

**(2025) 05 GAU CK 0314**

**In the Gauhati High Court**

**Case No : Review Petition no. 102 Of 2021**

Anowara Begum @ Anowara Khatun

APPELLANT

Vs

The Union Of India And 5 Ors.

RESPONDENT

**Date of Decision : 27-05-2025**

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 133(1)(c)  
Foreigner's Act, 1946 — Section 2(a), 9  
Citizenship Act, 1955 — Section 6(a)  
Code of Civil Procedure, 1908 — Section 114, 151

**Citation : (2025) 05 GAU CK 0314**

**Hon'ble Judges : Kalyan Rai Surana, J; Manish Choudhary, J**

**Bench : Division Bench**

**Advocate : A.M. Ahmed, H. Gupta, G. Sarma, P. Sarma, A.I. Ali,**

**Final Decision : Dismissed**

## Judgement

Manish Choudhary, J

1. The petitioner has preferred the present petition as a petition under Article 226 of the Constitution of India by styling it as a review petition. By the present petition, the petitioner has sought for review/recall of an Order dated 24.04.2019 passed in a writ petition, W.P.[C] no. 8178/2018 and another Order dated 11.09.2019 passed in a review petition, Review Petition no. 95/2019. The petitioner has also sought for setting aside and quashing of an Opinion/Order dated 29.09.2018 passed by the Foreigners' Tribunal [II], Dhubri in F.T. Case no. 328/F/15.

2. The relevant events leading to the institution of the present petition are found necessary to be briefly exposited, at first, before going into the issue involved in the present petition.

3. Suspecting the petitioner to be a doubtful citizen and a foreigner on the basis of a Report submitted by the LVO and ERO of 39, Jaleswar Legislative Assembly

Constituency [LAC], the Superintendent of Police [Border], Dhubri as a competent authority forwarded a Reference to the Foreigners' Tribunal [II], Dhubri ['the Tribunal', for short] to decide the nationality of the petitioner under the Foreigners' Act, 1946, as amended. The Reference, so forwarded, was registered as F.T. Case no. 328/F/15. Notice was issued to the petitioner as the opposite party in F.T. Case no. 328/F/15 by the Tribunal. On receipt of the notice, the petitioner as the opposite party entered appearance before the Tribunal and filed a written statement along with copies of a number of documents claiming that she was not a foreigner of post-25.03.1971 stream.

4. In the course of the proceedings of F.T. Case no. 328/F/15 before the Tribunal, the petitioner as the opposite party-proceedee submitted her evidence-in-chief on affidavit as D.W.1. Along with her evidence, the petitioner-opposite party-proceedee also exhibited ten nos. of documents in support of her claim as a citizen of India. The petitioner-opposite party-proceedee also adduced evidence of another witness, D.W.2 projecting him as her father. The witnesses – D.W.1 & D.W.2 – were duly cross-examined by the other side.

5. It is relevant to mention that as per provision of Section 9 of the Foreigner's Act, 1946, as amended, the onus of proving that the proceedee is a citizen of India and not a foreigner lies upon the proceedee.

6. The Tribunal after scrutinizing the oral and documentary evidence adduced by the petitioner-opposite party-proceedee rendered its Opinion/Order on 29.09.2018. The Tribunal held that the petitioner-opposite party-proceedee had failed to establish her linkage with an Indian parent relatable to a period prior to 25.03.1971, which is the cut-off date for identification of foreigners in the State of Assam as per Section 6A of the Citizenship Act, 1955, as amended. The Tribunal declared the petitioner-opposite party-proceedee a foreigner of post-25.03.1971 stream under Section 2[a] of the Foreigner's Act, 1946, as amended.

7. Aggrieved by the Opinion/Order dated 29.09.2018, the petitioner preferred a writ petition under Article 226 of the Constitution before this Court on 20.11.2018. The said writ petition was registered and numbered as W.P.[C] no. 8178/2018.

8. In the writ petition, the petitioner for the purpose of establishing linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971, projected D.W.2 as her father and one Meherjan Nessa as her mother, both names having appeared in the Voter List of 1966 [Ext.-2] and the Voter List of 1970 [Ext.-3]. Out of nine documents, produced and exhibited, before the Tribunal, link was sought to be established through a Kabinnama [Ext.-4]; an Admit Card of the Board of Secondary Education, Assam [Ext.-7]; a School Leaving Certificate of Nayapara High Madrassa [Ext.-8] and a Voter Identity Card issued by the Election Commission of India [Ext.-9]. Reliance was also placed in the deposition of D.W.2.

9. The writ petition came up for consideration on 24.04.2019. The record of F.T. Case no. 328/F/15 which was requisitioned, was received from the Tribunal. The learned counsel for the petitioner and the respondents were duly heard. After hearing the learned counsel for the parties and after perusal of the materials available in the record of F.T. Case no. 328/F/15 in original, the writ court found no merit in the writ petition and the writ petition, by an Order dated 24.04.2019, was dismissed. One of the reasons for rejection of the writ petition was that the petitioner failed to prove any linkage to her projected father. The writ court had reached a firm view that the Opinion/Order of the Tribunal was rendered on due appreciation of the entire facts, evidence and documents brought on record and there was no infirmity in the findings and Opinion recorded by the Tribunal. It was further observed that fresh documents sought to be introduced in the writ proceedings could not be looked into or considered as the same were not produced and exhibited before the Tribunal. It was observed that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, the writ court would refrain from reviewing the findings of facts reached by the Tribunal. It was further observed that no case was made out by the petitioner that interference to the impugned Order/Opinion was warranted on any ground that the Tribunal had acted on evidence which was legally impermissible and/or that the Tribunal had refused to admit admissible evidence and/or that the findings did not find support by any evidence at all.

10. Subsequent to the dismissal of the writ petition, W.P.[C] no. 8178/2018, the petitioner preferred a review petition, Review Petition no. 95/2019, on 23.05.2019, seeking review of the Order dated 24.04.2019. In the review petition, the petitioner urged that the two documents – the Admit Card of the Board of Secondary Education, Assam [Ext.-7] and the School Leaving Certificate of Nayapara High Madrassa [Ext.-8] – would need a re-look for the reasons averred in the review petition. The review petition was considered on the grounds urged with regard to Ext.-7 and Ext.-8. The review petition came up for consideration on 11.09.2019. After hearing the learned counsel for the parties, the review petition came to be dismissed by an Order dated 11.09.2019. The Court considered the documents, Ext.-7 and Ext.-8 vis-à-vis the findings already recorded in the Order dated 24.04.2019 [supra]. In the Order dated 11.09.2019, the Court had considered the scope of review and the grounds available to be raised in the review petition. After consideration, the Court had found that the grounds assigned for seeking review of the Order were entirely different from the recognized parameters of review. It was found that the Court was called upon to re-appraise and re-appreciate the facts which had already been answered in the Opinion/Order dated 29.09.2018 of the Tribunal as well as in the Order rendered in the writ petition, W.P.[C] no. 8178/2018.

11. We have heard Mr. A.M. Ahmed, learned counsel for the petitioner; Mr. H. Gupta, learned Central Government Counsel [CGC] for the respondent no. 1; Mr. G. Sarma, learned Standing Counsel, Home Department for NRC matters for the respondent nos. 2, 4 & 6; Mr. P. Sarma, learned Additional Senior Government

Advocate, Assam for the respondent no. 3; and Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent no. 5.

12. Mr. Ahmed, learned counsel appearing for the petitioner has submitted that the present review petition has been preferred pursuant to liberty granted by the Hon'ble Supreme Court in an Order dated 08.01.2020 passed in Special Leave Petition [Civil] Diary no[s]. 41782/2019. He has further made submissions on the grounds pleaded in the petition, styled as a review petition, to assail the Opinion/ Order dated 29.08.2018 [supra] passed by the Tribunal; the Order dated 24.04.2019 [supra] passed in the writ petition, W.P.[C] no. 8178/2018; and the Order dated 11.09.2019 [supra] passed in the review petition, Review Petition no. 95/2019;

13. The learned counsel for the respondents have, on the other hand, raised a preliminary point of maintainability of the present petition, styled as a review petition, in view of the previous endeavours made by the petitioner before this Court. It has been submitted, in unison, that the liberty granted to the petitioner by the Hon'ble Supreme Court on 08.10.2020 was only in view of withdrawal of the Special Leave Petition. The issue regarding maintainability of a review petition in the fact situation obtaining in the case has not been decided and as such, the issue of maintainability is necessary to be decided first as a preliminary issue, before going to the merits.

14. At the inception, it is required to find out about the scope and ambit of certiorari jurisdiction under Article 226 of the Constitution. It is settled by a long line of decisions that a writ in the nature of certiorari under Article 226 can be issued in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. It has been held that however extensive the certiorari jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made. A five-Judge Bench in T.C. Basappa vs. T. Nagappa and another, AIR 1954 SC 440, has observed that a tribunal may enter upon an enquiry but in making the enquiry, it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, for example, when it is based on clear ignorance or disregard to the provisions of law. In other words, it is patent error which can be corrected by certiorari but not a wrong decision. In granting a writ of certiorari, the court does not exercise the power of an appellate court. It does not review or reweigh the evidence upon which the determination of the 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 view for those of the tribunal.

15. Following the five-Judge Bench decision in T.C. Basappa [supra], a seven-Judge Bench decision in Hari Bishnu Kamath vs. Ahmad Ishaque and others, AIR 1955 SC 233, has considered the character and scope of the writ of certiorari. The decision has laid down the following propositions : [i] certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it; [ii] certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice; and [iii] the court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. The consequence flowing out of this proposition is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. The proposition is based on the principle that a court which has jurisdiction over of subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against the decision, it would be defeating its purpose and policy if a superior court were to re-hear the case on the evidence, and substitute its findings in certiorari jurisdiction. The seven-Judge Bench has held these propositions as well settled and undisputed.

16. When the Order dated 24.04.2019 passed in the writ petition, W.P.[C] no. 8178/2018 is examined vis-à-vis the afore-mentioned settled propositions of law with regard to certiorari jurisdiction, no infirmity is found in the Order dated 24.04.2019. It is the present petitioner who as the writ petitioner, had sought review of the Order dated 24.04.2019 by preferring a review petition, that is, Review Petition no. 95/2019 subsequently.

17. It is, thus, also necessary, firstly, to find out the scope and extent of review of an order passed in a proceeding under Article 226 of the Constitution. It has been held in Shivdev Singh vs. State of Punjab, AIR 1963 SC 1909, that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Following

Shivdev Singh [supra], it has been observed in Aribam Tuleswar Sharma vs. Aribam Pishak Sharma, [1979] 4 SCC 389, that there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent from the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits as that will be

the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court. It has been held in *Union of India and others vs. B. Valluvan and others*, [2006] 8 SCC 686, that the High Court, indisputably, has a power of review, but must be exercised within the framework of Section 114 read with Order 47 of the Code of Civil Procedure.

18. In *Aribam Tuleswar Sharma* [supra], the appellant filed a writ petition under Article 226 of the Constitution. The writ petition was contested on various grounds. By a Judgment dated 25.05.1956, the writ petition was allowed. Thereafter on 02.07.1965, the respondent nos. 1 to 4 filed an application for review purporting to be under Order 47, Rule 1 and Section 151, Civil Procedure Code. The application for review was allowed, the earlier judgment dated 25.05.1956 was set aside and the writ petition was dismissed. The appellant obtaining a Certificate under Article 133[1][c] of the Constitution, preferred the appeal before the Hon'ble Supreme Court. It was in such backdrop, the above observations were made by the Hon'ble Supreme Court. It was observed two documents which were part of the record were not considered by the court at the time of issue of a writ under Article 226 cannot be a ground for review especially when the two documents were not even relied upon by the parties in the affidavits filed before the court in the proceedings under Article 226. In the case in hand, the acceptability or otherwise of the documents relied on by the petitioner to establish her case, was considered by the Tribunal and thereafter, in the writ proceedings as well as in the review proceedings. Resting the discussion on this aspect here, it is apt to dilate on the preliminary issue, framed hereinabove.

19. The grounds taking which an application for review can be filed have been delineated in Rule 1 of Order XLVII of the Code of Civil Procedure [CPC]. For ready reference, Rule 1 of Order XLVII is quoted hereinbelow :-

1. Application for review of judgment –

[1] Any person considering himself aggrieved -

[a] by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

[b] by a decree or order from which no appeal is allowed, or

[c] by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

[2] A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation -The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

20. With regard to the scope and ambit of review jurisdiction, a three-Judge Bench of the Hon'ble Supreme Court in *S. Madhusudhan Reddy vs. V. Narayana Reddy and others*, [2022] 11 SCR 42, has observed in the following manner :-

19. After discussing a series of decisions on review jurisdiction in *Kamlesh Verma vs. Mayawati and Others*, [2013] 8 SCC 320, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute :

20.1. When the review will be maintainable :

[i] Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

[ii] Mistake or error apparent on the face of the record;

[iii] Any other sufficient reason.

The words 'any other sufficient reason' has been interpreted in *Chajju Ram vs. Neki*, AIR 1922 PC 112, and approved by this Court in *Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors.*, 1955 SCR 520, to mean 'a reason sufficient on grounds at least analogous to those specified in the rule'. The same principles have been reiterated in *Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors.*, [2013] 8 SCC 337.

20.2. When the review will not be maintainable: -

[i] A repetition of old and overruled argument is not enough to reopen concluded adjudications.

[ii] Minor mistakes of inconsequential import.

- [iii] Review proceedings cannot be equated with the original hearing of the case.
- [iv] Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- [v] A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- [vi] The mere possibility of two views on the subject cannot be a ground for review.
- [vii] The error apparent on the face of the record should not be an error which has to be fished out and searched.
- [viii] The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- [ix] Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

21. It has been expounded many times that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order XLVII Rule 1, CPC. Under Order XLVII Rule 1, CPC, a judgment may be open to review inter-alia if there is a mistake or an error apparent on the face of the record. The term, 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If a mistake or an error is not self-evident, it cannot be treated as a mistake or an error apparent on the face of the record for the purpose of Order XLVII Rule 1, CPC. In exercise of review jurisdiction under Order XLVII Rule 1, CPC, it is not permissible for an erroneous decision to be reheard and corrected.

22. For finding further insights into the review jurisdiction, the other rules contained in Order XLVII, CPC can be looked into. As per Rule 3, the provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review. Rule 4[1] has provided that where it appears to the court that there is not sufficient ground for a review, the court shall reject the application. Rule 4[2] has provided that where the Court is of opinion that the application for review should be granted, it shall grant the same provided that - [a] no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and [b] no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation. Rule 7[1] has provided a restriction in the form that an order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at

once by an appeal from the order granting the application or in an appeal from the order finally passed. Sub-rules [2] & [3] of Rule 7 have provided for matters regarding restoration of a review application. Rule 9 contains a bar for certain applications with a prescription that no application to review an order made on an application for a review shall be entertained.

23. Reverting back to the case in hand, it is found that the petitioner had approached the Hon'ble Supreme Court by preferring a special leave petition, Special Leave Petition [Civil] Diary no[s]. 41782/2019. From the Order dated 08.01.2020 passed in the Special Leave Petition, annexed as Annexure-E to the present petition, it can be noticed that the Special Leave Petition was preferred against the Order dated 24.04.2019 passed in the writ petition, W.P.[C] no. 8178/2018 and the Order dated 11.09.2019 passed in the review petition, Review Petition no. 95/2019. It can be further noticed that when the Special Leave Petition came up for consideration on 08.01.2020, permission was sought by the petitioner to withdraw the petition with liberty to file review petition before this Court. The permission so sought for, was granted by the Hon'ble Supreme Court by dismissing the Special Leave Petition on withdrawal, with liberty. It was further observed in the Order dated 08.01.2020 that in case the petitioner would fail before this Court, the petitioner had the permission to approach the Hon'ble Supreme Court again challenging the main order as well as the order passed in the review petition[s].

24. From the contents of the Order dated 08.01.2020 [supra], we respectfully find that the Hon'ble Supreme Court has not deliberated on the issue of maintainability and entertainability of the review petition for filing of which the petitioner sought liberty to withdraw the Special Leave Petition and to file a review petition before this Court. It is, thus, open for the Court to decide the preliminary issue as regards maintainability and entertainability of the present petition, styled as a review petition.

25. What can be clearly deducible from provisions contained in Order XLVII Rule 1, CPC is that if an application for review of an order is preferred and the said review application is rejected, the order rejecting the review application is not appealable. There arises no question of merger. If the original order is appealable, then the party after rejection of the review application, can prefer an appeal before the higher forum within the time stipulated by the law of limitation and the order passed in the review application alone cannot be subjected to appeal.

26. This Court is persuaded to take the above view from the following observations made in the decisions in DSR Steel Private Limited vs. State of Rajasthan, [2012] 6 SCC 782, :-

25. Different situations may arise in relation to review petitions filed before a court or tribunal.

25.1. One of the situations could be where the review application is allowed, the

decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

27. Once the petitioner had earlier preferred a review petition seeking review of the Order dated 24.04.2019 by Review Petition no. 95/2019 and the said review petition, Review Petition no. 95/2019 was dismissed after consideration on the grounds available to review the Order dated 24.04.2019, a subsequent review petition cannot be entertained in view of the bar contained in Rule 9 of Order XLVII, CPC. It has also been held in Lily Thomas and others vs. Union of India and others, [2000] 6 SCC 224, to the effect that once a review petition is dismissed no further petition of review can be entertained.

28. In light of the discussion made above and for the reasons recorded therein, the preliminary issue of maintainability and entertainability of this petition, styled as a review petition, is answered against the petitioner. This petition is neither maintainable against the Order dated 24.04.2019 passed in the writ petition, W.P. [C] no. 8178/2018 nor entertainable against the Order dated 11.09.2019 passed in the review petition, Review Petition no. 95/2019. In view of deciding the preliminary issue in the above manner, no deliberation is required on the other aspects raised on behalf of the petitioner. Thus, this petition is dismissed.