GAHC010011642017

2026:GAU-AS:16521-DB

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

Case No. : WP(C)/569/2017

SMT. MOMINA BIBI
W/O MOKBUL HUSSAIN, R/O BIDHYARDABRI, P.S. GOLAKGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF INDIA, DEPTT. OF HOME, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
DHUBRI
ASSAM

4:THE SUPERINTENDENT OF POLICE B
DHUBRI
ASSA

Advocate for the Petitioner : MR.I HAQUE, MR.P C DEY,MS.S PAUL

Advocate for the Respondent : , GA, ASSAM,ASSTT.S.G.I.

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

For the petitioner : Mr. P.C. Dey, Advocate
For respondent no.1 : Ms. P. Baruah, CGC.
For respondent nos.2 & 4 : Mr. J. Payeng, Standing Counsel.
For respondent no.3 : Mr. P. Sarmah, Addl. Senior Govt. Adv.

Date on which judgment is reserved : 14.07.2026

Date of pronouncement of judgment : 11.11.2026

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. P.C. Dey, learned counsel for the petitioner. Also heard Ms. S. Baruah, learned CGC; Mr. J. Payeng, learned standing counsel for FT and Border matters; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for the respondents.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Momina Bibi, has challenged the opinion dated 30.09.2016, passed by the learned Member, Foreigners Tribunal (8th), Dhubri, Assam, in F.T. Case No. 8/179/GKJ/2015 [arising out of F.T. Case No. 8193/GKJ/2011; Ref. IMDT Case No. 1596/98], thereby declaring her to be a foreigner, who had entered into India (Assam) without authority after

25.03.1971.

3) On service of notice, the petitioner had entered appearance before the learned Tribunal and in her written statement, she has stated, *inter-alia*, as follows:-

a. The case against her was not maintainable and allegation against her was not sustainable.

b. She was the daughter of Mofijuddin @ Mofijuddin Sheikh (father) and Asiya Bibi (mother). She is an Indian by birth and she was born and brought up at village- Belguri Part-I under P.S. Agomoni, Dist. Dhubri, Assam. In this regard, she had relied on a certificate dated 30.06.2015, issued by the Secretary, Sindurai Gaon Panchayat.

c. Her father, Mofijuddin @ Mofijuddin Sheikh, son of Ketap Sheikh was earlier a resident of village- Choto Pokalagi, under P.O. Pokalagi, P.S. Golokganj, Dist. Goalpara (now Dhubri), Assam. The name of her father is entered in the NRC of 1951. Her father was a labourer and had no landed property and as such, he resided in the land of other people by constructing hut and thus, her father does not possess any land document. After 1951, her father had shifted to Belguri Part-I, and started to live with her mother, Achiya Bibi in the house of one Sahidar Rahman, son of Haji Ayajan Box. The name of her father and mother appeared in the voter list of 1966 of village- Belguri Part-I, under 35 Golakganj LAC. The petitioner had stated that after attaining the age of puberty, she was married to Mokbul Hussain, son of Sirajul Hoque of village- Bidyardabari Part-III, under Golakganj P.S., Dist. Dhubri and since marriage, she is residing with her husband and her

name appeared in the voter list of 1997 of said village under 25 Golakganj LAC and in the year 2014, an Elector Photo Identity Card (EPIC for short) was issued in her name.

d. The petitioner had stated that the name of her father is Mafijuddin, son of Ketap Sheikh, but in the voter list of 1966, it was recorded as Mafijuddin Sheikh, son of Ketap Uddin. It was also stated that she is an Indian and neither the petitioner nor her parents are foreigners. Hence, it was prayed that the case be dismissed and she be declared to be an Indian.

4) In support of her defence, the petitioner had examined herself as DW-1. In her evidence-on- affidavit, the petitioner had reiterated the statements which she had made in her written statement. The petitioner had exhibited the following documents, viz., (i) Certificate dated 30.06.2015, issued by the Secretary, Sindurai Gaon Panchayat (Ext.1); (ii) copy of certified copy of voter list of 1966 (Ext.3); (iii) photocopy of EPIC (Ext.4). Moreover, two documents were referred to as annexures, viz., NRC Extract (Annexure-2) and voter list of 2016 (Annexure-5). In her oral examination the petitioner had stated that her name is Momina Bibi, age about 45 years, wife of Mokbul Hussain of village- Bidyadabari Part-III, Golakganj P.S. Her father is Late Mafiz Uddin and her mother is Late Asiya Bibi. She was casting vote. Her father was also casting vote. She does not know from when he was casting vote. She had also stated that the documents which were attached with evidence are not manufactured or fake documents.

5) The petitioner had also examined one Asan Ali @ Asan Ali Sheikh as DW-2. He had stated that his father is Mafis Uddin Miah @ Mafiz

Uddin Sheikh @ Mafiz Uddin. The name of his mother is Asia Bibi @ Asiman Nessa. Earlier, they were resident of village- Choto Pokalagi under P.S. Golakganj, in the district of Goalpara (now Dhubri), Assam, where he was born and his name was entered in the NRC of 1951 as Asan Ali Sheikh along with his parents, now deceased. He had stated that they are 4 (four) brothers and 2 (two) sisters, namely, (1) Asan Ali (himself), (2) Amjad Ali, (3) Afser Ali, (4) Abbas Ali, (5) Mojida Bibi (now deceased) and (6) Momina Bibi. When his age was 8/9 years, their residence was shifted to Belguri Part-I, under Sindurai Gaon Panchayat at the house of Sahidur Rahman, son of Haji Ayajon Box of village- Belguri Part-I, and his parents name appeared in the voter list of 1966 (Ext.3) under 35 Golakganj LAC. They resided there till his age of 24/25 and then they shifted to village- Sagolia Part-II, under Golakganj P.S., where he is residing till date. As a resident of village- Sagolia Part-II, under Golakganj LAC, his name is regularly entered in the voter lists and he is casting his vote. An EPIC has been issued in his name (Ext.5). He had stated that after attaining majority, the petitioner, his sister, was married to Mokbul Hossain, son of Sirajul Hoque, resident of Bidyardabari Part-III under Golakganj P.S. in the district of Dhubri, Assam and since marriage, his sister has been residing at her matrimonial address. In his cross-examination, he had stated that he had read upto Class-III at Sagalia L.P. School, but he does not know the year. His birth was in the year 1948. Petitioner is his own sister. She was married 20 years ago. Husband's name is Mokbul Hussain. He had stated that he has not filed any document that the petitioner is his sister. Otherwise, his father's name is Mafis Uddin Miah. His father was born at village- Choto Pokalagi.

6) Thus, the petitioner had exhibited the following documents:-

a. Certificate dated 30.06.2015, issued by the Secretary, Sindurai Gaon

Panchayat (Ext.1)

b. Voter list of 1966 containing name of Mofijuddin of village- 100 Beluguri Part-I under Golakganj LAC.(Ext.3).

c. EPIC of petitioner (Ext.4).

d. EPIC of DW-2 (Ext.5).

7) The learned Tribunal had appreciated the pleadings and evidence on record. The learned Tribunal had observed that the certificate issued by the Secretary, Sindurai Gaon Panchayat was not proved on the basis of any official record. The voter in the voter list of 1966 (Ext.3) is Mofijuddin of village- 100 Belguri Part-I under Golakganj LAC. However, it was held that there is no document to or reliable evidence to show that Mofijuddin, whose name appeared in the voter list of 1966 is the father of the petitioner. The EPIC of DW-2 disclosed that he was of village- Chagaliya Aj Khanda, and the name of his father is Mafis Uddin Mina (Ext.5). As the petitioner had stated that the name of her father was Mofijuddin and the name of father of DW-2, as per Ext.5, was Mafis Uddin Mina, which was different and accordingly, the evidence of DW-2 and Ext.5 was held to be not trustworthy. It was held that in the absence of any reliable and cogent evidence on record, it cannot be said that the petitioner is the daughter of Mofijuddin and had failed to prove existence in the Indian soil prior to 25.03.1971. Considering the materials on record and in light of the discussions, the learned Tribunal had held that the petitioner had failed to discharge her burden to prove that she had acquired citizenship of India by birth through Indian parents. It was held that petitioner had illegally entered into India (Assam) without authority subsequent to 25.03.1971 and accordingly, she was termed as an illegal migrant.

8) The submissions of the learned counsel for the petitioner is summarized as under:-

a. The enquiry report of the Local Verification Officer was vague and not properly filled-up and therefore, there was lack of sufficient material before the learned Tribunal to declare the petitioner to be a foreigner. Moreover, there was actually no enquiry and the petitioner was never asked by the LVO in any enquiry to produce any document in support of her Indian citizen. Thus, it was submitted that the exercise was illegal.

b. It was submitted that the notice issued to the petitioner contained two charges, one was of entering into India between 01.01.1966 to 24.03.1971 and the other was that she had entered into India after 25.03.1971. Accordingly, it was submitted that the petitioner was not specifically and clearly charged regarding the stream when she had entered into India and therefore, the learned Tribunal had rendered its opinion in a mechanical manner.

c. It was submitted that the petitioner was not supplied with the main grounds for alleging her to be a foreigner.

d. It was submitted that when the petitioner has stated that her father was Mofijuddin, which was also mentioned in the voter list of 1966 (Ext.3) and supported by the evidence of DW-2, the learned Tribunal ought not to have rejected the evidence merely because of the discrepancy in the name of her father that appeared in the EPIC of DW-2 (Ext.5).

e. It was submitted that the certificate (Ext.1), issued by the Secretary of Sindurai Gaon Panchayat was illegally discarded though such a link document is approved for the NRC so as to enable the married females

as a link to show her shifting to marital home after marriage.

f. In support of his submissions, the learned counsel for the petitioner had cited the following cases:-

i. On incomplete LVO report:

1. Anjana Biswas v. Union of India & Ors., 2023 (2) GLT 1102.

2. Md. Rahim Ali @ Abdul Rahim v. State of Assam & Ors., 2024 (4) GLT (SC) 97.

3. Amina Khatun v. Union of India & Ors., 2022 (4) GLT 102.

4. *Sushil Mondal v. Union of India & Ors., 2022 (1) GLT 790*.

ii. On dropped proceeding:

1. Soidur Rahman @ Sahidur Rahman v. Union of India & Ors., W.P.(C) No. 7517/2017, decided on 26.11.2024.

2. *Mayman Bibi v. Union of India & Ors., W.P.(C) No. 2986/2018, decided on 12.11.2021*.

iii. On brother's evidence:

1. *Rousansa Begum @ Rosona Begum v. Union of India & Ors., W.P.(C) No. 7893/2022, decided on 07.12.2022*.

9) Per contra, the learned standing counsel for the Border and FT matters has made his submission in support of the impugned opinion. In support of his submissions, the following cases were cited:-

a. On oral evidence:

i. Nur Begum v. Union of India & Ors., W.P.(C) No. 1900/2019, decided on 18.02.2020.

ii. Asia Khatoon v. Union of India & Ors., W.P.(C) 4020//2017, decided on 21.11.2019.

iii. *Bijoy Das v. Union of India & Ors., 2018 (3) GLT 118*.

b. On incomplete LVO report:

i. Shukurjan Nessa @ Sukurjan v. Union of India & Ors., W.P.(C) No. 245/2019, decided on 28.02.2025.

ii. Sayam Uddin v. Union of India & Ors., W.A. No. 170/2019, decided

on 29.07.2019.

iii. *Sayam Uddin v. Union of India, W.P.(C) No. 91/2019, decided on 19.02.2019*.

10) Thus, the following 3 (three) points of determination arise for decision in this case:-

a. Whether on the ground that the enquiry report of the Local Verification Officer was vague and not properly filled-up, the reference was vitiated?

b. Whether on the ground that the notice issued to the petitioner contained two charges, one of entering into India between 01.01.1966 to 24.03.1971 and the other was that she had entered into India after 25.03.1971, for which the charge against the petitioner was not clear, the impugned opinion is vitiated?

c. Whether the impugned opinion called for interference?

Analysis of the evidence of the petitioner's side:

11) In this case, the petitioner had not disclosed material facts. The petitioner had not disclosed the name of her grandmother or what happened to her grandparents. The petitioner had not disclosed what happened to her parents after her projected father's name had appeared in only one voter list of 1966. The petitioner had not disclosed about her siblings and her own children, if any. The petitioner had not exhibited any document where her father and her name appear together.

12) The DW-2, who was projected as the brother of the petitioner did not exhibit any voter list. The only document which he had exhibited,

disclosed the name of his father as Mafis Uddin Mina. Thus, the name of father of DW-2 is in variance with the name of the father, as disclosed by the petitioner. Even the name of the petitioner's father and mother do not appear in any document. Thus, the existence of the projected mother of the petitioner in Indian soil is not disclosed.

13) The age of DW-2, as disclosed in his evidence-on- affidavit sworn on 11.07.2016 is 68 years. Thus, DW-2, namely, Asan Ali @ Asan Ali Sheikh was born in the year 1948. Hence, he had derived his voting right at the age of 21 years in the year 1969. However, he had not exhibited any voter list, but exhibited only his EPIC, which was issued on 01.10.2013, portraying him to be a voter of Chagaliya AJ Khanda, P.S. Golakganj, Sub-Division and Dist. Dhubri.

14) After the DW-2 exhibits his EPIC (Ext.5), which reflects that the name of his relative is Mafis Uddin Mina, it is not open for the petitioner and DW-2 to give oral evidence to the effect that the name of father of DW-2 is wrongly written in the EPIC (Ext.5). This is not how a piece of evidence should be read. In the case of *Sirajul Hoque v. State of Assam & Ors., (2019) 5 SCC 534*, the Supreme Court of India had held that when identity of all members of the family is established including the appellant, he cannot be declared a foreigner just because there is a discrepancy in name of his grandfather in some documents. In the present case in hand the name of the petitioner does not appear with Asan Ali (DW-2) in any document. Moreover, the name of the petitioner and her projected brother, i.e. DW-2, does not appear together with the name of their projected father as a resident of one common household. In the opinion of the Court, parentage cannot be established by producing

documents which do not connect the petitioner and DW-2, coupled with oral evidence that the name of father of the DW-2 was wrongly written in his EPIC (Ext.5) in the absence of any supporting exhibited documents.

15) The petitioner has not pleaded about the year when she was married. The statement of the petitioner in her written statement and evidence-on- affidavit is vague as she had disclosed that she was married on attaining the age of puberty. On the contrary, the DW-2 has stated in his evidence-on-affidavit that the petitioner was married after she had become a major.

16) In the aforesaid context, it may be mentioned that in the case of *Rashminara Begum v. Union of India & Ors., 2017 (4) GLT 346*, this Court had held that material facts pleaded would have to be proved by adducing cogent and admissible evidence. The said view was also endorsed by this Court in the case of *Saru Sheikh v. Union of India & Ors., (2017) 4 GLR 295*. In the case of *Ayesha Khatun v. Union of India & Ors., (2017) 3 GLR 820*, and *Jehirul Islam v. Union of India & Ors., (2017) 5 GLR 670*, this Court had held that failure to disclose material facts would lead to adverse presumption.

17) In the case of *Ramila Khatun v. Union of India & Ors., 2018 (4) GLT 373*, this Court, while dealing with written statement in a proceeding before the Foreigners Tribunal, had laid down four legal propositions, viz., (i) it was held that it is trite law that documentary evidence will have to be proved on the basis of record and contemporaneous record must substantiate and prove the contents of the document; (ii) Proof of document is one thing and proof of contents is another and it was further held that not only the document has to be proved but the contents would also have to be proved; (iii) that apart, the truthfulness of the contents of the document would also have to be established

from the record; and (iv) that a document or contents of a document cannot be proved on the basis of personal knowledge.

18) Thus, on merit, the challenge to the impugned opinion is found to be without any merit.

19) The points of determination are now taken up for discussion.

Point of determination No.1 and 2:

20) The first and second point of determination is taken up together.

21) In this case, the Electoral Registration Officer (ERO for short), 25 Golakganj LAC had directed the Local Verification Officer (LVO for short) for making on-spot verification of the voter, Momina Bibi, whose name had appeared in the draft electoral roll of 1997. Accordingly, the LVO, submitted his on-spot verification report dated 13.10.1997 to the ERO. On the basis of the LVO report dated 13.10.1997, the ERO of 25 Golakganj LAC had submitted the reference to the Superintendent of Police (Border), Dhubri, who is the prescribed competent authority to make reference before the jurisdictional erstwhile Illegal Migrants (Determination) Tribunal[IM(D)T for short] as well as before the Foreigners Tribunal having jurisdiction.

22) The Tribunal's record reveals that on receipt of reference, the IM(D)T, Dhubri had registered IM(D)T Case No. 11276/D/99. The said fact is reflected in page 8 of the learned Tribunal's record, which is the order sheet of the IM(D)T.

23) The learned Tribunal's record also reveals that the Superintendent of Police (Border), Dhubri had doubted the citizenship of the petitioner and while doing so, referred to Col. No. 7 of Form No. VII[under Rule

9A of the IM(DT) Act, 1983], whereby against statement – "Does the person's name appear in electoral rolls prepared prior to 25th day of March/1971, if so details", the remark given is "No". It may also be mentioned that as per column. No. 4 of the LVO Report, the date of birth of the petitioner is recorded as 01.01.1974.

24) The remarks against column nos. 6 to 16, though projected to be blank by the learned counsel for the petitioner, but the same is found to be covered by a remark "Does not produced any documents."

25) It may be stated that on receipt of reference under Section 8(1) of the erstwhile IM(DT) Act, 1983, the erstwhile IM(D)T, Dhubri, had registered the case on 13.08.1999. However, in view of the Govt. W.T. message No. PLB.101/2005/116 dated 19.07.2005, the reference was transferred by the IM(D)T, Dhubri to the Foreigners Tribunal, Dhubri with immediate effect. As per the order dated 29.07.2011, the learned Foreigners Tribunal (2nd), Dhubri, had registered the transferred reference. Thereafter, vide order dated 18.08.2015, jurisdiction-wise, the case was again transferred from Foreigners Tribunal 2nd, Dhubri, to Foreigners Tribunal (8th), Dhubri, where the case was re-registered as FT8/179/GKJ/2015.

26) It may also be stated that the erstwhile IM(DT) Act, 1983 was declared to be unconstitutional by the Supreme Court of India in the case of *Sarbananda Sonowal v. Union of India & Ors., (2005) 5 SCC 665*, and the reference that were pending for disposal before the erstwhile IM(D)Ts were transferred to the jurisdictional Foreigners Tribunal. Therefore, when the reference in this case was transferred by virtue of the order passed by the

Supreme Court of India, this Court would refrain from questioning the very reference, based on which IM(D)T Case was registered upon transfer.

27) It may further be stated that the action by the ERO is initiated under the Representation of the People Act, 1950. After the draft electoral roll is prepared and the ERO has reasons to suspect that a voter, whose name appears in the draft, is an illegal migrant and/or a foreigner. Thus, the reference was not based on police enquiry. In such cases, the prescribed authority to make reference is only the Superintendent of Police (Border) of concerned District, which in this case is Dhubri.

28) It is common knowledge that a person who is suspected to be a foreigner would ordinarily not admit his guilt. It cannot be expected that the petitioner, who is allegedly an illegal foreigner/ migrant would admit that she is a foreigner and would voluntarily disclose about her address in Bangladesh. Under such circumstances, as per Section 9 of the Foreigners Act, 1946, the burden of proof is on the suspected illegal migrant to prove that she is not a foreigner but an Indian.

29) In this regard, it would be relevant to quote below paragraph nos. 22, 24 to 26, 29, 51, 56, 62 of the case of *Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665*.

> "***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 his 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 (UOI) Vs. Ghaus Mohammad, , 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 u/s 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.

24. *It needs to be emphasized that the general rule in the leading democracies of the world is that where a person claims to be a citizen of a particular country, the burden is upon him to prove that he is a citizen of that country. In United Kingdom, the relevant provision is contained in the Immigration Act, 1971 and sub-Section (1), (8) and (9) of Section 3 thereof read as under:*

> *"3. - General provisions for regulation and control. - (1) Except as otherwise provided by or under this Act, where a person is not a British citizen*
> *(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under this Act;*
> *(b) he may be given leave to enter the United Kingdom (or when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;*
> *(c) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both.*
> *xxxxxxxxxxx*
> *(8) When any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.*
> *(9) A person seeking to enter the United Kingdom and claiming to have the right of abode there shall prove that he has that right by means of either -m*
> *(a) a United Kingdom passport describing him as a British citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; or*
> *(b) a certificate of entitlement."*

25. *Somewhat similar provision is contained in Immigration and Nationality Act of USA and Section 291 places the burden of proof upon the person concerned in any removal proceeding. Section 318 provides that no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of the Act and the burden of proof shall be upon such person to show that he entered the United*

States lawfully. The Immigration and Refugee Protection Act, 2001 of Canada contains a provision of placing the burden upon the concerned person to establish his right to have a permanent residence in the said country. Section 188 of the Migration Act, 1958 of Australia provides that an officer may require a person whom the officer knows or suspects is a non-citizen to (a) show the officer evidence of being a lawful non-citizen; or (b) show the officer evidence of the person's identity.

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 u/s 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.*

29. *In State of West Bengal Vs. Mir Mohammad Omar and Others etc., , it was held that the legislature engrafted special rule in Section 106 of the Evidence Act to meet certain exceptional cases in which not only it would be impossible but disproportionately difficult for the prosecution to establish such facts which are specially and exceptionally within the exclusive knowledge of the accused and which he could prove without difficulty or inconvenience. This principle was reiterated in Sanjay @ Kaka Vs. The State (NCC.T. of Delhi), and Ezhil and Others Vs. State of Tamil Nadu.*

51. *The foremost duty of the Central Government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure. The Government has also a duty to prevent any internal disturbance and maintain law and order. Kautilya in his masterly work "The Arthashastra" has said that a King had two responsibilities to his state, one internal and one external, for which he needed an army. One of the main responsibilities was Raksha or protection of the state from external aggression. The defense of the realm, a constant preoccupation for the king, consisted not only of the physical defense of the*

kingdom but also the prevention of treachery, revolts and rebellion. The physical defensive measures were the frontier posts to prevent the entry of undesirable aliens and forts in various parts of the country. (Arthashastra by Kautilya - translated by Shri L.N. Rangarajan, who was in Indian Foreign Service and ambassador of India in several countries - published by Penguin Books - 1992 Edn. - page 676). The very first entry, namely, Entry 1 of List I of the Seventh Schedule is "Defense of India and every part thereof including preparation for defense and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization". In fact entries 1 to 4 of List I of Seventh Schedule mainly deal with armed forces. Article 355 of the Constitution of India reads as under:-

> *355. Duty of the Union to protect States against external aggression and internal disturbance. - It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."*
>
> *The word "aggression" is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, "an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes."*
>
> *The word "aggression" is not to be confused only with "war". Though war would be included within the ambit and scope of the word "aggression" but it comprises many other acts which cannot be termed as war. In Kawasaki v. Bantahm S.S. Company 1938 (3) All ER 80, the following definition of "war" as given in Hall on International Law has been quoted with approval :-*
>
> *"When differences between States reach a point at which both parties resort to force, or one of them does acts of violence, which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants may use regulated violence against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant."*

56. *There was a large scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak war. On 3rd November, 1971, one month before the actual commencement of the war, Dr. Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said :-*

> *".....The first consideration, in the view of the Indian Delegation, is that*

aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms..... We would accordingly support the categorical view expressed by the distinguished delegate of Burma, the U.K. and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous.

.....

For example, there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence, I am afraid, Mr. Chairman, it would have to be categorized as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order..... What I wish to convey, Mr. Chairman, is the complexity of the problem which does not permit of a four-line definition of aggression much less an ad-interim declaration on it."

62. *The very first sentence of the Statement of Objects and Reasons of the IMDT Act says "the influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North- Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region." It further says that "continuance of these persons in India has given rise to serious problems." The Preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India." The Governor of Assam in his report dated 8th November, 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. Pakistan's I.S.I. is very active in Bangladesh supporting militants in Assam. Muslim militant organizations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the*

rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of Deputy Chief of the Army Staff and is very well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people in Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources."

30) The learned counsel for the petitioner has not been able to show that the petitioner had taken any attempt to establish before the learned Foreigners Tribunal that the investigation was not proper. Moreover, in this case, the petitioner had participated in the proceedings without any demur and therefore, subjected herself to the jurisdiction of the said learned Foreigners Tribunal and therefore, it would be impermissible for the petitioner to now claim that the reference was not properly made.

31) Be that as it may, in the case of *Shukurjan Nessa @ Sukurjan v Union of India & Ors., W.P.(C) 245/2019, decided on 28.02.2025*, the reference by Electoral Registration Officer has been dealt with. In the said case, the issue relating to reference made at the instance of the Electoral Registration Officer (ERO for short) has been clarified. The relevant part of the said judgment and

order are extracted hereinbelow:-

> ***14***. *The point raised by the learned counsel for the petitioner that the reference was blank and not properly filled up and therefore, the grounds of suspecting the petitioner to be a foreigner has not been furnished to her is taken up first.*
>
> ***15***. *In this case, the reference was made by the Superintendent of Police (Border), Barpeta, on receipt of communication dated 16.03.1998, issued by the Electoral Registration Officer, 44 No. Jania L.A.C., which is accompanied with a three page Local Verification Report (Annexure-A) by one Sri Khagen Kalita, J.E. In the said LVO Report dated 17.10.1997, it has been mentioned at two places to the effect that no documents produced during field verification.*
>
> ***16***. *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.*
>
> ***17***. *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. We are 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 (In-charge 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.

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

***18**. The learned counsel for the petitioner had cited the case of Moslem Mondal (supra) and Amina Khatun (supra) to support his contention that if LVO report is blank, the reference is vitiated. In this regard, it would be relevant to mention that as per the contents of para-10 of the case of Moslem Mondal (supra), the Superintendent of Police, Barpeta, suspecting the respondent therein as illegal migrant within the meaning of the Illegal Migrants (Determination by Tribunals) Act, 1983, made a reference under Section 8 (1) of the said Act read with Rule 9 (A) of the Rules framed thereunder and accordingly, Case No. 1311/2003 was registered before the IM(D)T, Barpeta and the said proceeding was subsequently transferred to the Foreigners Tribunal and registered as F.T. Case No. 243/2006. Therefore, in the said case, reference was not made by Electoral Registration*

Officer (EVO for short). Hence, the decision of Moslem Mondal (supra), being distinguishable on facts, is not found to help the petitioner in any manner.

***19**. However, in the case of Amina Khatun (supra), which was decided on 28.04.2022, the reference was made by the Superintendent of Police (Border), based on LVO by the ERO. But when the said writ petition was being heard and decided by a Coordinate Bench, it appears that the previous decision of the learned Single Judge of this Court in the case of Sayam Uddin v. The Union of India & Ors., 2019 (4) GLT 456, as affirmed by the Division Bench of this Court in the case of Sayam Uddin v. Union of India & Ors., W.A. 170/2019, decided on 29.07.2019, were not brought to the notice of this Court. Therefore, under such circumstances, the Court is of the considered opinion that under the well settled principles of stare decisis, the decision in the case of Amina Khatun (supra) would be per in curium. Accordingly, the decision rendered in the case of Amina Khatun (supra) will also not be of any help to the petitioner.*

***20**. In the present case, the proceedings which were hitherto pending before the Illegal Migrants (Determination) Tribunals were transferred by the Supreme Court of India to the Foreigners Tribunal vide directions issued in the case of Sarbananda Sonowal (supra). 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.*

***21**. 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 point of determination no. (i) is answered accordingly.*"

32) As stated hereinbefore, in this case the petitioner did not take any such plea in her written statement that she was not furnished with grounds of suspecting her to be a foreigner. Had such a plea been raised before the learned Tribunal, the learned Tribunal would have provided the petitioner the relevant material. In this case, the petitioner was aware that she had failed to produce any material in support of her defence of not being an illegal migrant/ foreigner when enquiry was made. Therefore, at this stage, when the Court is

exercising certiorari jurisdiction, it is only permissible to examine if the opinion expressed by the learned Foreigners Tribunal is vitiated on account of perversity. Without raising such plea before the learned Tribunal, the State cannot be non-suited on such plea taken for the first time before this Court. If one needs any authority on the point of extent of power that can be exercised under certiorari jurisdiction, the decision of the Supreme Court of India in the case of *Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 INSC 733: (2023) 0 Supreme(SC) 763*, may be referred to. Paragraph 77 thereof is quoted below:-

> "*77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334 observed:*
>
> > "*26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made*."

33) In light of the discussions above, the cases cited by the learned counsel for the petitioner on the point of reference would not help the petitioner in any manner whatsoever.

34) Thus, the said plea that the petitioner was not served with the grounds of suspecting her to be a foreigner is repelled and rejected.

35) In this case, the exhibited documents are not sufficient documentary evidence to link the petitioner with her projected father. The petitioner's only document to link her with her projected father is the Certificate issued by the Secretary, Sindurai Gaon Panchayat. However, the author of the said document was not examined to prove the certificate as well as the contents of the said certificate (Ext.1). Thus, owing to failure on part of the petitioner to prove Ext. 1 by examining its author, the said Ext.1 is otherwise not admissible in evidence.

36) Thus, in light of the discussions above, the Court does not find any fault with the finding recorded by the learned Tribunal that the petitioner has failed to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove that she is not a foreigner and/or illegal migrant, but an Indian citizen.

37) Accordingly, it is held that the point that the LVO report was not properly filled up and that the summons did not disclose the grounds of suspecting the petitioner to be a foreigner is devoid of any merit.

38) The point urged by the learned counsel for the petitioner was that while issuing notice, the learned Tribunal had put the petitioner to notice that she had entered illegally from East Pakistan/ Bangladesh "*after 01.01.1966 and 24.03.1971*".

39) Under the Foreigners Act, 1946, the 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 Order 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 Order 2 of the Foreigners (Tribunals) Order, 1964 make it explicit that it is the Superintendent of Police (Border) who would be the 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.

40) 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 (WA 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."

41) 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 s 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 Staten 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."

42) The learned counsel for the petitioner had cited the case of *Anjana Biswas (supra)*, *Md. Rahim Ali (supra)*, *Amina Khatun (supra)* and *Sushil Mondal (supra)*. In the case of *Mayman Bibi (supra)*, the reference did not allege the petitioner therein to be an illegal migrant. Rather, the endorsement by the enquiry officer was that "*the proceeding be dropped*." Similarly, in the case of *Sushil Mondal (supra)*, the Enquiry Officer had mentioned that the petitioner is not suspected to be a foreigner. Thus, on facts, the present case is distinguishable.

43) In the case of *Anjana Biswas (supra)*, not only the petitioner of the said case had pleaded about her projected father, but her projected father had also appeared and deposed in favour of the petitioner and amongst others, the petitioner had exhibited land document of the year 1967. Therefore, on facts, the said case is distinguishable. It may also be stated that when the case of *Anjana Biwas (supra)* was decided, it was not brought to the notice of this Court that ERO Reference was not an exercise under Foreigners Act, 1946, but is an exercise done under the Representation of the Peoples Act, 1950.

44) In the case of *Md. Rahim Ali (supra)*, the reference was not made by the ERO, but the reference was made under the Foreigners Act, 1946, for which on facts, the present case is distinguishable, as elaborately discussed

hereinbefore.

45) In respect of the case of *Amina Khatun (supra)*, the discussion of the same is made in the case of *Shukurjan Nessa @ Sukurjan (ibid, at para 52 below)*, where reference is also made to the two cases of *Sayam Uddin (supra)*, cited by the learned standing counsel for Border and FT Matters.

46) Accordingly, the second point of determination is answered by holding that the Superintendent of Police (Border), Dhubri, while making a reference before the Foreigners Tribunal, had suspected the petitioner to be an illegal migrant and did not suggest that the petitioner was not a foreigner. Therefore, a mere fact that while issuing notice, the petitioner was accused of entering into India (Assam) after 01.01.1966 to 24.03.1971, would not make the charge against the petitioner to be not clear or ambiguous. Thus, the impugned opinion is not found to be vitiated on that count. Thus, the point of determination is answered in the negative and against the petitioner.

First point of determination:

47) The first point of determination is as to whether on the ground that the enquiry report of the Local Verification Officer was vague and not properly filled up, the reference was vitiated, is taken up first.

48) It is common knowledge that a culprit would ordinarily not admit his guilt and similarly, it cannot be expected that an illegal foreigner/ migrant would admit that he/she is a foreigner and would voluntarily disclose about his/her address in Bangladesh. The Court cannot lose sight of the fact that the Election Commission of India requisitions the serviced of various Government Servants for enumeration and verification duties. The said officers are not

trained in a manner in which the police are trained for investigation. Therefore, when Verification Officers put queries to the disputed voters, and those queries are not answered and no supporting documents are produced by the suspect, the Court cannot reject the enquiry report merely because no reply was given by the suspect and no documents were produced by the suspected illegal migrant. Under such circumstances, as per Section 9 of the Foreigners Act, 1946, the burden of proof is on the suspected illegal migrant to prove that he/she is not a foreigner but an Indian.

49) It may be mentioned herein that by virtue of the judgment and order passed by the Supreme Court of India in the case of *Sarbananda Sonowal (supra)*, all the proceedings that were then pending before the erstwhile IM(D)Ts, were transferred to the Foreigners Tribunal having jurisdiction. The transferred reference was received by the jurisdictional Foreigners Tribunal, being Foreigners Tribunal-2, Morigaon. Later on, after creation of the new Tribunal, the reference was transferred to the Foreigners Tribunal- 5th, Morigaon, where it was registered as Case No. F.T.(D) 1847/2017. Therefore, as evident from the decision of the Supreme Court of India, in the case of *Sarbananda Sonowal (supra)*, the instant case was transferred from IM(D)T to the Foreigners Tribunal, no further determination can be made by this Court regarding making of and/or registration of the reference.

50) The learned counsel for the petitioner has not been able to show that the petitioner had made any attempt to establish before the learned Foreigners Tribunal that the investigation was not proper. Moreover, in this case, the petitioner had participated in the proceedings without any demur and therefore, subjected himself to the jurisdiction of the said learned Foreigners

Tribunal and therefore, it would be impermissible for the petitioner to now claim that the reference was not properly made.

51) The said action by the Electoral Registration Officer is initiated under the Representation of the People Act, 1950, after the draft electoral roll is prepared and the Electoral Registration Officer has reasons to suspect that a voter, whose name appears in the draft, is an illegal migrant and/or a foreigner.

52) Be that as it may, in the case of *Shukurjan Nessa @ Sukurjan v Union of India & Ors., W.P.(C) 245/2019, decided on 28.02.2025*, the reference by the Electoral Registration Officer has been dealt with. In the said case, the issue relating to the reference made at the instance of the Electoral Registration Officer (ERO for short) has been clarified. The relevant part of the said judgment and order is extracted hereinbelow:-

> ***14***. *The point raised by the learned counsel for the petitioner that the reference was blank and not properly filled up and therefore, the grounds of suspecting the petitioner to be a foreigner has not been furnished to her is taken up first.*
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> ***15***. *In this case, the reference was made by the Superintendent of Police (Border), Barpeta, on receipt of communication dated 16.03.1998, issued by the Electoral Registration Officer, 44 No. Jania L.A.C., which is accompanied with a three page Local Verification Report (Annexure-A) by one Sri Khagen Kalita, J.E. In the said LVO Report dated 17.10.1997, it has been mentioned at two places to the effect that no documents produced during field verification.*
>
> ***16***. *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.*
>
> ***17***. *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. We are 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 (In-charge 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.

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

***18**. The learned counsel for the petitioner had cited the case of Moslem Mondal (supra) and Amina Khatun (supra) to support his contention that if LVO report is blank, the reference is vitiated. In this regard, it would be relevant to mention that as per the contents of para-10 of the case of Moslem Mondal (supra), the Superintendent of Police, Barpeta, suspecting the respondent therein as illegal migrant within the meaning of the Illegal Migrants (Determination by Tribunals) Act, 1983, made a reference under Section 8 (1) of the said Act read with Rule 9 (A) of the Rules framed thereunder and accordingly, Case No. 1311/2003 was registered before the IM(D)T, Barpeta and the said proceeding was subsequently transferred to the Foreigners Tribunal and registered as F.T. Case No. 243/2006. Therefore, in the said case, reference was not made by Electoral Registration Officer (EVO for short). Hence, the decision of Moslem Mondal (supra), being distinguishable on facts, is not found to help the petitioner in any manner.*

***19**. However, in the case of Amina Khatun (supra), which was decided on 28.04.2022, the reference was made by the Superintendent of Police (Border), based on LVO by the ERO. But when the said writ petition was being heard and decided by a Coordinate Bench, it appears that the previous decision of the learned Single Judge of this Court in the case of Sayam Uddin v. The Union of India & Ors., 2019 (4) GLT 456, as affirmed by the Division Bench of this Court in the case of Sayam Uddin v. Union of India & Ors., W.A. 170/2019, decided on 29.07.2019, were not brought to the notice of this Court. Therefore, under such circumstances, the Court is of the considered opinion that under the well settled principles of stare decisis, the decision in the case of Amina Khatun (supra) would be per in curium. Accordingly, the decision rendered in the case of Amina Khatun (supra) will also not be of any help to the petitioner.*

***20**. In the present case, the proceedings which were hitherto pending before the Illegal Migrants (Determination) Tribunals were transferred by the Supreme Court of India to the Foreigners Tribunal vide directions issued in the case of Sarbananda Sonowal (supra). 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.*

> ***21***. *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 point of determination no. (i) is answered accordingly.*"

53) In this case, the reference were made before the erstwhile IM(D)T and thereafter, the proceeding was transferred on the basis of orders passed by the Supreme Court of India, referred above. If in a given case, the proceedee discloses incorrect information and/or does not disclose any relevant information to the LVO, there is no way that a LVO will be able to fill-up all the columns of the form. Therefore, the pertinent question is that whether the reference be allowed to be frustrated because the petitioner had either given incorrect information and/or lack of information and consequently, whether giving false and/or incorrect information or lack of information would render the proceedee to be declared as an Indian citizen by dint of his own fault. The answer would in an emphatic no.

54) In this case, the petitioner was aware that she had failed to produce any material in support of her defence of not being an illegal migrant/ foreigner when the enquiry by the LVO was made. This is evident from the fact that against column nos. 3 to 16 of Format-A, which is the "Format for Verification Officer's Report", nothing was recorded. Therefore, at this stage, when the Court is exercising certiorari jurisdiction, it is only permissible to examine if the opinion expressed by the learned Foreigners Tribunal is vitiated on account of perversity. Without raising such plea before the learned Tribunal, the State cannot be non-suited on such plea taken for the first time before this Court. If one needs any authority on the point of the extent of power that can

be exercised under certiorari jurisdiction, the decision of the Supreme Court of India in the case of *Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 INSC 733: (2023) 0 Supreme(SC) 763*, may be referred to. Paragraph 77 thereof is quoted below:-

> "*77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334 observed:*
>
> > "*26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made*."

55) Thus, the said plea that the petitioner was not served with the grounds of suspecting her to be a foreigner and that the verification form was not properly filled-up are both repelled and rejected. The first point of determination is accordingly, answered in the negative and against the petitioner.

Third point of determination:

56) The third point of determination is as to whether the impugned opinion called for interference.

57) In light of the finding on the point of determination nos. 1 and 2, as well as in light of the analysis of the pleadings and evidence, as mentioned hereinbefore, the impugned opinion rendered by the learned Tribunal is not found to be vitiated by any jurisdictional error or that there was any failure of giving opportunity of hearing to the petitioner. Therefore, as the Court is exercising certiorari jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned Tribunal with any other view of the Court. This is not a case where the learned Tribunal had refused to admit admissible evidence or that it's finding is *dehors* the evidence on record.

58) In *Aziz Miya @ Md. Aziz Mia (supra)*, it has been held that a mere claim by a suspected person by referring to a voters' list claiming a person therein to be his father is not conclusive proof and that by doing so, it cannot be said that the person has discharged the burden to prove that he is not a foreigner. This is because there is also a further requirement to prove that the person who is reflected in the voters' list relied upon, is actually the father of the person who makes the claim. The claim will have to be substantiated with further material/materials acceptable in law. In this case, it does not appear that the petitioner had discharged her part of the burden to prove that she is the daughter of the person whose sole name appear in the exhibited voters list of 1966 (Ext.3), without any other supporting cogent and admissible evidence.

59) In light of the discussions above, this Court does not find that the impugned opinion rendered by the learned Tribunal is vitiated by any jurisdictional error or that there was any failure in giving opportunity of hearing to the petitioner. The petitioner has not been able to show that the learned Tribunal had failed to consider any pleadings or evidence or had taken into

consideration any extraneous materials to render its opinion. This is not a case where the learned Tribunal had refused to admit admissible evidence or that its finding is *dehors* the evidence on record. Therefore, as the Court is exercising supervisory jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned Tribunal with the view of the Court. The relevant part of the order passed by the Supreme Court of India in the case of *Bikartan Das (supra)* on the point of certiorari jurisdiction has been quoted hereinbefore.

60) Thus, the opinion dated 30.09.2016, passed by the learned Member, Foreigners Tribunal (8th), Dhubri, Assam, in F.T. Case No. 8/179/GKJ/2015 [arising out of F.T. Case No. 8193/GKJ/2011; Ref. IMDT Case No. 1596/98], thereby declaring the petitioner, namely, Momina Bibi to be a foreigner, who had entered into India (Assam) without authority after 25.03.1971, does not call for any interference in this writ petition. Hence, this writ petition fails on all counts and the same is dismissed.

61) Interim bail granted to the petitioner by order dated 20.05.2024, is vacated.

62) The consequences of the said opinion shall follow.

63) The parties are left to bear their own cost.

64) The Registry shall return back the Tribunal's records along with a copy of this order so that the said learned Tribunal would make it a part of the record for future reference.

65) The learned standing counsel for FT and Border matters shall send a downloaded copy of this order to the Home & Political (B) Department

for their information and record.

JUDGE **JUDGE.**

Digitally signed by Champak Rajbongshi
Date: 2026.11.11 16:37:07 +05'30'

Comparing Assistant **Private Secretary**