GAHC010200412017

2026:GAU-AS:14777-DB

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

Case No. : WP(C)/5110/2017

MUSTT. HASENA BHANU
W/O MD. SURAT JAMAL, R/O VILL-SONTOSHPUR PART-II, PS-MERECHAR, DIST. BONGAIGAON

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, NEW DELHI

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

3:THE SUPERINTENDENT OF POLICE B
BONGAIGAON
PS and DIST. BONGAIGAON
ASSAM

4:THE DEPUTY COMMISSIONER
BONGAIGAON
PO and DIST. BONGAIGAON
ASSAM

5:THE ELECTION COMMISSIONER OF INDIA
THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASOKA ROAD
NEW DELHI- 110001

Advocate for the Petitioner : MR.M H TALUKDAR, MR.A R SIKDAR,MR.N UDDIN

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

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

Advocate for the petitioner : Mr. A.R. Sikdar.
Advocate for the respondents : Mr. B. Sarma, CGC,
: Mr. A. I. Ali, SC, ECI
: Mr. G. Sarma, SC, FT,
Border matters and NRC.
: Mr. P. Sarmah, Addl. Sr. G.A.

Date on which judgment is reserved : 08.09.2026

Date of pronouncement of judgment : 05.10.2026.

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

Whether the full judgment has been Pronounced? : Yes.

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned CGC for respondent no.1; Mr. A.I. Ali, learned standing counsel for the ECI, respondent no.5; Mr. G. Sharma, learned standing counsel for the Border and FT matters for respondent nos. 2, 3 and 4; and Mr. P.

Sarmah, learned Additional Sr. Govt. Advocate for respondent no.4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 19.05.2017, passed by the learned Member, Foreigners Tribunal, Bongaigaon No.2, Abhayapuri, Assam, in BNGN/FT/Case No.77/2012, arising out of Ref. BNGN PE No.76/2012, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream.

3. On being served with the notice of the proceeding, the petitioner appeared before the learned Tribunal and filed her written statement. In this said written statement, apart from taking the usual defence, the petitioner had stated that she is an Indian by birth and that the proceedings under the Foreigners Act, 1946, was not maintainable against her. She had also stated that the name of her father was recorded in the Electoral Rolls of 1966 and 1970 as a regular voter of 51 Jania LAC and her name was recorded in the Electoral Rolls of 1997 and 2014 as a regular voter of 35 Abhayapuri South (SC) LAC.

4. In support of her defence, the petitioner had filed her evidence-on-affidavit as DW-1, wherein apart from reiterating the contents of her written statement, she had stated that she was born and brought up at Village-Hatchara, P.S. Baghbar, District-Barpeta and presently resides at Village Sontoshpur Part II, P.S. Mererchar, District - Bongaigaon. The name of her father is Hasen Ali, son of Asaruddin Gaonburah and the name of her father and grandfather were recorded in the Electoral Roll of 1966, which was exhibited as Ext.1.

5. The names of her parents were recorded in the Electoral Roll of 1970,

which was exhibited as Ext.2. She was married to Md. Surat Jamal, son of Late Hazrat Ali of Village Sontoshpur Part II. Her name was recorded in the Electoral Roll of 1997 of Village Sontoshpur, which was exhibited as Ext.3. Her name is also recorded in the Electoral Rolls of 2008 and 2014 as a voter of Village Sontoshpur Part II under 35 Abhayapuri South (SC) LAC, which were exhibited as Ext.4 and Ext.5. She has also relied on a link certificate bearing Sl. No.229, Book No.5, dated 05.06.2015, issued by the Secretary, 57 No. Isabpur Gaon Panchayat, wherein it was stated about her linkage with her father. The said certificate was exhibited as Ext.6. She also stated that she had applied for a PAN Card (Ext.7).

6. The petitioner had examined Md. Imam Hussain as DW-2, who had stated that he is the uncle of the petitioner and the name of his father is Asoruddin @ Asoruddin Gaonburah. He further stated that the name of his elder brother is Hasen Ali, the father of the petitioner. He had reiterated about the entries made in the voter lists of 1966 (Ext.1) and voter list of 1970 (Ext.2). He has also stated that the petitioner was married to Md. Surat Jamal of Village Sontoshpur Part II. He stated that the petitioner had never cast her vote before marriage and after her marriage her name was enrolled as a regular voter of 35 Abhayapuri South (SC) LAC with her husband. He had exhibited the PAN card of the petitioner as Ext.7; the Electoral Roll of 1997 as Ext.8; and electoral roll of 2008 as Ext.9, where her name is recorded as a voter of Village Hatchara, under 44 Jania LAC. He had also exhibited his driving licence as Ext.10; PAN card as Ext.11; Identity Card issued by the Niz Moinbari M.E Madrassa as a Science Teacher as Ext.12; and his Elector Photo Identity Card (EPIC for short) as Ext.13. He has stated that the petitioner is a daughter of an Indian father and therefore, is an Indian citizen and not a foreigner.

7. The learned Tribunal in its opinion dated 19.05.2017, referred to the voter list of 1966 (Ext.1), where the name of the projected father and grandfather appeared, and voter list of 1970 (Ext.2), where the name of the father of the petitioner had appeared. In respect of the voter list of 1997 (Ext.3), voter list of 2008 (Ext.4), voter list of 2014 (Ext.5) and Gaon Panchayat Certificate (Ext.6), the learned Tribunal held that the petitioner is shown as the wife of Surat Jamad. Ext.6 was discarded as the issuing authority of the said document was not examined. Reference was also made to the PAN Card of the petitioner [Ext.7(A)], where she is shown as the daughter of Hashen Ali.

8. By referring to the evidence of DW-2, the learned Tribunal had recorded that on a query made by the Tribunal, DW-2 had stated that he had first voted in the year 1985. However, the learned Tribunal remarked that the same was not submitted along with the evidence-on-affidavit. It was also mentioned that DW-2 had also stated that his name appeared in the voter list of 1993 and 1997 along with his father, but those were not submitted along with the evidence-on-affidavit. He had stated that in the voter list of 1997 (Ext.8), DW-2 appeared with Jaynab Bhanu instead of his father. DW-2 had stated that his father expired in the year 2002-2003.

9. In that regard, the learned Tribunal remarked that neither the petitioner nor DW-2 had submitted any voter list wherein the father of DW-2 appeared in the voter list published after 1966. Moreover, it was observed that the name of DW-2 did not appear in any of the voter lists along with the projected father of the petitioner. Accordingly, the learned Tribunal held that the petitioner has not been able to establish any link with her projected grandfather and father. Accordingly, the petitioner was declared to be a foreigner who had entered into India from Bangladesh illegally after 25.03.1971.

10. The learned counsel for the petitioner has submitted that there was no cross-examination of DW-1 and DW-2 and moreover, though the learned Tribunal had put some queries to DW-2, no queries were made to DW-1. Accordingly, it was submitted that the evidence tendered by DW-1 and DW-2 ought to have been accepted as truthful and in that regard, reliance was placed on paragraph 105 of the judgment of the Division Bench of this Court in the case of *Moslem Mandal v. Union of India, 2010 SCC OnLine GAU 241*. It was further submitted that as the deposition of DW-1 remained un-rebutted, a presumption of fact or an inference can be drawn regarding correctness of the statement made by the petitioner in her evidence. In support of his submissions, reliance is placed on the case of *State of West Bengal v. Mir Mohammad Omar & Ors., (2000) 8 SCC 382*. Moreover, the learned counsel for the petitioner had also cited paragraphs 117.3, 117.4 and 122.2 of the case of *Moslem Mondal v. Union of India & Ors., (2013) 1 GLT 809*. By referring to the impugned opinion, it was submitted that the learned Tribunal, in the impugned opinion, has declared the petitioner, namely Mustt. Hasena Bhanu, wife of Md. Surat Jamal, daughter of Abdul Hasen of Village Sontoshpur Part II as an illegal migrant, however, it was submitted that when the learned Tribunal has accepted that the petitioner is the daughter of Abdul Hasen, the learned Tribunal could not have declared the petitioner, the daughter of an Indian citizen to be a foreigner of post 25.03.1971 stream.

11. Per contra, the learned Standing Counsel for the Border and F.T matters has submitted that in the written statement, the petitioner has not made any relevant disclosure regarding the names of grandparents, parents, siblings of the father, her own siblings and about her own children. Accordingly, by referring to paragraph 26 of the judgment of *Sarbananda Sonowal v. Union*

of India, reported in *(2005) 5 SCC 665*, it was submitted that the burden was on the petitioner to make full disclosure in the written statement about her family and only when evidence was led to support the pleadings, the issue of rebuttal would have been on the State. By referring to the decision of this Court in the case of *Ohab Ali v. Union of India & Ors., 2018 (4) GLT 360*, it was submitted that this Court has laid down that the full disclosure has to be made in the written statement and thereafter proved by the petitioner with cogent and reliable evidence. Accordingly, it was submitted that in the absence of any pleadings, the petitioner has not been able to lay the foundation that DW-2, namely, Md. Imam Hussain was her uncle.

12. It was further submitted that the petitioner had not stated as to what happened to her grandparents and parents after 1970; about the respective date of death of grandparents and parents; and no document was exhibited to show the name of DW-2 appearing along with the petitioner or her projected father. Hence, it was submitted that the sudden appearance of DW-2 has to be looked with suspicion. In this regard, reliance is placed on the decision of this court in the case of *Momin Ali v. Union of India, 2017 (2) GLT 1076*.

13. Moreover, it was submitted that DW-2 had disclosed his age as 58 years in 2016 and therefore, he would have been born in the year 1958 and became eligible to vote in the year 1979. However, the name of DW-2 appeared for the first time only in the voter list of 1997 (Ext.8) and thereafter, in the voter list of 2008 (Ext.9). Accordingly, it was submitted that upon cumulative appreciation of the pleadings and the evidence of DW-1 and DW-2, the petitioner has failed to establish her link with her projected father and her grandfather. Accordingly, the learned Standing Counsel for the Border and F.T matters has supported the impugned opinion.

14. In reply, the learned counsel for the petitioner has submitted that the decision of the Supreme Court of India in the case of *Sarbananda Sonowal (supra) (para 26)* has been incorrectly interpreted because paragraph 26 only refers to the evidence and not the pleadings. It was also submitted that paragraph 3 of the Foreigners (Tribunal) Orders, 1964 also only referred to a representation and therefore, filing of a written statement, as is required in a civil suit is not envisaged in respect of a proceeding before the Foreigners Tribunal.

15. On a perusal of the Tribunal's record, it appears that there is an inadvertent typing error in the said opinion as regards entries made in the voter's lists of 1997 (Ext.3), 2008 (Ext.4) and 2014 (Ext.5). The learned Tribunal had made a mention that in the said voter's lists, the name of the projected father of the petitioner was "Surat Jamad", whereas as per the entries made in those three voter's lists of 1997, 2008 and 2014, the name of the projected father of the petitioner is written as "Surtjaman", "Suraj Jamal" and "Surat Jamal" respectively. The said clerical error does not affect the merit of the impugned opinion.

16. As per the contention of the learned counsel for the petitioner, the following points of determination arise in this case:-

I. Whether in the proceeding before the Foreigners Tribunal, as envisaged under the Foreigners (Tribunals) Order, 1964, as it stood, and the proceeding under the Immigration and Foreigners Order, 2005, a mere representation would suffice or a full disclosure of relevant facts, as envisaged in written statement must be made?

II. Whether while declaring the petitioner as a foreigner/ illegal

migrant, the mention of name of the projected father of the petitioner in the summons and/or enquiry form would come in the way of the learned Tribunal from declaring the petitioner as a foreigner?

III. Whether in the absence of any cross-examination by AGP and/or in the absence of Tribunal's query to the witnesses, the testimony of the petitioner as DW-1 and DW-2 in their respective evidence-on-affidavit should have been presumed to be truthful?

IV. Whether the impugned opinion passed by the learned Tribunal is liable to be interfered with.

17. Perused the Tribunal's record which was called for. Also considered the submissions by all sides and also considered the cases cited by the learned counsel for the petitioner and the learned standing counsel for the Border and FT matters.

18. It is seen that the written statement filed by the petitioner on 27.04.2005, is vague and she has not made any disclosure by which her full family can be identified. In the written statement, it was only stated by the petitioner that there was no cause of action for the case; the case registered by the District Police is false and baseless; the case was not maintainable by present nature and feature; the petitioner is an Indian by birth; the petitioner denies any claim by the Union of India and the claim is barred by principles of waiver, acquiescence and estoppel and also for reason of collusiveness; the name of her father is enrolled in the voter list of 1966 and 1970 as a regular voter of 51 Jania LAC vide Sl. No. 29, House No. 14; the name of the petitioner was enrolled in the voter list of 1997 and 2014 as a regular voter of 35 Abhayapuri South (SC) LAC vide Sl. No. 164 and 254; the petitioner reserves her

right to file additional written statement when circumstance arise. Thus, it is seen that in her written statement, the petitioner has not disclosed the name of her (a) grandparents, (b) parents, (c) siblings of her father; (d) her siblings; (e) her children; (e) where and when her parents were born; (f) when and where she was born and brought up; (g) when she got married and left her parental home.

19. The evidence of the DW-1 and DW-2 and the contents of the impugned opinion have been referred above and therefore, this judgment and order is not burdened with a repetition of the same.

20. Therefore, the points of determination which arise for decision in this case are now taken up.

21. *Point of determination no. (I):*

a. As per the language used in Paragraph 3 of the Foreigners (Tribunals) Order, the requirement of "representation" is envisaged. Moreover, in paragraph 26 of the case of *Sarbananda Sonowal (supra)*, the term "representation" has been referred to.

b. In almost all the cases before the Foreigners Tribunals, which have come to the notice of this Court in connection with writ petitions filed to assail the opinion rendered by the learned Foreigners Tribunals, invariably a written statement is filed by all the proceedees. The learned counsel for the petitioner has made no attempt to show that in any proceeding before the Foreigners Tribunals a "written statement" under the nomenclature of "representation" was filed.

c. The learned counsel for the petitioner has not been able to refer to any decision by Constitutional Courts in the Country where it has been

laid down that a "representation" submitted by a person need not contain all relevant facts.

d. The proceedings before a Foreigners Tribunal is registered on the receipt of a reference by the competent authority, i.e. the jurisdictional Superintendent of Police of the district, who is also the Superintendent of Police (Border) of the district.

e. By way of the reference, the learned Tribunal is called to determine as to whether or not the proceedee is a foreigner and/or illegal migrant. Hence, the fact in issue in all the proceedings before the Foreigner's Tribunal is only one, which is, whether or not the proceedee before it is a foreigner. Such a determination arises in view of Section 2(a) of the Foreigners Act, 1946.

f. Section 9 of the Foreigners Act, 1946, provides as follows: -

> *9.* ***Burden of proof*** *- If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person*.

g. Therefore, in light of the provision of Section 9 of the Foreigners Act, 1946, in this case, for the petitioner to take a defence that she is not a foreigner, but an Indian citizen, notwithstanding whether the defence is taken by her by filing a "representation" or by filing her "written Statement", the petitioner is required to – (i) plead essential and relevant facts, (ii) she must disclose when she was born; (iii) place where she was born; (iv) she must disclose who are her parents; (v) where her parents were born; (vi) who are the siblings of her father;

(vii) names of her siblings. Moreover, to show verifiable facts, the petitioner must file and prove relevant documents.

h. It may be stated that the Supreme Court of India, in the case of *Rupajan Begum v. Union of India & Ors., (2018) 1 SCC 579: (2018) 0 Supreme (SC) 1148*, had held that certificate by the Secretary of the Village Panchayat and countersigned by the local revenue official in respect of females who have migrated to other villages after marriage or such certificates issued by the jurisdictional Circle Officers in respect of urban areas, which are the documents agreed by all stake-holders in the process of updation of NRC and the same also had the approval of the Union Government as well as the State Government. However, it was clarified that the certificate issued by the Gaon Panchayat Secretary merely acknowledges shifting of residence of a married woman from one village to another. It was also held that the said certificate, by itself, by no means establishes any claim of citizenship of the holder of the certificate. It was further held that such proof will come only if the link between the claimant and the legacy person, who has to be a citizen of India, is established. It was also held that the certificate has to be verified at two stages. The first is authenticity of the certificate itself; and the second is the authenticity of the contents thereof.

i. The consequences of determination of whether a proceedee is a foreigner or not, carries civil consequences, which would be evident from the provisions of Paragraph 4 of the Foreigners (Tribunals) Order, 1964, which confers power of civil court to the Foreigners Tribunals. Therefore, if the proceeding is civil in nature, it would naturally mean

that the proceedee will have to disclose all relevant facts and then prove the same.

j. This Court in the case of *Saru Sheikh v. Union of India & Ors., (2017) 4 GLR 295*, and *Rashminara Begum v. Union of India & Ors., 2017 (4) GLT 346*, has held that material facts pleaded would have to be proved by adducing cogent and admissible evidence.

k. It would be relevant to quote paragraph 26 and part of paragraph 42 of the case of *Sarbananda Sonowal (supra)*, decided by the Supreme Court of India. The same are extracted below: -

> *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. Sometimes the place of birth of his grandparents 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.*
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> * * *
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> ***42**. It is elementary that a person who has illegally come from Bangladesh to India and is residing here for his better economic prospects or employment etc. would never disclose that he has come from Bangladesh but would assert that he is an Indian national and resides in India. There is no question of his telling his date of entry or giving any information on the aforesaid points. …*

l. This Court, in the case of (i) *Ayesha Khatun v. Union of India & Ors.,*

(2017) 3 GLR 820, (ii) *Jehirul Islam v. Union of India & Ors., (2017) 5 GLR 670*, and (iii) *Ohab Ali v. Union of India & Ors., 2018 (4) GLT 360*, has held that failure to disclose material facts would lead to adverse presumption.

m. Therefore, the Court is of the considered opinion that a mere inter-change of the nomenclature of defence by a proceedee in a proceeding before the Foreigners Tribunal from "written statement" to "representation", as provided for in Paragraph 3 of the Foreigners (Tribunals) Order, 1964, would not have the effect of diluting in any way the requirement of the proceedee, whose citizenship of the Country is being doubted, to make complete disclosure in his/her "written statement" and/or in his/her "representation", by whatever nomenclature used.

n. Thus, the requirement of law is that the foundational facts will have to be pleaded by the proceedee and then proved by adducing cogent, reliable and admissible evidence.

o. In light of the discussions above, the Court is inclined to hold that notwithstanding the use of word "representation", as provided in Paragraph 3 of the Foreigners (Tribunals) Order, 1964, which is *para-materia* to the provision of Paragraph 17 of the Immigration and Foreigners Order, 2005, does not dilute the requirement of law that a proceedee before the Foreigners Tribunal, has to make full disclosure of the foundational facts in his pleadings in the "representation". Thereafter, the proceedee will have to prove the same by adducing cogent, reliable and admissible evidence. Therefore, it can safely be said that for the purpose of the proceedings under the Foreigners

Tribunals, the word "representation" as used in Paragraph 3 of the Foreigners (Tribunals) Order, 1964, would carry the similar effect as a "written statement" in any civil proceeding. It can also be said that for the purpose of proceeding before the Foreigners Tribunals, the word "representation" and "written statement" can be inter-changeably used.

p. The point of determination No. 1 is answered accordingly.

Point of determination No. II:

22. The inquiry against a suspect of being a foreigner can originate, amongst others, in two ways. Firstly, by reference made by the Electoral Registration Officer, who may have reasons to suspect a particular voter, whose name appears in the voters list after enquiry. This exercise is one under the Representation of the Peoples Act, 1950. However, the Electoral Registration Officer is required to send the reference to the jurisdictional Superintendent of Police (Border), who is a designated authority to submit a reference before the Foreigners Tribunal having jurisdiction, without requirement to make a further enquiry. Secondly, the jurisdictional Superintendent of Police (Border) of the district may have reasons to suspect that a suspect is a foreigner and the said authority has the power to cause an enquiry to be made by police personnel and on satisfaction, the reference can be sent to the jurisdictional Foreigners Tribunal.

23. In course of enquiry, a suspect may disclose the name of a particular person to be his father. Thus, while making a reference, the said name is shown to be the father of the suspect. Such an entry alone is not sufficient proof that the suspect proceedee is the son of that person whose

name is shown in the proceeding and/or in the summons to be suspect's father. This is not how parentage is proved.

24. If contents of the summons is treated as sacrosanct by holding that because in the summons, the name of the father of suspect "Y" is mentioned as "Z", thus, "Z" is the father of "Y", then a debatable question would arise as to why the contents of the summons, alleging the suspect to be a foreigner should not be accepted as true and correct. The learned counsel for the petitioner has not been able to cite any case where the Constitutional Courts have held that contents of summons would amount to admitted fact which need not be proved.

25. Therefore, in light of the discussions above, the Court is inclined to hold that a mere mention of a particular name in the summons or accompanying complaint that the suspect is the son/ daughter of such person would not come in the way of the learned Foreigners Tribunal to declare the suspect as a foreigner. In other words, the contents of the summons cannot be treated as admission of its contents by the parties to the proceedings.

Point of determination no. III:

26. It is trite that in a proceeding before the Foreigners Tribunals, oral evidence does not constitute proof of citizenship. If one requires an authority on the point, the decision of this Court in the case of *Basiron Nessa v. Union of India & Ors.,2018 (4) GLT 692*, may be referred to. In the said case, the petitioner therein had exhibited a certificate by Gaonburah, wherein it was stated that Basiron Nessa is the daughter of Late Abdul Barek and Rabia Khatun. He had stated in his cross examination that he had issued the certificate after looking at the voters lists of 1966 and 1971. In light of such

evidence, this Court had held that documentary evidence must be proved from record and not solely by oral testimony.

27. In the case of *Bijoy Das v. Union of India & Ors., (2018) 4 GLR 599, 2018 (3) GLT 118*, this Court had held that it is trite that mere filing of written statement and oral testimony in a proceeding under Foreigners Act, 1946 would not be enough. The fact-in-issue would have to be proved by the proceedee by adducing documentary evidence which are admissible and relevant.

28. In this case, the petitioner, in her written statement had not disclosed and/or pleaded the name of her father and mother and she had also not mentioned about the name of her grandparents. The petitioners draws her lineage from her father, but she did not state where her grandfather and father were born. The petitioner had only stated that the name of her father is recorded in the electoral rolls of 1966 and 1970 as a regular voter of 51 Jania LAC vide serial no. 29, house no. 14. Even in the verification, the petitioner has not stated the name of her father. Only in her evidence-on-affidavit, the petitioner has stated that the name of her father is Hasen Ali, son of Asaruddin Gaonburah. The petitioner is not a voter along with her parents. In fact, on a perusal of the voters whose name appeared in the voter list of 1966 (Ext.1) and 1970 (Ext.2), the family of the grandparents and parents of the petitioner is not seen. Thus, from the voter's lists alone, one cannot make out a link of the petitioner with her projected father or grandfather. Therefore, a mere statement by the petitioner that she is the daughter of Hasen Ali or the link certificate issued by the Secretary of the Gaon Panchayat, stating that the petitioner is the daughter of Hasen Ali would not constitute a sufficient, cogent and admissible proof that the petitioner is the daughter of one Hasen Ali, who was the voter at

village- Hatchara and whose name appears as voter in the electoral roll of 1966 and 1970. There appears to be a failure on part of the petitioner to link herself to the said voter through documentary evidence.

29. As per the evidence of the petitioner as DW-1, the only proof of the projected father of the petitioner are the electoral roll of 1966 (Ext.1), electoral roll of 1970 (Ext.2), and PAN Card application form (Ext.7). From the evidence tendered by Md. Imam Hussain (DW-2), the projected uncle of the petitioner, it appears that he is not a voter along with the projected father of the petitioner and his name appeared in the electoral roll for the first time in the year 1997, when his age was 40 years. Therefore, DW-2 was born in the year 1978. However, the presence of his projected parents proximate to the year of his birth in the year 1978 is not proved through any document. The only document that he had proved to link the petitioner with her projected father is the PAN Card of the petitioner [Ext.7(A)], which is a post reference document. If the petitioner had provided the date of her birth for obtaining PAN Card, there was no reason for the petitioner not to disclose the date of her birth in her written statement or in her evidence-on- affidavit, which is indicative of the fact that it is a document purposefully made after the reference was made against the petitioner only for the case because the petitioner has not tendered any proof that she has a taxable income and is an income tax payee.

30. In light of the above, the point is whether non- cross-examination of the petitioner and her witnesses by the Govt. Pleader would lead to a presumption that the defence of the petitioner is duly established with the evidence of the petitioner's side.

31. Let us test this submission on the strength of an example. Let us assume that one *A* files a suit claiming that he is the son of a very famous

personality. The plaintiff along with 20 witnesses give oral evidence that the plaintiff is the son of the said famous personality. Merely because the Govt. Advocate has not cross-examined the plaintiff and his 20 witnesses, in the considered opinion of the Court, would not make the plaintiff entitled to a decree that he is the son of the said famous personality. In light of the provisions of Section 50 and 112 of the Evidence Act, 1872 [corresponding to Section 44 and 109 of the Bharatiya Sakshya Adhiniyam, 2023], that is not how parentage is proved.

32. In this regard, it would be appropriate to refer to the decision of this Court in the case of *Rukia Begum v. Union of India & Ors., (2018) 5 GLR 438 : 2018 (4) GLT 763*, wherein it was held that even if no objection is raised by the State to a document marked as an exhibit by the proceedee, it will not make the document admissible in evidence if it is otherwise inadmissible. There is a good and cogent reason for laying down so. In this case as well as in the case of *Rukia Begum (supra)*, the State had suspected the petitioners in both cases to be an illegal migrant/ foreigner who had illegally migrated into India (Assam) from specified territory, which means from East Pakistan as it was prior to 24.03.1971 and Bangladesh, after 25.03.1971. As stated hereinbefore, under Section 9 of the Foreigners Act, 1946, the onus of proof lies on the petitioner, who were the suspects of being a foreigner. Hence, the petitioner is statutorily required to discharge that burden, which the petitioner has failed in this case.

33. In the case of *Sarbananda Sonowal (supra)*, the Supreme Court of India had equated the issue of illegal influx from Bangladesh into India with external aggression. It would be appropriate to refer to the observations made by Lord Denning, as referred to in the said judgment, which is extracted below:-

"*Lord Denning in his book "The Due Process of Law" has written an "Introduction"*

to Part Five - "Entrances and Exits" (page 155) and the opening paragraph thereof reads as under :

> *"In recent times England has been invaded - not by enemies - nor by friends - but by those who seek England as a haven. In their own countries there are poverty, disease and no homes. In England there is social security - a national health service and guaranteed housing - all to be had for the asking without payment and without working for it. Once here, each seeks to bring his relatives to join him. So they multiply exceedingly."*
>
> *(Emphasis supplied)*

Thus, one of the most respected and learned Judges of the recent times has termed the influx of persons from erstwhile colonies of Britain into Britain as "invasion". The word "aggression" is, therefore, an all comprehensive word having very wide meaning. Its meaning cannot be explained by a straight jacket formula but will depend on the fact situation of every case."

34. The Supreme Court of India, in the said case, had also observed as follows

> *As mentioned earlier, the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region. Their presence has changed the demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts*."

35. The Supreme Court of India, in the said case had also analyzed the historical background of illegal migration into Assam. It was observed as follows:-

> *Failure to get Assam included in East Pakistan in 1947 remained a source of abiding resentment in that country. Zulfikar Ali Bhutto in his book "Myths of Independence" wrote "It would be wrong that Kashmir is the only dispute that divides India and Pakistan, though undoubtedly the most significant. One at least is nearly as important as the Kashmir dispute, that of Assam and some districts of India adjacent to East Pakistan. To these Pakistan has very good claims". Even a pro-India leader like Sheikh Mujibur Rahman in his book "Eastern Pakistan; its population & economics" observed, "Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan must include Assam to be financially and economically strong.*

> *Besides the above considerations, there are other contributory factors facilitating infiltration from Bangladesh. Ethnic, linguistic and religious commonality between the illegal migrants and many people on our side of the border enables them to find shelter. It makes their detection difficult. Some political parties have been encouraging and even helping illegal migration with a view to building vote banks. These immigrants are hardworking and are prepared to work as cheap labour and domestic help for lower remuneration than the local people. This makes them acceptable. Moreover, with corruption being all pervasive, corrupt officials are bribed to provide help. Recently, a racket has been busted in Lakhimpur. Four individuals were found to have been providing forged citizenship certificates and other documents to illegal migrants for the last 14 years.*

36. Therefore, in the considered opinion of the Court, when the Courts and Tribunals are dealing with the issue of illegal migrants and foreigners, sympathy cannot be misapplied. The interest of the Country should be of paramount consideration.

37. In light of the discussions above, the point of determination no. III is answered by holding that in the absence of any cross-examination by AGP and/or in the absence of Tribunal's query to the witnesses, the testimony of the petitioner and her witnesses, as stated in their respective evidence-on- affidavit cannot be presumed to be truthful.

Point of determination no. IV:

38. In light of the decision on the point of determination no. I, II and III, which have all been answered against the petitioner, the challenge to the impugned opinion fails. Consequently, the point of determination no. IV is answered in the negative and against the petitioner by holding that the impugned opinion warrants no interference by this Court.

39. Consequently, the writ petition is dismissed.

40. The interim order of bail, granted to the petitioner vide order 25.08.2017, stands revoked. The consequences of the impugned opinion dated

19.05.2017, passed by the learned Member, Foreigners Tribunal, Bongaigaon No.2, Abhayapuri, Assam, in BNGN/FT/Case No.77/2012, arising out of Ref. BNGN PE No.76/2012, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream would follow.

41. The Registry shall return back the learned Tribunal's record along with a copy of this judgment and order, to be made a part of the record by the said learned Tribunal.

42. The learned Standing counsel for the Border and FT matters shall transmit a downloaded copy of this judgment and order to the concerned authorities for information.

JUDGE **JUDGE**.

Digitally signed by Champak Rajbongshi
Date: 2026.10.05 17:32:52 +05'30'

Comparing Assistant **Private Secretary**