
(2017) 02 GAU CK 0014
In the Gauhati High Court
Case No : WP(C) No. 2634 of 2016

Manowara Bewa

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Citizenship (Registration of Citizens and Issuing of National Identity Cards) Rules, 2003 — Rule 4A
Citizenship Act, 1955 — Section 6A
Panchayat Act, 1994 — Section 19, Section 30

Citation : (2017) AIR(Gauhati) 112 : (2017) 2 GauLR 632 : (2017) 2 GauLT 143

Hon'ble Judges : Mr. Ujjal Bhuyan and Mrs. Rumi Kumari Phukan, JJ.

Bench : Division Bench

Advocate : Mr. S.B. Rahman, Advocate, for the Petitioner; Mr. C. Choudhury, Advocate General, Assam, Mr. S.C. Keyal, ASGI, Ms. G. Sharma, CGC, Mr. R. Dhar, Govt. Advocate, Assam, for the Respondents

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.— Heard Mr. S.B. Rahman, learned counsel for the petitioner, Mr. C. Choudhury, learned Advocate General, Assam assisted by Mr. R. Dhar, learned Govt. Advocate, Assam and Mr. S.C. Keyal, learned Assistant Solicitor General of India assisted by Ms. G. Sharma, learned Central Government counsel.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 17.03.2016 passed by the Foreigners Tribunal No.5, Dhubri in FT Case No. FT-5/G/58/2015 declaring the petitioner to be a foreigner who had illegally entered into India (Assam) after 25.03.1971.

3. In the course of hearing, an issue of considerable public interest surfaced, namely, legality of the certificate issued by the Gaon Panchayat Secretary and counter-signed by Revenue Officer of the State certifying residentship of the certificate holder (petitioner) in an area within his jurisdiction, as a supporting

document for inclusion in updated National Register of Citizens (NRC) which the petitioner relied upon in support of her contention of being a citizen of India and not a foreigner. We will discuss this issue in the second part of the judgment under the heading "Larger Issue".

4. First we will attend to the challenge made in the writ petition, namely, declaration of the petitioner by the Foreigners Tribunal No.5, Dhubri as a foreigner of post 1971 stream.

WP(C) NO.2364/2016

5. A perusal of the order dated 17.03.2016 would go to show that initially a reference was made by the State under the Illegal Migrants (Determination by Tribunals) Act, 1983 with the allegation that petitioner was a foreigner who had illegally entered into India (Assam) after 25.03.1971. After the said Act was declared unconstitutional by the Supreme Court in *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665, the reference was re-registered under the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964. Ultimately, after creation of additional Tribunals, the reference was assigned to the Foreigners Tribunal No.5, Dhubri (Tribunal) as FT Case No. FT-5/G/58/2015.

6. Notice issued by the Tribunal was served upon the petitioner where after she had entered appearance and submitted her written statement. She also examined herself as her witness and exhibited five documents.

7. After due consideration, Tribunal took the view that petitioner had failed to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove that she was not a foreigner but an Indian citizen and accordingly vide order dated 17.03.2016, declared the petitioner as a foreigner who had illegally entered into India (Assam) on or after 25.03.1971.

8. Learned counsel for the petitioner vehemently argued that petitioner had adduced sufficient evidence, both oral and documentary, to establish that she was not a foreigner but a citizen of India by birth. Thus, she had discharged her burden under Section 9. However, Tribunal taking a very technical and narrow approach, disbelieved the version of the petitioner and came to an erroneous conclusion by declaring the petitioner to be an illegal foreigner thereby visiting the petitioner with far reaching consequences. Referring to the documents placed on record including those annexed to the writ petition, he submits that view taken by the Tribunal is incorrect and requires interference by the Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. In support of his submissions, learned counsel for the petitioner placed reliance on the following decisions :-

(1999) 6 SCC 110 : *Rajendra Prasad v. Narcotic Cell*,

(2009) 12 SCC 454 : *Shyam Lal v. Sanjeev Kumar*

9. On the other hand, learned counsel for the respondents support the order of

the Tribunal and contend that being a finding of fact based on appreciation of evidence, the writ Court may not interfere with such finding of fact which is otherwise also fully justified in the facts and circumstances of the case.

10. Submissions made by learned counsel for the parties have been considered.

11. At the outset, order of the Tribunal may be adverted to, relevant portion of which is extracted hereunder :-

"7. On perusal of the case record including the W/S, the affidavit filed by the O.P. and as well as the documents relied upon by her it is found that during the course of evidence O.P. had produced two documents Ext-5 and Ext-1 to establish linkage with her parents and husband. Ext-5 is the certificate issued by the Sahebganj Gaon Panchayat (G.P. for short) dated 04-08-2013 to Monowara Bewa, W/o Sopiyl Hoque inhabitant of village Khagrabari Pt. II. On perusal of the case records it is found that O.P. Monowara Bibi is the W/o Sapiyar Rahman and the certificate of Sahabganj G.P. Ext-5 have been issued to one Monowara Bibi W/o Sopiyl Hoque inhabitant of village Khagrabari Pt-II. Thus, Sapiyar Rahman and Sopiyl Hoque are two different person and hence, due to contradiction and discrepancies of name, this documents Ext-5 issued to one Monowara Bibi W/o Sopiyl Hoque cannot be relied upon. Moreover Ext-5 is a private document issued by the President of Sahebganj G.P. and the authority who have issued the certificate have not been examined to prove the contents of the documents thereof. In the absence of examination of the authority issuing the certificate, the document Ext-5 is inadmissible in evidence and cannot be relied upon.

Ext-1 is the school certificate issued by the Headmaster of 1236 No. Khagrabari LP School dated 29-10-2010. On perusal of the W/S it is found that there is no specific pleading in the W/S that the O.P. had done her schooling from 1236 No. Khagrabari LP School and subsequently during the course of evidence, made statement in her Affidavit that she read upto Class-IV in the year of 1984 in 1236 Khagrabari LP School and produced one school certificate marked as Ext-1 issued by the Headmaster of 1236 No. Khagrabari LP School dated 29-10-2010. On perusal of the document Ext-1 it reveals that the school certificate was issued on 29-10-2010 and the OP had filed the W/S on 24-12-2015 and there is no mentioned of this school certificate in her W/S as such, the school certificate Ext-1 is not in conformity with her pleadings in the W/S. Thus, the OP had waived her right by not pleading in the W/S that she did her schooling from 1236 Khagrabari LP School accordingly, she is not entitled as of right to rely on any ground of defence which she has not taken specifically in her W/S. Further, on close scrutiny and examination of the school certificate it is further found that the school certificate Ext-1 issued by the Headmaster of 1236 No. Khagrabari LP School, duplicate is written in the said certificate and there is no clarification of explanation by the OP that under what circumstances the duplicate copy of the school certificate have been issued and moreover, the Headmaster who have issued the school certificate have not been examined to prove the contents of the

documents thereof. Hence, mere filing or accepting of a document without proving its contents is inadmissible in evidence and as such, the said certificate marked as Ext-1 cannot be relied upon under the law of evidence.

Thus, in the absence of any documentary and oral evidence that Kashem Ali Sk is the father of OP, the document produced by the OP in the name of one Kashem Ali Sk (projected father of OP) cannot be relied upon as the OP had failed to establish linkage with her parents and husband.

8. Now, let's analyse and examine the document produced by the OP in the name of her projected father Kashem Ali Sk, and on scrutiny and examination of the documents the following discrepancies and contradictions were found. Ext-2 is the copy of NRC 1951 issued in the name of one Kashem Ali Sk and Diljan Bibi at Sl.No. 5 and 6, House No.2 (Gha), House Hold No.6 of village Khagrabari, union No. 4 issued by the Officer-in-Charge, Golakganj PS, District-Dhubri, Assam marked as Ext- 2. On close scrutiny and examination of the copy of NRC 1951 it is found that at Sl. No.5 Kashem Ali Sk age has been tempered which is clearly distinguishable that age 10 has been overwritten as 16 and at Sl. No.6 Diljan Bibi relation name has been tempered and overwritten "Sha" i.e. husband in place of "Pee" i.e. father and as such, the purported tempered document of the copy of the NRC 1951 Ext-2 cannot be the basis to claim citizenship and hence, is not trustworthy and cannot be relied upon. Moreover, on going through the W/S and the affidavit the OP nowhere disclosed her mother's name. The omission of the mother's name of the OP has been done intentionally by overwriting "Sha" in place of "Pee". Hence, the OP with mala fide intention taking recourse to falsehood and tempering of document which itself establishes that OP is not a citizen of India and as such, the OP is suspected along with other documents produced by her during the course of evidence for genuineness and authenticity.

9. Ext-3 is the certified copy of the voter list of 1966 wherein one Kashem Ali Sk, S/o Chetaullah, age 39 name appears at Sl. No.55, House No.16 under 34 Gauripur LAC of village 160 Sukhatikhata. As already discussed above, in the copy of NRC 1951 Ext-2 the age of one Kashem Ali Sk was 10 years and was manipulated by overwriting 16 years in the 1951 NRC and in the voter list of 1966 the age of one Kashim Ali Sk appears as 39 years. Thus, if, Kashem Ali aged is 10 years in 1951 then Kashim Ali's age in the year 1966 would be 25 years whereas in the voter list of 1966 Kashim Ali Sk age appears as 39 years thus, there is an age variance of 14 years between Kashem Ali Sk and Kashim Ali Sk which is not acceptable and cannot be relied upon. Moreover, it is also found that in the copy of NRC 1951 Kashem Ali Sk father name is Getaullah and in the certified copy of 1966 Kashim Ali Sk father's name appears as Chetaullah. Thus, Kashem Ali Sk, S/o Getaullah and Kashim Ali Sk, S/o Chetullah are two different persons and due to discrepancies and contradictory names the document Ext-3 cannot be acted upon as trustworthy. And on further scrutiny and examination of the two documents it is also found that the copy of NRC 1951 is of village

Khagrabari and the certified copy of voter list of 1966 is of village Sukhatikhata. Thus, village Khagrabari and Sukhatikhata are two different village and as such, there is no doubt that the OP had picked upon the voter list of 1966 in the name of one Kashim Ali Sk to suit her purpose as the name Kashem Ali Sk and Kashim Ali Sk names are similar, so, that the document Ext-3 may come into force to established her nationality.

In view of the aforesaid reason and discussion, the purported document, Ext-3 the certified copy of the voter list of 1966 is not trustworthy and cannot be relied upon and is no help to the OP to prove that she is not a foreigner.

10. The OP without any specific pleading in the W/S had stated in her Affidavit that her father Kashem Ali, S/o Chapatulla name was recorded in the land document of village Khagrabari Circle Dhubri, in the year 1965 and produced one land document marked as Ext-4. On perusal of the document Ext-4, the Jamabandi copy it is found that one Kashem Ali Sk, S/o Khetaullah Peon along with other name appears at Khatian No. and Patta No.10 and 179 and their names have been mutated in the year 01-09-1966 whereas the OP had stated in her affidavit that her father name was recorded in the land document in the year 1965 as Kashem Ali Sk, S/o Chapatulla whereas in the jamabandi copy Ext-4 shows that one Kashem Ali Sk, S/o Khetaullah Peon name appears along with other in the year 01-09-1966 thus, the OP herself is contradicting the documents and, moreover, Kashem Ali Sk, S/o Chapatulla and Kashem Ali Sk, S/o Khetaullah Peon is altogether a different person and due to such contradiction of name in the said land document Ext-4 cannot be relied upon as trustworthy.

Furthermore, under the law of evidence, entries in the copy of the Jamabandi are prepared on fiscal inquires and the entry in the copy of Jamabandi has to be examined on the probative value of the contents of the documents which required corroboration with other documentary evidence. The OP had not provided any explanation and failed to produced the up-to-date land revenue receipt and other documentary evidence subsequent, to such entries made on fiscal inquires and as such, the entry in the copy of the Jamabandi is inadmissible in evidence in the absence of other substantial documentary evidence.

In view of the above discussion and reason, the purported land document Ext-4 is not trustworthy and cannot be relied upon and the document is of no help to the OP to prove her case that she is not a foreigner.

11. For the reason and discussion above and considering the entire materials on records the evidence of OP is not trustworthy at all and cannot be relied upon due to the manipulation, contradiction and discrepancies of the document submitted by her and as such, the OP had miserably failed to discharge her burden of proof as envisaged U/S 9 of the Foreigner Acts, 1946 with cogent and reliable evidence, that she is born through genuine Indian parents.

Order

12. In view of the above findings, this Tribunal is of the opinion that the OP is a Foreigner/Illegal migrant had entered Assam on or after 25-03-1971. In exercise of the power conferred under Section 3(13) of the Foreigners Tribunal Order, 1964 the OP namely Monowara Bewa, W/o Sapiyar Rahman of village Sukhatikhata under Gauripur PS, district-Dhubri, Assam, be taken into custody immediately, and be kept as internee (Section 4 of the Foreigners Act, 1946) in appropriate place till she is deported/push back to her specified territory. Hence, the reference case is answered in affirmative."

12. To appreciate the view taken by the Tribunal, let us examine the materials on record.

13. In her written statement, petitioner stated that she was a citizen of India by birth and this would be proved by the legacy data in the name of her father Kashem Ali Sk, which was annexed to the written statement as Annexure-A. She stated that she was wife of Sapiyar Rahman and daughter of Late Kashem Ali Sk and a resident of village Sukhatikhata under Gauripur Police Station in the district of Dhubri. Name of her father Kashem Ali Sk, son of Chetaullah was recorded in the 1951 NRC as resident of village Khagrabari under Golokganj Police Station in the then district of Goalpara; extract of NRC, 1951 was annexed as Annexure-B. It was also stated that her father had his name recorded in land document in respect of a portion of land having Katchha patta which was annexed as Annexure-C. Her father was a recorded voter in the voters list of 1966 from Sukhatikhata village relating to No.34 Gauripur Legislative Assembly Constituency. Extract of the voters list was annexed as Annexure-D. Statements were also made regarding inclusion of father-in-law in the legacy data and about school transfer of her husband but in this school transfer certificate dated 29.10.1988 (Annexure-F), name of the certificate holder was Md. Safiol Haque Bepari, son of Md. Nur Ali Bepari of village Khodarchar whereas according to the petitioner, name of her husband was Sapiyar Rahman. It was finally stated that she has been recorded as a voter in the voters list of 2015 from Khagrabari village in respect of Gauripur Constituency.

14. From this written statement, it is seen that though petitioner had stated that she was a citizen of India by birth, she did not mention about the date, year and place of her birth which are material facts. On the other hand, though she stated that she is the wife of Lt. Sapiyar Rahman and daughter of Lt. Kashem Ali Sk having residence at village Sukhatikhata, it has not been clarified as to whether she was born and brought up at village Sukhatikhata or after her marriage she started residing at village Sukhatikhata. While according to the petitioner, her father was a voter of 1966 from Sukhatikhata village, however his name had appeared in the 1951 NRC from village Khagrabari. That apart, in the 2015 voters list, petitioner claims to be a recorded voter from village Khagrabari which contradicts her stand that she is a resident of village Sukhatikhata. Thus, in 1951 NRC, her father's name appears from village Khagrabari, in 1966 voters list, her father's name appears from Sukhatikhata village and in 2015 voters list,

petitioner's name appears as a voter from village Khagrabari though she stated that her residence was at village Sukhatikhata. These averments made in the written statement, besides lacking in material particulars, are all very confusing and contradictory without any clarity. Moreover, as noticed above, while the petitioner claimed that she is the wife of Sapiyar Rahman, in the school transfer certificate of the husband, the name of the certificate holder is Md. Safiol Haque Bepari, son of Md. Nur Ali Bepari of village Khodarchar, a different person altogether.

15. Let us now examine the evidence adduced on behalf of the petitioner.

16. In her evidence-in-chief by way of affidavit filed on 16.02.2016, petitioner described herself as aged about 43 years and daughter of Late Kashem Ali Sk and wife of Lt. Sapiyar Rahman, resident of village Sukhatikhata under Gauripur Police Station in the district of Dhubri. She stated that she studied up-to Class-IV in the 1296 No. Khagrabari L.P. School in the year 1984 and as per school certificate, she was born in 1973. Her father's name Kashem Ali Sk was recorded in the 1951 NRC from the village Khagrabari. Her father's name also appeared in the voters list of 1966 as a voter from Sukhatikhata village under Gauripur Constituency. Her father's name also appeared in the land document of a plot of land at village Khagrabari covered by Patta No.18 (old)/30 (new) having Dag No.33(old)/34(new) in the year 1965. She stated that she was born and brought up at village Khagrabari Part-II under Golokganj Police Station and is presently residing in the said village as per certificate of the Gaon Panchayat Secretary.

17. A few questions were put to the petitioner by the Tribunal and in response thereto, she stated that she was born at Sukhatikhata village under Gauripur Police Station. Her father had two brothers, namely, Asmat Ali and Kasem Ali. Her father died about 8 years ago and that she had studied up-to Class-IV in 236 No. Khagrabari LP School.

18. From an analysis of her oral evidence, it is seen that while in chief, she stated that she had studied up-to Class-IV in the 1296 Khagrabari LP School but in response to a question by the Tribunal, she stated that she had studied in 236 No. Khagrabari LP School. Her father's name appeared in the 1951 NRC from village Khagrabari which is also reiterated in the land document of 1965 but in the voters list of 1966, he was shown as resident of village 160 Sukhatikhata. From this, it would appear that her father Kashem Ali Sk had his residence at village Khagrabari up-to 1965 but his residence in 1966 became 160 Sukhatikhata village. While in chief, she stated that she was born and brought up at village Khagrabari Part-II where she is presently residing, on her response to Tribunal's query, she stated that she was born at Sukhatikhata village. As noticed above, petitioner had declared her age as 43 years as on February, 2016. If that be so, then petitioner was born sometime in the year 1973. As noticed above, in the 1966 voters list, petitioner's father was shown as a resident of village 160 Sukhatikhata. If petitioner was born in the year 1973, her probable place of birth would be Sukhatikhata and not Khagrabari Part-II village. This

material discrepancy is further magnified by the complete silence of the petitioner regarding her marriage and her place of residence post-marriage. Petitioner has stated that she is the wife of Lt. Sopiya Rahman. Neither is the date nor the year of marriage is mentioned nor is the residence of Late Sopiya Rahman. Petitioner has not disclosed where she resided with Lt. Sopiya Rahman after her marriage; when he died; whether they have any children out of the wedlock or whether after his death, she continued to stay in her matrimonial home or she returned back to her parental home. However, she stated in her evidence-in-chief that she is presently residing at village Khagrabari Part-II, which was the village of her father up-to 1965. Another important aspect which needs to be noted is that neither in her written statement nor in her oral testimony petitioner mentioned anything about her brother(s) or sister(s).

19. Petitioner had exhibited the following documents before the Tribunal :-

- (1) Ext. 1 - School Certificate dated 29.10.2010,
- (2) Ext. 2 - Copy of NRC, 1951,
- (3) Ext. 3 - Extract of voters list, 1966,
- (4) Ext. 4 - Extract of land document, and
- (5) Ext. 5 - Certificate dated 04.08.2013 of President, Sahebganj Gaon Panchayat.

20. Ext.1 is a certificate dated 29.10.2010 issued by Nurul Haque Sk, Head Teacher of 1236 No. Khagrabari LP School. On top of the certificate, the word "duplicate" is written by hand. It was certified that petitioner Monowara Bewa, daughter of Late Kashem Ali Sk and Lt. Diljan Bibi of village Sukhatikhata under Gauripur Police Station studied in the 1236 No. Khagrabari LP School and had left the school after passing Class-IV examination on 31.12.1984. Her age as per Admission Register was 11 years 2 months 13 days, describing 1973 as her date of birth (sic). First thing to be noticed about this certificate is that it was marked as "duplicate" on top. Why a duplicate certificate had to be issued has not been explained either in the written statement or in the evidence. Secondly, the certificate was issued on 29.10.2010, 26 years after the petitioner had left the school which itself raises grave doubts about the genuineness of such certificate. It is quite evident that the certificate was obtained by the petitioner after enquiries regarding her citizenship status had commenced. That apart, as per this certificate, petitioner was a resident of village Sukhatikhata but according to her evidence-in-chief, petitioner was born and brought up at village Khagrabari where she is presently residing. Moreover, the author of this certificate did not come forward to prove the contents of the document and the truthfulness of the same.

21. Ext.2 is stated to be an extract of 1951 NRC of village Khagrabari. Here names of two persons appear, namely, Kashem Ali Sk and Diljan Bibi. In respect of Kashem Ali Sk, initially, age was written as 10 but thereafter the number 6

was written over 0 which means that initially age of Kashem Ali Sk was shown as 10 years but after overwriting, it became 16 years. In respect of Diljan Bibi, there is overwriting before the word Kashem Ali written just below her name. After overwriting, which is clearly visible, it becomes Diljan Bibi, wife of Kashem Ali Sk and her age is shown as 17 years. Before overwriting, Kashem Ali Sk was 10 years old in 1951 and his "wife" Diljan Bibi was 17 years; after overwriting, he became 16 years. Either way, it is quite unusual, for a husband to be younger in age to the wife, having regard to the remoteness of the residence and the period covered by the document i.e., the year 1951. That aside, names of no other family member, such as, father, mother, brother, sister etc. appear in the said NRC, 1951.

22. In the voters list of 1966 (Ext.3), Kashem Ali Sk was shown as a resident of village 160 Sukhatikhata, his age being 39 years. If Kashem Ali Sk was 10 years of age in 1951, he would have been 25 years of age in 1966. If he was 16 years of age in 1951, he would have been 31 years in 1966. Either way, he could not have been 39 years of age in 1966. This significant discrepancy remained unexplained.

23. Ext.4 land document is neither here nor there. It appears that certified copy of the same was applied for on 05.12.2011 and handed over on 09.12.2011 much after the proceeding started against the petitioner. As per this document, Kashem Ali Sk, Asmat Ali Sk, Smt. Khairon Bewa, wife of Lt. Naj Sk and Nesatulla Sk, son of Lt. Khetaulla Peon of village Khagrabari were shown possessors as per Khatian No.10 relating to land measuring 1 katha 12 lechas. As noticed above, the four names which appear in this land document and who were shown as possessors of land are Kashem Ali Sk., Asmat Ali Sk, Khairon Bewa and Nesatulla Sk. Petitioner while answering the questions put up by the Tribunal, stated that her father Kashem Ali Sk had two brothers, namely, Asmat Ali and Kasem Ali. While Asmat Ali's name appeared in the land document, who are the other persons have not been explained.

23.1. Tribunal while discussing this exhibit found that Kashem Ali Sk was shown as son of Khetaulla Peon and names of other persons appear. Tribunal took the view that while according to the petitioner, her father Kashem Ali Sk was the son of Chetaullah, which name appear in Ext.2 as Getaulla whereas in this document Kashem Ali Sk was shown as son of Khetaulla Peon, a different person altogether which rendered the said certificate unbelievable. Moreover, no subsequent documents were exhibited to show petitioner's father paying land revenue or such other related documents post 25.03.1971.

24. In so far Ext.5 is concerned, it is a certificate dated 04.08.2013 issued by the President of Sahebganj Gaon Panchayat. As per this certificate, petitioner was an inhabitant of village Khagrabari Part-II within Sahebganj Gaon Panchayat. The date of issuance of the certificate itself makes it suspicious. It was issued on 04.08.2013 when the proceedings against the petitioner were on. Secondly, author of the said certificate, i.e., President of Sahebganj Gaon Panchayat did not

appear before the Tribunal to prove the contents of the said certificate. As per this certificate, petitioner is shown as "son/daughter/wife of Late Sopiyl Haque". As per statement of the petitioner made in her written statement and evidence-in-chief, she is the wife of Late Sopiyl Rahman. But as per this certificate, she is shown as related to Late Sopiyl Haque. Lt. Sopiyl Rahman and Lt. Sopiyl Haque do not appear to be one and the same person. Therefore, proving of this document by the author by way of evidence was essential, which was not done.

25. In *LICI v. Rampal Singh Bisen*, (2010) 4 SCC 491, Supreme Court held that mere admission of a document in evidence does not amount to its proof; in other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with the law. Contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth.

26. Therefore, on a cumulative analysis of the evidence adduced by the petitioner, what comes to the fore is a bundle of confusing and contradictory statements making the contention of the petitioner of being an Indian citizen totally unreliable. Thus, it can be concluded that the petitioner had failed to discharge her burden as per mandate of Section 9 of the Foreigners Act, 1946. The decisions cited at the Bar by learned counsel for the petitioner have been perused but on due consideration those are found to be not at all relevant to the case.

27. At this stage, it may be mentioned that as noticed in the introductory part of the judgment, petitioner has also placed reliance on a certificate dated 14.07.2015 issued by the Secretary, Rupshi Gaon Panchayat counter-signed by the Block Development Officer, Rupshi Development Block certifying that petitioner is a resident of area within his jurisdiction. This certificate though annexed to the writ petition as Annexure-8 was not exhibited before the Tribunal. More about this certificate in the succeeding part of the judgment under the heading "Larger Issue". At this stage, suffice it to say, this document only adds to the discrediting of the version of the petitioner. As per this document, petitioner got married to Lt. "Sopial Hoque", son of Nur Ali Bepari of village Khodarchar, which is neither Sukhatikhata village nor Khagrabari Part-II village. This document says that petitioner after marriage is a resident of Khodarchar village under Rupshi Gaon Panchayat whereas as per Ext.5, petitioner is a resident of village Khagrabari Pt-II under Sahebganj Gaon Panchayat. This discrepancy of residence is in addition to the discrepancy in the name of the husband. That apart, as per this certificate, petitioner was aged about 35 years of age in the year 2015, which means that her year of birth would be 1980 which contradicts Ext.1, as per which petitioner was born in the year 1973. More importantly, as per Ext.1, petitioner had left school after passing class IV examination on 31.12.1984. If she was born in 1980, she would have been 4 years old in 1984 meaning thereby that she was 1 year old when she passed

class I. Nothing more can be absurd than this.

28. As extracted above, Tribunal had minutely examined the evidence on record and thereafter came to the conclusion that the version of the petitioner was untrustworthy and could not be believed. Therefore Tribunal recorded the finding that petitioner was a foreigner who had illegally entered into India (Assam) after 25.03.1971. This finding of fact was returned by the Tribunal on appreciation of the evidence on record.

29. In *State v. Moslem Mondal*, reported in 2013 (1) GLT 809, a Full Bench of this Court had examined various aspects relating to the law and procedure to be adopted in a proceeding before a Foreigners Tribunal under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964. Amongst other aspects, the Full Bench noted that though High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India certainly has the power to interfere with an order passed by the Foreigners Tribunal, the width of such jurisdiction would be limited as certiorari jurisdiction of the writ Court being supervisory and not appellate, writ Court would not review findings of fact reached by the Foreigners Tribunal, the exception being when a finding is reached on evidence which is legally inadmissible or where Foreigners Tribunal had refused to admit admissible evidence or if the finding is not supported by any evidence at all because in such a case it would amount to an error of law apparent on the face of the record. The other errors of fact, howsoever grave those may be, would not be corrected by a writ Court.

30. Notwithstanding the above, we have embarked upon an independent assessment of the evidence on record to satisfy ourselves about the correctness or otherwise of the decision of the Tribunal. On a thorough consideration of the matter, we find no error or infirmity in the view taken by the Tribunal which we hereby affirm.

31. Writ petition being devoid of merit is accordingly dismissed.

32. Registry to send down the LCR forthwith and also inform the concerned Foreigners Tribunal, Deputy Commissioner and Superintendent of Police (Border) for doing the needful.

Larger Issue :

33. As already noticed above, petitioner had also pressed into service a certificate dated 14.07.2015, issued by the Rupshi Gaon Panchayat and counter-signed by the Block Development Officer, Rupshi Development Block in support of her contention of being a citizen of India while assailing the finding of the Tribunal. As per this certificate, the said Gaon Panchayat Secretary has certified that petitioner, D/o. Kachim Ali Sheikh of Village-Sukhatikhata under Rupshi Gaon Panchayat got married to Lt. Sopial Hoque, S/o. Nur Ali Bepari, who are residents of Khoderchar village, had migrated from the earlier area to the above-mentioned location on account of her marriage. It is stated that the said

certificate had been issued based on the evidence placed before the Gaon Panchayat Secretary. The certificate also has a disclaimer to the effect that it would be accepted only as a supporting document for establishing linkage with the parents of the mentioned person(s) for whom certificate is issued. It is further clarified that this certificate would be valid only if accompanied by legacy data or any of the other admissible documents issued for the person with whom linkage is claimed for inclusion in updated NRC. For better appreciation, the said certificate in its entirety is extracted hereunder :-

"Government of Assam

Office of The Secretary Rupshi Gaon Panchayat

District Dhubri, Assam

No. Rgp-27/m.W/cft/2015-16/1275

Date 14-07-2015

To whom it may concern

This is to certify that Smt. Manora Bewa, Daughter of Sri Kachim Ali Sk (Father)/ (or) Smt. _____ (Mother) of Village Sukhatikhata under Rupshi Gaon Panchayat under Golakganj Revenue Circle of Dhubri District of Assam who is aged about 35 years was a resident within the jurisdiction of the said Gaon Panchayat area. Smt. Manora Bewa got married on _____ (date/month/year) to Sri Lt. Sapial Hoque, Son of Sri Nur Ali Bepari (Father) or Smt./Late _____ (Mother) who are residents of Khoderchar Village/Gaon Panchayat/Ward under Dhubri Revenue Circle of Dhubri District of Assam. Smt. Manora Bewa has now migrated from the said Gaon Panchayat area to the above mentioned location by virtue of her marriage which was solemnized as aforesaid.

This certificate is issued based on the evidence placed before me.

Signature: Sd/-

Name of the G.P. Secretary

: Ruhul Amin Sk

Date of Issue

: 14-07-2015

Office Seal

: Secretary

Rupshi Gaon Panchayat

Sd/-

Counter Signature

Office Address : Vill.- Daobhangi, PO-Rupshi, PS-Gauripur,

Block Dev. Officer,

Dist.- Dhubri (Assam),

Rupshi Dev. Block

Pin : 783331

Rupshi

Contract No. : +91 9954031511

Name of Circle Officer/Executive Magistrate/Block Development Officer : Saukat Ali

Date of issue :

Office Seal :

Office Address: Vill.- Rupshi Pt. III, P.O.- Rupshi, PS-Gauripur, Dist. Dhubri (Assam), Pin- 783331.

Contact No. : +91 9508196725

Memo No. RGP-27/M.W/CFT/2015-16/1275 -A

Date: 14-07-2015

Copy for information and necessary action to :-

1. Circle Officer, Golakganj Revenue Circle/Block Dev. Officer, Rupshi Dev. Block.
2. Smt. Manora Bewa (Concerned married woman).
3. Office File

Signature

: Sd/-

Name of the GP Secretary

: Ruhul Amin Sk

(Date of Issue)

14-07-2015

(Office Seal)

Secretary

Rupshi Gaon Panchayat

Disclaimer

It may be added that this certificate shall be accepted only as a supporting document for establishing linkage with the parent(s) of the aforementioned person, for whom the certificate is issued. This document shall be valid only if accompanied by Legacy Data or any of the other admissible documents issued for the person with whom linkage is claimed for inclusion in updated NRC."

34. So as per this certificate, petitioner, a resident of village Sukhatikhata under Rupshi Gaon Panchayat within Golokganj Revenue Circle, migrated to Khodarchar village under Dhubri Revenue Circle on account of marriage. However, date or month or year of marriage has not been mentioned.

35. In the course of hearing of the writ petition on 17.11.2016, this Court on perusal of the provisions contained in the Assam Panchayat Act, 1994 and the related Rules framed thereunder, prima-facie did not find vesting of any power or authority to issue such certificates or to counter-sign such certificates either on the Gaon Panchayat Secretary or on the Block Development Officer. It was submitted at the Bar that such certificates are being issued by the Gaon Panchayat Secretaries and counter-signed by Block Development Officers on a regular basis for the purpose of inclusion in NRC. Taking note of the seriousness of the matter, Commissioner & Secretary to the Govt. of Assam, Panchayat and Rural Development Department along with the Commissioner of Panchayat and Rural Development were requested to be present before the Court on 22.11.2016 to explain issuance of such certificate. The Court also requested Mr. Prateek Hajela, IAS, Commissioner and Secretary to the Government of Assam, Home and Political Department, who is also the State Coordinator, NRC, to be present on the next date.

36. On the next date i.e., on 22.11.2016, Mr. PK Buragohain, Commissioner and Secretary to the Govt. of Assam, Panchayat and Rural Development Department, Mr. JB Ekka, Commissioner, Panchayat and Rural Development and Mr. P. Kalita, Addl. State Consultant, NRC were present before the Court. Mr. Prateek Hajela could not be present before the Court as he was out of station and on his behalf, Ms. A. Verma, learned counsel submitted on the basis of written instructions that such certificates are issued by Gaon Panchayat Secretaries and counter-signed by the Block Development Officers as per modalities framed by the Cabinet Sub-Committee of the Govt. of Assam; pursuant to which, Registrar General and Census Commissioner, India had issued instructions dated 05.05.2015.

37. Having regard to the seriousness of the issue, Court took the view that the entire matter required a closer look.

38. On 29.11.2016, Mr. Prateek Hajela, IAS, State Co-ordinator, NRC was present before the Court. He submitted that as per decision of the Cabinet Sub-Committee taken sometime in the year 2012-2013, certificate of Gaon Panchayat Secretary and counter-signed by the jurisdictional revenue authority was mentioned as one of the supporting documents for the purpose of showing

linkage of persons to parents and grand-parents in India prior to the cutoff date of 25.03.1971. He further submitted that this certificate is intended to support the residential status of a married women because post-marriage, they normally shift to a different location to reside with their husbands.

39. Having regard to the magnitude of the issue and the wide ramifications it may have, Court took the view that Mr. Hajela should file a short affidavit before the Court. Mr. PK Buragohain, Commissioner & Secretary to the Govt. of Assam, Panchayat & Rural Development Department, who was also present, submitted that at the time of issuance of the guidelines to consider such certificate as supporting document, Panchayat and Rural Development Department was not taken into confidence. That being the position, Court also directed him to place the stand of the Panchayat and Rural Development Department in the form of an affidavit.

40. Thereafter, affidavits were filed by the State Coordinator, NRC and by the Panchayat & Rural Development Department.

41. Mr. SC Keyal, learned Assistant Solicitor General submitted that he would place the written instructions furnished to him by the office of Registrar General and Census Commissioner before the Court where after, the same was submitted before the Court along with a filing memo.

42. On 25.01.2017, Mr. C. Choudhury, learned Advocate General, Assam produced before the Court the relevant file dealing with the meetings of the Cabinet Sub-Committee relating to NRC updation.

43. In his affidavit, Mr. Prateek Hajela, State Coordinator, NRC stated that the process of NRC update is governed by the Citizenship Act, 1955, particularly Section 6A thereof and the Citizenship (Registration of Citizens and Issuing of National Identity Cards) Rules, 2003, particularly, Rule 4A thereof and the Schedule appended thereto. The verification procedure and the authorities responsible for implementing the NRC update process have been mentioned.

43.1. It is stated that updation of NRC is being carried on as per modalities prescribed by the Union of India on 22.11.2014, which are based on modalities sent by the Government of Assam to the Central Government on 05.07.2013. Modalities sent by the State Government were framed by the Cabinet Sub-Committee for NRC updation, which was first constituted on 03.08.2010 and thereafter reconstituted from time to time. The modalities were framed after discussion with various stake holders. As per above modalities, eligibility for inclusion in updated NRC has to be established by production of the following documents :-

"Illustrative list of documents admissible

1. Extract of NRC, 1951.
2. Extract/certified copy of Electoral Rolls up to the midnight of 24th March 1971

(midnight).

3. Land records including tenancy records of relevant period up to 24th March, 1971 (midnight).

4. Citizenship Certificate issued by competent authority up to 24th March, 1971 (midnight).

5. Permanent Residential Certificate issued from outside the State up to 24th March, 1971 (midnight) (which all should be got verified from the issuing authority by the Registering authority).

6. Refugee registration certificate issued up to 24th March, 1971 (midnight).

7. Passport issued by the Government of India up to 24th March, 1971 (midnight).

8. Life Insurance Corporation of India insurance policy (LICI) of relevant period up to 24th March, 1971 (midnight).

9. Any license/certificate issued by any Government authority of relevant period i.e. up to 24th March, 1971 (midnight).

10. Document showing service/employment under Government/Public sector undertaking up to 24th March, 1971 (midnight).

11. Bank/Post office Accounts of relevant period i.e. up to 24th March, 1971 (midnight).

12. Birth certificates issued by the competent authority up to 24th March, 1971 (midnight). Supporting Documents

13. Certificate issued by the Secretary of the Village Panchayat countersigned by the local revenue official in respect of females who have migrated to other villages after marriage. In respect of urban areas, such certificates issued by jurisdictional circle officers would be accepted. However, these would be supporting documents only.

14. Educational certificate issued by Board/Universities up to 24th March, 1971 (midnight).

15. Ration cards issued by competent authority with official seal and signature up to 24th March, 1971 (midnight).

16. Records/processes pertaining to court up to 24th March, 1971 (midnight).

Note: Any of the documents specified in the illustrative List of Document would be accepted except Documents mentioned against Sl. 13 to 15 which may be regarded as supporting documents only."

43.2. In para 10 of the affidavit, it is stated that the above-mentioned documents included in the modalities were agreed to by various stakeholders in

the course of meetings held with them. It is further stated that the modalities, including the list of admissible documents, had reportedly been placed before the Supreme Court by the Union of India before commencement of the actual process of NRC updation in Assam. Referring to the document at Sl. No.13 i.e., certificate of the Gaon Panchayat Secretary, it is stated that it is a supporting document only to establish linkage with the ancestor. In urban areas, Executive Magistrates are allowed to issue such certificates. Letter sent by the State Co-ordinator, NRC dated 09.04.2015 to the Registrar General of India seeking approval of the certificate and the approval of Registrar General of India dated 05.05.2015, have been placed on record as annexures to the affidavit. It is also stated that in respect of the four districts comprising Bodoland Territorial Council (BTC), since there are no Gaon Panchayats, Lot Mandals have been allowed to issue such certificate to be counter-signed by Executive Magistrate/Circle Officer/Block Development Officer. Similar arrangement has been put in place for the two hill districts of Assam, namely, Karbi Anglong and Dima Hasao.

43.3. Mr. Hajela, State Coordinator, NRC has stated that about 41,94,733 such certificates have been issued by the Gaon Panchayat Secretaries across the State; 4,19,394 certificates have been issued by Circle Officers in urban areas and 62,264 in BTC and hill districts. Clarifying the nature of certificates issued by Gaon Panchayat Secretaries, the State Coordinator, NRC has stated that such certificate does not certify citizenship of the certificate holder; it is only used for establishing linkage with parents, grand-parents etc. for whom any of the other admissible documents have been submitted. These certificates are taken into consideration only if accompanied by any of the other admissible documents mentioned above. It is stated that Gaon Panchayat Secretaries have been entrusted with the responsibility of issuance of such certificates as per modalities and guidelines approved by the Ministry of Home Affairs, Govt. of India and not as per the Assam Panchayat Act, 1994. These certificates are issued on the basis of evidence placed before the Gaon Panchayat Secretary and subjected to scrutiny through field verification and also through office verification. NRC verification process is still going on and final decision about inclusion of any person in the updated NRC is yet to be taken. In the process of verification whether due diligence were shown by the Gaon Panchayat Secretaries while issuing such certificates would also be examined through evaluation of evidence based on which such certificates have been issued.

43.4. Finally, it is submitted that the entire process of NRC updation, including the various issues involved, are being very closely and frequently monitored by the Supreme Court.

43.5. Along with his affidavit, the State Coordinator has annexed an illustrative list of admissible documents and supporting documents as extracted above. From the documents annexed to the said affidavit, it is seen that a letter was issued by the Joint Secretary, Home and Political Department, Govt. of Assam (name not mentioned) to Shri Sambhu Singh, Joint Secretary (NE), Ministry of

Home Affairs, Govt. of India on 05.07.2013 stating that a meeting of the Group of Ministers was held on 04.07.2013 and as per decision taken in the meeting, Modalities/Standard Operating Procedure for NRC updation was finalized, copy of which was annexed therewith. In Modality (1), it was mentioned that in some of the districts, records upto 1971 are partially available. This might be a hurdle in determination of eligibility of the persons for entry into the updated NRC; in such cases other authenticated records shall be relied upon. An illustrative list of documents would be enclosed with each application form and the applicant may provide any of the documents specified in the list except Sl. 13 and 15 which would be used as supporting documents only. Though in Modality (1), it was mentioned that copy of illustrative list of documents was enclosed as Annexure-3 to the Modalities, the same is found not enclosed. Be that as it may, Shri Anil Goswami, Home Secretary, Government of India in his letter dated 22.11.2014 addressed to the Chief Secretary, Government of Assam with copy to the State Coordinator, NRC forwarded therewith the work flow and Modalities for preparation of NRC in the State of Assam prepared as per statutory provision, draft modalities provided by the State Government, inputs of the Ministry of Home Affairs, Government of India and the discussions held by the Registrar General and Census Commissioner, India with the Chief Secretary. The Chief Secretary was requested to have the modalities examined and to convey the formal approval of the Government of Assam on the same. In paragraph (F) of the Modalities forwarded by the Union Home Secretary, reference was made to Modality (1) as adverted to above with the list of admissible documents and supporting documents marked as Annexure-A. At Sl. No.13 is mentioned documents to be issued by Gaon Panchayat Secretaries in respect of married women in rural areas and by Circle Officers in urban areas.

43.6. There is another letter dated 09.04.2015 issued by the State Coordinator, NRC to the Registrar General of India seeking approval of the format to be issued by Gaon Panchayat Secretary/Executive Magistrate for married women. In this letter, it was stated that as per approved Modalities and work flow for NRC updation, certificates shall be issued (emphasis ours) by Gaon Panchayat Secretaries counter-signed by local revenue officials with regard to women of rural areas who have migrated to another place after marriage and by Circle Officers for such instance in urban areas. It was stated that these certificates could be submitted by married women as supporting documents to claim linkage.

43.7. What is noticeable at this stage is that as per draft Modality (1) as referred to in paragraph (F) above, this was one of the documents which an applicant could provide as supporting document; from that it virtually becomes a positive directive to the Gaon Panchayat Secretaries and Circle Officers to issue such certificates, which would become more clear from the subsequent letter. It was also stated that in view of possibility of very large number of such certificates, NRC Coordination Committee in its meeting held on 21.03.2015 decided that all Executive Magistrates may also be authorised to counter-sign such certificates and in case of women of urban areas, Executive Magistrates could also be

authorised to sign such certificates. The draft formats were forwarded to the Registrar General of India for approval. Approval was also sought for allowing the respective Block Development Officers to counter-sign such certificates. The formats annexed to the said letter dated 09.04.2015 are identical to the one issued in this case (Annexure-8 to the writ petition) as extracted above. Registrar General and Census Commissioner of India by his letter dated 05.05.2015, approved the proposal submitted by the State Coordinator, NRC.

43.8. Following the same, State Coordinator, NRC immediately wrote to all the Deputy Commissioners of the State on the same day itself i.e., on 05.05.2015 forwarding therewith the formats of certificates to be issued to married women migrating to new place on account of marriage by the Gaon Panchayat Secretaries in rural areas and by Circle Officers/Executive Magistrates in urban areas as approved by the Registrar General of India. Among other things, it was mentioned that certificates should be issued on the basis of evidence placed by the applicant and that such certificates should be issued only to establish linkage with her parents and to be used as supporting document.

43.9. Thus, according to the State Coordinator, NRC, 16 categories of documents have been mentioned, which may be relied upon by a person seeking inclusion in the updated NRC. Out of these 16 categories, certificates at Serial Nos.13, 14 and 15 would be used as supporting documents, which includes certificate issued by the Secretary of Gaon Panchayat counter-signed by local revenue authority at Sl. No.13. According to him, modalities relating to updation of NRC including list of admissible documents as above were finalized by the Cabinet Sub Committee which were forwarded to the Central Government on 05.07.2013 and which received approval of the Central Government. Further stand is that though such certificate of Gaon Panchayat Secretary is not issued as per provisions of Assam Panchayat Act, 1994, those are being issued as per Modalities agreed upon by all the stakeholders which were reportedly placed before the Supreme Court by the Govt. of India before commencement of the actual process of NRC updation.

43.10. As per statement of the State Coordinator himself, more than four million such certificates have been issued. Finally, it is stated that entire process of NRC updation is being closely and frequently monitored by the Supreme Court.

44. In his affidavit filed by Mr. P.K. Buragohain, Commissioner and Secretary to the Govt. of Assam, Panchayat and Rural Development Department, it is stated that in pursuance of guidelines issued to all the Deputy Commissioners of the State by the State Coordinator, NRC dated 05.05.2015, Gaon Panchayat Secretaries have been assigned the task of issuance of certificates in prescribed format to establish linkages of married women with her parents who have migrated to new place by virtue of marriage for the purpose of NRC updation. Accordingly, Gaon Panchayat Secretaries have been issuing such certificates as per the format designed by the NRC authority on being empowered by the State Coordinator. However, Commissioner and Secretary has stated that Panchayat and Rural Development Department is not competent to assess the veracity of

such certificates issued by the Gaon Panchayat Secretaries as per guidelines issued by State Coordinator, NRC. Therefore, Panchayat and Rural Development Department declined to offer any comment on such arrangement made by the NRC authority.

45. A perusal of the list of documents mentioned by the State Coordinator, both admissible and supporting, as extracted above, would go to show that barring the certificates issued by the Gaon Panchayat Secretaries in rural areas and by Circle Officers in urban areas, all the other documents are existing documents issued up-to the midnight of 24.03.1971. All the remaining documents are existing documents which are to be produced by an applicant seeking inclusion in updated NRC. If that be so, was it really necessary on the part of the State Government to create new certificates ostensibly for migrating married women to enable them to show linkage with their parents prior to the cut-off date of 24.03.1971. Is it really the duty of the State to facilitate such an exercise when it is for the applicant to justify his claim for inclusion in the updated NRC by producing necessary documentary evidence. Are the remaining existing documents not enough? Is it the duty of the State to facilitate creation of additional new documents, that too in millions, for inclusion of the certificate holder in updated NRC which would be prima facie proof of citizenship, as in this case, where such a certificate was relied upon by the petitioner to prove that she was an Indian citizen though such plea has been negated by the Court ?

46. The Immigrants (Expulsion from Assam) Act, 1950 was enacted by the Parliament immediately after independence. As per the statement of objects and reasons for enactment of the said Act, it was mentioned that during the last few months, a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. It was stated such large migration was disturbing the economy of the province besides giving rise to a serious law and order problem. Accordingly, the said Act was enacted for expulsion of certain immigrants from Assam. While Section 2 deals with power to order expulsion of certain immigrants, Section 5 provides for penalty for contravention or attempted contravention or abetting contravention or harbouring person contravening such order etc. This was Parliament speaking in the year 1950, 67 years ago.

47. In *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665, whereby Supreme Court had declared the Illegal Migrants (Determination by Tribunals) Act, 1983 as unconstitutional, amongst others on the ground of contravening Article 355 of the Constitution of India, Supreme Court held that 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 his date of birth, place of birth, name of his parents, their place of birth and citizenship. Sometimes place of birth of grand-parents may also be relevant. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After saying so, Supreme Court emphasized

that the general rule in the leading democracies of the world is that where a person claims to be a citizen of a particular country, the burden is upon him to prove that he is a citizen of that country. In the same judgment, Supreme Court declared that there could be no manner of doubt that the State of Assam is facing "external aggression" and "internal disturbance" on account of large scale influx of Bangladeshi nationals into the State. Supreme Court further held that presence of such a large number of illegal migrants from Bangladesh, which runs into millions, is in fact an "aggression" on the State of Assam and has also contributed significantly in causing serious "internal disturbances" in the shape of insurgency of alarming proportion making the life of the people of Assam wholly insecure. Therefore, it becomes the duty of the Union of India to take all measures for protection of the State of Assam from such "external aggression" and "internal disturbance" as enjoined in Article 355 of the Constitution.

48. In the second Sonowal Case, i.e., *Sarbananda Sonowal v. Union of India*, (2007) 1 SCC 174, whereby the Foreigners (Tribunals) Amendment Order, 2006 was quashed, Supreme Court observed that in the first Sonowall case, it had noticed the lack of will on the part of the Central Government to proceed against the foreigners. Therefore, observing that as held in Sonowall, such uncontrolled immigration of foreigners into the North-Eastern States posed a threat to the integrity of the nation, the Supreme Court once again lamented that there is a lack of will in the matter of ensuring that illegal immigrants are sent out of the country. In this case also, the Supreme Court reiterated what was stated in Sonowall that burden of proof would be on whom who claims to be a citizen of India not only within the meaning of the provisions of the Constitution of India but also within the provisions of the Citizenship Act, 1955, as amended, as it is he who would be possessing the necessary documents.

49. In *Assam Sanmilita Mahasangha v. Union of India*, (2015) 3 SCC 1, Supreme Court referred to the report of the then Governor of Assam Lt. General S.K. Sinha dated 08.11.1998 which he had submitted to the then President of India whereby the dangerous consequences of large scale illegal migration from Bangladesh, both for the people of Assam and more for the nation as a whole, was highlighted. After referring to the judgment in Sonowall, Supreme Court in paragraph-16 referred to the submissions made by the Minister of State for Home Affairs, Government of India before the Parliament on 14.07.2004 to highlight the enormity of the problem. Paragraph-16 reads as under :-

"16. On 14.07.2004, in response to an unstarred question pertaining to deportation of illegal Bangladeshi migrants, the Minister of State, Home Affairs, submitted a statement to Parliament indicating therein that the estimated number of illegal Bangladeshi immigrants into India as on 31.12.2001 was 1.20 crores, out of which 50 lakhs were in Assam."

50. Thus, as per the statement of Minister of State for Home Affairs, Govt. of India made before the Parliament on 14.07.2004 as referred to by the Supreme Court in *Assam Sanmilita Mahasangha* (supra), as on 31.12.2001, the estimated

number of illegal Bangladeshi migrants in India was 1.20 crores out of which 50 lakhs were in Assam.

51. These figures as highlighted by the Supreme Court should be an eye-opener for all right thinking citizens of the country.

52. In the backdrop of such startling facts and stringent views expressed by the Supreme Court, was it really necessary for the Govt. of Assam to allow creation of new documents to support inclusion of names in the updated NRC? Is it really in the public interest or is it in the national interest? The enormity of the issue can be gauged from the candid admission of the State Coordinator, NRC himself that more than four million of such documents have been issued and submitted before the NRC authorities in support of claims to inclusion of names in updated NRC. The figure is not only alarming but also has an uncanny resemblance to the estimated number of foreigners as per statement of Union Minister of State for Home Affairs made before the Parliament and referred to by the Supreme Court, as extracted above.

53. When the State is facing "external aggression" and "internal disturbance" due to the presence of a large number of illegal migrants, as held by the Supreme Court, where is the need to issue special directives to Gaon Panchayat Secretaries for creation of new documents to facilitate inclusion of names in updated NRC. While on the one hand the Supreme Court has lamented the lack of political will to proceed against the foreigners and to send them out of the country, on the other hand we see an over-exuberance to create additional documents running into millions to facilitate inclusion of names in updated NRC.

54. The Citizenship Act, 1955 is an Act to provide for the acquisition and determination of Indian citizenship. Section 6A was inserted in the said Act following signing of the Assam Accord and deals with special provisions as to citizenship of persons covered by the Assam Accord. Without entering into details at this stage, all that can be said is that as per the said provision, foreigners from the specified territory i.e., Bangladesh who came to Assam before 01-01-1966 would be deemed to be citizens of India w.e.f. 01-01-1966; those foreigners who came to Assam on or after 01-01-1966 but before 25-03-1971 upon detection would be disenfranchised for a period of 10 years from the date of registration where after they would regain back their voting rights. In other words, those foreigners who came to Assam on or after 25-03-1971 upon detection as foreigners would be deported from the country. Section 14A provides for maintenance of NRC and issue of national identity card. Section 18 is the rule making provision.

54.1. As per the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, framed in exercise of the powers conferred by Sub-Sections (1) and (3) of Section 18 of the Citizenship Act, 1955, more particularly under Rule 3 thereof, the Registrar General of Citizen Registration, who is the Registrar General of India appointed under the Registration of Births and Deaths

Act, 1966, shall establish and maintain the NRC containing various particulars in respect of every citizen, such as, name, father's name, mother's name, sex, date of birth, place of birth, residential address (present and permanent), marital status, if married name of spouse etc., as mentioned in Sub-Rule (3) of Rule 3. Rule 4A provides for special provisions as to NRC in the State of Assam. Sub-Rule (2) of Rule 4A says that the Central Government for the purpose of preparation of NRC in the State of Assam shall invite applications from all the residents for collection of specified particulars relating to each family and individuals residing in a local area in the State including citizenship status based on the NRC, 1951 and the electoral rolls upto the midnight of March 24, 1971. As per Rule 7, it shall be the responsibility of the head of every family to give the correct details of name and number of members and other particulars as specified in Sub-Rule (3) of Rule 3 of the family of which he is the head; it shall also be the responsibility of every citizen to provide correct individual particulars to the Local Registrar of Citizen Registration. As per Rule 12 which deals with modification of entries in NRC, the Sub-District or Taluk Registrar on an application made by the concerned person and after due verification, may authorize the modification of any entry in the NRC in respect of :-

- (a) change of name, or
- (b) change of parent's name in case applicant's status has been altered by adoption, or
- (c) change of residential address, or
- (d) change of marital status, or
- (e) change of sex.

55. From a conjoint reading of the relevant provisions of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, as alluded to herein above, it is quite evident that it is the duty of an applicant to provide specified particulars of each member of his family for the purpose of entry into updated NRC. In-fact it is the responsibility of the head of every family to furnish the correct details and also the responsibility of every citizen to provide correct individual particulars. Thus, it is the duty and responsibility of the concerned applicant to furnish the specified particulars not only of himself but also of his family members. In the case of Assam the entire exercise of determination of eligibility for entry in the updated NRC is based on the record i.e. NRC 1951 and the electoral rolls upto 1971; the updating shall be carried out by inviting applications from the concerned person. The aforesaid Rules nowhere provide that the concerned authorities engaged in the task of preparation of NRC should facilitate creation of new documents which would act as an aid to an applicant seeking inclusion in the updated NRC.

56. Thus the decision to allow issuance of residentship certificate by Gaon Panchayat Secretaries countersigned by Block Development Officers in rural

areas and by Circle Officers/Executive Magistrates in urban areas and subsequent issuance of such certificates are contrary to the mandate of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. Moreover, on the face of the express intent of Parliament as manifest through the Immigrants (Expulsion from Assam) Act, 1950 and the serious view taken by the Supreme Court regarding the dangerous consequences of influx of large number of illegal migrants from Bangladesh into Assam, as alluded to above, directive to issue such certificates and issuance of such certificates cannot be said to be in the national interest.

57. With the above misgivings, we perused the file produced by the learned Advocate General. On perusal of the file we find that the file handed over to us bears file No. PLB.119/2010/Pt. of the Political Department with the caption "Infrastructure for updation of NRC, 1951". On top of the file is marked "confidential". The file contains pages 1 to 123 of note-sheets and pages 1 to 130 of other documents though there are many pages in between which are not paginated. The note sheets cover the period from 04-10-2010 to 24-12-2016.

57.1. As per background note prepared by the Political (B) Department, Government of Assam and forwarded to the Principal Secretary to the Hon'ble Chief Minister, Assam on 14-05-2013, it was mentioned that a tripartite meeting was held at New Delhi on 05-05-2005 between Central Government, State Government and All Assam Students Union (AASU) wherein it was decided that NRC, 1951 be updated by including the names of persons from the electoral rolls upto 1971 and their descendants. Thereafter, a Cabinet Sub-Committee was constituted on 30-08-2007 headed by Dr. Bhumidhar Barman, the then Revenue Minister, to examine the modalities for updating NRC. Recommendations made by this Cabinet Sub-Committee was accepted by the Cabinet and sent to Government of India. A Cabinet Sub-Committee was again set up on 03-08-2010 to make recommendations for removing the difficulties and simplifying the procedure in NRC updation. Thereafter, a new Cabinet Sub-Committee was constituted on 21-07-2011 headed by Shri Prithvi Majhi, the then Minister for Revenue and Disaster Management etc. This Cabinet Sub-Committee made certain recommendations including enclosing of an illustrative list of documents with each application form.

57.2. In the minutes of meeting held on 01-02-2010 between officials of the Government of Assam in the Home and Political Department and members of All Assam Minorities Students Union (AAMSU) regarding updation of NRC in Barpeta district, one of the demands of AAMSU was that certificate issued by Gaon Panchayat and countersigned by Government official should be acceptable for all persons and not only for women.

57.3. This would go to show that the decision to accept certificate of Gaon Panchayat Secretary countersigned by Government official was taken prior to 01-02-2010.

57.4. The illustrative list of documents including the certificate of Gaon Panchayat Secretary countersigned by local revenue official in respect of women migrating to another village after marriage at Sl. No. (m) is found circulated to various authorities. In a letter dated 13-12-2010 of AAMSU addressed to the Chairman, Cabinet Sub-Committee, it was mentioned that any one of the illustrative documents should be accepted for inclusion of name in NRC. In respect of the illustrative document at Sl. No.(m) i.e., certificate of Gaon Panchayat Secretary it was suggested that there should be a full stop after the word "revenue official" and the remaining words should be deleted. In other words, such a certificate should be made applicable to all persons and not confined to married women only.

57.5. In the letter dated 02-01-2013 of the Joint Secretary to the Government of Assam, Home and Political Department addressed to the Deputy Secretary to the Government of India, Ministry of Home Affairs, NE IV, it was submitted on behalf of the Government of Assam that in the absence of the main documents i.e. copies of NRC, 1951 and electoral rolls upto 1971, applicants could submit documents specified in the illustrative list of documents for inclusion of names in NRC. In the Modalities and Standard Operating Procedure at Sl. No.11, it was mentioned that an illustrative list of documents would be enclosed with each application form and the applicant may provide any of the documents specified in the illustrative list except Sl.No. 13 and 15 which would be used as supporting documents only. Be it stated that the document at Sl. No.13 is the certificate of the Gaon Panchayat Secretary.

57.6. A meeting of the Cabinet Sub-Committee was held on 04-07-2013 to discuss certain suggestions given by AASU in respect of the Modalities already sent to the Government of India for preparation/updation of NRC. But from the minutes of the said meeting it does not appear that issuance of certificate by Gaon Panchayat Secretary was discussed in that meeting.

58. The net result of the above exercise is creation of 41,94,733 new certificates by the Gaon Panchayat Secretaries in rural areas; 4,19,394 by the Circle Officers in urban areas and 62,264 by Lot Mondals in BTC and hill districts, in all a total of whopping 46,76,391 documents. We shudder to think about the time, energy and manpower requirement and money spent while scrutinizing such newly created/additional documents, besides the ability to correctly evaluate the evidence. Though the State Coordinator has stated that these certificates would be subjected to scrutiny through field and office verification, that is wholly besides the point. Moreover, those who are entrusted to verify and scrutinize such documents are not judicially trained to analyse evidence like judicial officers or members of Foreigners Tribunal.

59. Having noticed the above, we would like to clarify that we are acutely aware of the fact that the Supreme Court is monitoring the process of NRC updation. However, when such a document (Annexure-8 to the writ petition) came to our notice, we could not ignore the same as it would have amounted to shirking our

constitutional responsibilities. Accordingly, we have gone into the larger issue and have stated what we thought we should say.

60. However, as already discussed, we can also examine such a certificate from another angle, viz, its evidentiary relevance. This we are doing because such a certificate was pressed into service in the present writ petition in support of the claim of the petitioner to be an Indian citizen. As per the State Coordinator, NRC himself, more than 4 million such certificates have been issued to be used as supporting documents by the certificate holders to claim that they are citizens of India.

61. Secretary of a Gaon Panchayat is appointed under Section 140(1) of the Assam Panchayat Act, 1994 (1994 Act) in terms of the provisions contained in Section 30(1) of the 1994 Act. Sub-Section (2) of Section 30 of the 1994 Act mentions the powers and duties of the Secretary of a Gaon Panchayat. Secretary shall be the in-charge of the office of the Gaon Panchayat and shall perform and exercise all the powers and duties imposed or conferred upon him by or under the 1994 Act or Rules and Bye-laws framed thereunder. The Gaon Panchayat Secretary, therefore, is to perform and exercise the powers and duties as specified in the 1994 Act or under the Rules and Bye-laws framed thereunder.

62. Section 19 of the 1994 Act provides for functions of the Gaon Panchayat, namely, general function, agriculture including agriculture extension, animal husbandry, dairy development and poultry, fisheries, social and farm forestry/minor forest produce, fuel and fodder, etc. There are altogether 30 functions to be performed by the Gaon Panchayat as specified in Section 19 of the 1994 Act.

63. Section 21 of the 1994 Act empowers a Gaon Panchayat to do all acts necessary for or incidental to the carrying out of the functions entrusted, assigned or delegated to it and in particular and without prejudice to the aforesaid powers to exercise all powers specified in the 1994 Act.

64. The 1994 Act does not specifically lay down which of the functions of the Gaon Panchayat is to be exercised by the Secretary. The Assam Panchayat (Administrative) Rules, 2002 (2002 Rules) framed in exercise of the powers conferred by Section 141 of the 1994 Act also does not specifically lay down the powers and functions of Secretary of a Gaon Panchayat.

65. As discussed above, Secretary of a Gaon Panchayat under Section 30(2) of the 1994 Act is also required to perform and exercise the powers and duties imposed upon him by any Bye-laws made under the 1994 Act. The expression "Bye-laws" has been defined in Section 2(24) of the 1994 Act to mean the Bye-law made and approved under the provisions of the 1994 Act. Section 116 of the 1994 Act empowers the Gaon Panchayat to make Bye-laws to carry out the purposes of the 1994 Act in so far it relates to its powers and duties and also to discharge the functions and duties entrusted to it under Section 19 of the 1994 Act. Such Bye-law has to be made with the previous sanction of the Zilla Parishad as well as previous publication in such manner as may be prescribed.

66. A Gaon Panchayat, therefore, by framing Bye-laws can provide for powers and functions of its Secretary by virtue of Sub-Section (2) of Section 30 of the 1994 Act. There being no stipulation either in the 1994 Act or in the 2002 Rules relating to power and function of the Secretary of a Gaon Panchayat, such power and function can be stipulated in the Bye-laws to be made under Section 116 of the 1994 Act. However, powers and functions of the Secretary cannot exceed or traverse beyond the powers, functions and duties of a Gaon Panchayat as specified in Section 19 of the 1994 Act.

67. Though certain powers and functions are assigned to the Secretary of a Gaon Panchayat under the provisions of the Assam Panchayat (Financial) Rules, 2002, those do not relate to the Secretary's authority to issue residency certificate.

68. As discussed above, Secretary of a Gaon Panchayat, in any case, cannot exercise any power or function beyond those assigned to a Gaon Panchayat under Section 19 of the 1994 Act. None of the provisions of the 1994 Act, 2002 Rules and the Assam Panchayat (Financial) Rules, 2002 provide for maintenance of a register relating to residents of any local area comprising the Gaon Panchayat. Therefore, the certificates that are being issued by the Gaon Panchayat Secretaries certifying residency of the certificate holders within their jurisdictional area and counter-signed by the Block Development Officers are beyond the mandate of the 1994 Act and the Rules framed thereunder.

69. Section 74 of the Indian Evidence Act, 1872 (Evidence Act) specifies which of the documents are "public documents". It says that documents forming acts or records of the act - (i) of the sovereign authority, (ii) of official bodies and Tribunals, and (iii) of public officers, legislative, judicial and executive of any part of India or of the commonwealth or of a foreign country as well as public records kept in any state of private documents are "public documents".

70. Section 75 of the Evidence Act provides that all other documents are private which means that all documents which are not "public documents" are private documents. Section 76 of the Evidence Act empowers every public officer having custody of a "public document" to issue certified copy of such "public document" and contents of such document or part of it which can be proved by production of the certified copy by virtue of Section 77 of the Evidence Act.

71. From the above, it is, therefore, evident that the certificate of residence issued by a Secretary of Gaon Panchayat is not a "public document" within the meaning of Section 74 of the Evidence Act as such certificate is not issued on the basis of any record required to be maintained by a Gaon Panchayat under the provisions of the 1994 Act or the Rules framed thereunder. Such a document, therefore, is not admissible as a "public document" as it partakes the character of a private document. Such a certificate would also not partake the character of a "public document" merely on account of counter-signing of the same by a Block Development Officer. Therefore, the contents as well as execution of such a document would have to be proved by examining the person issuing the same.

By adducing evidence, he has to satisfy the Tribunal or the High Court, if the necessity so arises, about his personal knowledge relating to the residence of the person in whose favour such residency certificate has been issued. In other words, he has to prove not only the contents of the certificate but also the truthfulness of the same.

72. Summing up, we hold that such a certificate has no statutory sanctity, being beyond the mandate of the 1994 Act and the Rules framed thereunder. We have already held that issuance of such certificates is contrary to the mandate of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, besides not being in the national interest.

73. Therefore, if a Gaon Panchayat Secretary issues such a certificate, it would at best be a private document. Being a private document, he will have to take full responsibility as to the contents of the certificate with all its attendant consequences. If a residency certificate issued by such Gaon Panchayat Secretary is disbelieved by a Foreigners Tribunal or by the High Court as in the present case and the certificate holder is declared to be a foreigner, the concerned Gaon Panchayat Secretary would run the risk of issuing such certificate to a person who has been declared to be a foreigner. Such an act may be construed to be an act of harbouring an illegal migrant, which may amount to a gross misconduct exposing himself to departmental action besides attracting penal consequences. Such consequences may also visit the counter-signing authority.

74. Record produced by the learned Advocate General is returned back.

75. While the writ petition is dismissed as declared in paragraph 31, the larger issue is answered as above.