GAHC010282842019

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

Case No. : WP(C)/8585/2019

JAYNAB BEGUM
W/O- LATE FARHAD ALI, D/O- IDDRISH ALI, D/O- SAHERA KHATUN @ SAHERA BEGUM, R/O- VILL- HAZIPARA, MOUZA- GHILAZARI, P.S- HOWLY, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 06

3:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM
P.S- BARPETA
DIST- BARPETA
ASSAM

4:THE ELECTION OFFICER
BARPETA
DIST- BARPETA
ASSAM

5:THE DEPUTY COMMISSIONER
BARPETA
DIST- BARPETA

ASSAM

6:THE CHIEF COORDINATOR
NRC
ASSAM
DIST- KAMRUP(M)
DISPUR
GUWAHATI- 06

7:THE ELECTION COMMISSION
THE STATE OF ASSA

Advocate for the Petitioner : MR A ALI, MR S ISLAM,MR. Y ALI,MR H ALI

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

B E F O R E

Hon'ble MR. JUSTICE KALYAN RAI SURANA

Hon'ble MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the petitioner : Mr. A. Ali.

Advocates for the respondents : Mr.G. Sarma, SC- Home Deptt & NRC, Mr.P. Sarma, Sr.GA,
Mr.A.I. Ali, SC, ECI.
Mr.S.K. Medhi, CGC.

Date of hearing : 24.08.2026

Date of Judgment : **04.11.2026**

JUDGMENT & ORDER (CAV)

(S.P.Khaund, J.)

The extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this application under Article 226 of the Constitution of India by putting

to challenge the opinion rendered vide impugned order dated 12.04.2019 passed by the learned Member, Foreigners Tribunal no.10th , Barpeta in F.T. Case No. 361/2016. By the impugned judgment, the petitioner, who was the proceedee before the learned Tribunal, has been declared to be a foreigner of post 25.03.1971 stream.

2. The facts of the case may be put in a nutshell as follows:

(i) A reference was made by the Superintendent of Police (B), Barpeta District, against the petitioner giving rise to the aforesaid F.T. Case No. 361/2016.

(ii) As per requirement u/s 9 of the Foreigner's Act, 1946 to prove that the proceedee is not a foreigner, the petitioner had filed the written statement on 28.12.2016 along with certain documents.

(iii) The learned Tribunal, after considering the facts and circumstances and taking into account of the provisions of Section 9 of the Foreigners' Act, 1946 had come to a finding that the petitioner, as opposite party, had failed to discharge the burden cast upon him and accordingly, the opinion was rendered declaring the petitioner to be a foreign national post 25.03.1971.

3. We have heard Mr. A. Ali, learned counsel for the petitioner. We have also heard Mr.G. Sarma, SC- Home Deptt & NRC,; Mr.P. Sarma, Sr.GA, Mr. A.I. Ali, learned Standing Counsel, Election Commission of India and Mr. S.K. Medhi, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated 06.05.2020.

4. The learned counsel for the petitioner has submitted that the petitioner could prove her case with cogent evidence and in view of the fact that there

was no rebuttal evidence, the learned Tribunal should have accepted the said proof and accordingly held the petitioner to be a citizen of India. In this regard, she has referred to her evidence adduced as DW1 and also the following documentary evidence. Her brother Sanowar Hussain was examined as DW-11 and he also exhibited the following documents. The gaonbura of village Hazipara deposed as DW-3 and of Village Khandarpara deposed as DW-4.

(i) Ext-A is the photocopy of certified copy of 1965 voter list,

(ii) Exhibit-B is photocopy of certified copy of 1970 voter list,

(iii) Exhibit-C is photocopy of certified copy of 1997 voter list,

(iv) Exhibit-D is a photocopy of certified copy of 2010 voter list,

(v) Exhibit-E is a photocopy of elector photo identity card (EPIC for short) in the name of Idrish Ali,

(vi) Exhibit-F is a photocopy of certified copy of 1989 voter list,

(vii) Exhibit-G is a photocopy of certified copy of 1997 voter list,

(viii) Exhibit-H is a photocopy of certified copy of 2010 voter list,

(ix) Exhibit-I is a photocopy of elector photo identity card in the name of Jaynab Begum,

(x) Exhibit-J is a certificate dated 26.09.2017 issued by the Gaonburha of village Khandarpar,

(xi) Exhibit-K is a certificate dated 24.10.2016 issued by the Gaonburha of village Hazipara,

(xii) Exhibit-L is a certificate dated 18.06.2015 issued by the Secretary of 35 No. Uttar Betbari Gaon Panchayat,

(xiii) Exhibit-M is a photocopy of elector photo identity card in the name of Sanowar Hossain.

5. The learned counsel has submitted that in the written statement, all material disclosures were made. It is contended that the petitioner was declared as a foreigner as discrepancies in names and age surfaced in the Voters lists and other documents submitted by the petitioners. It is submitted that the LVO's report clearly depicts that the petitioner was born in India in 1964 and thus the petitioner is an Indian citizen. The paragraph-5 of the written statement also corroborates the LVO's report that the petitioner's place of birth is at Khandarpar. The petitioner's grandfather's name appears as Kurpan Ali in Voters list of 1997 and 2010 and the letter 'f' is changed to letter 'p' as her grandfather's name appears as Kurfan Ali in the Voter's list of 1965 and 1970. It is contended that although the learned Member held in page-4 of the Judgment that the constituency has not been mentioned in Exhibit-A (Voter's list of 1965), this was not disputed by the prosecution, nor did the prosecution cross-examine the witnesses on this aspect. It is further submitted that the voter's lists have not been challenged.

6. It is submitted on behalf of the petitioner that the Gaonbura Hasem Ali who issued the Certificate dated 24.10.2016 was examined as DW-3. The Gaonbura's certificates traces the petitioner lineage to her father and grandfather whose names appear in the voters lists of 1965, 1970, 1997 and 2010. Not a single voters list was challenged nor were the witnesses cross-examined on the discrepancies surfacing in the petitioner's grandfather's name. Her evidence is substantiated by her brother's evidence as well. Her brother's evidence and the Gaonbura's certificates establishes her linkage to her father and grandfather. The learned counsel for the petitioner laid stress in his

argument that the petitioner could prove that she is an Indian citizen by adducing oral as well as documentary evidence. The LVO's report showing that she was born in Khandarpar village in the year 1964 proves that the reference was not a valid reference.

7. Relating to discrepancies in the names, the learned counsel for the petitioner has relied on the decision of the Supreme Court in ***Sirajul Haque Vs. The State of Assam & Ors reported in 2019 (5) SCC 534***, wherein it has been held that:-

> "*There is no doubt that the great grandfather's name Amtullah appears as Amtullah throughout the document. Equally, there is no doubt about the father's name which appears as Hakim Ali throughout. The only discrepancy found is that in some of the documents Kefatullah later becomes Kematullah. However, what is important to note is that his father's name Amtullah continues as Amtullah and the other family members associated continued as such. Also produced are NRC Registration details of the year 1971 of the grandfather who is noted to be Kefatullah in this document. Other voters lists are then produced where the letter F becomes the letter M with other family names remaining the same. In fact, the appellant has himself produced a document of 1981 from the Income Tax Department giving his Permanent Account Number. Apart from these documents, certain other later documents have also been produced including photo identity cards issued by the Election Commission of India and identity cards issued to his brother including voters lists in which the appellant's name appears.*"

8. The petitioner tried to substantiate his argument relating to undisputed documents by relying on the decision of the Supreme Court in ***Muddasani Venkata Narsaiah (Dead) through Legal Representatives Vs. Muddasani Sarojana reported in 2016 (12) SCC 288,*** wherein it has been held that:-

> "*Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale f deed. The cross-examination is a matter of substance not of*

procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.

9. On the same subject, the petitioner has also relied on the decision of the Supreme Court in ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Anr. reported in 2003 (0) AIR (SC) 4548***, wherein it has been held that:-

"*The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission vs. The State of Madras & Anr AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence, and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as an exhibit, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play The crucial test is whether an objection, if taken at the appropriate point of time, would*

have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence In the first case, acquiescence would be no bar to raising the objection in superior Court."

10. The petitioner has also relied on the decision of this Court in ***WP(C) No. 1818/2019, wherein vide order dated 30.03.2021***, this Court has held that :

"On proper analysis of the aforesaid observation of the Hon'ble Supreme Court, the following aspects emerge:

(i) In order to establish one's citizenship, normally he may be required to give evidence of (1) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. However, the Supreme Court nowhere states that the aforesaid facts must be proved only by documents. The expression used is "normally he may be required to give evidence" Thus, it is not mandatory to prove all these to show that he is an Indian citizen. These are, however, relevant facts, if one proves, can establish beyond doubt that he is a citizen of this country. Yet, he may be able to prove his citizenship by other evidences as well.

(ii) Further, disclosure of facts or information other than the ones

mentioned in para 26 does not mean that adverse inference can be drawn.

(iii) One may prove one's citizenship without referring accurately to all the factors mentioned under paragraph 26 of Sonowal II (supra). For example, if the date of birth or the place of birth is not conclusively proved, but if it is conclusively proved that the father of the proceedee is an Indian citizen, the claim of the proceedee cannot be rejected as a foreigner, as it would fly in the face of logic and common sense.

(iv) Further, it is nowhere mandated that he must prove all these facts by documentary evidence only. Section 59 of the Evidence Act, 1872 says that all facts, except the contents of document or electronic records, may be proved by oral evidence. There may be cases, where the proceedee is an illiterate, and the birth is not registered with any authority, in which event, it would be impossible to produce any documentary evidence to prove his date of birth and place and other facts accurately and one may rely on oral evidence only. In such case, can a claim be thrown out merely because only oral evidence has been led?
(v) Further, after he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary.

43. It may be also noted that the standard of proof in discharge of the onus by a proceedee under Section 9 of the Foreigners Act is preponderance of probability as has been also reiterated in the Full Bench decision of this Court in ***State of Assam vs. Moslem Mondal, 2013 (1) GLT 809****. Thus, the standard of proof being preponderance of probability, there could be minor inconsistencies here and there in the evidence of the proceedee which would not warrant rejection of the claim. This is what the Hon'ble Supreme Court held in* ***Sirajul Hoque v. State of Assam, (2019) 5 SCC 534."***

11. The petitioner has relied on the decision of this Court in the case of ***Miraj Alom @ Miraj Hussain vs. Uniion of India & Ors.*** in WP(C) No. 2498/2020, wherein vide order dated 10.11.2020, it has been held that the:-

"*We have carefully examined the case records received from the Tribunal. It is seen from the Report of the Local Verification Officer that the place of birth of the petitioner is described as Bihar and date of birth*

is recorded as 02.11 1981. His father is named as Md. Munir Alom, with present address at Choudhury Market, P.S. Doomdooma, district- Tinsukia. At Sl. No. 12 of the Report it is recorded that the mother tongue of the petitioner is "Hindi". Further, at Sl. Nos. 15 and 16 of the said Report, which pertains to queries as to whether the proceedee has migrated into Assam and, if so, the place from where migrated, the Local Verification Officer have recorded in the affirmative as against Sl. No.15 and "Bihar, India".

Against Sl. No. 16, meaning thereby that the petitioner migrated into Assam from Bihar. Neither in the impugned opinion dated 29.12.2018 nor in the Report of the Local Verification Officer or in the Referral Order of the Electoral Registration Officer (ERO), 125 Doomdooma LAC, there are any findings or suspicion recorded that the petitioner came to Assam from the "specified territory".

Pertinent to note that for the purpose of initiating proceeding against a person for examination as to whether he/she is a foreigner or not, in respect of references made to a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 having jurisdiction over a district or part thereof in the State of Assam, the primary and necessary ingredient or the condition precedent is that reference can only be made in respect of persons who have come to Assam from the "specified territory", meaning the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, and also having regard to the cut-off date of migration into Assam as prescribed under the aforesaid Section 6-A of the Citizenship Act, 1955."

12. The learned counsel accordingly submits that in view of the availability of the aforesaid materials, the impugned opinion could not have been rendered against the petitioner and therefore, the same requires interference.

13. *Per contra,* the learned Standing Counsel, Home Department has categorically refuted the stand taken on behalf of the petitioner. He submits that a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not. Therefore, the relevant facts are especially within the knowledge of the proceedee and accordingly, the burden of proving citizenship rests absolutely

upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872 and this is mandated under Section 9 of the aforesaid Act, 1946. However, in the instant case, the petitioner utterly failed to discharge the burden. It is also submitted that rebuttal evidence is not mandatory in every case and would be given only if necessary. He further submits that the evidence of a proceedee has to be cogent, relevant, which inspire confidence and acceptable and only thereafter, the question of adducing rebuttal evidence may come in.

14. The learning Standing Counsel has further submitted that the written statement is the basic document which is supposed to lay down the foundation of the case of the petitioner, and the written statement in the instant case lacks details and is totally vague. There is no date or year of birth of the petitioner and there are no details of the family members. In this connection, he has relied on the following observations made by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal vs. Union of India*** reported in***(2005) 5 SCC 665,*** wherein it has been observed that :-

"*17. 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. Some times the place of birth of his grand parents may also be relevant like under Section 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."

15. In support of his submission that a certificate has to be proved from contemporaneous records, the learned Standing Counsel has relied upon the judgment passed in the case of ***Romila Khatun vs. Union of India*** reported in ***2018 (4) GLT 373*** and the following observations have been pressed into service.

> "***20.*** *It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. …"*

16. He has also drawn the attention of this Court to the case of ***Nur Begum vs. Union of India and Ors.*** reported in ***2020 (3) GLT 347*** wherein certain observations regarding exercise of Certiorari jurisdiction have been made which reads as follows:

"*9. On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts*

reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion."

17. He has also relied upon the case of the Hon'ble Supreme Court in ***Rupjan Begum vs. Union of India*** reported in***(2018) 1 SCC 579,*** wherein it has been laid down that a certificate has to be proved on two aspects, firstly, the authenticity of the same and secondly, the authenticity of the contents.

18. The learned Standing Counsel has accordingly submitted that the writ petition be dismissed and the interim order be vacated.

19. The learned counsel for the other respondents have supported the submissions advanced on behalf of the Home Deptt. & NRC and have prayed for dismissal of the writ petition. They have submitted that this Court in exercise of its Certiorari jurisdiction does not act as an Appellate Court and it is only the decision making process which can be the subject matter of scrutiny. It is submitted that there is no procedural impropriety or illegality in the decision making process and therefore, the instant petition is liable to be dismissed. They have further submitted that the procedure adopted for adjudication of a reference by a Foreigners Tribunal is summary in nature and there is also a time frame for completion. It is also submitted that there is a question of national security by the unabated influx of foreign nationals and before any action is

taken, the proceedee is given an opportunity whereby he or she is required to prove the citizenship.

20. The rival submissions made have been duly considered and the materials placed before this Court including the records of the Tribunal have been carefully perused.

21. With regard to the aspect of burden of proof as laid down in Section 9 of the Act of 1946, the law is well settled that the burden of proof that a proceedee is an Indian citizen is always on the said proceedee and never shifts. In the said Section, there is *non-obstante* clause that the provisions of the Indian Evidence Act would not be applicable. For ready reference, Section 9 is extracted hereinbelow-

"*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.*"

22. In this connection, the observations of the Hon'ble Supreme Court in the case of ***Fateh Mohd. Vs. Delhi Administration [AIR 1963 SC 1035]***which followed the principles laid down by the Constitutional Bench in the case of ***Ghaus Mohammad Vs. Union of India [AIR 1961 SC 1526]*** in the context of Foreigners Act, 1946 would be relevant which is extracted hereinbelow-

"*22. This Act confers wide ranging powers to deal with all foreigners or with respect to*

any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including their arrest, detention and confinement. The most important provision is Section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person. Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person. In Union of India v. Ghaus Mohd. the Chief Commissioner of Delhi served an order on Ghaus Mohammad to leave India within three days as he was a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. In appeal the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent."

23. The argument of the learned counsel for the respondents has substance. It is submitted that rebuttal evidence in every case is not mandatory. Learned counsel for the petitioner has relied on the decisions of the Supreme Court in the case of ***Muddasani Venkata Narsaiah (Dead) through legal representatives (Supra),*** and in the case of ***Arulmigu Viswesaraswami & V.P. Temple & Anr. (Supra),*** and has submitted that the voters lists have not been disputed through cross-examination of the witnesses and the same cannot be discarded by the Tribunal. It has been submitted that the voters list ought to have been considered as the petitioner's father's name reveals that her father was an Indian citizen, as the petitioner's father and grandfather have been shown as voters prior to 1971 in the voters list of 1965 as well as the voters list

of 1970.

24. The argument of the learned counsel for the petitioner that no effective cross-examination was made by the prosecution disputing the documents, has no legs to stand. The cross-examination of the petitioner's brother, Sanowar Hussain as DW2 clearly reveals that he had no knowledge about the voters, whose names are reflected in the voters list of 1965 and 1970. He further stated in his cross-examination that he had no idea about the enrollment of his sister's name in the voters list. He did not even know about the constituency, where she was shown as a voter. It is further admitted in his cross-examination that his grandfather came to India from Bangladesh. This contradicts the petitioner's pleadings and evidence that her father was an Indian citizen.

25. It is also pertinent to note that petitioner admitted in her cross-examination that since 1965 to 2010, her father was residing in the same place. This is not true. The voters list of 2010 marked as exhibit-D clearly reveals that the constituency was Sarukhetri. No reasons were ascribed, how the constituency had changed from Khandarpar to Sarukhetri. The change of address was not explained by the petitioner in her pleadings or in her evidence. It can be safely held that both DW1 and DW2 have been duly cross-examined on the voters lists.

26. It has to be borne in mind that a Writ Court in exercise of jurisdiction under Article 226 of the Constitution of India would confine its powers to examine the decision making process only. Further, the present case pertains to a proceeding of a Tribunal which has given its findings based on the facts. It is trite law that findings of facts are not liable to be interfered with by a Writ Court under its certiorari jurisdiction.

27. Law is well settled in this field. The Hon’ble Supreme Court, after

discussing the previous case laws on the jurisdiction of a Writ Court *qua* the writ of certiorari, in the recent decision of ***Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors [Civil Appeal No. 3339 of 2023]*** has laid down as follows:

"*49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.*

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While

administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

28. In the instant case, the written statement is absolutely vague and apparently, has not met the requirements, as laid down by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal*** (supra). There is a requirement to disclose the following:

(i) date of birth,

(ii) place of birth,

(iii) name of the parents,

(iv) their place of birth and citizenship.

Further, there may be a requirement to give the details of the grandparents. It has been stated that all these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State.

29. The written statement of the petitioner is vague. The petitioner has not mentioned the names of her grandparents, her mother or her siblings in her written statement. The petitioner introduced the names of her grandfather and her mother in her evidence-in-chief. Although, she examined her projected brother as a witness, yet the petitioner failed to mention her brother's name in the written statement or in the evidence. It is trite law that evidence cannot traverse beyond pleadings.

30. It would also be pertinent to mention that the petitioner and her brother also failed to substantiate their documentary evidence through their oral evidence when they were cross-examined. The cross-examination and the

evidence-in-chief of DW1 does not at all give a hint regarding the petitioner's siblings. However DW2 mentioned in his cross-examination that he has two brothers and four sisters. It is also apparent that their parents were alive. DW2 further admitted in his cross-examination that he was not aware of the constituency from where his sister cast her vote and if his father came to India from Bangladesh. He also admitted that his grandfather came to India from Bangladesh.

31. The decision of this Court in WP(C) 1818/2019 in the case of ***Haidar Ali (Supra)*** is of no aid to the petitioner. The documentary evidence as well as the oral evidence of the petitioner was not found to be reliable. We cannot be oblivious of the fact that between the voters list of 1970 and the voters list of 1997, there is a gap of 27 years. To prove citizenship, continuous stay is a *sine qua non*. There is no explanation by the petitioner relating to the voters list after 1970. A voters lists has been produced which reveals a gap of 27 years. The grandfather's name appears to be different in this case. The grandfather's name is shown as Kurpan Ali in the voters list of 1997 and grandmother's name is shown as Sahara Begum in the voters list of 1997 instead of Sahara Khatun as shown in the voters lists of 1965 and 1970. The grandfather's name appears as Kurfan Ali in the voters lists of 1965 and 1970.

32. The learned counsel for the petitioner has relied on the decision of the Supreme Court in ***Sirajul Hoque (Supra).*** The discrepancies relating to names and ages have also surfaced. In Sirajul Hoque’s case, there was a difference of only one letter. In this case, there are discrepancies in the letters as well as age. Continuous stay has also not been proved. The village has shifted from Khandarpar to Sarukhetri as is apparent in the voters list of 2010. There is no explanation relating to shifting of constituency from Khandarpar to Sarukhetri.

The age of Idris Ali is shown as 37 years in the year 1970, and after 27 years in the voters list of 1997,Exhibit-C, his age ought to have been 64 years instead of 70 years. The age of Sahira Khatun is shown as 27 years in the voters list of 1970, Exhibit-B, whereas her age after 27 years is shown as 65 years and her name is shown as Sahira Begum and not Sahira Khatun in the voters list of 1997, Exhibit-C. 11 years age discrepancy has surfaced between the voters list of 1970 *vis-a-vis* the voters list of 1997. The facts and circumstances of this case are thus not similar to the facts and circumstances of Sirajul Hoque's case (supra).

In the instant case, there are too many inconsistencies between the age and names of the petitioner's parents and grandparents.

33. To bridge the long gap of 27 years, the petitioner exhibited two Gaonburah's certificates to establish her lineage with her father and grandfather. The petitioner produced two Gaonburahs as witnesses to establish her lineage with her parents and grandparents. However, the evidence of the Gaonburahs as DW3 and DW4 could not prove the petitioner's lineage with their father and grandfather. The petitioner failed to bridge the gap of 27 years by producing DW3 and DW4. Haseem Ali of Hajipara deposed as DW3 that he issued the certificate to the petitioner on 24.10.2016. The petitioner is known to him and she is a resident of village Hajipara and she is the wife of late Farhad Ali. In his cross-examination, he deposed that he did not maintain any register. He did not know when the petitioner's marriage was solemnized. The petitioner has been residing in his village for the last 22 years. Thus, no error is apparent when the learned Tribunal held that the petitioner was known to the DW3 since 1996 only. It is apparent from the evidence of DW3 that the petitioner's place of birth, the petitioner's father's name or grandfather's name is not known to him. His evidence is not based on contemporaneous records. It is discernible that he may

have been acquainted with the petitioner's husband, but not with the petitioner's parents or grandparents.

34. The certificate has also not been identified by him. The other Gaonburah is Dinesh Nath and he deposed as DW4 that he was serving as Gaoburah of Village-Khandarpar and Bamunbari. He issued the certificate to the petitioner marked as Exhibit-J. This witness however testified that the petitioner's father is known to him but the petitioner is not known to him. He thus issued a certificate to the petitioner who was not known to him. He further deposed that as the petitioner's father wanted a certificate, he issued the certificate to the petitioner. In his cross-examination, he admitted that the Circle Officer authorized him to issue the certificate. He also admitted that he did not know Idris Ali's father's name. He did not verify the contents of his certificate. He admitted that he issued the certificate on being requested by Idris Ali.

35. It has been held by this Court in ***Romila Khatun (Supra),*** that not only the document would have to be proved but its contents are to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record.

36. In the case of ***Bijoy Das vs UOI*** reported in***2018 (3) GLT 118,*** this Court has laid down that in proceedings of this nature, oral evidence alone would not be enough and such evidence is required to be supported and corroborated by documentary evidence and contemporaneous records. However, in this case, the petitioner failed to prove the Gaonburah’s documents with the aid of contemporaneous records. We are of the view that the petitioner as proceedee had failed to discharge her burden to prove her citizenship.

37. Petitioner exhibited Exhibit-E, EPIC in the name of Idris Ali, Exhibit-I, EPIC in the name of the petitioner as well as Exhibit-M, EPIC reflecting the name of

her projected brother, Sanowar Hussain. It is indeed trite law that voter identity card does not prove citizenship of the person. A person has to prove his citizenship by cogent, admissible and reliable evidence. A procedee has to prove continuous stay to prove his or her citizenship.

38. The petitioner failed to prove her citizenship through cogent, reliable and admissible evidence. The petitioner failed to discharge her burden as mandated under Section 9 of the Foreigners Act.

39. In view of the foregoing discussions, it is also apt to mention that the decision of this Court in Miraj Alom (supra), relied upon by the petitioner, is of no aid to the petitioner.

40. We are of the opinion that the impugned order dated 12.04.2019 passed by the learned Member, Foreigners Tribunal No.10th , Barpeta in F.T. Case No. 361/2016 does not call for any interference.

41. The writ petition accordingly stands dismissed. Interim order passed earlier stands vacated. The actions consequent upon the opinion rendered by the learned Tribunal would follow in accordance with law.

42. The records of the learned Tribunal be returned forthwith, along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant