

GAHC010115672018



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

Case No. : WP(C)/4545/2018

HAJERA KHATUN
D/O- USMAN ALI, REP. BY HER HUSBAND MIRAJ ALI, S/O- RUSHAN ALI,
R/O- VILL- GUTIBARI,, DIST- BIAWANATH (ASSAM), PIN- 784177

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
PIN- 781006
KAMRUP (M)
ASSAM

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

4:THE STATE COORDINATOR OF NATIONAL REGISTRER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH

GHY-5
ASSAM

5:THE DY. COMMISSIONER
BISWANATH DISTRICT
AT BISWANATH CHARIALI
ASSAM
PIN- 784177

6:THE SUPERINTENDENT OF POLICE (BORDER)
SONITPUR
P.O. TEZPUR
DIST- SONITPUR
ASSAM
PIN- 78400

Advocate for the Petitioner : MR. S SAHU, MR. A K SAHU, M M ZAMAN, MR. S I
TALUKDAR, MD A ALI, MR. A R SIKDAR

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 24-04-2026

Date on which judgment is reserved : 20.03.2026

Date of pronouncement of judgment : 24.04.2026

**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. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. Mr. H. Gupta, learned CGC for the respondent no.1; Mr. G. Sarma, learned standing counsel for the FT, Border Matters and NRC for respondent nos. 2, 4 and 6; Mr. A.I. Ali, learned standing counsel for the respondent no.3; and Ms. R.B. Bora, learned Junior Govt. Advocate.

2. By filing this writ petition, the petitioner, namely, Hajera Khatun has assailed the impugned opinion dated 28.03.2017, passed by the learned Member, Foreigners Tribunal 6, Sonitpur, Tezpur, in Case No. F.T.C. (6) 190/2015, thereby declaring her to be a foreigner of post 24.03.1971 stream.

Submissions by the learned counsel for the petitioner:

3. The learned counsel for the petitioner had referred to the pleadings and evidence and had submitted that the Local Verification Officer did not make a proper enquiry, which is evident from the incomplete forms of enquiry. Accordingly, it was submitted that not only the reference was defective and mechanically submitted by the Superintendent of Police (Border) Sonitpur, but the reference was also mechanically accepted by the learned Tribunal and process was issued against the petitioner. It was submitted that as the Verification Officer's Report was blank, the petitioner was not furnished with the grounds of suspecting the petitioner to be a foreigner and in other words, there were no charges against the petitioner. In support of the said submission, the learned counsel for the petitioner had cited the case of *Rafika Bibi @ Rafika Khatoon v. Union of India & Ors., W.P.(C) No. 3330/2020, decided on 26.05.2025*. Moreover, it was submitted that as per the Verification Officer's Report, the petitioner was born at Habidalani in the year 1967 and therefore,

the petitioner was a citizen of India as per Section 3(1)(a) of the Citizenship Act, 1955. Therefore, the petitioner is an Indian citizen. It was submitted that the learned Tribunal had discarded the pleadings and evidence, including 5 (five) exhibits for untenable reasons and without applying judicious mind. Hence, it was submitted that the impugned opinion be interfered with.

Submissions by the learned standing counsel for the FT and Border matters:

4. Per contra, the learned standing counsel for the FT and Border matters has made his submissions in support of the impugned opinion. It was submitted that it is not expected that the petitioner, who is a suspected foreigner will disclose any material unfavourable to her. Therefore, the Verification Officer, due to non-disclosure of material facts, had to put 'X' marks against column nos. 7 to 16 of the Verification Officer's Report. It was submitted that the case of *Rafika Bibi @ Rafika Khatoon (supra)*, as the law laid down in this regard was not placed before this Court and thus, it was submitted that the decision of *Rafika Bibi @ Rafika Khatoon (supra)* must be considered to apply under the facts of that case and in this case the same cannot be applied as it is hit by the principles of *per incuriam*.

Discussion and decision:

5. On service of notice, the petitioner appeared before the said learned Tribunal and filed her written statement. It was stated that the petitioner was a citizen of India. She was born at Jurgorh, P.S. Tezpur, Dist. Sonitpur, Assam. Her father, Late Usman Ali had casted his vote in the year 1966 at village- Jurgorh under 77 Tezpur LAC. The petitioner has relevant documents in her name such as *Gaonburah* certificate/ school certificate and thus, the petitioner could not be treated as doubtful citizen and the question of illegal

entry in between 01.06.1966 to 25.03.1971 does not arise at all and the said proceeding is liable to be dismissed. It was also stated that the petitioner got married on 12.03.1984 to Md. Miraj Ali of village No.2, Gotabari, under Ward-Itakhola, Tezpur Revenue Circle at Sonitpur, Assam. Along with the written statement, the petitioner had enclosed copies of voter list of 1966; Marriage certificate by Secretary, Rajgarh Gaon Panchayat; Elector Photo Identity Card (EPIC for short); voter list of 1966 and 2013.

6. The petitioner had examined herself as DW-1. In her examination-in-chief, the petitioner had stated that she was born and brought up at village- Jurgorh under Tezpur in the district of Sonitpur. She got married to Miraj Ali of village- Gutibari (*sic. written as Gotabari in written statement*) under Sootea P.S. Since then she is staying in the said place. Her elder child is 20 years and younger child is about 10 years. She casted her vote at Gutibari after her marriage. Ext.1 is the voter list of 1966; Ext.2 is the certificate issued by the Secretary, Rajgarh Gaon Panchayat; Ext.3 is her EPIC; Ext.4 is the voter list of 1966 in photocopy; and Ext.5 is the voter list of 2013. In her cross-examination, the DW-1 had stated that her father's name is Usman Ali, resident of Village-Jurgarh under Tezpur P.S. They are four brothers and sisters. She is the eldest child of her parents. She has forgotten her mother's name. Her grandfather's name is Abdul Suban. Her brother's name is Khairul Ali and she had forgotten the name of any other brothers. She has three brothers.

7. The petitioner had examined Dimbeswar Saikia, the Govt. *Gaonburah* of Dakhin Baliguri as DW-2. In his examination-in-chief, he had stated that he was the Govt. *Gaonburah* of Dakhin Baliguri Lot No. 19. He had stated that he does not know the petitioner and has not seen the petitioner

earlier. He had issued a certificate in favour of the petitioner on the basis of the statement of the husband of the petitioner. The name of the husband of the petitioner is Miraj Ali. He is holding the post of the Govt. *Gaonburah* since 1993. Thereafter, he knows the husband of the petitioner (i.e. after 1993). They do not stay under his *Lot* [actual writing by the learned Tribunal is- "They are not stay under my Lat]. In his cross-examination, DW-2 had stated that he does not know the petitioner and he does not know whether the petitioner had cast her vote or not. He does not know whether the petitioner is a foreigner or not.

8. The petitioner had examined Prem Narayan Bora, the Secretary of Uttar Nagsankar *Gaon* Panchayat as DW-3. In his examination, he had stated that he was the Secretary of the Uttar Nagsankar *Gaon* Panchayat. He does not know the petitioner. He has seen the petitioner that day itself. He does not know the husband of the petitioner also. He knows Siraj Ali and Miraj Ali, but he does not know who is the husband of the petitioner. In his cross-examination. DW-3 had denied the suggestion that he had deposed false evidence.

9. The learned Tribunal, upon considering the pleadings and evidence, observed that the petitioner had relied on the voter list of 1966 (Ext.1) showing that Usmam Ali, father of the petitioner had casted his vote in the year 1966, but she has not proved the certificate issued by the Secretary, Rajgarh Gaon Panchayat (Ext.2) by examining the issuing authority and therefore, it was held to be inadmissible. The learned Tribunal had taken note of the fact that in her cross-examination, the petitioner could not remember the name of her mother and brothers and that DW-2 and DW-3 had stated that they do not know the petitioner. Hence, it was held that the petitioner has not been able to prove the said certificate and the name of her father and grandfather.

The learned Tribunal took note of the projection that Usman Ali had casted his vote in India in the year 1966 only and that the petitioner had not casted her vote in any Constituency in the Country, which could not be believed. The learned Tribunal took note of the Verification Officer's Report and also failure of the petitioner to produce any documents like electoral roll of 1966, NRC, birth certificate, citizenship certificate, refugee registration certificate driving licence or any other public document to show that she is a genuine citizen of India. Thus, the petitioner was held to be a foreigner of post 24.03.1971 stream.

10. The 5 (five) documents exhibited by the petitioner are (i) voter list of 1966 (Ext.1); (ii) certificate issued by the Secretary, Rajgarh Gaon Panchayat (Ext.2); (iii) her EPIC (Ext.3); (iv) voter list of 1966 in photocopy (Ext.4); (v) and voter list of 2013 (Ext.5). On a perusal of the Tribunal's record, it is seen that there is no record of any document produced in original for being marked as Exhibits. The photocopies of the exhibits are available, but they are not marked as "proved in original" after comparing the photocopies with the original documents and they do not bear the signature of the learned Member.

11. As per the Tribunal's record, the DW-1, DW-2 and DW-3 were examined and discharged vide order dated 15.03.2016. Thereafter, the petitioner had taken adjournment for further evidence on 07.04.2016, 29.04.2016, 18.05.2016, 14.06.2016, 13.07.2016, 27.07.2016, 20.08.2016, 07.09.2016, 22.09.2016, 13.10.2016, 02.11.2016, 18.11.2016, 07.12.2016 and 22.12.2016. By order dated 22.12.2016, the DW was closed and the case was fixed for argument/ order on 11.01.2017, 01.02.2017, 16.02.2017, 21.02.2017, 07.03.2017, 16.03.2017 and thereafter, the opinion was rendered on 28.03.2017, There is no order that original exhibits were filed and were

returned. In paragraph 6 of the impugned opinion, the learned Tribunal had recorded that Ext.1 was a photocopy, which was not proved. Thus, the evidence of the petitioner was disbelieved and the petitioner was declared to be a foreigner of post 24.03.1971.

12. As regards, Ext.4 and Ext.5, the petitioner had admitted in her evidence-on-affidavit that they were photocopies of voter list of 1966 and 2013. Out of the 5 (five) exhibited documents, in this writ petition, the petitioner has annexed photocopies of Panchayat certificate (Ext.2); EPIC (Ext.3), voter list of 2013 (Ext.5). Be that as it may, assuming for the time being that the original documents were exhibited, entries made in the voters' lists of 1966 (Ext.1 and Ext.4) and 2013 (Ext.5) are not sufficient to establish that the petitioner is the daughter of Usman Ali. The Panchayat certificate (Ext.2) was not proved by its author and therefore, does not have any evidentiary value. Moreover, at the foot of the said certificate, a 'disclaimer' has been printed to the following effect:-

It may be added that this certificate shall be accepted only as a supporting document for establishing linkage with the parent(s) of the aforementioned person, for whom the certificate is issued. This certificate shall be valid only if accompanied by Legacy Data or any of the other admissible documents issued for the person with whom linkage is claimed for inclusion in updated NRC.

13. Thus, due to the disclaimer, the Panchayat Certificate (Ext.2) cannot be said to be the primary evidence, as the certificate mentions that the same is a supporting document. Moreover, in the case of *Manowara Bewa @ Manora Bewa v. Union of India*, 2017 (2) GLT 143: (2017) 2 GLR 632, this Court had held that a certificate by the Secretary, Gaon Panchayat, has got no statutory sanction, rather such a certificate would be contrary to the mandate of the Assam Panchayat Act, 1994 and Citizenship (Registration of Citizens and

Issue of National Identity Card) Rules, 2003, besides being opposed to national interest. Moreover, it was held that such a certificate would not partake the character of a "public document" merely on account of counter-signing of the same by the Block Development Officer. Therefore, contents as well as the execution have to be proved by examining the person issuing the same. It was further held that such a certificate partakes the character of a "private document" in which event the author of the document would have to come and testify to prove the truthfulness of the contents of the said document.

14. In respect of EPIC (Ext.3), it may be stated that the said document was issued on 01.10.2013, which makes it a post reference document. Moreover, in the case of *Md. Babul Islam v. Union of India, W.P.(C) 3547/16, decided on 09.05.2018*, this Court had held that EPIC is not a valid piece of evidence in the absence of supporting evidence.

15. 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.

16. Thus, the pleadings and evidence of the petitioner, which

includes examination of DW-1, DW-2 and DW-3, are found to be wholly insufficient to prove that the petitioner is the daughter of Usman Ali, the voter in the voter's list of 1966. In the photocopy of voter's list of 1966, which is available in the Tribunal's record, there are 9 (nine) voters, but the petitioner has not explained her relationship with them. In her written statement and examination-in-chief, the petitioner has failed to disclose the details about the members of the family of her grandfather, her father's family and her own family, except stating that she is married to Miraj Ali.

17. In *Aziz Miya @ Md. Aziz Mia v. Union of India & Ors., 2023 (4) GLT 246*, 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 show that she is the daughter of the persons whose names appear in the exhibited voters list (Ext.A to Ext.D) through any other supporting cogent and admissible evidence.

18. 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.

19. Coming to the point that in the enquiry report, the petitioner is stated to be the daughter of Usmal Ali, it may be mentioned that the said point was elaborately dealt with in the case of *Sahera Khatun @ Sahera Bibi v. UoI*, WP(C) 7932/2015, decided on 14.03.2018. It was held that in the report of the Enquiry Officer, the name of father of the petitioner was mentioned as *Md. Abdul Barek*. However, in the notice issued by the Tribunal, she was identified as the wife of *Md. Asuruddin*. That was admitted by the petitioner in her written statement. It was also held that the fact in issue would be: (1) *Md. Abdul Barek* is a citizen of India. (2) Petitioner is the daughter of *Md. Abdul Barek* and thereby, she is a citizen of India. It was also observed that there is no provision either in the Evidence Act or in Foreigners Act, 1946 that presumption may be drawn that since petitioner is marked as daughter of *Md. Abdul Barek* in the enquiry report, this "fact in issue" should be presumed to be proved. Therefore, it was held that a notice issued by a FT to a proceedee described him/her as son/daughter of some person or in a report by the Enquiry Officer preceding the reference cannot be construed as "evidence" or "proof".

20. It may be mentioned that what is recorded in the report of the Verification Officer, is the statement that is given by the proceedee. As Section 9 of the Foreigners Act, 1946 casts burden on the person who is suspected foreigner to prove that he is a citizen of India and not a foreigner.

21. Moreover, in the case of *Shukurjan Nessa @ Sukurjan v Union of India & Ors.*, W.P.(C) 245/2019, decided on 28.02.2025, where the said aspect

of the matter has been clarified. The relevant part of the order, on which reliance has been placed, 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 incurium. 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."*

22. In this case, the Electoral Registration Officer of 75 Sootea LAC had doubted the citizenship of the petitioner and directed the Verification Officer to conduct an enquiry and submit a report. This is an exercise under the Election Guidelines, and are actions taken under the Representation of the Peoples Act, 1950. However, reference was previously made before the Illegal Migrants (Determination) Tribunals, which was discontinued after the Illegal Migrants (Determination by Tribunals) Act, 1983 was declared to be ultra vires. Thereafter, all these cases were transferred before jurisdictional Foreigners

Tribunal. Thus, the present case got transferred from the Illegal Migrants (Determination) Tribunal, Tezpur to Foreigners Tribunal-2, Tezpur, pursuant to the decision of the Supreme Court of India in the case of *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665. Therefore, as observed by this Court in the case of *Shukurjan Nessa @ Sukurjan (supra)*, this Court would exercise restraint in making any comment on the form by which reference has been made because the Supreme Court of India had transferred the proceedings pending before the erstwhile Illegal Migrants (Determination) Tribunal, Tezpur, were transferred to the Foreigners Tribunal having jurisdiction.

23. 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 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.

24. The learned counsel for the petitioner had referred to the case of *Rafika Bibi (supra)*. In this regard, it may be stated that the said case is not found to help the petitioner in any way because the copy of the notice issued to the petitioner by the learned Tribunal on 03.11.2015 (available at pg.19 of the Tribunal's record), the petitioner was informed that she is an illegal migrant after 25.03.1971. Therefore, the allegation is not vague but specific. Thus, this point is without any merit.

25. Thus, on all counts, this writ petition to assail the impugned opinion dated 28.03.2017, passed by the learned Member, Foreigners Tribunal 6,

Sonitpur, Tezpur, in Case No. F.T.C. (6) 190/2015, thereby declaring her to be a foreigner of post 24.03.1971 stream, fails. Resultantly, the writ petition is dismissed.

26. The consequences of the said impugned opinion would follow.

JUDGE

JUDGE.

Parimita Kalita

Digitally signed by Parimita
Kalita

Date: 2026.04.27 02:09:27 -07'00'

Comparing Assistant