GAHC010203782023

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

Case No. : WP(C)/5365/2023

NEKIBA BEGUM @ NEKIMAI BEGUM
W/O- MD. HAZARAT ALI,
D/O- SAFIUR RAHMAN @ SURAB ALI,
R/O- VILLAGE- MERAPANI FOREST BLOCK,
P.O.- MERAPANI, P.S.- MERAPANI,
DISTRICT- GOLAGHAT, ASSAM, PIN- 785705.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI- 781005.

5:THE DEPUTY COMMISSIONER
GOLAGHAT
DISTRICT- GOLAGHAT
ASSAM
PIN- 785621.

6:THE SUPERINTENDENT OF POLICE(B)
GOLAGHAT
DISTRICT- GOLAGHAT
ASSAM
PIN- 785621

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 S.A. Ahmed

Advocates for the respondents : Shri P.K. Medhi, CGC,
Shri A.I. Ali, SC, ECI;
Ms. A. Verma, SC, Home Deptt. & NRC.
Ms. R.B. Bora, GA, Assam.

Date on which judgment is reserved : **18.09.2026**

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 26.05.2023 passed by the learned Foreigners Tribunal,Jorhat in F.T. Case No. FTG/2020/2011. 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), Golaghat District, against the petitioner giving rise to the aforesaid F.T. Case No. FTG/2020/2011

(ii) As per requirement u/s 9 of the Foreigner's Act, 1946 to prove that the proceedee is not a foreigner, the petitioner had filed the written statement on 25.10.2021 along with certain documents and adduced evidence through herself as DW.

(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 S.A. Ahmed, learned counsel for the petitioner. We have also heard Shri P.K. Medhi, learned CGC, Shri A.I. Ali, learned Standing Counsel, Election Commission of India, Ms. A. Verma, learned Standing Counsel, Home Deptt. & NRC and Ms. R.B. Bora, GA, Assam. We have also carefully examined the records which were requisitioned vide an order dated 18.12.2023.

4. Shri Ahmed, 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 her evidence adduced by herself as DW and also the following documentary evidence.

(i) Ext-1 - School Certificate dated 30.03.2015.

(ii) Ext-2 - Voter List of 1966.

(iii) Ext-3 - Voter List of 1970.

(iv) Ext-4 - Voter List of 1975.

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

(vi) Ext-6 - Voter List of 2005

(vii) Ext-7 - Voter List of 2011.

(viii) Ext-8 - Voter List of 2015.

(ix) Ext-9 - Voter List of 2018.

(X) Ext-10 - Voter List of 2021

5. The learned counsel for the petitionerhas submitted that in the written statement, all material disclosures were made.The petitioner has relied upon a school certificate dated 30.03.2015 which contains her name along with her father. Reliance has been placed on Voters Lists of the years 1966, 1970 and 1975 containing the names of the parents of the petitioner. The petitioner has also relied upon Voters Lists of the years 1997, 2005, 2011, 2015, 2018 and 2021. Reliance has also been placed on a Gaonburah certificate dated 03.06.2023. The petitioner has also relied upon a *Jamabandi*.

6. By drawing the attention of this Court to the evidence of the petitioner as DW, the learned counsel for the petitioner has submitted that the petitioner has clearly deposed of having two brothers and that her father had died when she

was 5-6 years old and that her mother was still casting votes.

7. Shri Ahmed, the learned counsel for the petitioner has also referred to additional affidavit filed on 08.11.2023 wherein the voter card, PAN Card and Aadhar Card have been enclosed. Further, an affidavit dated 10.10.2023 on non-judicial paper executed by one Halima Khatun has been enclosed wherein it has been stated that Surab and Saifur Rahman is the same person.

8. 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. Alternatively, he submits that the matter may be remanded for a fresh adjudication.

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

may come in.

10. 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 and is totally vague. There is no date of birth of the petitioner and no mention of siblings. In this connection, she has relied upon the following observations made by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal vs. Union of India*** reported in***(2005) 5 SCC 665***:

> "*26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. 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."*

11. She has submitted that linkage with her father has not been proved. She

has also highlighted the aspect that the learned Tribunal had noticed the difference in the name of the projected father. She has submitted that the school certificates has been issued after 3 decades and there is no explanation. She adds that in any case, the said certificate has not been proved by the School authorities and no school register was produced.

12. In this regard, she has relied upon the case of the Hon'ble Supreme Court in ***Narbada Devi Gupta v. Birendra Kumar Jaiswal*** reported in ***(2003) 8 SCC 745*** and the following observations have been pressed into service:

> *"16. Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala& Sons (P) Ltd.3 The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue". The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as admitted documents."*

13. 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. …"

14. She has also drawn the attention of this Court to the case of ***Nur Begum vs. Union of India and Ors.*** reported in ***2020 (3) GLT 347*** wherein certain observations regarding exercise of Certiorari jurisdiction have been made which read as follows:

"*9. On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion."*

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 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.

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 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."

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 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."*

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) his date of birth;
(ii) place of birth;
(iii) name of his 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 school certificate dated 30.03.2015 is concerned, the same was not proved by the school authorities and therefore, would not be admissible in evidence, apart from the aspect of such proof being required to be done along with contemporaneous record which has not been done. Nevertheless, a bare perusal of the said certificate would reveal that the same is not even in the Letter Head / Pad of the school which makes the certificate doubtful. Further, the certificate states that the pupil had completed school on 31.12.1978 and her date of birth was 12.06.1971. It may be mentioned that in the written statement, the petitioner has not mentioned her date of birth. What is also striking is that both the name of the pupil and the father are totally different from the petitioner and her projected father. The certificate names the pupil as Nekimai Begum and father's name as Surab Ali. On the other hand, the name of the petitioner is Nekiba Begum and her father's name is Sofiur Rahman. So far as the Voters Lists of 1966, 1970 and 1975 are concerned, those may not be relevant as no link as such has been created between the petitioner and her projected parents. So far as the Voters Lists of the years 1997, 2005, 2011, 2015, 2018 and 2021 are concerned, those are containing the name of the petitioner with her husband and would not serve as a link with her projected parents and therefore would be irrelevant. The Gaonburah Certificate dated 03.06.2023 is admittedly procured on 03.06.2023 which is after the impugned opinion dated 26.05.2023 and therefore, cannot not be created to be admissible evidence. In any case, the jurisdiction exercised by this Court is certiorari jurisdiction which confines to a scrutiny of the decision-making process. In other words, the examination would be on the aspect as to whether relevant materials / considerations have been overlooked or as to whether the decision is based on irrelevant and extraneous consideration.

So far as the *Jamabandiis* concerned, the same was not produced before the learned Tribunal. This Court has also noticed that there is no mention of any such *Jamabandi* in the written statement or the evidence of the petitioner.

24. As regards the evidence of the petitioner as DW, in the cross-examination she had stated of not submitting any land document. Further, she did not remember the name of the school which is very difficult to accept.

25. So far as the additional affidavit is concerned, there is no scope for entertaining new documents which were never a part of the proceedings in the learned Tribunal. Nevertheless, even if the documents enclosed are considered, none of those would constitute clinching evidence regarding the citizenship of the petitioner. Law has been settled that Voter Card, PAN Card and Aadhar would not be a proof of citizenship and those are issued only for facilitation to certain benefits and identity. The self sworn affidavit by one Halima Khatun would be wholly irrelevant as the aspect of being one and the same person with two names have to be done by the person himself in a manner prescribed in law. it is a settled position of law that a self-declaratory affidavit so far as another individual is concerned would not be relevant inasmuch as even for an affidavit for change of the name of the executor is concerned, a detailed procedure is envisaged which has not been done in the instant case. The learned Standing Counsel has relied upon a judgment of a Coordinate Bench in the case of Abdul Seikh vs. Union of India [WP(C)/6871/2016 judgment dated 29.03.2018] wherein the following observations have been made.

> "19…*That apart, a self serving suo-moto affidavit filed by a proceedee to explain discrepancies in name and age of self, father etc is neither*

evidence nor proof in the eye of law.."

26. In the case of ***Bijoy Das Vs.UOI*** reported in***2018 (3) GLT 118,*** this Court has laid down that in proceedings of this nature, oral evidence alone would not be enough and such evidence is required to be supported and corroborated by documentary evidence and contemporaneous records. However, in this case, the same has not been able to be done by the petitioner.We are of the view that the petitioner as proceedee had failed to discharge her burden to prove her citizenship.

27. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 26.05.2023 passed by the learned Foreigners Tribunal, Jorhat in F.T. Case No. FTG/2020/2011 does not call for any interference.

28. 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.

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

JUDGE JUDGE

Comparing Assistant