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

Case No. : Review.Pet./28/2021

MOHELA KHATUN
D/O ABDUL KADER, W/O JAIDUL ISLAM, R/O DERGAON, VILL. AND P.O. NO. 3 DHOLPUR, DIST. DARRANG, ASSAM, PIN 784145

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT.OF ASSAM
HOME DEPTT.
DISPUR

GHY-6

4:THE STATE COORDINATOR OF NRC
BHANGAGARH
ASSAM
GHY-5

5:THE DY. COMMISSIONER
DARRANG
DIST- DARRANG
ASSAM
PIN- 784125

6:THE SUPERINTENDENT OF POLICE (B)
DARRANG
DIST- DARRANG
ASSAM
PIN- 784125

7:THE OFFICER-IN-CHARGE
SIPAJHAR P.S.
DIST- DARRANG
ASSAM
PIN- 784145

8:DEPEN DEKA
ADVOCATE
MANGALDOI BAR ASSOCIATION
MANGALDOI ASSAM
PIN- 78412

Advocate for the Petitioner : MR. M U MAHMUD, MS R ALI,MR S H MAHMUD

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,SC, NRC,SC, ELECTION COMMISSION.

Linked Case : WP(C)/4079/2019

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Advocate for : MR. M U MAHMUD
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE PRANJAL DAS

O R D E R

06.10.2026

(K.R. Surana, J)

Heard Mr. M. U. Mahmud, learned counsel for the petitioner/review petitioner. Also heard Mr. B. Kaushik, learned CGC; Mr. A.I. Ali, learned Standing Counsel for the ECI for the respondents; Mr. P. Sarmah, learned Addl. Senior Govt. Advocate and Mr. J. Payeng, learned Standing Counsel for the F.T. and Border matters.

2. By filing this review petition, the petitioner herein, who is the writ petitioner in W.P.(C) 4079/2019, has assailed the order dated 27.09.2019 passed by this Court in the said W.P.(C) 4079/2019. The effect of the said impugned order dated 27.09.2019 was to the effect that the writ petition was dismissed without finding any reason to interfere with the opinion dated 12.10.2018 passed by the learned Member, Foreigners Tribunal (4th), Darrang, Mangaldai, in FT-4th Case No. 97/SPR/2017, arising out of F.T. Case No. 1210/11 and Reference - IM(D)T Case No. 1005/2001.

3. In the review petition, the following grounds of review have been urged:

(i) For that the Honorable Court has not considered her panchayat certificate as linkage, due to not proving the same by the author of the certificate. This Honorable Court has given chance to many individuals to prove their linkage under similar circumstances.

ii) For that the Honorable Court has not considered her School Certificate, PAN Card and Marriage agreement, which is her linkage with her father, bearing Annexure nos. 6-8 due to not proved but in a similar case, this Honorable Court has remanded back the matter to

Tribunal to prove the petitioner's Marriage Certificate as linkage at para-12, vide judgement, dated 12.02.2019, passed in W.P.(C) No. 221/2018.

iii) For that the brothers and sisters names have been recorded in the NRC of Assam, which is also a good ground for review in view of the Honorable Supreme Court's order in the case of Abdul Kuddus.

iv) For that the Honorable High Court in the Full Bench decision, as reported in the State of Assam and Others Vs. Moslem Mondal 2013 (1) GLT 809, paras-90, 91 and 92, it has categorically observed that the Tribunal has the power to review the order, if appropriate ground exists. Moreover, in a large number of judgements, the Honorable Apex Court has also held that the courts have ample powers to review its own orders even on subsequent development.

v) For that the NRC 1951 and voter list of 1970 in the name of her grandfather, chitha of surveyed villages in her own name with her father and other public documents have been illegally doubted and disbelieved which requires review of the impugned order.

vi) For that the lawyers dereliction of duty to the effect that though she wanted to adduce more witnesses, she was discouraged by the lawyer and this aspect has not been considered by the Honorable High Court, whereas the settled position of law is this that due to the mistakes of the lawyers, parties should not suffer, more so when the petitioner has filed complaint against lawyer before the Bar Council.

vii) For that the other grounds may be submitted at the time of hearing.

4. In support of his submissions to the effect that this Court had not considered all the documents in proper perspective, the learned counsel for the petitioner had referred to the following Ext.s, which were documents exibited by the petitioner before the learned Tribunal.

(i) Ext.1-Voter List of 1970 in the name of projected Grandfather, grandmother and uncles of the petitioner.

(ii) Ext.2-Copy of the NRC 1951 in the name of projected Grandfather and grandmother of the petitioner.

(iii) Ext.3-Legacy Data Code No.340-0036-4589 of the projected father of the petitioner.

(iv) Ext.4-Copy of NRC of 1951.

(v) Ext.5- Copy of Voter List of 1971.

(vi) Ext.6- Copy of Voter List of 1970.

(vii) Ext.7- Copy of Voter List of 1989.

(viii) Ext.8- Copy of Voter List of 1997.

(ix) Ext.9-School Transfer Certificate of Japea Govt. Aided High School in the name of the petitioner.

(x) Ext.10-Gaonburah Certificate.

(xi) Ext.11-Marriage agreement No. 576 dated 19.07.1996.

(xii) Ext.12- Certificate issued by the Gaon Panchayat Secretary dated 14.04.2017.

(xiii) Ext.13-Identity Card of the petitioner.

(xiv) Ext.14-Certificate of Elected Member Panchayat Election 2012.

(xv) Ext.15-Gaon Panchayat Certificate dated 21.06.2015.

(xvi) Ext.16-Elector Photo Identity Card of the petitioner.

(xvii) Ext.17 - Voter list of 1997.

(xviii) Ext.s-18 to 24 - Voter Lists.

(xix) Ext.25 - NRC entry certificate

(xx) Ext.26 - Voter list of 1970.

(xxi) Ext.27 - Voter list of 1966.

5. Referring to the entries made in the said documents, the learned counsel for the petitioner has submitted that the petitioner has been able to establish that her grandfather was Md. Desaruddin and her father was the son of Desaruddin, whose name appeared in the NRC of 1951 (Ext.4) along with her father, namely, Abdul Kader Sk. The name of her grandfather also appeared in the voter list of 1970 (Ext.6) and the name of her father Abdul Kader appeared in the voter list of 1989 (Ext.7), voter list of 1997 (Ext.8).

6. The learned counsel for the petitioner has also submitted that the name of the petitioner appeared in the School Transfer Certificate (Ext.9), where the name of her father is written as Abdul Kader Mondal, which is a link of the petitioner to her projected father. In the same context, reference is made to the marriage agreement (Ext.11) dated 19.07.1996 to establish the link of the

petitioner to her projected father.

7. The learned counsel for the petitioner has also referred to the contents of the Gaonburah certificate (Ext.10), Gaon Panchayat Secretary's certificate dated 14.04.2017 (Ext.12). It is submitted that the petitioner had contested the Panchayat elections of 2012 and was elected and in that regard, the contents of the identity card of the petitioner (Ext.13), certificate of elected Member of Panchayat election 2011-2013 (Ext.14), and the Gaon Panchayat certificate dated 21.06.2015 and Elector Photo Identity Card (EPIC) for short of the petitioner (Ext.16) were referred to. It was submitted that the name of the petitioner appeared in the voter list of 1997 along with her husband (Ext.8).

8. It has been further submitted that the name of the petitioner had appeared in the NRC which was not the earlier produced. Moreover, it is submitted that in this review petition, the petitioner has produced a copy of Chitha, which contains the name of the projected grandfather and father, as well as the name of the petitioner. So, accordingly, it is submitted that the link of the petitioner can be established with the said document and therefore, it was an appropriate case for remand of the matter back to the learned Tribunal for a fresh decision by giving opportunity to the petitioner to prove the land document as well as to prove the subsequent event of the name of the petitioner being included in the NRC.

9. The learned counsel for the petitioner has submitted that the engaged counsel for the petitioner who appeared before the Foreigners Tribunal had committed dereliction of duty and though the petitioner wanted to adduce more witnesses, she was discouraged by her learned counsel and accordingly, the authors of the documents like the Gaon Panchayat and the Sub-Registrar in respect of the marriage agreement (Ext.11), School Transfer Certificate (Ext.9)

could not be summoned and examined. It is submitted that the petitioner has filed a complaint before the Bar Council of India to take disciplinary action against her engaged counsel. However, on a query put by the Court, the learned counsel for the petitioner submitted that he is not aware of the status of the said proceedings, which were initiated by filing a complaint before the Bar Council of India.

10. In order to support his submissions, learned counsel for the petitioner has cited the following cases:

(i) *M.M. Thomas vs. State of Kerala and Others, (2000) 1 SCC 666*,

(ii) *Board of Control for Cricket in India (BCCI) vs. Netaji Cricket Club) (2005) 4 SCC 741*,

(iii) *Anil Rishi Vs. Gurbaksh Singh (2006) 5 SCC 558,*

(iv) *Sabitri Dey @ Swasthi Dey vs. State of Assam and Others, (2026) INSC 694*.

11. *Per contra*, the learned Standing Counsel for the Foreigners' Matters has submitted that in order to entertain a review petition, the first and foremost requirement is to satisfy the Court regarding the existence of error apparent on the face of the record, which would be in respect of the impugned order dated 27.09.2019 under review. In the said context, it has been submitted that the learned counsel for the petitioner has not made any attempt to show as to what error apparent had crept in the said order dated 27.09.2019. It is submitted that the second ground on which a review petition can be entertained is that despite due diligence, certain documents could not be produced. However, there is no reference made by the learned counsel for the petitioner as to which document could not be produced despite exercise of due diligence. It is submitted that the learned counsel for the petitioner had relied on the subsequent NRC, where the name of the petitioner had appeared. In the said context, it is submitted that in ground no. (iii), it has been averred that the NRC contained listing of names of

the brothers and sisters of the petitioner. However, the document relied on which is annexed to this review petition at (Annexure- F) series is the printout of an NRC containing the name of the petitioner. It is submitted that on an examination of the said document, the said printout is of July 2018. Accordingly, it is submitted that since the printout relates to the entries in the NRC as on 30th July 2018. After such updation of NRC, the learned Foreigners Tribunal had passed its opinion dated 12.10.2018. Accordingly, it is submitted that the opinion passed by the learned Foreigners' Tribunal would always override the updation of the NRC which has been done in respect of a declared foreign national.

12. It has also been submitted that as per the contents of the entries in the Chitha, the name of the petitioner was entered by the Settlement Officer, Mankachar Revenue Circle vide order dated 20.11.2018, which is after the opinion dated 12.10.2018 was passed. Accordingly, it is submitted that the entries made in the revenue records would not override the opinion dated 12.10.2018.

13. In support of his submissions that the review jurisdiction was very limited as this Court, while entertaining the challenge to the opinion dated 12.10.2018 in W.P.(C) 4079/2019, was exercising certiorari jurisdiction and not appellate or revisional jurisdiction. Therefore, as the petitioner did not approach the learned Tribunal for review of the opinion, the present review petition would not be maintainable, the following cases were cited:-

(i) *Kamlesh Verma vs. Mayawati (2013) 8 SCC 320*;

(ii) *Altar Ali vs. Union of India, 2025 SCC OnLine GAU 2919*;

(iii) *Md. Siraj Ali @ Chiraj Ali, 2024; GAU; AS (capital); 12406*

(iv) Abdul Kuddus Vs Union of India and others, reported in (2019) 6 SCC 604,

14. Examined the review petition with all documents. Also, considered the submissions as well as the cases cited at the Bar.

15. The submission in respect of the impugned order dated 27.09.2019 under review is that this Court had not considered the Gaon Panchayat certificate, School Transfer Certificate, PAN card, and marriage agreement of the petitioner as linkage, merely because the authors of the said documents were not summoned and examined. In that regard, it has been stated in ground no.1 of this review petition that this Court had given chance to many individuals to prove their linkage under similar circumstances and in that regard, reliance is placed on order dated 20th February 2019 passed in W.P.(C) No. 5158/2018 as well as order dated 12.02.2019 passed by this Court in W.P.(C) No. 221/2018. Therefore, as these are the only two grounds urged for finding error apparent in the order of the Court, the said aspect of the matter is now being examined hereinunder:-

15.1. This Court, while entertaining the challenge to the opinion dated 12.10.2018, is exercising certiorari jurisdiction. In order to understand the powers of the Court while exercising certiorari jurisdiction, it would be appropriate to refer to a recent judgment of this Court in the case of *Central Council for Research in Ayurvedic Sciences Vs. Bikartan Das 2023 INSC 733: (2023) O Supreme (SC) 763*. In the said judgment, the Supreme Court of India has laid down that while exercising certiorari jurisdiction, the Court is not entertaining appellate or revisional jurisdiction. Thus, if in a given case, the Court is satisfied that a case of remand is made out, the Court would have power and jurisdiction to set aside the impugned order and remand the matter back to the said Foreigners' Tribunal. In the case of *Jamila Khatun Vs. Union of India & 8 Ors. in W.P.(C) No.5158/2018*, this Court was satisfied with the cross-

examination of DW-2 in that case that prior to 17 or 20 years ago, he was a resident of village Padupuri and accordingly, this Court was of the view that in the absence of any material to arrive at a definite conclusion that DW-2, Abdul Jalil, son of Golap Ali and Azalil, son of Golap of the 1971 voter list of village Padupuri are the same person or not, a definite view cannot be taken as to whether the petitioner had established a link with Azalil, son of Golap of the voter list of 1971 of village Padupuri.

16. A similar situation is not there in the present case in hand. In this case, the Gaon Panchayat certificate dated 14.04.2017 (Ext.12), Gaon Panchayat certificate dated 21.06.2015 (Ext.15), School Transfer Certificate (Ext.9), and marriage agreement (Ext.11) were examined by the learned Foreigners' Tribunal. On a challenge being made, this Court, while disposing of the writ petition being W.P.(C) No. 4079/2019 by order dated 27.09.2019 had taken into consideration the reference to the said documents and gave a finding to the effect that Ext. nos-9, 11, 12, and 15 certificates rendered themselves as inadmissible in evidence, inasmuch as the authors of the said certificates were not examined to prove the same and/or the contents thereof. The submission of the learned counsel for the petitioner that this Court did not give opportunity to the petitioner to prove the documents is misconceived, because documents are to be proved before the learned Tribunal and not before this Court.

17. Therefore, an issue which has been already taken into consideration and decided cannot be reopened in exercise of review jurisdiction merely because another view could have been taken to remand the matter back to the learned Foreigners' Tribunal. This is not how a review jurisdiction should be entertained and exercised when the challenge has been considered under certiorari jurisdiction. In certiorari jurisdiction, the Court is required to examine only

whether the impugned opinion was sustainable and whether, it took into consideration materials extraneous to the record to declare the petitioner as a foreigner or whether the learned Tribunal had committed any error in appreciating the pleadings and evidence on record. Therefore, in the considered opinion of the Court, a review would not be maintainable in respect of re-consideration of the Ext. Nos. 9, 11, 12, and 15, which was held by this Court to be inadmissible in evidence for non-examination of the authors of the said certificate. The above would answer the ground nos. (i) and (ii) taken by the petitioner in this review petition.

17.1. Ground no. (iii) of the review application is that the names of the brothers and sisters of the petitioner have been recorded in the NRC and according to the learned counsel for the petitioner, in view of the decision of the Supreme Court of India in the case of *Abdul Kuddus (supra),* the same content constitutes a good ground for review.

18. In light of the discussions above, it would now be appropriate to refer to the decision of the Supreme Court of India in the case of *Kamlesh Verma*, (*supra*). It has specifically been held in paragraph 20.2 thereof to the effect that a mere possibility of two views on the subject cannot be a ground for review, it has also been laid down that review proceedings cannot be equated with the original hearing of the case and it has also been held that a review would not be maintainable on a repetition of the old and overruled arguments, which is not enough to reopen a concluded adjudication.

19. The learned counsel for the petitioner had cited the case of *Abdul Kuddus*, (*supra*) and reference was made to paragraph nos. 28 and 29 thereof. Both the said paragraphs are quoted hereinbelow:-

"28. It was highlighted that there could be contradicting decisions/opinions of the Foreigners Tribunal even in cases of near family members, albeit contradictions can be avoided when "family tree hearings" are held as is now being undertaken. In the absence of joint decisions, conflict is possible as the principle of res judicata would not apply to separate proceedings even if against two closely related but different persons, as each case has to be strictly decided on the facts and evidence on record. Secondly, there is a possibility that some/one of the near family members may have migrated to India prior to midnight of 24-3-1977 and, therefore, fall in a different category. Any such conflict, however, would not compel us to take a different view, in terms of the clear statutory provisions. In a given case, the person aggrieved would have liberty to invoke writ jurisdiction, or if necessary, review jurisdiction before the High Court or this Court to ensure that no injustice is done. Any order passed in case of close family members, subsequent to adjudication order determining the citizenship status of a person, would necessarily be a material evidence which can be duly taken note of and considered while deciding a writ petition or a review application.

29. In view of the aforesaid findings, it has to be held that Para 8 of the Schedule to the 2003 Rules which gives a right to appeal before the Tribunal under the 1964 Order would apply only if and, in those cases, where the Tribunal constituted under the 1964 Order has not already adjudicated upon and decided the issue as to whether the person is an Indian National or a foreigner. In other words, where the issue and question of nationality has already been determined under the 1964 Order, an appeal would not be maintainable under Para 8 of the Schedule to the 2003 Rules. The determination would be final and binding on the Registering Authority under the Schedule and the Local Registrar. Para 8 does not envisage and provide for a second round of litigation before the same authority i.e. the Foreigners Tribunal constituted under the 1964 Order on and after preparation of the final list. Provisions of Para 8 of the Schedule to the 2003 Rules will apply when there has not been an earlier adjudication and decision by the Foreigners Tribunal."

20. From the hereinbefore referred paragraphs 28 and 29 of the case of *Abdul*

Kuddus, (*supra*), this Court does not find that the said part of the judgment of the Supreme Court of India would help the petitioner in any manner whatsoever. In this case, notwithstanding the entry of the name of the petitioner in the NRC as on 30.07.2018, by relying on the ratio of the case of *Abdul Kuddus*, (*supra*), would not negate the opinion of the learned Tribunal, which would override the data in the NRC updation.

21. Be that as it may, the opinion passed by the Foreigners Tribunals are not subject to the data updation in the NRC and the opinion of the learned Tribunal can only be challenged by filing a writ petition under Article 226 of the Constitution of India and this Court having dismissed the writ petition, subsequent NRC data updation would not invalidate the said opinion.

22. In Ground No. (iv) of the review petition, it has been stated that the Tribunal has the power of review, as held by the Full Bench of this Court in the case of *State of Assam and Others Vs. Moslem Mondal*, *(2013) 1 GLT 809*, and reliance was placed on paragraphs 90, 91, and 92 thereof. There is no doubt that the Foreigners Tribunal does have power to entertain a review application, which is within the scope of paragraph 3-C of the Foreigners (Tribunals) Order, 1964, which is also present in paragraph 20 of the Immigration and Foreigners Order, 2025. However, in this case, the petitioner did not avail the same. Therefore, notwithstanding that the learned Foreigners Tribunal had the power to review its orders, the same cannot now be exercised after the challenge made to the said opinion was dismissed by virtue of order dated 27.09.2019 passed in W.P.(C) 4079/2019.

23. In ground No. (v) of the review petition, it has been urged that the NRC of 1951 and the voter list of 1970 in the name of petitioner's grandfather, Chitha

of surveyed villages in her own name and her father and other public documents have been illegally doubted and disbelieved, which requires review of the impugned order. If that be so, then this cannot be cured by a re-hearing of the said issue in the guise of review. A review petition is not an appeal in the disguise. If the petitioner is of the view that the documents have been illegally doubted by this Court or disbelieved the same illegally, the same cannot be cured in exercise of review jurisdiction of this Court. In this regard, it would be appropriate to refer to the decision of the Supreme Court of India in the case of *Aribam Tuleshwar Sharma Vs Aribam Pishak Sharma and Others*, *AIR 1979 SC 1047*, wherein, the Supreme Court of India held that power of review may not be exercised on the ground that the decision was erroneous on merits, further holding that it would be within the province of a Court of appeal and that power of review is not to be confused with appellate power which an appellate an Appellate Court exercises to correct all manners of errors committed by the subordinate Courts. The said judgment still holds the field.

24. It would also be appropriate to now refer to the to paragraph 20 of the decision of the Supreme Court of India in the case of *Kamlesh Verma*, *(supra)*. The said paragraph is quoted hereinbelow:-

"*20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki

[(1921-22) 49 IA 144: (1922) 16 LW 37: AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526: (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337: JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

25. In light of the decisions of the case of *Aribam Tuleshwar Sharma*, *(supra)* and *Kamlesh Verma*, *(supra),* on the ground nos. (i) to (v) referred above, the review would not be maintainable.

26. The ground no. (vi) of this review application is regarding the lawyer's dereliction of duty. This Court has no way to know as to what transpired between the petitioner and her learned counsel. Therefore, this Court could not comment as to the nature of legal assistance that was received by the petitioner from her learned engaged counsel. The complaint against the learned counsel

for the petitioner was made before the competent authority, which is the Bar Council of Assam, Nagaland, etc., and its outcome is not brought on record. Therefore, this Court would not entertain a review petition merely on the ground that the petitioner had received incorrect legal advice as this is merely presumptive.

27. The learned counsel for the petitioner, alleging the fault on the part of the learned counsel for the petitioner before the learned Tribunal, had cited the case of *Board of Control for Cricket in India*, (*supra*). Paragraphs 87 to 90 thereof are quoted below:-

"*88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.*

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

28. The learned counsel for the petitioner had tried to project that there was

a misconception of fact or law by the learned counsel for the petitioner. However, the said plea was taken in paragraph No.9 of the writ petition, wherein, it has been stated that that when the petitioner desired to produce more evidence, her lawyer told her that the same would no longer be necessary and it is alleged that for the said advice, the petitioner had become a foreigner. By no stretch of imagination, the same can be said to be a misconception of fact or law.

29. As stated above, the petitioner did not file a review petition before the said learned Tribunal immediately on being declared to be a foreigner within the time permitted. The complaint petition before the Bar Council of India against the learned counsel for the petitioner was allegedly made on 29.05.2019. From the record, it appears that W.P.(C) 4079/2019 was thereafter, presented on 11.06.2019. The status of the said complaint, which was made about 7 (seven) years back, is still not known. Therefore, the Court is also not aware as to whether the petitioner has been diligently pursuing her complaint against her engaged learned counsel. Therefore, in the considered opinion of the Court, mere complaint against the learned counsel that he had not given her correct advice was allegedly made more than 7 months after the opinion was passed, and therefore, the said complaint has to be diligently pursued and cannot be made a ground for review, which would expand the scope of review jurisdiction as has been laid down by the Supreme Court of India in the herein before referred cases of *Board of Control for Cricket, India and Another*, *(supra), Lily Thomas Vs. Union of India and Others*, *(2000) 6 SCC 224*, *M.M. Thomas*, *(supra).*

30. The learned counsel for the petitioner had also cited the case of *Anil Rishi*

(supra), to the effect that if active relationship is proved, the burden shifts to the other side and that a party in possession of a document can always be directed to produce it. The case of *Sucha Singh Vs. State of Punjab, (2001) 4 SCC 375*, was cited that the presumption under Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt.

31. Coming to the case of *Anil Rishi*, (*supra*), the case before the Supreme Court of India was that the appellant was the defendant in the suit, who had assailed the orders passed by the learned trial Court as upheld by the High Court of Punjab and Haryana, dismissing his revision application. There was an agreement for sale dated 26.03.1990 which was entered into by and between the parties in respect of a particular premises, for which a sale deed dated 26.03.1991 was executed, the respondent before the Supreme Court of India had filed a suit for declaration that the said sale deed was forged, fabricated, and void. It is in the said context that the Supreme Court of India referred to the burden of proof under Section 101 regarding proof of good faith in transaction where one party is in relation of active confidence.

32. Under the said facts, the ratio of the cited case cannot be applied to the facts of the present case in hand, where Section 9 of the Foreigners Act, lays the burden on the proceedee to prove that he or she is not a foreigner but an Indian citizen and in this regard, by a catena of judgments, reliance is always placed on Section 106 of the Evidence Act where the burden of proof never shifts. That was not so in the case before the Supreme Court of India, where the issue was as to whether the beneficiary of the said deed had a dominant fiduciary relationship with the executant of the said deed and it is in the said

context that the Supreme Court of India held that if an active relationship is proved, the burden shifts to the other side. So the said ratio has no application to the facts of the present case in hand, which is quite distinguishable.

33. The learned counsel for the petitioner had also placed reliance on the case of *Sabitri Dey, (supra)* and specifically referred to paragraph nos.12 to 18, 31 and 32. In this case, the proceedings of W.P.(C) 4079/2019, the petitioner is not found to have taken any plea that she was not supplied with the main grounds of suspecting her to be a foreigner. Therefore, when the said issue has not been raised in the writ petition, the absence of such plea would not be a good ground to entertain the said plea in a review jurisdiction. Therefore, the case of *Sabitri Dey*, *(supra)* is not found to help the petitioner in any way. In the present case in hand, the petitioner had received the notice and had contested the proceedings and pursuant to the opinion rendered therein, the challenge was made to the said opinion by filing W.P.(C) 4079/2019.

34. In respect of ground no. (vi) of the review petition, the same only refers to any other ground that may be submitted at the time of hearing. No such other ground was urged in the course of the hearing.

35. Resultantly, the Court does not find any merit in this review application, as this review application is filed seeking rehearing of the issues already raised in the writ petition, save and except the issue of the subsequent entry of the name of the petitioner and her brothers and sisters in the NRC.

36. It would be an opportune moment to also refer to the acceptance of the data in the NRC. A usual form of the result of the NRC application, amongst others, contains a footnote to the effect that *"Receipt at any point of time of opinion by any Foreigner Tribunal declaring any person as foreigner, will lead to*

exclusion of person from NRC."

37. In the present case in hand, the learned counsel for the petitioner had submitted that she had inadvertently left out refering to the names of the brothers and sisters of the petitioner. In this regard, by referring to Annexure-F series to the review petition, it was submitted that the Solamon Ali, Golap Ali and Saiful Islam are the brothers of the petitioner and Monuwara Khatun is the sister of the petitioner.

38. On perusal of the records, it is noticed from the contents of the written statement filed by the petitioner in the proceedings before the learned Tribunal, being Ref.F.T/4th/97/17, that the petitioner has not disclosed the hereinbefore referred names as her brothers and sisters in the written statement. It is reiterated, at the cost of repetition, that the name of Solamon Ali, Golap Ali, Saiful Islam, and Monuwara Khatun have not been disclosed as brothers and sister of the petitioner in her written statement. Therefore, in the absence of any initial pleadings linking the petitioner to the hereinbefore referred four names, it would be it would not be appropriate in exercise of review jurisdiction to entertain a review petition on a ground which was never urged before the learned Foreigners Tribunal, nor the references to the same were made in the writ petition. Therefore, the plea that the projected brothers and sister of the petitioner have been included in the NRC would not constitute a sufficient and valid ground to entertain a review petition against the order dated 27.09.2019 passed by this Court in W.P.(C) 4079/2019, as this Court had no occasion to deal with those names in the writ proceedings in the absence of pleadings.

39. In the case of *Altar Ali Vs. The Union of India, 2025 (5) GLT 1018*, this Court had held that the burden of proving citizenship under the Foreigners Act,

1946 lies on the petitioner, and a review petition cannot be used to re-argue the case based on previously dismissed evidence.

40. Accordingly, this review petition fails and the same is dismissed.

41. Consequences of the dismissal of (i) this review petition, (ii) the writ petition, as well as the consequences of the opinion dated 12.10.2018 passed by the learned Member, Foreigners Tribunal (4th), Darrang, Mangaldai in FT-4th Case No. 97/SPR/2017, arising out of F.T. Case No. 1210/11 shall follow.

42. Bail granted to the petitioner by order dated 24.11.2021 passed in Review Petition No. 28/2021 stands recalled and revoked.

43. The learned Standing Counsel for the Border and IT matters shall transmit a downloaded copy of this order to the competent authorities for their record.

JUDGE **JUDGE**

Comparing Assistant