (b) certified copy of voter list in name of her and her family (Ext.ii); (c) her voter id card (Ext.iii); (d) her PAN Card (Ext.iv); (e) legacy data in the name of her father (Ext.v).

11) In her cross-examination, the DW-1 had stated that her father had 5 (five) brothers, namely, Hyder Ali, Abed Ali, Dil Mamud, Noor and Muslim. Her name was Raju Bala. Her father had expired about 25 years back but her mother was still alive. Her uncles have casted their vote with her father. Originally, her father was born at Nagaon, Panigaon. She was married at Haibargaon in Nagaon with one Jabbar Seikh. Her father did not have landed property. Her father had casted vote and her mother was still casting her vote. They are 8 (eight) brothers and sisters, namely, Amir Hussain, Monowar Hussain, Sanowar Hussain, Akbar Hussain, Pyar Hussain, herself, Hazara Begum and Babul Hussain. She had taken admission in School but she did not pursue her studies further. She had stated that she had submitted certified copy of

voter list of 1966, 2018, Voter id Card, PAN Card and legacy data. In her cross-examination in respect of additional evidence, the petitioner had stated that she was married to Jabbar Seikh of Nagaon, Dhing No.1 Mullapatty. Father of Jabbar Seikh is Sheikh Badshah. She was married to Jabbar Seikh in the year 1989. Her father is Abed Ali, son of Tarif Ali Seikh. Originally, she is from Nagaon, Panigaon.

12) The records further reveal that the following documents are available in the learned Tribunal's records, viz., 2 (two) certified copy of voter lists of 1966; certified copy of voter list of 2018; proved in original photocopy of voter id card of the petitioner, bearing seal and signature of someone, who is not the learned Member; proved in original photocopy of PAN card of the petitioner, bearing seal and signature of someone who is not the learned Member; proved in original photocopy of voter id card of the Manowar Hussain, bearing seal and signature of someone who is not the learned Member. No statement has been made in the writ petition to disclose the name and designation of the person whose signature appears in three photocopies referred above. It may also be stated that there are photocopies of several other documents in the learned Tribunal's records, but neither the original of those documents were exhibited nor their proved in original photocopies are marked as exhibits.

13) The learned counsel for the petitioner had submitted that the learned Tribunal had handled the exhibited documents in a casual manner, but on a perusal of the Tribunal's record, it is noticed that though some of the documents were marked as exhibits that were proved in original, but the said documents are also not marked by giving exhibit numbers.

14) The DW-2 had claimed to be the brother of the petitioner. He

had stated that they were 8 (eight) brothers and sisters and disclosed their respective names. The name of his grandfather is Late Tarib. His father had five brothers and sisters and disclosed their respective names. He had stated that all his father's brothers had casted their vote at Nagaon. The husband of petitioner is Jabbar Sheikh. They went to reside at Halem for business purpose. In his cross-examination, DW-2 had stated that his grandmother is Raju Bala. As per his memory, his elder brother Amir Hussain had casted his vote with his father. His father had expired in the year 1996-1997 and had lastly casted his vote in the year 1993. He had also casted his vote with his father. His mother was still alive and she was staying with him and still casting her vote. His father did not have landed property. He has two children. Petitioner has 4 (four) children, namely, Ekbal Sheikh, Imran Sheik, Alman Sheikh and Anju Sheikh (nickname) and he did not his original name. He had stated that all the children of the petitioner had casted their vote. The petitioner had casted vote after her marriage, i.e. after 1983.

15) The DW-3 had stated that the petitioner is her sister. They are 8 (eight) brothers and sisters and all of them including Aklima had casted their vote. His sister Aklima had casted vote at No.1 Mulakati, Dhing Syndicate. His parents had casted their vote. His father had 5 (five) brothers and sisters and disclosed their names. Abed Ali had 8 (eight) children whose names were disclosed by DW-3. He had stated that his sister did not have any formal education. From 1991-1992, his sister was casting her vote from Dhing Centre after marriage and she was married in 1989. Her husband is Jabbar Seikh. In his cross-examination, DW-3 had stated that his grandfather is Late Toyab Ali Sheikh and grandmothers are Umarjan and Ambia. He was born in Nagaon, Panigaon. His father had died in the year 1992 and until his death, he was

casting his vote. His father does not have landed property. Originally, they are from Panigaon, Nagaon and her sister was given marriage at Dhing and after marriage, his sister had casted vote. The neighbour of petitioner's husband are Late Makbul and Hoku at Dhing. The husband of the petitioner has 5 (five) brothers, namely, Sattar, Jabbar, Rezak, Kadir and he did not remember the other name. The petitioner has 4 (four) children and the age of the elder is 32. At Panigaon, they all brothers used to reside and all had casted vote.

16) Sri Jigna Ram Sarmah, the DW-4 had stated in his examination-in- chief that on receiving summons he had appeared before the Tribunal. The Kabil nama is of Nagaon Sadar Kazi, which was finally submitted to their office and the record of submission of Kabil nama is brought by him before the learned Tribunal. The name of Md. Abdul Jabbar Skeikh, son of Sheikh Badshah of village- No.1 Mullapatti, Mouza- Kachomari, Dist. Nagaon is there in the record which he had brought. Another name, Musstt. Aklima Begum, daughter of Abed Ali, village- Panigaon Mouza/P.S.- Nagaon, Dist. Nagaon, is shown according to the record and the serial number is 69/1989 and the Kabil was registered on 15.02.1989. In his cross-examination, the DW-4 had stated that the Kabil nama, which he had brought shows the name of Abdul Jabbar Sheikh. The signature of the bride Aklima Begum as well as the signature of her guardian was not there in the record which he had brought before the learned Tribunal.

17) Thus, none of the exhibited documents have been proved in accordance with law. No attempt has been made to exhibit the contents of the exhibited documents. It is also seen that the petitioner had not disclosed her relationship with names which appear in the voters list of 1966 and 2018. The petitioner had made no attempt to produce and exhibit any document from

where one can get the family of the petitioner's (i) projected grandfather; (ii) projected father; and (iii) her own family. The petitioner is not an Income Tax payee and the petitioner had not exhibited any IT return, if any, submitted by the petitioner before the Income Tax Department. Moreover, PAN Card and voter id card are not pre-1971 document and therefore, does not conclusively prove that the name of the relation of the petitioner, as disclosed therein are in any manner related to her and that is not how relationship is proved. The petitioner did not make any attempt to prove her application, based on which voter id card and PAN card had been issued.

18) This Court, in the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) 3547/2016, decided on 09.05.2018*, had held that EPIC and PAN Card is not a valid piece of evidence in absence of supporting evidence and it was further held that they were post reference document. Moreover, it was also held that if date of birth is known to the petitioner, it should have been mentioned in the written statement.

19) Though the petitioner had examined her projected brothers as DW-2 and DW-3, but the petitioner had made no attempt to either prove that the DW-2 and DW-3 had casted their vote with her father or to prove that she had casted her vote with DW-2 and DW-3. In the said context, it may be stated that entries made in the voter list would only prove that the person whose name appears in a particular voter list was a voter of that year from the village concerned, but mere entries in the voter list is not sufficient to prove relationship between voters of two distinct and separate voter list. It is well known that voter lists are available in public domain and there is no statutory bar for anyone to obtain any particular voter's certified copy. Therefore, relationship of the petitioner with her projected father and projected brothers

can only be proved by supporting cogent, reliable and admissible evidence, which the petitioner had failed to prove. Though the mother of the petitioner is alive, but proof of her name appearing in the voter list is not disclosed. In fact, in her written statement, the petitioner had not disclosed the name of her mother.

20) Therefore, the evidence of the DW-1, DW-2 and DW-3 are not found to help the petitioner in any manner whatsoever.

Lack of signature in Kabin Nama:

21) The Kabin Nama (also spelt as Kabil nama at a few places) produced by the DW-4 before the learned Tribunal, admittedly, did not contain the signature of the petitioner and her guardians. Under the Assam Moslem Marriage Act, 1935 and Assam Moslem Marriage Rules, 1936, the marriage register must contain the signature of the groom and the bride. As per Rule 51 of the Assam Moslem Marriages and Divorces Registration Rules, 1935, a Moslem Registrar or other officer whom the District Registrar may depute can only produce the marriage register to prove the same before a Court of law. Thus, the defect in the kabin nama, which does not contain the signature of the petitioner and not proved in accordance with law, renders the document as inadmissible in evidence. Thus, the evidence of the DW-4 also does not help the petitioner to establish her case in any manner whatsoever. Thus, as the DW-4 was an LDA of the Office of the Deputy Registrar, Nagaon and not the Moslem Registrar or person authorized by the District Registrar, did not exhibit his authority to exhibit the marriage register. Nonetheless, be that as it may, as per his evidence, the Kabin nama, brought by him did not contain the signature of the bride, Aklima Begum and her guardian was not there. Rule 31 of the Assam Moslem Marriages and Divorces Registration Rules, 1935, requires person who,

by Section 10 of the Assam Moslem Marriages and Divorces Registration Act, 1935, are required to sign the register if the entries are admitted to ne correct. Section 10 of the Assam Moslem Marriages and Divorces Registration Act, 1935 prescribes the persons who may sign the entries made in the Moslem Marriage Register, which includes the parties to the marriage, and if the parties are minor, the entries are required to be signed by their lawful guardians. Thus, the Marriage Register and the entries therein are not found to be proved in accordance with the prescription of the Assam Moslem Marriages and Divorces Registration Act, 1935 and Rules framed thereunder.

Blank LVO Report:

22) One of the submissions was to the effect that the LVO report was blank and not properly filled up, for which there was no proper investigation, which had vitiated the proceedings and consequently, the impugned opinion. The said issue is taken up.

23) In this case, the reference was made by the Superintendent of Police (Border), Sonitpur, Tezpur (now Biswanath), on receipt of communication bearing no. BNE.25/97/7 dated 18.11.1997, issued by the Electoral Registration Officer, 78 No. Gohpur L.A.C., whose name is disclosed in Form-VII, available in the Tribunal's record, which is accompanied with a three page Local Verification Report (Annexure-A) by the Local Verification Officer. In the said LVO Report dated 27.09.1997, it has been mentioned at two places against serial no. 6 to 16 as 'nil". The same is suggestive of the fact that no documents produced by the petitioner during field verification.

24) Therefore, this is not a case where any enquiry was made under the provisions of Foreigners Act, 1946 or Rules framed thereunder, where

investigation is done under the authority of the Superintendent of Police (Border). The jurisdictional Superintendent of Police (Border) is the prescribed authority to make reference before the Illegal Migrants (Determination) Tribunal constituted under the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983 and Rules framed thereunder.

25) Therefore, in this case, the E.R.O., 78 Gohpur LAC had addressed the reference to the Chairman, Illegal Migrants (Determination) Tribunal, Sonitpur, Tezpur. On receipt of the same, the police authority had opened a case diary on 16.03.1998, to fill-up the Form-VII under the IM(DT) Act. Accordingly, the Form-VII was sent to the Superintendent of Police (Border), Sonitpur, Tezpur. Accordingly, the Superintendent of Police (Border), Sonitpur, Tezpur, who is the prescribed authority to submit reference, had forwarded the reference made by the E.R.O., 78 Gohpur LAC, Biswanath, to the Chairman, IM(D)T, Sonitpur, Tezpur, vide memo no, Tz(B)/98/567/GPR LAC/ dated 06.04.1998.

26) There is an important facet, which is contained in the judgment and order of this Court in the case of *Sayam Uddin (supra)*, which must be referred to. This Bench is in respectful agreement with the said judgment and therefore, paragraphs 11 to 22 thereof are quoted below:-

> ***11***. *In the year 1997, Election Commission of India had undertaken an intensive revision of electoral rolls in the State of Assam as apprehensions were expressed from various quarters that the electoral rolls were infested with the names of foreigners/illegal migrants. In the course of this exercise citizenship status of as many as 3,13,046 persons whose names were in the draft voters lists were found to be doubtful and accordingly they were marked as doubtful "D" voters in the electoral rolls after local verification.*
>
> ***12***. *Legality of this exercise was challenged before this Court in HRA Choudhury Vs Election Commission of India, reported in 2002 (1) GLT 1. The challenge made was rejected by a Division Bench of this Court. In HRA Choudhury (supra) this Court examined the guidelines dated 17.07.1997 of the Election*

Commission of India laying down the procedure to carry out the exercise.

12.1. As per paragraph 3.8 of the guidelines the Electoral Registration Officer was required to consider the verification report received from the Local Verification Officer. If he was satisfied on such report and such other material/information as may be available about the eligibility of a person, he should allow his name to continue on the electoral roll. Where, however, he was not so satisfied and had reasonable doubt about the citizenship of any person, he was required to refer such doubtful cases to the competent authority under the then Illegal Migrants (Determination by Tribunals) Act, 1983 or the Foreigners Act, 1946 as the case may be. For convenience of the Electoral Registration Officers, Election Commission devised proformas.

12.2. As per paragraph 3.9, after the case of a person was referred by the Electoral Registration Officer to the competent authority, he should wait for the decision of the relevant Tribunal in relation to that person and act according to such decision.

12.3. As per paragraph 3.10, where the relevant Tribunal decided that any such person was not a citizen of India, Electoral Registration Officer should proceed under Rule 21 A of the Registration of Electors Rolls, 1960 to have the name of such person deleted from the electoral roll before it was finally published.

12.4. This Court in HRA Choudhury (supra) held that such guidelines and decision of the Election Commission were in accordance with Article 324 of the Constitution of India besides conforming to the principles of natural justice. It was held that such guidelines cannot be held to be arbitrary or vitiated by mala fide or partiality.

***13**. At this stage, it may be mentioned that the Illegal Migrants (Determination by Tribunals) Act, 1983 is no longer in existence, the same having been declared unconstitutional by the Supreme Court in Sarbananda Sonowal Vs Union of India reported in (2005) 5 SCC 665. Therefore, in so far paragraph 3.8 of the guidelines dated 17.07.1997 is concerned, the reference would be under the Foreigners Act, 1946.*

***14**. The above exercise was repeated in the year 2005 with the Election Commission of India again going for intensive revision of electoral rolls in the State of Assam taking 01.01.2005 as the qualifying date. In this connection, guidelines dated 17.06.2004 were issued by the Election Commission of India. Paragraph 2.2 of the guidelines dealt with "D" voters. It was mentioned that the guidelines issued in 1997 would be followed while dealing with such category of persons. Paragraph 8 dealt with verification by Electoral Registration Officers. It laid down the procedure while carrying out such verification including verification by Local Verification Officer. As per paragraph 8.6, Local Verification Officer would conduct*

the verification by making an on the spot visit and the person concerned could adduce any one or more of the documents mentioned therein in support of his claim as a citizen of India. After due verification, the Local Verification Officer was required to submit his report in the prescribed format. Under paragraph 8.8, Electoral Registration Officer on receipt of the verification report from the Local Verification Officer should consider the same. Where he was satisfied about the eligibility of a person, he should allow the name of such person to continue on the electoral roll but where he was not so satisfied and had reasonable doubt about the citizenship of any person he should refer such doubtful cases to the competent authority under the then Illegal Migrants (Determination by Tribunals) Act, 1983 or the Foreigners Act, 1946 in a prepared format (Annexure-B to the guidelines dated 17.06.2004) to the competent authority for making reference to the Tribunal and await the decision of such Tribunal.

***15**. As pointed out by Mr. Barua, in Mameja Khatun (supra) a Single Bench of this Court directed that "D" voters should not be allowed to cast their votes with the clarification that "D" voters would include persons whose names were included in the electoral rolls but their citizenship was doubted or disputed and also those whose cases were pending before the Foreigners Tribunals. This decision of the learned Single Bench was confirmed by the Division Bench in Writ Appeal No. 114/2011 (State Vs Mameja Khatun). By the judgment and order dated 13.10.2015, the Division Bench directed Election Commission of India and other authorities to implement the directions of the Single Bench in letter and spirit.*

***16**. At this stage, it may also be mentioned that in WP(C) No. 274/2009 filed by Assam Public Works which is pending before the Supreme Court of India wherein NRC updation exercise in the State of Assam is being monitored by the Supreme Court of India, on 25.10.2013, Supreme Court clarified that as far as persons in the "D" list are concerned, undoubtedly they were doubtful voters and therefore their names could not be included unless the NRC is updated and unless the Foreigners Tribunals declared them to be Indian citizens.*

***17**. The Foreigners Act, 1946 is an act to confer upon the Central Government certain powers in respect of foreigners. This Act provides for the exercise of certain powers by the Central Government in respect of the entry of foreigners into India; their presence in India and their departure therefrom. Section 2 (a) defines a "foreigner" to mean a person who is not a citizen of India. Section 3 confers power to the Central Government to make orders making provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or their continued presence therein.*

***17.1**. In exercise of the powers conferred by Section 3 of the Foreigners Act,*

1946, Central Government made the Foreigners (Tribunals) Order, 1964. As per order 2 (1), the Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose for its opinion.

***18**. Ministry of Home Affairs, Govt. of India had issued notification dated 19.04.1958 in exercise of powers conferred by Clause-(1) of Article 258 of the Constitution of India whereby the President with the consent of the State Government concerned entrusted to the Governments of each of the States mentioned therein including the State of Assam the functions of the Central Government in making orders of the nature specified in Section 3 of the Foreigners Act, 1946. Another notification dated 17.02.1976 was issued by the Government of India, Ministry of Home Affairs in the exercise of the powers conferred by Article 258 (1) of the Constitution entrusting the Superintendents of Police and Deputy Commissioners (In-charge of Police) under the Government of Assam the functions of the Central Government in making orders of the nature specified in Section 3 of the Foreigners Act, 1946 within their respective jurisdictions subject to the conditions mentioned therein which included the condition that exercise of such functions would be in respect of nationals of Bangladesh and that while exercising such functions, Superintendents of Police and Deputy Commissioners (In-charge of Police) shall comply with such general or special directions as the Government of Assam or the Central Government may issue from time to time.*

***19**. Article 258 of the Constitution deals with power of the Union to confer powers etc on States in certain cases. Clause (1) of Article 258 starts with a non-obstante clause. It says that notwithstanding anything in the Constitution, President may with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends. Clause (3) provides for making of payment by the Government of India to the State concerned such sum as may be agreed upon or in default of agreement through arbitration in respect of any extra-cost of administration incurred by the State in connection with the exercise of powers and duties of the Government of India conferred or imposed upon a State Government.*

***20**. Thus, under the Central Government notifications dated 19.04.1958 and 17.02.1976, Government of Assam, Superintendents of Police and Deputy Commissioners (Incharge of Police) have been delegated the power to make reference to the Foreigners Tribunal under order 2 (1) of the Foreigners (Tribunals) Order, 1964 to seek opinion as to whether the proceedee is a foreigner or not within the meaning of the Foreigners Act, 1946.*

***21**. Thus from the above, what transpires is that there are two categories of "D" voters:- (i). those who were marked as "D" voters in the electoral roll by the*

Electoral Registration Officer following enquiry by Local Verification Officer; and (ii). those whose references are pending before the Foreigners Tribunals.

***22**. In so far Electoral Registration Officer is concerned the exercise undertaken by him while marking a person as a "D" voter in the electoral roll is a quasi judicial exercise. If he holds the view after examining the enquiry report of the Local Verification Officer that the concerned person is not a citizen of India, he is required to forward the case of that person to the competent authority i.e., the Superintendent of Police. If it is so forwarded by the Electoral Registration Officer, the jurisdictional Superintendent of Police has to make a reference to the competent Foreigners Tribunals under order 2(1) of the Foreigners (Tribunals) Order, 1964 based on the report received from the Electoral Registration Officer. Question of making further enquiry by the Superintendent of Police in such a case would not arise because enquiry has already been made by the Electoral Registration Officer by exercising quasi judicial powers and the Superintendent of Police cannot sit over such decision of the Electoral Registration Officer. He has to forward the same by making the reference to the competent Foreigners Tribunal for its opinion.*

27) The said judgment by the learned Single Judge was affirmed by the Division Bench of this Court by judgment and order dated 29.07.2019, passed in the case of *Sayam Uddin v. The Union of India & Ors., W.A. 170/2019*.

28) It may be mentioned that the references pending before the Illegal Migrants (Determination) Tribunals in the State were transferred by the Supreme Court of India to the Foreigners Tribunal vide directions issued in the case of *Sarbananda Sonowal v. The Union of India & Ors., (2005) 5 SCC 665*. The said fact has been stated in para-1 of the impugned opinion. Hence, this Court would refrain from making any observations on the LVO Report in this case because the Foreigners Tribunals would have no power or jurisdiction to remand the reference back to the Superintendent of Police (Border) for a fresh enquiry by the LVO/ERO, because the transfer was made pursuant to the directions passed by the Supreme Court of India, as referred hereinbefore.

29) Therefore, the challenge to the proceeding before the learned

Foreigners Tribunal on the ground that certain paragraphs and/or columns of the Local Verification Officer's (LVO) Report, as forwarded by the Electoral Registration Officer (ERO) were left blank, is held to be not maintainable on facts and in law morefully referred to hereinbefore. The said point is answered accordingly.

Notice served on petitioner contains two distinct accusations, firstly, that she entered into India (Assam) between 01.01.1966 and 24.03.1971 and secondly, that she had entered into India (Assam) after 25.03.1971:

30) The learned counsel for the petitioner had submitted that the notice/summons issued to the petitioner by the learned Tribunal contained allegation that the petitioner was a foreigner of period between 01.01.1966 and 24.03.1971 and she was also alleged to be a foreigner of post 15.03.1971. In this regard, by citing the case of *Sona Kha @ Sona Khan (supra)*, it was submitted that the reference was answered beyond the reference without putting the petitioner to notice of the real charge against her.

31) In the said regard, it would be appropriate to mention that However, while issuing notice, the learned Tribunal had failed to strike the period of entry of the petitioner "between 01.01.1966 and 24.03.1971" and "after 25.03.1971". The petitioner did not take such a plea in her written statement and therefore, this point appears to have been taken up for the first time in this writ petition. Be that as it may, under the provisions of the Foreigners Act, 1946, a reference can only be made as to whether or not a person is a foreigner within the meaning of Section 2(a) of the Foreigners Act, 1946. Upon reading Paragraph 2(1) of the Foreigners (Tribunals) Order, 1964, it is discernible that a reference is made to a Tribunal for its opinion whether a person is a foreigner within the meaning of Section 2(a) of the Foreigners Act,

1946. Thus, if no reference is made, the Foreigners Tribunals cannot assume jurisdiction, but only after the reference is made, the Tribunal would have to confine itself to the terms of reference and render its opinion. This Court in the case of *Aziz Miya @ Md. Aziz Mia v. Union of India & Ors., 2023 (4) GLT 246*, had held that the provisions of Paragraph 2 of the Foreigners (Tribunals) Order, 1964 make it explicit that it is the jurisdictional Superintendent of Police (Border),is the empowered authority to take a decision based upon the report of the inquiry or any further materials that may be available as to whether a person concerned is required to be referred to a Tribunal for its opinion as to whether he is a foreigner or not.

32) As regards non-mentioning and/or wrong mentioning of the stream when the suspected foreigner had entered illegally into India (Assam), it would be appropriate to refer to the decision of this Court in the case of *Ananda Ghosh v. Union of India & Ors., 2017 (2) GLT 996*, which is quoted below:-

> *10. Question for consideration is whether such a finding of the Tribunal would stand vitiated by non-mentioning in the two notices issued to the petitioner that the allegation against him was of being a foreigner who had illegally entered into India (Assam) after 25.03.1971?*
>
> *11. As already noticed above, the reference made by the Superintendent of Police to the Tribunal was specific. Petitioner was a Bangladeshi national who had illegally entered into India (Assam) after 03.25.1971. Prima facie, it was the mistake of the Tribunal not to have specifically mentioned this in the two notices issued to the petitioner. However, from the materials on record. Tribunal came to the conclusion and thereafter rendered its opinion that petitioner was a foreigner who had illegally entered into India (Assam) after 25.03.1971. The reference was answered accordingly.*
>
> *12. In a recent decision of this Court in the case of Mustt. Abiran Nessa Vs. Union of India (W.A. 200/2016), decided on 27.3.17, it has been held that wrong mentioning of the foreigners' stream as classified under Section 6A of the Citizenship Act. 1955 to which the noticee belongs would not vitiate the proceeding before the Tribunal or consequential order passed by the Tribunal if the*

materials on record discloses that the noticee actually belongs to the stream of foreigners which has been ultimately held to be so by the Tribunal. Wrong mentioning of the stream of foreigners to which the noticee belongs contrary to the reference made by the State would not vitiate the order passed by the Tribunal and would not confer any undue advantage to a proceedee or enable a proceedee to improve his status. It was held as follows:-

> *"10. Thus, materials on record, as found by the learned Single Judge, disclosed that appellant was a foreigner who had illegally entered into India (Assam) from the specified territory after 25.03.1971. The reference was also made accordingly.*
>
> *11. It is trite that non-mentioning or wrong mentioning of a provision would not invalidate an order if such an order can be traced to a valid source. In such a situation, Court would examine whether the order in question has any legal sanctity and whether it can be traced to a valid source of power. If it can be traced to a valid source of law, wrong mentioning of the provision of law in the order impugned would be immaterial.*
>
> *12. By applying the same analogy, it can also be said that wrong mentioning of the foreigners stream as classified under Section of the Citizenship Act, 1955, as amended, to which the noticee belongs would not vitiate the proceeding or the consequential order passed by the Tribunal if materials on record disclose that the notices actually belongs to the stream of foreigners, which has been ultimately held to be so by the Tribunal. Such wrong mentioning contrary to the materials on record or contrary to the reference made would not confer any undue advantage to a proceedee or enable a proceedee to improve his/her status. Therefore, on this count, we cannot condemn the order passed by the Tribunal which has been rightly affirmed by the learned Single Judge.*
>
> *13. Having regard to the above, we have no hesitation to hold that when the reference was as to whether petitioner was a foreigner belonging to the post 25.03.1971 stream, non-mentioning of the same or wrong-mentioning of the stream of foreigners to which the petitioner belongs in the notices would not vitiate the ultimate conclusion reached by the Tribunal that petitioner was a foreigner of post 25.03.1971 stream. Since the reference was answered in favour of the State, it ought to be and has rightly been answered in the above manner. As a matter of fact, this issue was not even raised by the petitioner in his written statement possibly because he was fully aware that the allegation against him was of being a foreigner belonging to the post 25.03.1971 stream. Therefore, this ground urged on behalf of the*

petitioner stands rejected. However, before moving on to the next ground, we would like to observe that the Tribunal ought to have been careful while issuing the notices. We hope and expect that such mistakes would not be repeated in future."

33) In the same context, it would be relevant to quote paragraph nos. 10, 12, 13 and 21 of the case of *Rukia Begum Barbhuiya v. Union of India & Ors., 2023 (1) GLT 1208*.

10. A reading of Rule 2(1) of the Foreigners Tribunal Order 1964 makes it discernible that the Central Government may by order, refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946 to a Tribunal constituted for the purpose. The statutory provision of Rule 2(1) makes it explicit that the reference to be made by a Tribunal would be the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946. Section 2(a) of the Foreigners Act 1946 defines foreigner to mean a person who is not a citizen of India. In other words, going by the meaning given to the expression foreigner under Section 2(a) of the Foreigners Act 1946 a reference made to the Tribunal would be as to whether the person concerned is a citizen of India or he is not a citizen of India.

* * *

12. A reading of the provisions of Section 6-A makes it explicit that it is a special provision as to citizenship of persons covered by the Assam Accord and the core provisions of Section 6-A are that a person who may have entered the State of Assam from the specified territory prior to 01.01.1966 shall be deemed to be a citizen of India from the 1st day of January, 1966. The further provision is that such persons who entered the State of Assam from the specified territory after 01.01.1966, but before 25.03.1971 from the specified territory, and has been detected to be a foreigner, shall register himself with the Foreigners Registering Authority of the district concerned and upon having been registered shall be debarred of any voting rights for a period of ten years, but otherwise retaining all such other rights that a citizen of India may be bestowed with under the provisions and further that upon expiry of the period of ten years, even the voting rights would be restored back. In case of persons, who had entered the State of Assam from the specified territory on or after 25.3.1971, such persons are to be declared as foreigners.

13. In view of the provisions of Section 6-A of the Citizenship Act 1955. Clause 2(1) of the Foreigners (Tribunal) Order, 1964 would now have to be

understood that once a reference is made, the reference would be whether the person concerned is or is not a foreigner, meaning thereby, whether the person concerned is a foreigner, who had entered the State of Assam from the specified territory on or after 25.03.1971 or he is a person who belongs to any of the other categories i.e., a person who entered the State of Assam from the specified territory before 01.01.1966 or between 01.01.1966 and 25.03.1971. No other meaning can be attributed to the reference under Clause 2(1) of the Foreigners Tribunal Order 1964 i.e. whether a person is or is not a foreigner within the meaning of the Foreigners Act 1946. We further take note that even if a reference is made by setting up a question whether the person had entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971, the reference would have to be understood to be a reference under Clause 2(1) of the Foreigners Tribunal Order 1964 i.e., as to whether he is a foreigner or not. If the reference is worded whether the person concerned, is a person who had entered the State of Assam from the specified territory between 1.1.1966 and 25.03.1971, in order to arrive at any such conclusion that the reference itself is faulty inasmuch as the decision of the Tribunal upon the materials on record would be that the person concerned had entered the State of Assam from the specified territory on or after 25.03.1971, in such circumstance, the only situation that can be envisaged is that the Tribunal first arrives at a conclusion of its own that the person concerned had entered the State of Assam from the specified territory on or after 25.03.1971, meaning thereby that the reference itself had been answered by the Tribunal. After having answered the reference, it would be an inconceivable situation that merely because the reference is worded whether the person had entered the State of Assam from the specified territory between 01.01.1966 and 25.03.1971 it has to be referred back to the referral authority to make a fair reference now putting up a question whether the person concerned had entered the State of Assam on or after 25.03.1971. In such situation, as the matter would have to be referred back only after a final decision has been arrived at and now if the reference is again made with a corrected expression in the questions framed, the same may lead to further complications that the subsequent reference would be barred by the principles of res judicata inasmuch as it would be a subsequent reference on the same issue between the same set of parties where an earlier decision had already been arrived at. It is noticed that in Falani Bibi (supra) the aforesaid aspect of the further implication of a corrected reference being again made had not been gone into and from such point of view, it can be said that the view taken therein would be per in curiam of the further consequences of a fresh reference being made.

* * *

> *21. We further add that going by the statutory provisions of Clause 2(1) of the Foreigners Tribunal Order 1964 any reference would have to be understood to be a reference to the Tribunal on the question whether the person so referred is a foreigner or not within the meaning of Foreigners Act, 1946, where again foreigner is given the meaning of a person who is not a citizen and again where a citizen is defined under the Citizenship Act 1955.*"

34) In light of above, the Court is of the considered opinion that when the case of *Sona Kha @ Sona Khan (supra)* was decided, the earlier precedent of this Court in the case of *Ananda Ghosh (supra)*, *and Safiqul Islam @ Md. Abikul Islam v. Union of India & Ors., 2019 (4) GLT 55* were not brought to the notice of this Court.

35) In the case of *Sona Kha @ Sona Khan (supra)*, the reference did not allege the petitioner therein to be an illegal migrant. Rather, the Enquiry Report was to the effect that the petitioner in the said case was not an illegal migrant. Yet, the Superintendent of Police (Border), Baksa, had forwarded the case to the Foreigners Tribunal, Baksa, Tamulpur. Under such distinguishable facts and circumstances, this Court, in the case of *Sona Kha @ Sona Khan (supra)*, had held that the learned Tribunal would have to satisfy itself about the existence of grounds before proceeding to consider the case on merits about the citizenship. Thus the facts of the instant case is distinguishable for which the ratio of the case of *Sona Kha @ Sona Khan (supra)*, cannot be applied.

36) The case of *Santosh Das (supra)*, cited by the learned counsel for the petitioner is also distinguishable on facts. In the said case, reference was made under the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983. After the said Act was declared as *ultra vires*, by the Supreme Court of India in the case of *Sarbananda Sonowal v. Union of India & Ors., (2005) 5 SCC 665*, the reference were transferred to Foreigners Tribunals from the erstwhile

IM(D)T. In that case, the police reference was that the petitioner had entered into India between 01.01.1966 and 25.03.1971. Under the said circumstances, the said case was decided. But in the present case, the reference was not made under IM(DT) Act, but under Foreigners Act, 1946. Therefore, the reference has to be answered in terms of Section 2(a) of the Foreigners Act, 1946. Hence, the case of *Santosh Das (supra)*, is not found to help the petitioner.

37) Hence, in a reference proceeding that has been registered before the Foreigners Tribunals, the learned Tribunal has to answer the reference in accordance with the mandate of Section 2(a) of the Foreigners Act, 1946, which does not make any distinction between a foreigner of stream of 01.01.1966 and 24.03.1971 and a foreigner who had entered India after 25.03.1971.

38) The reference to the stream appears in Section 6-A(3) of the Citizenship Act, 1955. Thus, the proceedee must disclose that he or she fulfills the conditions prescribed under Section 6-A(1)(d) and Section 6-A(2) of the Citizenship Act, 1955. It is only after the Foreigners Tribunal renders an opinion that a person has entered into India between 01.01.1966 and before 25.03.1971 (i.e. on 24.03.1971) from the specified territory, only they will become entitled to register themselves under Section 6-A(3)(c) of the Citizenship Act, 1955.

39) Thus, the mention made in the summons/ notice, accusing the petitioner to be a foreigner of stream between 01.01.1966 and 24.03.1971 and stream of 25.03.1971, is not found to prejudice the petitioner in any manner in light of the definition of foreigner as provided under Section 2(a) of the Foreigners Act, 1946 read with Paragraph 2(1) of the Foreigners (Tribunals) Order, 1964.

Non marking of exhibit documents as Exhibits:

40) As mentioned hereinbefore, in her evidence-on- affidavit, the petitioner had given the mark of Ext.(i) to two documents, i.e. the voter list of 1966 and 1970. The petitioner had referred to certified copy of voter list in her name and the name of her family members as Ext. (ii), but she had not disclosed the year of the voter list and the names of her family members. She had also referred to a legacy data in the name of her father as Ext.(v), but no disclosure was made regarding the year of the legacy data. No document was referred as exhibit in the petitioner's additional evidence- on- affidavit. Thus, the record reveals that the petitioner and her learned counsel had made no attempt to have any documents marked as exhibits by obtaining the signature of the learned Member. The petitioner had also not disclosed in her written statement about her relationship with all 4 (four) voters whose name appear in the voter list of 1966 (Ext.i). In the said regard, the learned counsel for the petitioner, by citing the case of *Thatithoi Chiru & Ors. (supra)* had sought to bring home the point that when certified copies of public documents are on record and not returned, the same is not required to be proved by calling witnesses and moreover, it was held that the documents were not considered by the Court as they were not marked as exhibits, were ordered to be marked as exhibits and numbered.

41) However, in this case, the petitioner has not been able to show that the learned Tribunal had refused any prayer made by the petitioner to mark an exhibited document as exhibits. The Tribunal's record reveals that two certified copies of voter list of 1966is available. However, the petitioner had not referred to the names contained in those two voters' lists either in her written statement or in her evidence-on- affidavit. In the context of cases before the

Foreigners Tribunals, it has been held in a catena of judgments that pleadings made in the written statement have to be proved by cogent, reliable and admissible evidence. In this regard, reference may be made to the case of *Saru Sheikh v. Union of India & Ors., (2017) 4 GLR 295*. It has also been held by this Court in the case of *Momin Ali v. Union of India & Ors., 2017 (2) GLT 1076*, that variance between pleadings and evidence is not permissible. It has also been held in the case of *Ayesha Khatun v. Union of India & Ors., (2017) 3 GLR 820*, that non-disclosure of material facts in the written statement will lead to adverse presumption. The petitioner had admitted in her cross-examination that she had submitted voter list of 1966, 2018, her voter id card and her PAN Card. It may be mentioned that the cited case of *Rafiq and Anr. (supra)*, is not an authority on the point that if there was a lacuna in the pleadings and evidence of the petitioner on her failure to exhibit any document, such lacuna can subsequently be allowed to be filled up.

42) The case of *Rafiq and Anr. (supra)* was cited on the point that a party should not suffer on account of lapses or omission on part of the learned counsel. However, the said case is not found to help the petitioner in any manner whatsoever because neither before the learned Tribunal and nor in this writ petition before this Court the petitioner has made any allegation accusing her engaged learned counsel of committing any professional misconduct, lapses or omission whatsoever. Thus, the said plea is found to have no substance.

43) As mentioned hereinbefore, in this case, the petitioner has not been able to discharge her burden under Section 9 of the Foreigners Act, 1946, to prove her link with the voters whose name appears in the exhibited voter lists of 1966 (Ext.i). There is a huge gap of 52 years between the exhibited voter list of 1966 (Ext.i) and voter list of 2018 (Ext.ii). Thus, the petitioner has not been

able to prove that her projected grandparents and/or parents were ordinary residents of Assam and continuously resided in Assam, which is the requirement under Section 6A(2) of the Citizenship Act, 1955, which is the requirement of the special provisions for the State of Assam. The said provisions are special to the State of Assam and not applicable to the rest of the Country.

44) Thus, the submissions made by the learned counsel for the petitioner is not found to help the petitioner in this case.

45) As none of the documents were marked as exhibits, the same were liable to be rejected at the outset, but as the citizenship right of the petitioner has been questioned, the said documents, though not exhibited, have been examined. The learned Tribunal is also found to have appreciated and discussed the documentary exhibits.

46) In light of the discussions above, the challenge to the impugned opinion fails and the writ petition is dismissed. Consequently, the consequences of the opinion dated 30.06.2022 passed by the learned Member, Foreigners' Tribunal 4th, Tezpur at Gohpur in F.T. (T-4)/GPR. Case No. 1058/2016 [arising out of S.P. Ref. Case No. Tz(B)/98/567/GPR LAC/ dated 06.04.1998; ERO. Ref. No.BNE.25/97/8 dated 18.11.1997: D.C. Case No.2090/2013], by which the petitioner, namely, Aklima Begum was declared to be a foreigner of post 25.03.1971 stream, would follow.

47) Interim bail granted to the petitioner by order dated 16.09.2022, passed in this writ petition is recalled and revoked.

48) The Registry shall return the learned Tribunal's record together with a copy of this order, to be made a part of the record by the said learned Tribunal for future reference.

49) Under the circumstances, there shall be no order as to cost.

JUDGE **JUDGE**

Munna Kumar

Digitally signed by Munna Kumar
Date: 2026.10.14 17:56:08 +05'30'

Comparing Assistant **Private Secretary**