GAHC010180042019

2026:GAU-AS:5961

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

Case No. : WP(C)/5617/2019

MAYA DAS
D/O- LT NIBARAN CHANDRA DAS, W/O- LT DILU DAS, VILL- RAJESHWARPUR PART I,, P.O. LAKHIPUR PART I, P.S. KATIGORAH, DIST- CACHAR, ASSAM, PIN- 788816

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY ITS SECY., DEPTT. OF HOME, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY.
DEPTT. OF HOME DISPUR
GHY-6
ASSAM

3:THE CHIEF ELECTORAL OFFICER
ASSAM
DISPUR
GHY-6

4:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZEN
ASSAM
DISPUR
GHY-6

5:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN ASOKA ROAD
NEW DELHI-1

6:THE MEMBER
FOREIGNERS TRIBUNAL NO. 4TH

SILCHAR
DIST- CACHAR
ASSAM
788001

7:THE DISTRICT ELECTION OFFICER
CACHAR
SILCHAR
DIST- CACHAR
ASSAM
788001

8:THE SUPERINTENDENT OF POLICE (B)
CACHAR
SILCHAR
DIST- CACHAR
ASSAM
78800

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner : Shri T. Sheikh.

Advocates for the respondents : Shri J. Payeng, SC- Home Deptt& NRC,
Ms. R.B. Bora, GA, Assam;
Shri A.I. Ali, SC, ECI.
Shri P.S. Lahkar, CGC.

Date of hearing : 27.04.2026

Date of Judgment : 30.04.2026

JUDGMENT & ORDER

(S.K. Medhi, 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 24.05.2019 passed by the learned Foreigners Tribunal no.4, Silchar in F.T. Case No. 105/2015. By the impugned judgment, the petitioner, who was the proceedee before the learned Tribunal, has been declared to be a foreigner post 25.03.1971. It may however be mentioned that along with the petitioner, her sons Diju Das, Pintu Das and daughters Mukta Das, Sukta Das and Bijoya Das have also been declared as foreigners.

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), Cachar District, against the petitioner giving rise to the aforesaid F.T. Case No. 105/2015.

(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 11.01.2016 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 her and accordingly, the opinion was rendered declaring the petitioner to be a foreign national post 25.03.1971. As mentioned above, along with the petitioner, her sons Diju Das, Pintu Das and daughters Mukta

Das, Sukta Das and Bijaya Das have also been declared as foreigners.

3. We have heard Shri T. Sheikh, learned counsel for the petitioner. We have also heard Shri J. Payeng, learned Standing Counsel, Home Department& NRC; Ms. R.B. Bora, learned GA, Assam, Shri A.I. Ali, learned Standing Counsel, Election Commission of India and Shri P.S. Lahkar, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated 10.02.2020.

4. Shri Sheikh, 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 hold the petitioner to be a citizen of India. In this regard, he has referred to her evidence and the evidence of CW1 and also the following documentary evidence.

(i) Ext-1 is the Xerox copy of school certificate in the name of OP Maya Das and same was not countersigned by the higher authority.

(ii) Ext-2 is the Xerox copy of NRC data in the name of Nibaran Chandra Das, son of Nadia Ram Das.

(iii) Ext-3 is the Xerox copy of certified copy of voter list 1965 in the name of Nibaran Chandra Das.

(iv) Ext-4 is the Xerox copy of certified copy of voter list 2013 in the name of Nikunja Das and Naru Das, sons of Nibaran Das.

(v) Ext-5 is the Xerox copy of affidavit in the name of Nibaran Das.

(vi) Ext-6 is the Xerox copy of certified copy of voter list 1997 in the name

of OP viz Maya Das, W/O-Dilu Das.

(vii) Ext-7 is the Xerox copy of voter ID in the name of OP

(viii) Ext-8 is the Xerox copy of marriage certificate in the name of OP.

(ix) Ext-9, 9(1), 9(2), 9(3) and 9(4) are Xerox copies of birth certificates of the OP's children.

5. Shri Sheikh, the learned counsel has submitted that in the written statement, all material disclosures were made. It is submitted that the Voters List of 1965 was proved in which the name of the father of the petitioner – Nibaran Ch. Das appears. Reference has also been made to the NRC of the year 1966 containing the name of the father of the petitioner. He has also submitted that a land document of 1970 was proved in the Tribunal wherein the name of the father of the petitioner appears in the final *Khatian.* The Voters List of 1997 where the name of the petitioner appears has also been proved. It is also contended that the concerned Lakhipur Gaon Panchayat has issued a certificate to the petitioner dated 27.06.2015 certifying that she is the daughter of Nibaran Ch. Das and wife of late Dilu Das.

6. He has submitted that the petitioner had adduced evidence as DW1 in which she had stated all the relevant facts. She was cross-examined by the State in which she had given the details of her parents and also her late husband, Dilu Das and the children born to them. The Secretary of the concerned Syedbond Gaon Panchayat was examined as CW1 who had proved the certificate issued by him as Ext-8. He had deposed that the same was issued on the basis of application by the applicant along with EPIC and Legacy Data. In the cross-examination however, he had stated that Ext-8 certificate was issued on demand of the applicant to establish the fact of her marriage with Dilu Das.

7. 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.

8. *Per contra,* Shri Payeng, 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.

9. 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 proceeding and the written statement in the instant case lacks details. He has submitted that no link could be established with the projected father and the certificate issued by the Panchayat, by no means, could be deemed as a proof of citizenship. He has also submitted that apart from the school certificate, there is nothing to link the petitioner with her projected father and the school certificate was also not proved by the author of the same.

10. On the aspect of a certificate by the Gaon Panchayat Secretary *vis-à-vis,* the evidentiary value for establishing citizenship, the learned Standing Counsel has relied upon the case of ***Rupajan Begum vs. Union of India*** reported in ***(2018) 1 SCC 579***, the relevant observations of which are extracted herein below:

> "*15. The certificate issued by the G.P. Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and by no means establishes any claim of citizenship of the holder of the certificate. This is made clear in the illustrative list of documents itself by specifying the same to be only a supporting document. The certificate in question only enables its holder to establish a link between the holder and the person from whom legacy is claimed. It has been made clear in the several reports of the learned State Coordinator, NRC, Assam that a claim accompanied by such a certificate, without details of the legacy person, is to be discarded and in the event information as to the legacy person has been furnished, the certificate in question is to be used for the limited purpose of providing a linkage after due enquiry and verification.*
>
> *16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list."*

11. 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. …"*

12. He has also relied upon a judgment dated 23.04.2018 passed by this Court in WP(C)/2460/2018 (***Samala Khatun vs. Union of India and Ors.)*** to contend that there is a procedure to be followed for proving a school certificate. The observations made in the said case are as follows:

> "*Since petitioner has placed reliance on the school certificate, it is for him to prove the same having regard to the provisions contained in Section 66 of the Indian Evidence Act, 1872. Unless previous notice is given by a party to the person or authority who is the custodian of the original record or document sought to be relied upon by the party, it would not be justified for the Tribunal on its own to issue summon to such person or authority for production of the original record and for testifying before the Tribunal"*

13. 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."

14. 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.

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

16. Shri Ali, the learned Standing Counsel, ECI and Shri Sarma, the learned GA, Assam have supported the submissions advanced by Shri Payeng, the learned Standing Counsel, 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. He submits that there is no procedural impropriety or illegality in the decision making process and therefore,

the instant petition is liable to be dismissed.

17. 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.

18. 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."

19. 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 herein below-

> "*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."

20. Before embarking to adjudicate the issue involved *vis-a-vis* the submissions and the materials on record, we are reminded 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.

21. 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."

22. In the instant case, it does not appear that there is any relevant document which have been proved in accordance with law to show a connection of the petitioner with Nibaran Ch. Das, her projected father, whose name appears in the Voters List of 1965. As noted above, the petitioner had also produced the NRC and land document pertaining to her projected father. However, the documents containing the name of the petitioner do no show a link with her projected father. So far as the certificate dated 27.06.2015 issued by the Lakhipur Gaon Panchayat is concerned, the Secretary, in his cross-examination had deposed that the same was issued to establish the fact of her marriage.

23. In the opinion of this Court, the evidence adduced by the petitioner through herself and the Secretary of the Syedbond Gaon Panchayat would not be sufficient to discharge her burden under Section 9 of the Foreigners Act, 1946.

24. 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 same has not been able to be done by the petitioner.

25. There is however another issue involved in this case. Vide the impugned order, while the Reference is answered against the petitioner, it has been held that the sons and daughters of the petitioner, namely, Diju Das, Pintu Das, Mukta Das, Sukta Das and Bijoya Das are also foreigners.

26. It is a settled position of law that until a specific reference is initiated against an individual, no orders of declaration as foreigner of such persons can be made by any Foreigners Tribunal and in this connection, reference may be made to the judgment dated 04.01.2019 passed in the case of ***Sudhir Kr. Roy vs. Union of India in WP(C)/6790/2018*** wherein it has been held that the authorities would be at liberty to initiate a fresh reference against the family members of a person who is declared foreigner but the fact that a family member has been declared a foreigner would not be sufficient by itself to declare the other family members as foreigners without any specific reference.

27. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 24.05.2019 passed by the learned Foreigners Tribunal no. 4, Silchar in F.T. Case No. 105/2015 does not call for any interference *qua* the petitioner. However, the observation with regard to the sons and daughters of the petitioner, as mentioned above are interfered with and set aside.

28. The writ petition accordingly stands disposed of in the manner indicated above. Interim order passed earlier stands vacated.

29. The records of the aforesaid impugned order dated 24.05.2019 passed by the learned Foreigners Tribunal no. 4, Silchar in F.T. Case No. 105/2015 be returned to the concerned Foreigners Tribunal forthwith, along with a copy of this order.

30. It is however made clear that the present order shall not cause any prejudice to the petitioner to file appropriate application under the Citizenship

Amendment Act and if the same is done, such application(s) is to be considered in accordance with law.

JUDGE **JUDGE**

Comparing Assistant