GAHC010262212019

2026:GAU-AS:16522

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

Case No. : WP(C)/8604/2019

AFIZ KHATUN @ AFIZA KHATUN @ AFICHA KHATUN
D/O. CHAYED ALI @ SAYED @ SAYED ALI, W/O. MD. MAJIBUR RAHMAN,
VILL. AMAGURI CHAPORI, P.S. THELAMARA, DIST. SONITPUR, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH- THE SECRETARY, TO THE GOVT. OF INDIA, THE MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI.

2:THE STATE OF ASSAM

THROUGH- THE SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA

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

4:THE STATE CO-ORDINATOR

NATIONAL REGISTRATION OF CITIZEN
ASSAM BHANGAGARH
GUWAHATI-781005.

5:THE DY. COMMISSIONER

SONITPUR
P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001.

6:THE SUPDT. OF POLICE (B)

SONITPUR
P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001

Advocate for the Petitioner : MD. I HUSSAIN, MR. L R MAZUMDER,MR. F A HASSAN

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

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

Advocate for the petitioner : Mr. I. Hussain.
Advocate for the respondents : Mr. B. Sharma, CGC,
: Mr. A.I .Ali, SC, ECI
: Mr. J. Payeng, SC, FT,
Border matters and NRC.
: Mr. P. Sarmah, Addl. Sr. G.A.

Date on which judgment is reserved : 22.07.2026

Date of pronouncement of judgment : 11.11.2026

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

Whether the full judgment has been Pronounced? : Yes.

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J)

Heard Md. I. Hussain, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned CGC; Mr. A.I. Ali, learned standing counsel for the ECI; Mr. J. Payeng, learned standing counsel for the FT matters and NRC; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Musstt. Afiz Khatun @ Afiza Khatun @ Aficha Khatun has assailed the impugned opinion dated 25.07.2019, passed by the learned Member, Foreigners Tribunal No.8, Tezpur, in F.T.(8) Case No. 1720/17, arising out of Ref. TZP(B) Case No. 1083/98, by which the petitioner was declared as an illegal migrant.

3. The learned counsel for the petitioner has assailed the impugned opinion on the ground that the inquiry against the petitioner was improper and vague, and that the inquiry report was blank in respect of several columns. Moreover, it was submitted that the petitioner had examined herself as DW-1 and, in support of her defence, had also examined her father as DW-2, who was cross-examined and discharged. Further, the petitioner examined the Junior Assistant of the Election Branch, Morigaon, as DW-3 to prove the voter list, he was also cross-examined and discharged. Additionally, the petitioner had examined the Gaonburah as DW-4. However, it is contended that the learned Tribunal failed to appreciate the evidence in its correct perspective and rejected

the evidence of the petitioner's mother on flimsy grounds, merely because there was shifting of their place of permanent residence and minor contradictions in the cross-examination of her mother. Accordingly, it is submitted that the impugned opinion is not sustainable in law and is liable to be set aside, and that the petitioner be declared to be an Indian citizen.

4. On receipt of notice, the petitioner had appeared and filed her written statement, wherein apart from usual denial of being a foreigner. It was also claimed that the case was illegal and baseless. It was stated that the police had not visited the petitioner's house, nor had they carried out any inquiry or investigation, and that the petitioner's documents had not been verified. The petitioner claimed to be a citizen of India by birth, having been born and brought up at Village Silpukhuri, P.S. Lahorighat, in the District of Nagaon. Her date of birth is 03.05.1961 as per the family records and PAN card.

5. The name of her grandfather is Late Nabab Ali @ Nabab, who was also the original resident of Village Silpukhuri, P.S. Lahorighat, whose name was recorded in the Jamabandi of the said village in respect of land covered by Dag no. 7 of Periodic Patta no. 72 of the year 1931, issued by the Deputy Commissioner (Revenue Branch), Morigaon. It is claimed that the grandfather of the petitioner purchased Eksona Patta no. 25 of Village Silpukhuri vide Sale Deed no. 56 of 1955 dated 05.01.1955. The parents of the petitioner are Chayad Ali @ Sayad @ Sayad Ali and Musstt. Rufjan @ Rupjan Bibi, original residents of Village Silpukhuri, whose names appeared in the voters list of 1966 of the said village. The name of her father was recorded in the Jamabandi of Village Silpukhuri, in respect of land covered by Dag no. 16 of Periodic Patta no.

167 of the year 1967–68, issued by the Deputy Commissioner (Revenue Branch), Morigaon. It was stated that the parents of the petitioner along with elder brother, namely, Nurul Islam had shifted to Village- Khalpiya, P.S. Mikirbhata in the District Nagaon in the year 1980 and their names appeared in the electoral roll of 1985 of Village- Khalpiya under No. 84 Batadraba LAC. After the death of her father, her mother, along with her younger brothers, namely, Sahab Uddin and Baharul Islam had subsequently shifted to Village- Alisinga, P.S. Mayong, District Morigaon, Assam, and their names appeared in the electoral rolls of 2015 and 2018 of Village- Alisinga under No. 79 Jagiroad (SC) LAC. Her mother has an Elector Photo Identity Card (EPIC for short). The petitioner was married to Md. Majibur Rahman of Village- Amaguri Chapori, P.S. Thelamara, District Sonitpur, Assam, and since her marriage, she has been residing in the said village along with her husband and in the said regard, she had obtained a certificate from the Gaonburah of Village- Alisinga on 15.06.2015. The petitioner is a holder of an EPIC. It was stated that her actual name is Afiza Khatun and she is also called Afiz Khatun and Aficha Khatun, and that all these 3 (three) names refer to one and the same person having the same identity. Similarly, the actual name of her grandfather is Nabab Ali and he is also known as Nabab and both the names are of same person having same identity. The actual name of her father is Chayad Ali and he is also known as Sayad and Sayad Ali and all the 3 (three) names are of same person having same identity. The name of her mother is Rufjan and she is also known as Rupjan Bibi, and both the names are of same person having same identity. It was stated that her father's actual age was 55 years in 1985, but in the voters list of 1985, the same was recorded as 48 years. Her mother's actual age was 49 years in 1985, but in the voter list of 1985, her age was recorded as 37

years; again the age of petitioner's mother was 79 years in 2015, but in the voter list of 2015, her age was recorded as 54 years; similarly, the age of petitioner's mother was 82 years in 2018, but in the voter list of 2018, her age was recorded as 56 years. It was stated that these minor mistakes had been committed by the enumerator and that the petitioner, her grandfather, her parents should not suffer for the mistakes. In the said context, reliance was placed on the decision of this Court in the case of *Abdul Motali @ Motaleb (Md.) v. Union of India & Ors., 2015 (2) GLT 617*.

6. It was stated that the process of preparation and upgradation of the NRC has been carried out and as per the guidelines for inclusion of names in the NRC, only 2 (two) valid documents were acceptable, one being a valid document prior to 1971 and another being a valid document after 1971 to establish linkage. Accordingly, it was stated that the petitioner is a citizen of India and had not entered Assam illegally between 01.01.1966 and 25.03.1971.

7. In support of her defence, the petitioner filed her evidence-on-affidavit as DW-1, wherein she had reiterated the statements made in her written statement, and exhibited the following documents:

Ext.1 is the Pan card.
Ext.2 is the Jamabandi copy.
Ext.3 is the sale Deed.
Ext.4 is the voter list of 1966
Ext.5 is the Jamabandi copy.
Ext. 6 is the voter list of 1985.
Ext.7 is the voter list of 2015.
Ext.8 is the voter list of 2018.
Ext. 9 is the EPIC of petitioner's mother.
Ext.10 is the Gaonburah certificate.
Ext. 11 is the EPIC of the petitioner.

8. In her cross-examination, the petitioner has stated that she was born in the year 1961 at Silpukhuri, Nagaon. Her father was Late Sayed Ali, and he died in the year 2004 at Alisinga, Morigaon. Her father was born at Silpukhuri, Nagaon. Her grandfather was Late Nabab Ali. Her mother is Roopjan Bibi. She got married in the year 1990 to Md. Majibur Rahman of Amguri Chapori, P.S. Thelamara. She is not an income tax payee. She stated that no foreigner case is pending or has been initiated against any member of her parental family or her husband's family.

9. The petitioner has examined Musstt. Rufjan @ Rupjan Bibi, aged 83 years, wife of Chayad Ali @ Sayad @ Sayad Ali as DW-2. She has reiterated the statements made by the petitioner and has re-exhibited the documents already exhibited by the petitioner. Her evidence-on-affidavit is a replica of the evidence-on-affidavit filed by DW-1.

10. In her cross-examination, DW-2 has stated that the petitioner is her daughter. She does not know when her daughter was born. She was born at Silpukhuri, Nagaon. Her husband died in the year 2004 at Alisinga and he was born at Silpukhuri. Her father-in-law was Late Nabab Ali. Her daughter was married about 30 years ago to Md. Majibur Rahman of Amguri. She has stated that no foreigners case has been initiated against any member of her family except the petitioner.

11. The petitioner had examined one Abhijeet Bhattacharya as DW-3. He was the Junior Assistant of the Election Branch, Morigaon. In his examination-in-chief, he had stated that he came to depose as deputed by the Election Officer, Morigaon, vide letter dated 22.06.2019. He had stated that the

voter list of 1966 (Ext. 4), voter list of 2015 (Ext.7) and voter list of 2018 (Ext.8) were verified with the original copies of the Electoral Rolls and found correct. The exhibited copies of the original Electoral Rolls of the said exhibits are annexed with the said letter issued by the Election Officer, Morigaon. In his cross-examination, DW-3 had stated that in the said letter issued by the Election Officer, the words "original copy of Electoral Roll" were not mentioned.

12. The petitioner has examined Md. Anjak Ali as DW-4. He was the Govt. Gaonburah of Alisinga and four other villages. In his examination-in-chief, he has stated that Ext.10 was issued by him on 15.06.2015 and Ext.10(1) is his signature. He has stated that the petitioner is the daughter of late Sayad Ali, whom he knew very well and who resided at Alisinga village. He has known Late Sayad Ali since 1995. He has stated that the petitioner got married to Majibur Rahman of village Amoguri Chapori about 20 years ago. Ext.10(2) is the Channat. In his cross-examination, DW-4 had stated that he did not bring the counterfoil of Ext.10. He does not have the Register of Certificates issued by him. He has stated that it is not a fact that he does not know the petitioner or that he issued Ext.10 without verifying any documents.

13. The learned Tribunal, on appreciation of the pleadings and evidence on record, observed in respect of the certified copy of the *jamabandi* in the name of Nabab Ali, village Silpukhuri (Ext.2), that the land is covered by PP No. 72 (New), issued by the Revenue Sheristadar, Morigaon, who was claimed to be the grandfather of the petitioner. The learned Tribunal recorded that in the said document, the remarks column was blank and it was not mentioned as to how the name of Nabab Ali was recorded or mutated in the

said *jamabandi*. Accordingly, it was observed that primary evidence was very essential to prove the same, and therefore, Ext.2 was discarded.

14. In respect of the certified copy of the sale deed of 1955 in the name of Nabab Ali (Ext.3), the learned Tribunal merely recorded that the said Ext.3 is a one-page registered sale deed of 1955, which was claimed by the petitioner to belong to her grandfather.

15. In respect of the copy of *jamabandi* (Ext.5), the learned Tribunal has observed that the same was not proved by primary evidence. It was also observed that the *jamabandi* was not clearly visible, which is apparent on the on the face of the record and that the remarks column was shown to be blank. It was not mentioned as to how the name of the pattadar were recorded or mutated. Therefore, Ext. 5 was discarded.

16. In respect of the certified copy of the voter list of 1966 (Ext. 4), it was observed that the Md. Sayad Ali and Rufjan, whose names were enlisted in the voter list of 1966, were available in the territory of India prior to 25.03.1971, and therefore, the projected parents of the petitioner were not foreigners.

17. However, by referring to Ext.1 and Ext.10, by which the petitioner claimed to link herself with her projected parents, the learned Tribunal had observed that the PAN card (Ext.1) was issued on 11.10.2017, wherein the date of birth is shown as 03.05.1961 and the name of the father as Sayad Ali. The said document was held not to be a valid piece of evidence because the petitioner is not an income tax payee, and there is no record of filing income tax

returns by the petitioner. Secondly, Ext.1 was obtained by the petitioner on 11.10.2017, whereas the reference case was of the year 1998. Apart from that, it was held that Ext.1 was not proved by tendering evidence through the income tax authorities. Therefore, it was observed that when the petitioner relied upon the PAN card as proof of citizenship, the same had to be examined with a great deal of care, caution and circumspection.

18. In respect of the Gaonburah certificate dated 15.06.2015 (Ext.10), enclosed in the name of Afija Khatun, whom the petitioner claimed to be herself, the learned Tribunal relied upon the cross-examination of DW-4, wherein he had stated that he did not bring the counterfoil of Ext.10 or the Register of Certificates issued by him. It was also noted that he had denied the suggestion that he did not know the petitioner and that he had issued Ext.10 without verifying any documents. However, the said Gaonburah certificate (Ext.10) was discarded as it contained the State Emblem of India, which he was not authorised to use. Secondly, the DW-4 knew the father of the petitioner Late Sayad Ali since 1995.

19. The learned Tribunal found it to be contradictory, as the petitioner in her written statement and also in her evidence-on-affidavit as DW-1 had stated that after the death of her father Late Sayad Ali, her mother along with her younger brothers had shifted to village Alisinga, which meant that Late Sayad Ali was not a resident of village Alisinga. Moreover, the DW-4 had not brought any contemporaneous record, such as the counterfoil of Ext.10 or any register maintained in his office in respect of certificates issued by him.

20. The learned Tribunal also discarded the Electoral Photo Identity

Card (EPIC) of the petitioner, issued on 01.10.2013.

21. As regards the evidence of DW-2, the learned Tribunal took note of the fact that she had stated in her cross-examination that the petitioner was her daughter, but she did not know when her daughter was born and that she was born at Silpukhuri. In her evidence-on-affidavit, DW-2 had stated that the petitioner was born on 03.05.1961, but in her cross-examination, she had stated that she did not know when her daughter was born. It was observed that in her evidence-on-affidavit, DW-2 had stated that after the death of her husband, she, along with her younger sons, shifted to village Alisinga. However, in her cross-examination, DW-2 had stated that her husband had died in the year 2004 at Alisinga. Accordingly, the evidence of DW-2 was discarded.

22. In respect of the EPIC of the petitioner (Ext.11), it was stated that the said document connects the petitioner with her husband, but did not link or prove her relationship with her projected father.

23. Accordingly, the learned Tribunal held that the petitioner had failed to discharge the burden under Section 9 of the Foreigners Act, 1946, to prove that she was not a foreigner but an Indian.

24. It may be stated that the learned standing counsel for the FT and Border matters had made submissions to support the impugned opinion.

25. We found force in the submission of the learned counsel for the petitioner that various columns of the inquiry Form were left blank and, therefore, a perfunctory investigation had been conducted by the police. The

said point is taken up first.

26. On a perusal of the Tribunal's records, it is noticed that in the Draft Roll published on 24.07.1997 in respect of the 72 Borchalla Assembly Constituency, the name of the petitioner appeared as Ajita Khatun, wife of Md. Majibur, resident of Amguri, P.S. Thelamara and the Election Commission of India had ordered an extensive revision of the Electoral Roll for the 72 Borchalla Assembly Constituency in Assam with reference to 01.01.1997 as the qualifying date. The Electoral Registration Officer of the said Assembly Constituency, having doubts about the citizenship of the petitioner, desired that the matter be verified by way of on-the-spot local verification, and accordingly, the matter was forwarded for inquiry. Accordingly, the Inquiry Officer, in the format for the Verification Officer's Report (referred to as Annexure A), had submitted his verification report to the ERO, 72 Borchalla Assembly Constituency, wherein column nos.4, 7, 8 and 10 were left blank. However, in respect of column nos.9 and 11, it was mentioned as, "Not produced any documents". As against column no.14, sub-paragraph-14, which refers to documentary evidence produced, the entry "Nil" had been made. Against column no.15, as to whether the person had migrated into Assam, the remark was "No". In respect of column no.16, which refers to the place from where migrated, State/Country, and whether migrated before 01.01.1966, and between 01.01.1966 and 25.03.1971, or after 25.03.1971, the remark was "Nil".

27. Accordingly, the AERO of the 72 Borchalla Assembly Constituency referred the matter to the SP, Sonitpur, for further verification.

28. Thereafter, the reference was made by the ERO, 72 Borchalla

Assembly Constituency, and the Superintendent of Police (Border), who is the competent authority to make a reference under the erstwhile IM(D)T Act as well as under the Foreigners Act, 1946, had submitted the reference before the Foreigners Tribunal.

29. Therefore, the inquiry in the present case was not conducted under the Foreigners Act, 1946. The inquiry against the petitioner and the reference made against her were based on the report of the ERO, which is an exercise contemplated under the Representation of the People Act, 1950.

30. It may be mentioned that as per the Tribunal's record, the Superintendent of Police (Border), Sonitpur, Tezpur had submitted the reference to the Chairman (IMDT), Tezpur vide Memo No. TZ(B)/98/1083/BSL LAC dated 24.08.1998 and the said reference was forwarded as per the IMDT amendment Rule 1997 and Govt. Order vide MHA No. 11012/24/92- NEIV Dtd. 14/01/1998.

31. The Supreme Court of India, in the case of *Sarbananda Sonowal v. Union of India & Ors., (2005) 5 SCC 665*, declared the aforesaid IM(DT) Act, 1983 as unconstitutional and directed that all the references which were pending for disposal before the erstwhile IM(D)T be transferred to the jurisdictional Foreigners Tribunal. Accordingly, the reference was transferred to the Foreigners Tribunal. However, the reference appears to have registered on the basis of letter from the Superintendent of Police, Sonitpur, Tezpur, who had issued the letter dated 24.08.1998 referred above and the matter was registered as F.T.(8) Case No. 1720/17, which appears from the order dated 10.10.2018.

32. It is not expected that the petitioner, who is suspected to be a

foreigner would admit that she had illegally migrated from the specified territory and to voluntary disclose her address in the specified territory. In this regard, it may be stated that under Section 9 of the Foreigners Act, 1976, the burden is on the petitioner to prove that she is not a foreigner, but an Indian. In this regard, without burdening the order with various paragraphs of the decision of the Supreme Court of India in the case of *Sarbananda Sonowal (supra)*, it would be suffice to mention that in paragraph-22, 24 to 26, 29, 51, 56 and 62 had explained in details to why the erstwhile IM(D)T Act 1983 was unconstitutional and why burden of prove was on the suspect, who was accused of being a foreigner.

33. Moreover, the petitioner has not been able to show that she had taken any attempt to establish before the 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 learned Tribunal. Hence, it would be impermissible for the petitioner to now claim that the reference was not properly made.

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

> ***14***. *The point raised by the learned counsel for the petitioner that the*

reference was blank and not properly filled up and therefore, the grounds of suspecting the petitioner to be a foreigner has not been furnished to her is taken up first.

15. *In this case, the reference was made by the Superintendent of Police (Border), Barpeta, on receipt of communication dated 16.03.1998, issued by the Electoral Registration Officer, 44 No. Jania L.A.C., which is accompanied with a three page Local Verification Report (Annexure-A) by one Sri Khagen Kalita, J.E. In the said LVO Report dated 17.10.1997, it has been mentioned at two places to the effect that no documents produced during field verification.*

16. *Therefore, this is not a case where any enquiry was made under the provisions of Foreigners Act, 1946 or Rules framed thereunder, where investigation is done under the authority of the Superintendent of Police (Border). The jurisdictional Superintendent of Police (Border) is the prescribed authority to make reference before the Illegal Migrants (Determination) Tribunal constituted under the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983 and Rules framed thereunder.*

17. *There is an important facet, which is contained in the judgment and order of this Court in the case of Sayam Uddin (supra), which must be referred to. We are in respectful agreement with the said judgment and therefore, paragraphs 11 to 22 thereof are quoted below:-*

> *11. In the year 1997, Election Commission of India had undertaken an intensive revision of electoral rolls in the State of Assam as apprehensions were expressed from various quarters that the electoral rolls were infested with the names of foreigners/illegal migrants. In the course of this exercise citizenship status of as many as 3,13,046 persons whose names were in the draft voters lists were found to be doubtful and accordingly they were marked as doubtful "D" voters in the electoral rolls after local verification.*
>
> *12. Legality of this exercise was challenged before this Court in HRA Choudhury Vs Election Commission of India, reported in 2002 (1) GLT 1. The challenge made was rejected by a Division Bench of this Court. In HRA Choudhury (supra) this Court examined the guidelines dated 17.07.1997 of the Election Commission of India laying down the*

procedure to carry out the exercise.

12.1. As per paragraph 3.8 of the guidelines the Electoral Registration Officer was required to consider the verification report received from the Local Verification Officer. If he was satisfied on such report and such other material/information as may be available about the eligibility of a person, he should allow his name to continue on the electoral roll. Where, however, he was not so satisfied and had reasonable doubt about the citizenship of any person, he was required to refer such doubtful cases to the competent authority under the then Illegal Migrants (Determination by Tribunals) Act, 1983 or the Foreigners Act, 1946 as the case may be. For convenience of the Electoral Registration Officers, Election Commission devised proformas.

12.2. As per paragraph 3.9, after the case of a person was referred by the Electoral Registration Officer to the competent authority, he should wait for the decision of the relevant Tribunal in relation to that person and act according to such decision.

12.3. As per paragraph 3.10, where the relevant Tribunal decided that any such person was not a citizen of India, Electoral Registration Officer should proceed under Rule 21 A of the Registration of Electors Rolls, 1960 to have the name of such person deleted from the electoral roll before it was finally published.

12.4. This Court in HRA Choudhury (supra) held that such guidelines and decision of the Election Commission were in accordance with Article 324 of the Constitution of India besides conforming to the principles of natural justice. It was held that such guidelines cannot be held to be arbitrary or vitiated by mala fide or partiality.

13. At this stage, it may be mentioned that the Illegal Migrants (Determination by Tribunals) Act, 1983 is no longer in existence, the same having been declared unconstitutional by the Supreme Court in Sarbananda Sonowal Vs Union of India reported in (2005) 5 SCC 665. Therefore, in so far paragraph 3.8 of the guidelines dated 17.07.1997 is concerned, the reference would be under the Foreigners Act, 1946.

14. The above exercise was repeated in the year 2005 with the Election Commission of India again going for intensive revision of electoral rolls in the State of Assam taking 01.01.2005 as the qualifying date. In this connection, guidelines dated 17.06.2004 were issued by the Election Commission of India. Paragraph 2.2 of the guidelines dealt with "D" voters. It was mentioned that the guidelines issued in 1997 would be followed while dealing with such category of persons. Paragraph 8 dealt with verification by Electoral Registration Officers. It laid down the procedure while carrying out such verification including verification by Local Verification Officer. As per paragraph 8.6, Local Verification Officer would conduct the verification by making an on the spot visit and the person concerned could adduce any one or more of the documents mentioned therein in support of his claim as a citizen of India. After due verification, the Local Verification Officer was required to submit his report in the prescribed format. Under paragraph 8.8, Electoral Registration Officer on receipt of the verification report from the Local Verification Officer should consider the same. Where he was satisfied about the eligibility of a person, he should allow the name of such person to continue on the electoral roll but where he was not so satisfied and had reasonable doubt about the citizenship of any person he should refer such doubtful cases to the competent authority under the then Illegal Migrants (Determination by Tribunals) Act, 1983 or the Foreigners Act, 1946 in a prepared format (Annexure-B to the guidelines dated 17.06.2004) to the competent authority for making reference to the Tribunal and await the decision of such Tribunal.

15. As pointed out by Mr. Barua, in Mameja Khatun (supra) a Single Bench of this Court directed that "D" voters should not be allowed to cast their votes with the clarification that "D" voters would include persons whose names were included in the electoral rolls but their citizenship was doubted or disputed and also those whose cases were pending before the Foreigners Tribunals. This decision of the learned Single Bench was confirmed by the Division Bench in Writ Appeal No. 114/2011 (State Vs Mameja Khatun). By the judgment and order dated 13.10.2015, the Division Bench directed Election Commission of India and other authorities to implement the directions of the Single Bench in letter and spirit.

16. At this stage, it may also be mentioned that in WP(C) No. 274/2009

filed by Assam Public Works which is pending before the Supreme Court of India wherein NRC updation exercise in the State of Assam is being monitored by the Supreme Court of India, on 25.10.2013, Supreme Court clarified that as far as persons in the "D" list are concerned, undoubtedly they were doubtful voters and therefore their names could not be included unless the NRC is updated and unless the Foreigners Tribunals declared them to be Indian citizens.

17. The Foreigners Act, 1946 is an act to confer upon the Central Government certain powers in respect of foreigners. This Act provides for the exercise of certain powers by the Central Government in respect of the entry of foreigners into India; their presence in India and their departure therefrom. Section 2 (a) defines a "foreigner" to mean a person who is not a citizen of India. Section 3 confers power to the Central Government to make orders making provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or their continued presence therein.

17.1. In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946, Central Government made the Foreigners (Tribunals) Order, 1964. As per order 2 (1), the Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose for its opinion.

18. Ministry of Home Affairs, Govt. of India had issued notification dated 19.04.1958 in exercise of powers conferred by Clause-(1) of Article 258 of the Constitution of India whereby the President with the consent of the State Government concerned entrusted to the Governments of each of the States mentioned therein including the State of Assam the functions of the Central Government in making orders of the nature specified in Section 3 of the Foreigners Act, 1946. Another notification dated 17.02.1976 was issued by the Government of India, Ministry of Home Affairs in the exercise of the powers conferred by Article 258 (1) of the Constitution entrusting the Superintendents of Police and Deputy Commissioners (In-charge of Police) under the Government of Assam the

functions of the Central Government in making orders of the nature specified in Section 3 of the Foreigners Act, 1946 within their respective jurisdictions subject to the conditions mentioned therein which included the condition that exercise of such functions would be in respect of nationals of Bangladesh and that while exercising such functions, Superintendents of Police and Deputy Commissioners (In-charge of Police) shall comply with such general or special directions as the Government of Assam or the Central Government may issue from time to time.

19. Article 258 of the Constitution deals with power of the Union to confer powers etc on States in certain cases. Clause (1) of Article 258 starts with a non-obstante clause. It says that notwithstanding anything in the Constitution, President may with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends. Clause (3) provides for making of payment by the Government of India to the State concerned such sum as may be agreed upon or in default of agreement through arbitration in respect of any extra-cost of administration incurred by the State in connection with the exercise of powers and duties of the Government of India conferred or imposed upon a State Government.

20. Thus, under the Central Government notifications dated 19.04.1958 and 17.02.1976, Government of Assam, Superintendents of Police and Deputy Commissioners (In-charge of Police) have been delegated the power to make reference to the Foreigners Tribunal under order 2 (1) of the Foreigners (Tribunals) Order, 1964 to seek opinion as to whether the proceedee is a foreigner or not within the meaning of the Foreigners Act, 1946.

21. Thus from the above, what transpires is that there are two categories of "D" voters:- (i). those who were marked as "D" voters in the electoral roll by the Electoral Registration Officer following enquiry by Local Verification Officer; and (ii). those whose references are pending before the Foreigners Tribunals.

22. In so far Electoral Registration Officer is concerned the exercise undertaken by him while marking a person as a "D" voter in the electoral

roll is a quasi judicial exercise. If he holds the view after examining the enquiry report of the Local Verification Officer that the concerned person is not a citizen of India he is required to forward the case of that person to the competent authority i.e., the Superintendent of Police. If it is so forwarded by the Electoral Registration Officer, the jurisdictional Superintendent of Police has to make a reference to the competent Foreigners Tribunals under order 2(1) of the Foreigners (Tribunals) Order, 1964 based on the report received from the Electoral Registration Officer. Question of making further enquiry by the Superintendent of Police in such a case would not arise because enquiry has already been made by the Electoral Registration Officer by exercising quasi judicial powers and the Superintendent of Police cannot sit over such decision of the Electoral Registration Officer. He has to forward the same by making the reference to the competent Foreigners Tribunal for its opinion.

18. *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.*

19. *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.*

20. *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.

21. *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.*

22. *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."*

35. As stated hereinbefore, in this case the petitioner did not take any such plea in her written statement that she was not furnished with grounds of suspecting her to be a foreigner. Had such a plea been raised before the learned Tribunal, the learned Tribunal would have provided the petitioner the relevant material. In this case, the petitioner was aware that she had failed to produce any material in support of her defence of not being an illegal migrant/ foreigner when enquiry was made. Therefore, at this stage, when the Court is exercising certiorari jurisdiction, it is only permissible to examine if the opinion expressed by the learned Foreigners Tribunal is vitiated on account of perversity. Without raising such plea before the learned Tribunal, the State cannot be non-

suited on such plea taken for the first time before this Court. If one needs any authority on the point of extent of power that can be exercised under certiorari jurisdiction, the decision of the Supreme Court of India in the case of *Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 INSC 733: (2023) 0 Supreme (SC) 763*, may be referred to. Paragraph 77 thereof is quoted below:-

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

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

37. Insofar as the rest of the submissions are concerned, it would be appropriate to mention that in the written statement, the petitioner had referred

to the name of Late Nabab Ali @ Nabab as her grandfather, Chayad Ali @ Sayad @ Sayad Ali as her father, Musstt. Rufjan @ Rupjan Bibi as her mother, and Nurul Islam as her elder brother. The petitioner has exhibited four voter lists, being the voter list of 1966 (Ext.4), voters list of 1985 (Ext.6), voters list of 2015 (Ext.7), and voters list of 2018 (Ext.8). The said voter lists contain certain names. However, the petitioner has not been able to establish her relationship with voter nos. 2, 3 and 4 of the voters list of 2015 (Ext.7) and voter nos. 2, 3, 4 and 5 of the voters list of 2018 (Ext.8).

38. The chart containing the names of various voters in the exhibited voters lists is as follows.

Name of voter and voter list year	Relative	Village	Ext. No.	Age
VL- 1966		Silpukhuri	Ext.4	
Md. Shayad Ali	Nabab			35
Rufjan	Shayad			29
VL- 1985			Ext.6	
Shayad Ali	Nabab	Khalpia and		47
Rupjan Bibi	Sayad	Bhehuguri		37
Nurul Islam	Sayad			30
Kulsum Bibi	Nur Islam			25
VL- 2015		Alisinga	Ext.7	
Rupjan Bibi	Sayad Ali			54
Sahab Uddin	Sayad Ali			33
Baharul Islam	Sayad Ali			31
Minara Khatun	Sahab Uddin			28
VL- 2018		Alisinga	Ext.8	
Rupjan Bibi	Sayad Ali			56
Sahab Uddin	Sayad Ali			35
Baharul Islam	Sayad Ali			33
Minara Khatun	Sahab Uddin			30
Nurjahan Begum	Baharul Islam			23

39. While the voter list of 1966 (Ext.4) is of village Silpukhuri, the voters list of 1985 (Ext.6), the voters list of 2015 (Ext.7) and the voters list of

2018 (Ext.8) are of village Alisinga.

40. From the said voters lists, the petitioner has only established her relationship with Sayad Ali, whose name appears in the voters list of 1985 only, and Rupjan Bibi, whose name appears in the voters lists of 1985, 2015 and 2018. The petitioner has also referred to her relationship with Nurul Islam, her elder brother, whose name appears only in the voters list of 1985, but not in the voters lists of 2015 and 2018.

41. On perusal of the voters list of 1985, it is noticed that the age of Sayad Ali is 47 years, the age of Rupjan Bibi is 37 years, and the age of Nurul Islam, son of Sayad is 30 years. Thus, the age difference between Nurul Islam and Rupjan Bibi is only 7 years, and the age difference between Nurul Islam and his projected father is 17 years.

42. Thus, from the entries made in the Electoral Roll, the petitioner has not been able to establish a link with Md. Sayad Ali and Rupjan, whose respective ages were 35 and 29 years respectively in the voters list of 1966 of village Silpukhuri. Hence, the entries of the names of Sayad Ali and Rupjan Bibi in the voters list of 1985 of a different village Alisinga is not sufficient proof to establish that they were the parents of the petitioner.

43. In her written statement and evidence-on-affidavit, the petitioner has not stated her age and when she got married to Md. Majibur Rahman. However, in her cross-examination, she has stated that she got married in the year 1990. As per the evidence-on-affidavit of the petitioner as DW-1, she was aged 58 years on 08.05.2019. Therefore, she was born in the year 1961 and,

therefore, became eligible to cast her vote on attaining the age of 21 years in the year 1982 and thereafter. Therefore, the petitioner was married at the age of 29 years. If the said calculation is accepted, then the age of the projected mother of the petitioner in 1985 was 37 years and, therefore, she was born in the year 1948. Therefore, the age gap between the petitioner and her projected mother would be 13 years, which makes the relationship between the petitioner and her projected mother to be scrutinized more carefully. Moreso, in light of the observations made earlier, the age gap between the projected mother of the petitioner and her elder brother would only be 7 years as per the voters list of 1985.

44. Though the petitioner had exhibited copies of Jamabandi (Ext.2 and Ext.5), the said exhibited documents do not show that the land was inherited by the petitioner through her projected grandfather and projected father, both of whom had died.

45. The certified copy of *jamabandi* are available to any person who applies for such certified copies, though he or she may not be the person in whose name the land belongs. Therefore, though entries made in the *jamabandi* have evidentiary value, they are insufficient evidence to prove citizenship when the land has not devolved upon the petitioner by way of inheritance. Accordingly, the learned Tribunal had correctly observed that the remarks column does not disclose as to how the names got entered in the Jamabandi.

46. From the *jamabandi* (Ext.2) is in respect of land at village Silpukhuri, it is not known that when the projected father of the petitioner left

Silpukhuri, who became the owner of the said land. Therefore, the learned Tribunal cannot be said to have committed any illegality in rejecting the said exhibits.

47. Therefore, if the documents prior to 25.03.1971 failed to link the petitioner with her projected parents and grandfather, the exhibited documents subsequent to 25.03.1971 do not help the petitioner in any way to establish her citizenship through her projected parents.

48. The grandfather and father are not together as voters in any of the exhibited voter lists. Moreover, in light of the statement made in the written statement and evidence-on-affidavit that after her father, Chayad Ali @Sayad @ Sayad Ali had died, the petitioner's mother along with her younger brothers, namely, Sahabuddin and Baharul Islam had shifted to village Alisinga, the same would negate the certificate of the Gaonburah (DW-4), who had stated that he had seen the father of the petitioner in village Alisinga. Therefore, if the projected father of the petitioner was present at village Alisinga, which would only mean that the petitioner is trying to take advantage of a similarly named person, namely, Sayad Ali, who had died prior to the shifting of the mother and elder brother of the petitioner to village Alisinga. The evidence of DW-4 is also contrary to the pleadings and evidence tendered by the petitioner and her projected mother. Moreover, the State Emblem in the Gaonburah certificate makes the document inadmissible in evidence.

49. In this regard, reference may be made to the decision of this Court in the case of *Afuja Begum @ Afruja Begum v. Union of India & Ors., WP(C) No. 7340/2016, decided by this Court on 19.04.2018*, wherein it has

been held that a Gaonburah is not a person authorised to use the State Emblem, and that the use of the State Emblem by an unauthorised user would make the document inadmissible in evidence.

50. In respect of the PAN and EPIC cards, both the PAN and EPIC cards (Ext.1, Ext.6, Ext.9 and Ext.11) are documents issued on the basis of the self declaration without any investigation by the authorities issuing the PAN card or EPIC.

51. In this regard, reference may be made to the decision of this Court in the case of *Md. Babul Islam v. Union of India & Ors., WP(C) No. 3547/2016, decided on 09.05.2018*, wherein it has been held that EPIC and PAN cards are not valid pieces of evidence in the absence of any supporting documents and that, in any case, they are post-reference documents.

52. Accordingly, the petitioner has not been able to make out any case for interference with the impugned opinion dated 25.07.2019, passed by the learned Member, Foreigners Tribunal No.8, Tezpur, in F.T.(8) Case No. 1720/17, arising out of Ref. TZP(B) Case No. 1083/98.

53. Consequently, the writ petition is dismissed.

54. The parties are left to bear their own costs.

55. Interim bail granted to the petitioner by order dated 08.05.2020 stands recalled and revoked.

56. The consequences of the impugned opinion dated 25.07.2019 declaring the petitioner to be a foreigner post-25.03.1971 would follow.

57. The Registry shall send back the Tribunal's records along with a copy of the order to be made a part of the record by the said learned Tribunal.

JUDGE **JUDGE**.

Digitally signed by Champak Rajbongshi
Date: 2026.11.11 17:20:46 +05'30'

Comparing Assistant **Private Secretary**