GAHC010265502019

2026:GAU-AS:15220

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

Case No. : WP(C)/8849/2019

SAPATAN NESSA
D/O- LATE ABDUL HAKIM, W/O- REZEK ALI, VILL- PANI MARICHA, P.S- BARPETA, DIST- BARPETA

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME AFFAIRS, NEW DELHI- 110001

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

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

4:THE STATE COORDINATOR
NRC
ASSAM
ACHYUT PLAZA
BHANGAGARH
GHY- 5

5:THE STANDING COUNSEL
SPECIAL FT AND BORDER

6:THE DEPUTY COMMISSIONER
BARPETA
ASSAM

PIN- 781301

7:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM
PIN- 781301

8:THE O/C BARPETA POLICE STATION
BARPETA
PIN- 78130

-BEFORE-

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

Advocated for petitioner:
Mr. J. Ahmed

Advocate for Respondent:
Mr. G. Sarma, SC, F.T. & NRC.
Mr.A.I. Ali, SC, ECI.
Mr. H. Das, CGC.
Mr. P. Sarmah, Addl. Sr. Govt. Advocate

Date on which judgment is reserved : 17.08.2026

Date of pronouncement of judgment : 07.10.2026

Whether the pronouncement is of

the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Pranjal Das, J.)

1. Heard Mr. J. Ahmed, learned counsel for the petitioner. We have also heard Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal and NRC as well as

Mr. A.I. Ali, learned Standing Counsel, ECI and Mr. H. Das, learned CGC appearing for the Union of India and Mr. P. Sarmah, learned Addl. Senior Government Advocate.

2. The instant writ petition has been filed under Article 226 of the Constitution of India by the petitioner assailing the judgment and opinion dated 20.08.2018 passed by the learned Member, Foreigners Tribunal No. 1st, Barpeta in F.T. Case No. 09/2016, whereby answering the reference against the petitioner as proceedee, she was declared to be a foreigner post the stream of 25.03.1971.

3. The facts in brief are that originally a reference was made by the Superintendent of Police (Border), Barpeta, giving rise to IM(D)T Reference Case No. 3104/1997. Subsequently, after the setting aside of the Act by the Hon'ble Supreme Court, the case came to be renumbered as F.T. Case No. 09/2016 and taken up for adjudication by the aforementioned Foreigners Tribunal.

4. Upon receiving the reference case, notice was issued to the petitioner and received by her, whereupon she appeared and filed her written statement claiming that she was a citizen of India by birth and residing at village Pani Maricha under the jurisdiction of Barpeta Police Station in the district of Barpeta, Assam. Subsequently, during the proceeding, the petitioner examined 3(three) witnesses including herself as DW-1, her projected brother Asahak Ali as DW-2, and one Gaonburah as DW-3.

5. In support of her contentions, she also exhibited 5(five) documents as Exhibit-A to Exhibit-E. However, upon considering her material evidence and contentions, the learned Foreigners Tribunal answered the reference against her,

thereby leading her to file the instant writ petition.

6. Mr. J. Ahmed, the learned counsel for the petitioner, submits that the petitioner is a citizen of India by birth and in support of her said position, she had adduced sufficient evidence before the learned Tribunal. It is submitted that the learned Tribunal discarded relevant evidence, including the testimony of the petitioner's brother, who had adduced evidence in her favour. It is submitted that the Gaonburah certificate also proved her linkage and supported her case of being an Indian citizen, but the same was incorrectly discarded and misread by the learned Tribunal, resulting in the impugned judgment and opinion.

7. In support of his contentions, the learned counsel for the petitioner cites the following decisions:-

(i) *Rahim Ali @ Rahim -vs- Union of India 2014 0 Supreme (SC)575*, (Paragraphs 33,35,36,38,39,40,41,49 & 50),

(ii) *WP(C) No.5250/2019 Saidul Rahman @Md. Saidul Islam -vs- Union of India*, (Paragraph – 10,12 & 13)

(iii) *State of Rajasthan -Vs-T.N Sahani and others, 2001(10) SCC-619*, Paragraph-4,

(iv) *Haidar Ali -vs- Union of India 2021 (3) GLT 85*, (Para-20,22,24,25,27,28,29,30,35,36, 39,40,42&46)

(v) *Sujab Ali (MD) -vs- Union of India & others* (Para-15 & 16)

(vi) *Dalgobinda Paricha -vs- Nimai Charan Misra, AIR 1959 SC 914* (Para-6,7 & 15),

(vii) *Sirajul Hoque -vs-State of Assam & ors.,2019(5) SCC 534* (Para- 2,3,4

& 5)

8. On the other hand, Mr. J. Payeng, the learned Standing Counsel appearing for the Home Department and NRC, submits that the petitioner was not successful in showing any linkage evidence with her projected Indian citizen ancestors. It is submitted that her projected brother did not have any presence in the Jamabandi and there is also a discrepancy with regard to the name of his father. It is submitted that though the petitioner attained the age of franchise in 1977 but her name appeared much later in the voters list, thereby casting doubts. The learned Standing Counsel submits that the impugned judgment and opinion is correct and the same should be upheld and confirmed.

9. In support of his contentions, the learned Standing Counsel, for the F.T. cites the following decisions:-

(i) *Romila Khatun Vs. The Union of India and Anr. in WP(C) 3807/2016*,

(ii) *Shukurjan Nessa @ Sukurjan Vs. The Union of India and 5 Ors. In WP(C) 245/2019.*

10. We have perused the pleadings of the writ petition, the evidence of the witnesses adduced during the proceeding, the documents adduced in evidence, the written statement and other relevant materials.

11. We have considered the submissions of the learned counsels on both sides and perused the decisions cited at the Bar.

12. In her written statement, the petitioner had referred to her parents and claimed that her projected father was Abdul Hakim and projected mother Sarifan Nessa, who figured in the voters lists of 1966 and 1970 and further stated that they expired in 1970. The petitioner also claimed to be a citizen of

India, born and brought up at village Debradi in the district of Barpeta.

13. As rightly held by the learned Tribunal in the impugned order, there is no reference in the written statement to the projected brother of the petitioner who has adduced evidence as DW-2. Though a proceeding before the Foreigners Tribunal is not a suit with strict principles of CPC applying, nevertheless, it has been held by this Court in more than one decision that the proceedee must state all the necessary facts, including particulars of family members, in her written statement and also that there should not be variance between her pleading and her evidence. The necessity to state the particulars within the knowledge of the proceedee, including about family members, has also been emphasized by the cardinal decision on the subject matter in *Sarbananda Sonowal vs. Union of India 2005 (5) SCC 665***.** In any case, even if the strict principles of CPC do not apply, variance between pleading and proof, and omitting to mention important particulars in the written statement, would weaken the process of discharging of the burden by the proceedee under Section 9 of the Foreigners Act, 1946.

14. In her testimony as DW-1, the petitioner had stated about her projected father Abdul Hakim and mother Sarifan Nessa and their enlisting in the voters lists of 1966 and 1970 with regard to No. 54 Chenga LAC in the district of Barpeta, exhibiting the said two voters lists as Exhibit-A and Exhibit-B, respectively. A perusal of the said documents indicates the figuring of the names of the petitioner's said projected parents therein. However, the same at best only proves that the said two persons were present in India prior to the cut-off date. What is most important from the point of view of the petitioner is to create the linkage through adequate documentary evidence with her said

projected ancestors, being her parents.

15. In her cross-examination, DW-1 has admitted that she had never cast vote in any election. Though she mentioned about one brother and five sisters, she has not stated the name of her brother.

16. The projected brother of the petitioner, namely, Asahak Ali, adduced evidence as DW-2, as mentioned above, deposing that the petitioner is his younger sister and that he was also a citizen of India by birth. DW-2 has also stated about the projected parents. The petitioner has exhibited, as Exhibit-C, a voters list figuring the name of the said projected brother in the year 1997 of the same LAC.

17. However, as discussed by the learned Tribunal, in the voter ID exhibited as Exhibit-E, the father's name of the said projected brother is mentioned as Hakibar Ali, rather than Abdul Hakim, projected by the petitioner as her father. Though DW-2 has stated about that name discrepancy, calling it a mistake; whether that itself would cure that irregularity and whether on the basis of the mere statement, it can be assumed that Asahak Ali, indicated as son of Hakibar Ali in the voter ID, is actually Asahak Ali, son of Abdul Hakim. We are of the opinion that such an assumption cannot be made automatically.

18. As the petitioner has herself testified about her parents expiring in 1970, therefore, the question of adducing any subsequent voters list would not arise. Thus, clearly there are no voters lists where the name of the petitioner or even her projected brother figures along with her projected parents.

19. The mere oral testimony of DW-2, the projected brother of the petitioner, would not be sufficient to discharge the burden under Section 9 in the absence

of cogent linkage documentary evidence. On the question of linkage evidence, the sole document the petitioner had adduced as Exhibit-D is a Gaonburah certificate mentioning her as daughter of Hakim Ali and about her marriage to Rezek Ali.

20. In support of the said certificate, though the issuing Gaonburah has adduced evidence as DW-3 and has exhibited the certificate as Exhibit-D and also his signature, all he has stated in his oral testimony is that he knows the petitioner and also her father. But in cross-examination, he himself admitted that in the certificate, he has mentioned the name of the petitioner's father as Hakibar Ali.

21. This aspect of the name discrepancy of the father, which also appears in the voter ID of her projected brother, significantly dilutes the testimony of DW-3. This is in addition to his oral testimony merely stating about knowing the petitioner and her father for long. The basis of such knowledge has to be proved through contemporaneous records, as has been held in several decisions of this Court and therefore, the said aspect of the oral testimony of DW-3 is also not much helpful.

22. In the case of *Rahim Ali* (supra), the Hon'ble Supreme Court has emphasized the importance of not arbitrarily suspecting a person to be a foreigner and that any suspicion or consequent reference should be based on some reasonable grounds. The said proposition is undoubtedly unexceptionable. However, in the instant case, upon perusing the original record, we find that in the reference form sent by the SP (Border), it has been indicated that information and documents have not been furnished by the petitioner, and that the report of the ERO has been considered to be the ground for making the

reference due to considering the person as an illegal migrant. The said ground of the ERO is also available, and it is stated therein that while preparing the electoral roll of the constituency, there were some doubts and therefore a field verification was conducted by Durga Kumar Mazumdar, and the verification report is Annexure-A, which reveals that no documents could be furnished regarding the particulars of the petitioner despite repeated visits.

23. In our considered view, the same would constitute sufficient and reasonable grounds to make the reference, whereupon the burden would be on the petitioner as proceedee under Section 9 of the Foreigners Act, 1946 to rebut the presumption and prove by preponderance of probability that she is not a foreign national.

24. In the case of *Saidur Rahman* (supra), on the facts of that case, the coordinate Division Bench was pleased to remand the matter for a fresh adjudication. However, in the instant case, we have not found any such ground to remand the matter, and rather we have found that the linkage evidence could not be adduced to discharge the burden on the part of the proceedee.

25. We have perused the judgment of *Haidar Ali* (supra), and we are of the opinion that the same would not be of assistance to the petitioner in view of our determination discussed in the preceding paragraphs based on the materials on record.

26. The case of *Sujab Ali* (supra) was also a case of remand by the coordinate Bench of this Court in the facts of that case, and as already discussed above, the present case is not one of remand, but a case where clearly the petitioner as proceedee had failed to discharge the burden before the learned Tribunal.

27. The oft-quoted decision of *Sirajul Hoque* (supra) pertained to a minor discrepancy in the name of the grandfather, while there was consistency in the other parts of the materials, and therefore the said small discrepancy in the name was held to be fit enough to be overlooked. In the instant case, however, apart from the lack of link documentary evidence, the discrepancy in the name of the father arises from the voter ID of the petitioner's projected brother and also from her own certificate adduced in evidence, wherein the name is written as Hakibar Ali, and the same is also testified to by the author of the certificate. This discrepancy cannot be overlooked because all along the petitioner has projected her father to be Abdul Hakim and tried to show link documentary evidence with him. Therefore, this decision would not be of assistance to the petitioner.

28. Now, coming back to the facts of this case, upon perusing the materials on record, we, thus, find that there are no linkage voters list between the petitioner and her projected parents; the oral testimony of her projected brother alone would not suffice and there is no reference to that brother in her written statement; the voter ID of her projected brother mentions his father's name as Hakibar Ali and that has been explained away merely by a statement in the evidence that it is a mistake; the Gaonburah certificate and the testimony of the Gaonburah is not supported by contemporaneous records and the materials on the basis of which he has testified about Abdul Hakim being the petitioner's father; and the certificate also suffers from the name discrepancy by mentioning the name of the petitioner's father as Hakibar Ali, though she has tried to build the linkage evidence with projected father Abdul Hakim.

29. Consequently, we cannot but agree with the opinion of the learned

Tribunal that the proceedee has not been able to discharge the burden during the proceeding before the learned Tribunal. There is no infirmity in the impugned judgment dated 20.08.2018 passed by the learned Member, Foreigners Tribunal No. 1st, Barpeta in F.T. Case No. 09/2016.

30. Accordingly, the writ petition stands **dismissed**.

31. Interim order, if any stands vacated.

32. Return the original records to the learned Tribunal.

JUDGE **JUDGE**

Comparing Assistant