

GAHC010083592019



2026:GAU-AS:8094

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

Case No. : WP(C)/2622/2019

UDAY SHANKAR KURI
S/O- LT HAR CHANDRA KURI, R/O- VILL- TOLIBAR PAR, DHING TOWN,
MOUZA- DHING, P.O. DHING, P.S. DHING, DIST- NAGAON, ASSAM, PIN-
782123

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME, NEW
DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-06

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

4:THE STATE CO-ORDINATOR OF NATIONAL REGISTER OF CITIZENS
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
GHY-5
ASSAM

5:SUPERINTENDENT OF POLICE (B)
DIST- NAGAON
ASSAM
PIN- 782001

6:THE DY. COMMISSIONER
DIST- NAGAON
ASSAM
PIN- 78200

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the petitioner : Shri J. Roy, Sr. Advocate.
Shri B.P. Sarma, Advocate.

Advocates for the respondents : Shri G. Sarma, SC, Home Deptt. & NRC.
Ms. R.B. Bora, GA, Assam
Shri N. Kalita on behalf of Shri A.I. Ali, SC, ECI
Ms. M. Das on behalf of Shri S.K. Medhi, CGC.

Date of hearing : 26.05.2026

Date of Judgment : 09.06.2026

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 30.01.2019 passed by the learned Foreigners Tribunal no.5th, Nagaon at Dhing in F.T. Case No.1675/2016. 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.

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), Nagaon District, against the petitioner giving rise to the aforesaid F.T. Case No. 1675/2016.
- (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 30.03.2017 along with certain documents and adduced evidence through 4 nos. of DWs.
- (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 Shri J. Roy, learned Senior Counsel assisted by Shri B.P. Sarma, learned counsel for the petitioner. We have also heard Shri G. Sarma, learned Standing Counsel, Home Deptt. & NRC, Ms. R.B. Bora, GA, Assam, Shri N. Kalita, learned counsel appearing on behalf of Shri A.I. Ali, SC, ECI and Ms. M. Das, learned counsel appearing on behalf of Shri S.K. Medhi, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated 26.04.2019.

4. Shri Roy, the learned Senior Counsel for the petitioner has submitted that the petitioner could prove his 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 the evidence adduced by the DWs and also the following documentary evidence.

- (i) Ext. 1 is the Certificate issued by the Gaonburah;
- (ii) Exhibit 1 (1) is the signature of the Gaonburah;
- (iii) Ext. 2 is the Voter List of 1965;
- (iv) Ext. 3 is the Voter List of 1970;
- (v) Ext. 4 is the School Transfer certificate;
- (vi) Ext. 5 is the Land purchased document;
- (vii) Ext. 6 is the copy of an additional affidavit sworn by the petitioner.

5. The learned counsel for the petitioner has submitted that in the written statement, all material disclosures were made and 4 nos. of witnesses had proved the case. It is submitted that the Gaonburah had issued a certificate dated 04.10.2014 (Ext. 1) which is proved by him as DW3 and the said certificate clearly establishes that the petitioner is a citizen of the Country. He has relied upon the Voters Lists of 1965 and 1970 containing the names of his parents. He has also proved a Transfer Certificate issued by the Dhing Public School dated 12.11.2016 (Ext. 4) in which not only his date of birth was mentioned but also the name of his father. Reliance has also been placed in a Sale Deed by his father. He has also relied upon a Voters List of 2015 having his name along with his brother and wife. A *Jamabandi* in the name of his father and a PRC have also been relied upon. Reliance have also been placed on a Voters List of the year 2013 which however was not exhibited. It has however been clarified that the name of the petitioner was not there as he was marked 'D'. He has also relied upon the NRC of 2018 containing the names of his

brothers.

6. The learned Senior Counsel has submitted that the petitioner had adduced evidence as DW1, his brother as DW2, the Gaonburah as DW3 and the Headmaster of the School as DW4 and the petitioner had accordingly discharged his burden. It is submitted that the petitioner had shifted to the State of Manipur in search of work and therefore, his name was not enlisted in the Voters List.

8. The learned Senior 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. He has also alternatively submitted that the petitioner would be entitled to the benefit under the Citizenship (Amendment) Act, 2019.

9. *Per contra*, Shri Sarma, 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.

10. The learned 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 and is totally vague. There is no date or year of the birth of the petitioner and there is no detail of the family members. In this connection, he has relied upon 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**:

“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. Sometimes the place of birth of his grandparents 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.”

11. He has submitted that there are only 4 documents in this case which may

require a consideration. So far as the certificate by the Gaonburah is concerned, though the Gaonburah had deposed as DW3, the contemporaneous records were not proved by him. Further, there is unauthorized use of the National Emblem which renders the said certificate otiose. So far as the Voters Lists of the years, 1966 and 1970 are concerned, those cannot be construed as any link documents between the petitioner and his father. Further, he has contended that in the Voters List of 1966, the name of the village has been stated to be Samua Gaon whereas the petitioner had stated that he is born and brought up at Sonarigaon.

12. The learned Standing Counsel has also submitted that though a statement has been made that the mother of the petitioner had expired two years before, there is no name of the mother in any Voters List after 1970. As regards the School Transfer Certificate, though the same contains the name of his father, the learned Standing Counsel has submitted that the certificate is dated 19.11.2016 which certifies that the petitioner had studied in that school up to Class-V and left on 31.12.1968. He has pointed out that the Headmaster who had deposed had clearly stated that he had joined the school in the year 2016. He has submitted that though the Admission Register of the period was produced, the deposition is wholly inconsistent with the certificate. He has submitted that, while as per the certificate, the petitioner had left the school while reading in Class V, in his deposition, it has been stated that he took admission in Class V in the said school on transfer from Talibor Sonorigaon L.P. School.

13. He has submitted that in the deposition of the projected brother as DW2 would not be conclusive as oral evidence is necessarily required to be supported

by documentary evidence.

14. In support of his submission that a document 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. ...”

15. 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 read 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."

16. He has also relied upon the case of the Hon'ble Supreme Court in ***Rupajan 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.

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

18. The learned counsel for the rest of the 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 through cogent, credible and acceptable evidence.

19. 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.

20. 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.”

21. 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 are 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."

22. 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.

23. 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."

24. 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) his date of birth;
- (ii) place of birth
- (iii) name of his 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.

25. So far as the evidence is concerned, the petitioner had primarily relied upon 4 documents namely, the Voters Lists of 1965 and 1970 containing the names of his projected parents, the Gaonburah certificate and the School Certificate. So far as the Voters Lists of 1965 and 1970 are concerned, those cannot be construed as link documents. So far as the Gaonburah certificate is concerned, it is seen that the Gaonburah had adduced evidence in support of the certificate. The certificate however contains the National Emblem which is unauthorized. Further, the jurisdiction of a Gaonburah to issue such certificate vouching for citizenship of a particular individual is governed by the Executive of Instructions under the Assam Land and Revenue Regulation. In this regard, a Coordinate Bench had dealt with the issue in the case of **State of Assam vs. Oheb Ali** [WP(C)/2641/2017 decided on 29.05.2018] and had made the following observations which we endorse:

"13. Though petitioner exhibited a number of documents from Exhibits-A

to M, we find that none of these documents were proved in accordance with law. There were simply filed and marked as exhibits. It is trite that mere filing of document or marking of document as exhibit is not enough. Not only the document has to be proved, the contents of the document would also have to be proved; that apart truthfulness of the contents would have to be proved too.

14. The two crucial documents which say that Ahed Ali @ Oheb Ali was the son of Late Shangser Ali are Exhibits-H and Exhibit-I. Exhibit-H is a certificate dated 02.06.2014, issued by one Akmat Ali, Gaonburah, certifying that Ohed Ali was the son of Late Shangser Ali, but Akmat Ali did not appear before the Tribunal alongwith the contemporaneous record to prove Exhibit-H as well as the contents thereof. Therefore, this exhibit was not proved. That apart, we find that the Gaonburah had embossed the State Emblem of India in Exhibit-H certificate. Under the State Emblem of India (Prohibition of Improper Use) Act, 2005, and the State Emblem of India (Regulation of Use) Rules, 2007, Gaonburah is not authorized to use the State Emblem of India in any manner. Such unauthorized use of the State Emblem of India had rendered Exhibit-H inadmissible in evidence. Similar is the position in respect of Exhibit-I, issued by another Gaonburah, Jahidul Islam Bhuyan on 23.12.2014. For the reasons mentioned above, this exhibit is also inadmissible in evidence. Therefore, these two exhibits besides not being proved were inadmissible in evidence. If these documents are excluded from consideration, there is nothing on record to establish linkage between Ahed Ali @ Oheb Ali or Ohed Ali on the one hand and Shangser Ali on the other hand.”

26. In view of the aforesaid exposition of law, the said certificate cannot be

taken into consideration.

27. We are therefore left with the School Certificate which was sought to be proved by the Headmaster as DW4. The certificate is admittedly issued after a period of about 50 years which itself raises some doubt. However, the Headmaster as DW4 in his evidence had also stated that he had produced the Admission Register. Be that as it may, a careful perusal of the certificate (Ext. 4) *vis-à-vis* the deposition of the Headmaster as DW4 would show that there is an inherent contradiction between the same. While, as per the certificate, the petitioner had left the Dhing Public High School on 31.12.1968 when he was reading in Class V, as per the deposition, the petitioner had taken admission in the said school in Class V on transfer from Talibor Sonarigaon L.P. School. Therefore, the said certificate as well the deposition of the Headmaster as DW 4 is not trustworthy at all and cannot be construed as any lawful evidence in support of the petitioner.

28. We have also noted that though the petitioner has stated to have been born in 1957, there is no Voters List of the relevant period containing his name. There is one Voters List of the year 2015 which is however of the Municipal Election wherein the age of the petitioner has been declared as 61 years. The question therefore arises as to why his name was not enlisted in any previous Voters Lists. There is a frail submission made on behalf of the petitioner that he was at Manipur in connection with his work. Though this aspect has been mentioned by DW2, the projected brother, there is no pleadings at all in the written statement that the petitioner was at Manipur. Even assuming for argument's sake that the petitioner was indeed at Manipur, that will not be a reason as to why his name was not enlisted in any of the Voters List either at

Nagaon or at Manipur. In any case, it is settled law that there cannot be any variance between the pleadings and the evidence and in this regard, we endorse the views expressed by a Coordinate Bench in the case of **Momin Ali Vs Union of India** reported in **2017 (2) GLT 1076** wherein the following observations have been made:

“12. This written statement of the petitioner was wholly inadequate and did not disclose any material facts. As noticed above, it was the allegation of the State that petitioner was a foreigner. Therefore, as per mandate of Section 9 of the Foreigners Act, 1946, it was the bounden duty of the petitioner to have disclosed all material facts which were specifically within his knowledge in the written statement but he did not do so. Petitioner neither mentioned his date of birth nor his age. He was silent regarding the name of his mother and identity of his grandparents both paternal and maternal. He did not mention anything about his brothers and sisters or about his marital status. On the basis of such a written statement, it cannot be said that petitioner had stated anything substantial to show that he was not a foreigner but a citizen of India.

13. It is a settled proposition of law that where a party fails to set up a case in his pleadings, he would be debarred from adducing evidence in his support at the stage of trial. As a matter of principle, variance between pleading and proof is not permissible.

17. Reverting back to the written statement, it has already been noticed that there was not a whisper by the petitioner that he had any brothers or sisters, not to speak of disclosing their names and other particulars. Therefore, the sudden appearance of Omar Ali in the witness box as brother of the petitioner has to be looked with suspicion and this suspicion is further fortified by the fact that in the 1997 voters list (Ext.3), name of Omar Ali did not appear along with the petitioner. That apart, in Ext.6, i.e., land document (periodic Khiraj Patta), name of Omar Ali did not appear along with the petitioner as pattaholder. Therefore, evidence of Omar Ali was rightly discarded by the Tribunal.”

29. We are of the view that the petitioner, as proceedee had failed to discharge his burden to prove his citizenship.

30. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 30.01.2019 passed by the learned Foreigners Tribunal no. 5th, Nagaon at Dhing in F.T. Case No. 1675/2016 does not call for any interference.

31. 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.

32. At this stage, considering the alternative submission, it is also observed that the petitioner would be at liberty to approach the appropriate authority to get the benefit under the C(A)A provided he fulfils all the requirements. It is also observed that in case any such application is filed, the same is to be considered strictly in accordance with law and on its own merits.

33. The records be returned to the concerned Foreigners Tribunal forthwith, along with a copy of this order.

JUDGE

JUDGE

Comparing Assistant