GAHC010056202020

2026:GAU-AS:16235

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

Case No. : WP(C)/2459/2020

KULCHAN BEGUM
W/O- OMAR ALI, VILL- FUHORATOLI, P.O. BAJNA PATHAR, P.S. SIPAJHAR, DIST.- DARRANG, ASSAM, PIN- 784145

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-1

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

3:THE MEMBER
FOREIGNERS TRIBUNAL
MANGALDOI
DIST.- DARRANG
PIN- 784125

4:THE DY. COMMISSIONER
DARRANG
DIST.- DARRANG
ASSAM
PIN- 784125

5:THE SUPERINTENDENT OF POLICE (B)
MANGALDOI
DIST.- DARRANG
ASSAM

PIN- 784125

6:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTORAL OFFICER
ASSAM
DISPUR
GHY-6

7:THE DIRECTOR OF CITIZEN REGISTRATION
ASSAM (NRC)
DISPUR
GHY-

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the petitioner : Mr. S. Zaman, Advocate.
For respondents : Mr. G. Pegu, CGC.
: Mr. G. Sarma, SC, FT & Border.
: Mr. P. Sarmah, Addl. Sr. GA.
: Mr. A.I. Ali, SC, ECI.

Date on which judgment is reserved : 02.09.2026

Date of pronouncement of judgment : 05.11.2026

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

Whether the full judgment has been Pronounced? : Yes

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J.)

Heard Mr. S. Zaman, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC for respondent no.1; Mr. G. Sarma, learned standing counsel for FT, Border matters and NRC for respondent nos. 2, 5 and 7; Mr. A.I. Ali, learned standing counsel for respondent no.6; and Mr. P. Sarmah, learned Addl.

Senior Govt. Advocate for respondent no.4.

2) The learned Member, Foreigners Tribunal, Mangaldai has been arrayed as respondent no. 3. The said learned Tribunal is not required to defend its orders and therefore, it is neither a necessary nor a proper party to this writ proceeding. Therefore, the name of respondent no. 3 is ordered to be struck-off without altering the seriatim of the parties.

3) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Kulchan Begum has assailed the opinion dated 21.08.2018, passed by the learned Member, Foreigners Tribunal (4th), Darrang, Mangaldai, Assam, in F.T. 4th Case No. 149/SPR/2017 [arising out of FT Case No. 2880/11; Ref. IM(D) T Case No. 25/2000], by which she was declared to be a foreigner of post 25.03.1971.

4) The petitioner, apart from usual denial of being a foreigner and claiming herself to be an Indian citizen, had projected in her written statement that she was born on 25.04.1977 and brought-up at Luitpar, Kharghuli, near Amiya Nagar, Dist. Kamrup (M), Assam. Her grandparents are Sabed Ali, son of Kashem and Jaheda Khatun, wife of Sabed, and their names appear in the voter list of 1966 and 1970 at village- Nosotra, P.S. Baghbar, Dist. Kamrup, Assam, under 51 Janiya LAC. Her father, Abu Chand Mahammad, son of Sabed Ali was born on 01.03.1955, at village- Nosotra, P.S. Baghbar, Dist. Kamrup, Assam and brought-up in this Country as an Indian citizen. Later on, his father shifted from village- Nosotra to Luitpar, Kharghuli, near Amiya Nagar, Dist. Kamrup (M), Assam and thereafter got married to Nachiran Khatun, daughter of Asmat Ali of village- Sikatari, Dist. Goalpara, Assam. She had stated that she was born on 25.04.1977 and brought-up at Luitpar, Kharghuli, near Amiya Nagar, Dist.

Kamrup (M), Assam, and got married to Omar Ali, son of Asker Ali, of village- Fuhuratali, under Sipajhar P.S., where she is residing till date. Her name was enrolled in the voter list of 2018 at village- Fuhuratali, under No. 66 Sipajhar LAC. The Election Commission of India has issued an Elector Photo Identity Card (hereinafter referred to as EPIC for short) in the name of the petitioner at village- Fuhuratali, Part No. 166. She had stated that her father is an elected councillor of the Guwahati Municipal Corporation in the year 2013 from Ward No. 22, for which the Addl. Deputy Commissioner, Kamrup (M) had issued a certificate on 01.06.2013 and that prior to the said election, in the year 2009, her father had contested as a Lok Sabha candidate from No. 6 Barpeta LAC and her father was also a candidate in General Assembly from No. 45 Baghbar Constituency in the year 2011. The name of her father, mother and brother appeared in the voter list of 1997 of village- Amiya Nagar under No.53 Pub Guwahati LAC. The petitioner had stated that she had used the legacy data of her grandfather of 1966 while applying for NRC updation. Accordingly, she had stated that she was a citizen of India by birth and not an illegal migrant or a doubtful voter and therefore, the case against her be dismissed.

5) In support of her defence, the petitioner had examined only herself as DW-1 and in her evidence-on- affidavit, she had reiterated the statements made in her written statement. The petitioner had exhibited the following documents: -

a. PAN Card (Ext.1).
b. Certificate of Guwahati Municipal Board (Ext.2).
c. Certified copy of voter list of 1966 (Ext.3).
d. Certified copy of voter list of 1970 (Ext.4).
e. PAN Card of her father (Ext.5).
f. EPIC of her father (Ext.6).
g. Voter list of 2018 (Ext.7).

h. Copy of ration Card of her family (Ext.8).
i. Photocopy of her EPIC (Ext.9).
j. Photocopy of Municipal Corporation Councillor Certificate (Ext.10).
k. Photocopy of candidate's identity card (Ext.11 and Ext.12).
l. Certified copy of voter list of 1997 (Ext.13).
m. NRC acknowledgement receipt dated 25.08.2015 (Ext.14).

6) In her cross-examination, the petitioner had stated to the effect that it is true that when she applied for PAN Card, she had given the date of her birth as 25.04.1977, but without any document. She had stated that it is true that she did not know the contents of evidence. She had not produced any document regarding her birth year. Her father's name is Abu Chand Mohammad and her mother's name is Nasiran. Her father is still alive. Her grandfather Subed Ali lived in village Nosotra, Barpeta. He had expired before 9 (nine) years at village- Nosotra. It is true that in the year 1966 vote was casted by Sabed Ali, Jabeda and Abu Chand Mohammad. She does not know who casted vote in her family in the year 1970. She does not know the present age of her father and mother. She does not know when her father first casted vote. She had admitted as true that she had submitted only one certified copy of voter list of 1997 showing name of Abu Chand Mohammed, age- 50 and before that she had not exhibited certified copy of voter list to show his name. She was married to Omar Ali of village- Fuhuratali, P.S. Sipajhar before 20 years. She had casted vote after her marriage. She had admitted as true that she had exhibited voter list of 2018 where her age is 40 years. She had stated that it is true that she has only one brother. She had stated that it is true that no case is pending against her father, mother, brother or sister, or reference or declared as foreigner. She had stated that it is true that before her birth her father was living at Guwahati, Kharghuli.

7) The learned Tribunal, in its opinion dated 21.08.2018, took note

of the fact that the reference by the Superintendent of Police (Border), Darrang, was initially made under the erstwhile Illegal Migrants (Determination by Tribunals) Act, 1983 with the allegation that the petitioner was an illegal migrant. The said reference was registered as IM(D)T Case No. 25/2000. After the said Act was declared to be unconstitutional by the Supreme Court of India in the case of *Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665*, the reference was registered under the Foreigners Act, 1946 as FT Case No. 2880/11 before the Foreigners Tribunal 1st, Darrang, Mangaldai. After creation of additional Tribunals, the said reference was renumbered as F.T. 4th Case No. 149/SPR/2017 and assigned to the Foreigners Tribunal 4th, Darrang, Mangaldai for opinion. The learned Tribunal, upon analysis of the pleadings and evidence on record, expressed that the written statement and evidence of the petitioner was wholly inadequate to establish her citizenship having regard to paragraph 26 of the case of *Sarbananda Sonowal (supra)*. The learned Tribunal appreciated the documentary exhibits to find out whether the petitioner has been able to prove by adducing cogent, reliable and admissible evidence that Abu Chand Mohammad, son of Sabed Ali of Luitpar, Kharghuli, in the district of Kamrup (M), is the father of the petitioner. The discussions of the learned Tribunal on the exhibited documents are summarised as under: -

a. PAN card (Ext.1) is issued by the Income Tax Department to identify for transaction and Income Tax return and is not related to person claiming citizenship of India. Moreover, the petitioner had admitted in her cross-examination that in her application for PAN Card, she did not attach any documents to prove her date of birth as 25.04.1977.

b. Reference was made to certificate dated 25.03.2018 (Ext.2) issued by

Area Sabha Representative of Ward No.12 [*sic. should be Ward No. 12(A)]*. By referring to the provisions of Section 20A of the Gauhati Municipal Corporation Act, 1971, which provides for constitution of Ward Committees, it was held that Area Sabha representatives were not permitted to such type of certificate. The learned Tribunal took note of the fact that the reference was made in the year 2000 and the certificate was obtained 18 years after that, which made the certificate doubtful. Moreover, it was held that the petitioner had failed to adduce the evidence of the author to testify and prove the certificate (Ext.2) and its contents. Hence, the document was held to be inadmissible.

c. By referring to the voter list of 1966 (Ext.3), it was observed that it contained names of 6 (six) voters. The voter list of 1970 (Ext.4) contains names of 2 (two) voters. The voter list of 1997 (Ext.13) contains names of 3 (three) persons. By referring to the said three exhibits, the learned Tribunal had held that the said exhibited documents were not proved by comparing with primary evidence for which the said documents were untrustworthy. In that regard, reference was made to the decision of this Court in the case of *Nasiruddin v. Union of India, W.P.(C) No. 3728/2016, decided on 05.04.2018*.

d. Referring to the PAN Card of Abu Chand Mahammad (Ext.5), EPIC of Abu Chand Mohammad (Ext.6), Election Agent of 2013 of a political party (Ext.10), Identity Card of Lok Sabha election, 2009 (Ext.11) and Candidate's identity card of 2011 election (Ext.12), it was held that the said documents are for the purpose of determining the identity of Abu Chand Mahammad. However, those documents do not prove that the

person is the father of the petitioner.

e. Referring to certified copy of voter list of 2018 (Ext.7) it was observed that the same contains names of 2 (two) voters Omar Ali and Kulchan Begum (petitioner), wife of Omar Ali of village- Fahuratali under No. 66 Sipajhar Constituency.

f. Referring to ration card (Ext.8), in the name of Kulchan Begum, which did not prove her relationship with her father. And hence it was held that it cannot help to decide citizenship.

g. In respect of EPIC (Ext.9), the same was in the name of Kulchan Ali, wife of Omar Ali and it was observed that the same was not proved by issuing authority and it did not prove linkage with her father.

h. In respect of copy of application in the name of Omar Ali (Ext.14) submitted for draft NRC received by LRCR, Sipajhar on 25.08.2015, it was observed that the original thereof was not proved.

i. Accordingly, the learned Tribunal held that the petitioner had not been able to establish her link with her projected father, she was declared to be a foreigner of post 25.03.1971 stream.

8) The learned counsel for the petitioner had submitted that the father of the petitioner was a public figure, who was not only a Ward Member of Guwahati Municipal Corporation, but he was also a candidate in Lok Sabha and Assembly election. It was submitted that the learned Tribunal did not properly appreciate the evidence and rejected the same on the basis of surmises and conjectures by disbelieving the evidence of the petitioner. By referring to the statement made in paragraph 6 of the writ petition, it was submitted that the after her evidence as DW-1, the petitioner wanted to examine other witnesses,

like her parents, other family members and the Area Sabha representative. However, her learned advocate gave the petitioner a wrong advice that she had a good case and had exhibited sufficient documents to prove her linkage with her parents and other family members. Thus, the petitioner was misled by wrong advice. Accordingly, it was submitted that the petitioner should not suffer because of the incompetence of her engaged learned counsel. Hence, it was prayer that the matter be remanded back to enable the petitioner to produce and examine further witnesses to prove her case.

9) Per contra, the learned standing counsel for the FT, Border matter and NRC had submitted that the written statement of the petitioner lacked essential pleadings and therefore, it is impermissible to adduce evidence which is not the pleaded case of the petitioner in her written statement. Moreover, submissions were made in support of the impugned opinion.

10) Considered the submissions of the learned appearing counsel. Also considered the Tribunal's records which were called for.

On the plea of wrong advice by the learned counsel for the petitioner:

11) One of the submissions by the learned counsel for the petitioner is that the petitioner was a victim of wrong advice given by her learned counsel.

12) In the opinion of the Court, this Court has not been called upon to examine the alleged advice and/ or the professional competency of the learned counsel who engaged by the petitioner to represent her before the Foreigners Tribunal.

13) However, on a perusal of the Tribunal's record, it is seen that as per order dated 12.06.2018, the petitioner had filed her evidence-on-affidavit without annexing the exhibited documents. When the same was brought to the

notice of the learned counsel for the petitioner, he has assured the learned Tribunal that he would produce the documents at the time for cross-examination. Therefore, the cross-examination of DW-1 was deferred to 26.06.2018. On the said date, the learned counsel for the petitioner had submitted exhibited documents and provided a set of the same to the learned Assistant Govt. Pleader. Therefore, cross-examination of DW-1 was deferred to 06.07.2018. On the said date, the learned A.G.P. cross-examined the DW-1 and declined to adduce any evidence. The petitioner had not filed any application to adduce further evidence and therefore, the evidence of the petitioner's side was closed. As per order dated 20.07.2018, the learned Tribunal had heard the learned counsel for the petitioner and the learned A.G.P. and on conclusion of hearing, the case was fixed on 21.08.2018, for passing final order. Accordingly, on 21.08.2018, the impugned opinion was passed.

14) Therefore, after filing of evidence-on-affidavit, the matter was adjourned on several dates, but the petitioner did not avail such time to produce and examine other witnesses like her parents, other family members and Area Sabha representative. None of those persons would have required any summons from the learned Tribunal and depose as witnesses because it is not the case of the petitioner that those persons had refused to appear as witness without notice from the learned Tribunal. As per the affidavit filed in support of the writ petition, the statement made in paragraph 6 of the writ petition is verified to be matters of record, which the petitioner believes to be true. However, the writ petition contains no record of the petitioner receiving allegedly wrong advice from her engaged learned counsel. Thus, the statement made by the petitioner in paragraph 6 of the writ petition is a result of an after-thought and manufactured to create a ground to assail the impugned opinion, solely aimed

to fill-up the lacuna that the impugned opinion has exposed.

15) The petitioner has not moved the jurisdictional Bar Council alleging wrong advice, professional incompetence or misconduct by her learned counsel engaged to represent her before the Foreigners Tribunal.

16) Thus, in light of the discussions above, the plea of the petitioner that she was a victim of wrong advice from her learned counsel fails.

On the plea that the learned Tribunal decided the matter on the basis of pleadings and evidence on record without providing opportunity of hearing the petitioner:

17) By referring to the statements made in paragraph 7 of the writ petition, the learned counsel for the petitioner had submitted that after closure of evidence of the petitioner, the learned Tribunal had rendered its opinion only on perusal of the records, but without providing any opportunity of hearing to the petitioner and thereby declared the petitioner to be a foreigner illegally.

18) It is reiterated at the cost of repetition that as per the learned Tribunal's order dated 20.07.2018, the learned Tribunal had heard the learned counsel for the petitioner and the learned A.G.P. and on conclusion of hearing, the case was fixed on 21.08.2018, for passing final order. Accordingly, on 21.08.2018, the impugned opinion was passed.

19) Thus, the plea taken by the petitioner in paragraph 7 of the writ petition is *ex facie* false, and aimed to mislead the Court. Had the entire order-sheet not been perused by the Court, the said false statement of the petitioner, which was reiterated by her learned counsel would not have come to light.

On the plea that the evidence of the petitioner was illegally rejected:

20) In paragraph 11 of this writ petition, the petitioner had referred to her family tree consisting of 13 (thirteen) names.

21) However, in her written statement, the petitioner had specifically referred to Sabed Ali and Jaheda Khatun as her grandparents. Their names appear in the voter list of 1966 (Ext.3) of village- Nosotra, P.S. Baghbar, Dist. Kamrup, as it was then. The said voter list contains 6 (six) names, but the petitioner has failed to make any statement as to how they are related to the petitioner. There is good reason not to disclose petitioner's relationship with them because the first voter is Kashem Ali, aged 59 years. It is assumed that second voter Sundari Nessa, age- 48 years is the wife of Kashem. Sahed Ali, age 41 years is the name of the third voter and if that be so then the age gap between the second voter and the third voter is 7 (seven) years. If the second voter is assumed to be the daughter of Kashem, then there is no pleading as to how was the wife of Kashem and what happened to her.

22) Similarly, the voter list of 1970 (Ext.4) contains 7 (seven) names but the petitioner has not disclosed her relationship with any voter other than Sabed Ali and Jaheda Khatun.

23) The name of Abu Chand Mohammad, age- 50 years, son of Late Sabed appears for the first time in the voter list of 1997 (Ext.13), but the said voter list contains names of three voters. Though in paragraph 17 of the written statement, the petitioner had stated that the name of her father, mother and brother appears in the said voter list, but she has not disclosed the name of her brother in her written statement. In paragraph 11 of her written statement, the petitioner has stated that her projected father had married Nachiran Khatun. In the said voter list, Nachiran Khatun, age 35 years, is the second voter. Therefore, if Nachiran Khatun, projected mother of the petitioner was 35 years

in the year 1997, she was born in the year 1962. The petitioner has pleaded in paragraph 12 of her written statement that she was born on 25.04.1977. Thus, if the same is true, then the age gap between projected mother and the petitioner would be 15 years, which makes the stand doubtful. The petitioner has not pleaded in which Town or City Amiya Nagar, where the petitioner was born and brought-up is situated.

24) From google-map, Amiya Nagar is situated at Guwahati under Chandmari Police Station. It is strange that the petitioner, who was born in the heart of Guwahati city, is a daughter of a political person, would have no formal medical certificate of birth and no formal education. Thus, except for the voter list of 2018, where the petitioner's age is 40 years, where her name appears with her projected husband, the petitioner has no document showing her co-existence with her parents or brother. In her cross-examination, the petitioner has also referred to her sister, of whom no mention is made in her written statement and evidence-on- affidavit.

25) The PAN Card and EPIC exhibited by the petitioner as Ext.1, Ext.5, Ext.6 and Ext.9 respectively, is not a proof of citizenship. These are documents that are issued on self-application without any formal enquiry by the Income Tax Department and Election Commission of India. Therefore, unless, the records supplementing the PAN Card and EPIC are proved, the said exhibited documents cannot be accepted as a proof of citizenship of India. If one needs any authority on the point, the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) 3547/ 2016, decided by this Court on 09.05.2018*, and the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) No. 3547/2016, decided by this Court on 09.05.2018* may be referred to.

26) The copy of application for NRC (Ext.14) was not proved by

calling for the original. Moreover, the NRC had not been updated till the date when the impugned opinion was passed. Thus, the said copy is not admissible in evidence. The certificate issued by Area Sabha representative (Ext.2) is not a proof of citizenship or for proving parentage and moreover, the author was not examined as witness to prove the document and its contents. Thus, the said document is not admissible evidence. The voter list of 2018 (Ext.7) does not link the petitioner to her projected parents. Ration Card (Ext.8) is also not a proof of citizenship. Moreover, the said document does not link the petitioner to her projected parents. The election cards, which were exhibited as Ext.10, Ext.11 and Ext.12, does not prove that the petitioner is the daughter of the person in whose favour those exhibits were issued.

27) The name of the projected father of the petitioner had appeared for the first time in the voter list of 1997 (Ext.13), when he was 50 years of age. Thus, the projected father of the petitioner was born in the year 1947 and therefore, he would have derived his right to exercise franchise at the age of 21 years in the year 1968. However, there is no evidence of continuous residence of the projected grandparents and father of the petitioner between the year 1970 and 1997, i.e. 27 years. However, as per the requirement of Section 6A(2), of the Citizenship Act, 1955, which is a special provision applicable for the State of Assam, the petitioner has to prove that her grandparents and father was continuously residing in the State of Assam.

28) Thus, a mere fact that the projected father of the petitioner had offered his candidature in Lok Sabha Election and State Assembly Election and that he was an elected Ward Member of Guwahati Municipal Corporation, is not sufficient to prove that the petitioner has been able to establish her linkage with the said person.

29) Thus, none of the exhibited documents helps the petitioner to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove that she is a citizen of India and daughter of parents who are Indian.

30) In light of the discussions above, the challenge to the impugned opinion dated 21.08.2018, passed by the learned Member, Foreigners Tribunal (4th), Darrang, Mangaldai, Assam, in F.T. 4th Case No. 149/SPR/2017 [arising out of FT Case No. 2880/11; Ref. IM(D)T Case No. 25/2000], by which the petitioner, namely, Kulchan Begum, was declared to be a foreigner of post 25.03.1971, fails. Accordingly, this writ petition is dismissed.

31) There shall be no order as to cost.

32) Interim bail granted by order dated 18.04.2022 is recalled and revoked. The consequences of the said opinion would follow.

33) The learned standing counsel for the FT, Border matters and NRC shall communicate this order to the concerned authorities for their information.

34) The Registry shall return back the learned Tribunal's records along with a copy of this order, to be made a part of record by the said learned Tribunal for future reference.

JUDGE **JUDGE**

Comparing Assistant **Private Secretary**