Introduction

Understanding Jurisprudence on Citizenship in Assam, CJP's second Legal and Paralegal Training Workshop is scheduled to be held in Assam on Sunday, May 15, 2022. As is our regular practice and part of our vision, we widely share understanding and analysis of developments in jurisprudence within Foreigners Tribunals, the Guwahati High Court and the Supreme Court. This detailed analysis on crucial judgements and jurisprudence around the question is a step towards that. We are happy that this is shared widely. We request only an acknowledgement to the CJP Legal Research Team at CJP (www.cjp.org.in)

ANALYSIS OF JUDGEMENTS POST 2019 CITIZENSHIP ISSUE

List of Judgements that have been uploaded for reference

A) Judgments cited in the table

20211124 Rajendra das and others vs UoI WP-C 8295_2019

https://cjp.org.in/wp-content/uploads/2022/05/20211124-Rajendra-das-and-others-vs-UoI-WP-C-8295_2019.pdf

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20211110 Pushpa Rani Dhar vs UoI WP-C 114_2018

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20220408 Gauhati HC Citizenship should be on basis of merit (Rahima Khatun) WP-C 8284_2019

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20210129 Nasima Begum vs UoI WP-C 8838_2019

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20210519 Gauhati HC Forward List of Female FT inmates and Children PIL (Suo Moto) 4_2020

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SL NO	CASE NO	PARTIES	REMARKS
1	**WPC 8295/19**	**RAJENDRA DAS & ORS v/s UOI**	The Petitioners in this case were proceeded before the Foreigners'Tribunal-4th, Cachar, Silchar, and an ex-parte order was passed on 18.01.2018 against the petitioners, as the petitioners failed to appear before the learned Tribunal after being served notice and also did not file written statement after seeking time to do so. Subsequently, the petitioner No.1, approached the Tribunal by filing a *miscellaneous* case for setting aside the said ex-parte opinion dated 18.01.2018, which however, was rejected by the learned Tribunal on 26.04.2018 on the ground that no sufficient cause was shown by the petitioner for setting aside the ex-parte order. In that Order, the FT also observed, on the strength of the decision earlier rendered in Rukia Begum v/s Union of India & Ors, that any application to set aside an ex-parte opinion should not be entertained in a routine manner. A person stripped of citizenship would be rendered a stateless person, if any other country refuses to accept him or her as its citizen. Such is the overarching significance and importance of citizenship to a person. Therefore, any such proceeding which has the potential of depriving citizenship, ought to be accordingly, examined from that perspective also. In a normal proceeding before a court of law, in spite of any adverse finding, the person would continue to enjoy the rights as a citizen.

			Though a proceeding under the Foreigners Tribunal, is merely quasi-judicial in nature, yet an adverse opinion by the Tribunal that the proceedee is a foreigner almost completely seals the fate of the proceedee as far as the issue of citizenship is concerned, as the authorities are expected to declare such a person a foreigner in terms of the opinion of the Tribunal and he would be liable to be immediately detained and deported. Thus, ordinarily, an Opinion of the Tribunal, ought to be given after analyzing *all the available* evidence that may be produced by the proceedee and not by way of default as has been done in the present case. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20211124-Rajendra-das-and-others-vs-UoI-WP-C-8295_2019.pdf **Link to Cited Judgement:** Rukia Begum v/s Union of India WPC 6344/2016 decided on 29.05.2018 https://cjp.org.in/wp-content/uploads/2022/05/Rukia-Begum-vs-UOI-2018_5_gau_lr_438.pdf
2	**WP(C) 6544/19**	**ASORUDDN v/s UOI**	Petitioner drew attention of the Court to the voters' lists of 1965,1970 and 1971, wherein the names of his grandparents, parents and the petitioner himself have been shown to be included in respect of village Sahariapam, Mouza-Moirabari, District-Nagaon, under Assam Legislative Assembly Constituency, No.84 Laharighat and No.83 Dhing. Accordingly, it was submitted that otherwise, there are sufficient documents and evidences to prove that he is an Indian citizen. However, these are factual aspects which are to be ordinarily considered by the Foreigners' Tribunal and not by High Court. However, if the petitioner is able to prove the aforesaid documents, certainly, he can make a reasonable claim that he is an Indian citizen and not a foreigner, ……that it will be most appropriate to remand the matter to the Foreigners' Tribunal (2nd), Morigaon, Assam for reconsideration.

			Considering the circumstances as narrated by the petitioner, ……. that there were sufficient reasons for the petitioner for not being able to appear before the Foreigners' Tribunal to enable the Tribunal to consider his claim on merit and accordingly, court provided another opportunity to the petitioner to appear before the Foreigners' Tribunal to prove that he is an Indian, not a foreigner. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210909-Gauhati-HC-Citizenship-important-right.pdf
3	**WP(C) 2434/20**	**GOLAPI BEGUM v/s UOI**	Power of the Central Government to make reference in terms of Order 2(1) has since been delegated to the concerned Superintendents of Police. By memo No. BSA/B/06/07/314-37 dated 31.08.2007, the reference was made by the Superintendent of Police (Border), Baksa district on the basis of investigation and enquiry that the petitioner along with other family members are foreigners coming into Assam after 01.01.1966 and before 25.03.1971. The Tribunal entered into the reference on the grounds and reasons mentioned therein. It arrived at the conclusion recorded in Paragraph-18 of the opinion that the petitioner had entered into India illegally after 24.03.1971 from the specified territory and the reference was disposed of by holding that the proceedee (petitioner) is a foreigner. In terms of Order 2(1), the Tribunal gets its jurisdiction to render its opinion only when any reference is made to it under Order of the Foreigners (Tribunals for Assam) Order, 2006. Without a reference being made, Tribunal cannot exercise its jurisdiction to opine that a person is or is not a foreigner. It is only when a reference is made as above that the Tribunal assumes jurisdiction to render its opinion. Tribunal will have to confine its opinion to the terms of the reference made to it and not go beyond the same. Reference was that petitioner was a foreigner who had illegally entered into India (Assam) from the specified territory during the period 01.01.1966 to 24.03.1971. The Tribunal was

			required to answer the reference either in favour of the State or in favour of the proceedee. If the reference was to be answered in favour of the State and it was answered rightly so by the Tribunal, the natural corollary would be that petitioner is a foreigner belonging to the 01.01.1966 to 24.03.1971 stream. Therefore, the view taken by the Tribunal that the Foreigners' Act, 1946 or the Orders framed thereunder do not bind it to the terms of the reference is not correct. The Tribunal cannot suo motu assume jurisdiction to give an opinion which is not sought. No opinion was sought from the Tribunal as to whether the petitioner entered India after 24.03.1971 or not. The issue of the Foreigners' Tribunal assuming jurisdiction beyond the reference has been held to be not permissible by this Court in Santosh Das Vs. Union of India reported in (2017) 2 GLT 1065 and in WP(C) No.1293/2021 [Sona Kha @Sona Khan vs. Union of India and Ors.] disposed of on 24.03.2021. <u>Tribunal went beyond the reference and rendered its opinion that the petitioner and her family members are illegal immigrants who entered India after 25.03.1971, which is clearly impermissible in law.</u> Impugned opinion dated 29.11.2019 passed in F.T. Case No.126/Baksa/2017 set aside and matter remanded to the Foreigners Tribunal, Baksa, Tamulpur for a fresh decision in terms of the reference of Superintendent of Police (Border), Baksa district in F.T. CaseNo.51/07 issued vide Memo No. BSA/B/06/07/314-37 dated 31.08.2007 made. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210715-Gauhati-HC-Golapi-Begum-vs-UoI.pdf
4	**WP(C)/206/18**	**SMTI SEFALI RANI DAS v/s UOI**	After being duly served the notice, the petitioner appeared before the Foreigners' Tribunal. According to the petitioner, she filed her written statement along with certain documents. However, unfortunately the petitioner did not get proper legal advice from her engaged counsel, who not only failed to give

			proper legal advice but also failed to appear before the Foreigners' Tribunal. The petitioner, also not being well versed with the legal provisions and also because of the communication gap between the petitioner and her engaged counsel, remained absent before the learned Tribunal on several occasions resulting in the Tribunal passing the ex-parte order declaring her to be a foreigner, as mentioned in paragraph 14 of the writ petition. It was submitted that there was no willful negligence or disregard on the part of the petitioner about the proceeding as the petitioner duly appeared and filed her written statement. High Court Observed that Citizenship being a very important right of a person should ordinarily be decided on merit rather than by way of default. Consequently, the impugned order dated 19.09.2017 passed by the learned Member, Foreigners' Tribunal 6th, Silchar, Assam in F.T. 6th Case No.404/2015 was set aside. Directing the petitioner to appear before the Foreigners' Tribunal within a period of 1(one) month **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210720-Gauhati-HC-Citizenship-should-be-on-merit.pdf
5	**WP(C) 114/18**	**SMTI PUSPA RANI DHAR WP(C)**	Firstly, the learned Trial Court rejected the certificate dated 31.01.2003 issued by the Railway authorities exhibited as Exbt.-A, as irrelevant. The said certificate clearly indicates the name of the petitioner's husband Mrinal Kanti Dhar, who was earlier serving in the N.F. Railway and as per the said certificate, he was born on 01.02.1943 and he was appointed in the Railways on16.06.1962 and he retired on 31.01.2003. The said certificate also shows the name of the petitioner as the wife having date of birth on 01.01.1952 and also their children, namely, Joysree Dhar, Uday Sankar Dhar, Gita Sree Dhar, RupaSree Dhar, Rabi Sankar Dhar and Barun Kanti Dhar. 4.

			The High Court observed that "We fail to understand, how the said document can be said to be irrelevant and liable to be rejected. Rather it shows that the petitioner who was married to the aforesaid Mrinal Kanti Dhar, was serving in the Indian Railways and as such, there is a remote possibility of the petitioner being a foreigner and this document will show, in absence of any contrary proof, that in probability the petitioner would be an Indian as an Indian is most unlikely to marry a foreigner." Secondly, it was noted that the learned Tribunal had accepted a certificate issued in Calcutta by the Bengal Medical Union dated 05.04.1966, in which it was certified that one Hirendra Nath Paul whom the petitioner claims to be her father, is a member of the said Union. This document would also indicate that if his father was in Bengal in 1966, which is a strong corroborative evidence that the petitioner is an Indian. Further, the learned Tribunal had accepted the voters' lists of 1997, 2005 & 2016 relied upon by the petitioner. In the aforesaid voters' lists, the name of the petitioner is shown along with her husband Mrinal Kanti Dhar. The learned Tribunal discarded one land document of 2008 by stating that it is totally indistinct and not in a readable condition. Though in the original, the same is not clearly legible, yet it can be seen that the name recorded in the said land document is Smt. Puspa Rani Dhar, W/O Mrinal Kanti Dhar. Matter remanded back for further consideration. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20211110-Pushpa-Rani-Dhar-vs-UoI-WP-C-114_2018.pdf
6	**WP(C)/8284/19**	**RAHIMA KHATUN v/s UOI**	Though notice was served, according to the petitioner, upon receipt of notice from the Foreigners Tribunal, the son of the petitioner appeared on her behalf without her knowledge. But, unfortunately, the petitioner's son neglected to appear before the Tribunal on various dates fixed by the Tribunal resulting in passing of the ex-parte order.

			By virtue of citizenship, one becomes a member of a sovereign country and becomes entitled to various rights and privileges granted by law in the country and, as such, if any question arises about citizenship of a person, ……., the same should be adjudicated as far as possible on the basis of merit and on hearing the person concerned. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20220408-Gauhati-HC-Citizenship-should-be-on-basis-of-merit-Rahima-Khatun.pdf
7	**WP(C) 8838/19**	**NASHIMA@ NASIMA BEGUM v/s UOI**	The petitioner studied in Indira Gandhi L.P. School and the Headmaster of the school issued her a certificate displaying the petitioner to be the daughter of Sultan Ansari. In fact this is the only document showing her linkage with Sultan Ansari @ Sultan Miya. For the said purpose the petitioner produced two other documents, namely, a Gaonbura certificate and a certificate issued by the Secretary of the Panchayat. The Gaonbura and the Secretary of the Panchayat were not examined before the Tribunal. So far as the school certificate is concerned, the Tribunal albeit at the behest of the petitioner, issued summons to the Headmaster, but the Headmaster did not appear before the Tribunal. Therefore, bailable warrant of arrest was issued against the said Headmaster. Finally, the Tribunal issued non-bailable warrant of arrest on 13.11.2017 for securing the presence of the Headmaster of Indira Gandhi L.P. School but police did not execute the said warrant of arrest. On 15.12.2017 and on 18.01.2018 the Tribunal passed two orders asking the I/C(B) Branch, Gohpur to produce the aforesaid Headmaster of the said school but the endeavour of the Tribunal proved to be futile. Therefore, on 16.03.2018 the Tribunal again passed a similar order asking the I/C(B) to execute the warrant of arrest. This time also nothing happened. On several dates subsequent thereto the Tribunal passed different orders for securing the presence of the Headmaster.

			Finally, the Tribunal delivered the opinion without examination of the Headmaster and declared the petitioner to be a foreigner. Now it is clear on the face of the record that the school certificate issued by the Headmaster of Indira Gandhi L.P. School is the only document to prove the linkage between the petitioner and her projected father Sultan Ansari @ Sultan Miya. The Court held that "There should not be any quarrel with the proposition of fact that the petitioner did not get the opportunity to prove that document. Citizenship of a person is a valuable right. " "Section 4 of the Foreigners (Tribunals) Order,1964 empowers the Tribunal with the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and the appearance of a Judicial Magistrate, 1st Class under the Code of Criminal Procedure, 1973 in respect of summoning and enforcing the attendance of any person and to examine him or her on oath. In the case in hand it appears that the Tribunal acted half-heartedly while trying to enforce the attendance of the Headmaster of Indira Gandhi L.P. School. "…….. citizenship of a person is a valuable right and here in this matter the school certificate is the only document to prove the linkage between the petitioner and her father. "The petitioner could not prove the school certificate only because of the failure of the Tribunal to enforce the attendance of the Headmaster of Indira Gandhi L.P. School. "Therefore, the impugned order suffers from perversity and for this reason alone the impugned order was held to be not sustainable. Matter remanded back. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210129-Nasima-Begum-vs-UoI-Case-No-WP-C-8838_2019.pdf
8	**WP(C) 6404/19**	**MUZIBUR RAHMAN v/s UOI**	It is seen from the order dated 21.12.2018 that notice was deemed to have been served on the petitioner in terms of para 3(5)(g) of the Foreigners (Tribunal) Order, 1964. However, from the Report of the Process Server at page 38, it is seen that as the petitioner could not be found, therefore,

			copy of the notice was affixed on the notice board of the office of the Gaonburah. Having regard to the manner of service, as above, the court held that substituted service of notice, as required to be done under 3(5)(g) of the Foreigners(Tribunals) Order, 1964, was not complied with…….. the petitioner was denied opportunity of hearing to contest the case on merits. It clearly appears that no notice was served on the petitioner by affixing a copy of the notice pasted in a conspicuous place of his residence, witness by one respectable person of the locality who has given his signature or thumb impression and has agreed to be available and stand as witness with regard to such service of notice. Matter remanded back for fresh consideration. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20190906-Muzibur-Rehman-vs-UoI-Case-No.-WP-C-6404_2019.pdf
9	**WP(C) 6927/19**	**BIJOY KUMAR DAS v/s UOI**	Petitioner's case is that after entering appearance before the learned Tribunal, he was suffering from serious liver and chronic kidney ailments, as a result of which, he had lost track of the proceeding. There was substantial delay in filing the writ petition inasmuch as the order assailed in the proceeding was passed on 22-05-2015, i.e. more than four years back. Having regard to the statements made in the writ petition, court was of the view that the petitioner has not succeeded in explaining the delay in approaching the Court in a satisfactory manner. However, the Court noticed that the petitioner had apparently filed his written statement by enclosing photocopies of the documents in support of his claim of citizenship, which includes Voters' List of 1970 containing his name and also the citizenship certificate issued by the competent authority.

			In the impugned order, the learned Tribunal has not referred to the statements made in the written statement or the documents filed by the petitioner. Law requires the proceedee to furnish proof of his citizenship and therefore, the burden of proof will always be on the proceedee. However, even if a proceedee remains absent after filing written statement and documents, the learned Tribunal would be dutybound to take note of the materials available on record before rendering its opinion. The mere fact that the proceedee has remained absent after filing written statement and documents cannot be a justification for the Tribunal to give an opinion against the proceedee without considering the materials brought on record. The petitioner granted one more opportunity to appear before the Tribunal and contest the matter. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20191220-Bijoy-Kumar-Das-vs-Union-of-India-Gauhati-HC-Ray-of-hope-for-ex-parte-FT-orders.pdf
10	WP(C) 7426/19	MUNINDRA BISWAS v/s UOI	Exhibit-3 is the Registered Sale Deed of 1964; Exhibit-4 is the Sale Deed dated 23.04.1970; The Tribunal has held that Exhibits 3 and 4 were not proved in the manner as required by law. Since no voter lists prior to 1997 could be furnished by the petitioner, the Tribunal held that the petitioner failed to prove that his parents entered into Assam prior to 01.01.1966. On the conclusion of hearing, the Tribunal declared the petitioner to be a foreigner of post 1971 stream. Sale Deeds are private documents, therefore, they must be proved in accordance with law. In the case of Narbada Devi Gupta Vs. Birendra Kumar Jaiswal reported in (2003) 8 SSC 745, the Supreme Court has reiterated the legal position that

			marking of documents as exhibits and their proof are two different legal concepts. Mere production and marking of a document as exhibits cannot be held to be due proof of its contents. Execution of a document has to be proved by admissible evidence i.e., by the evidence of those persons who can vouch safe for the truth of the facts in issue. Regarding Electoral Photo Identity Card High Court in the case of Md. Babul Islam Vs. State of Assam [WP(C) No. 3547 of 2016] has held that Electoral Photo Identity Card is not a proof of citizenship. The petitioner herein has failed to file voter lists prior to 1997, thereby the petitioner failed to prove that he has been staying in Assam prior to 25.03.1971. It was held that the Tribunal has correctly appreciated the evidence placed before it and arrived at a correct finding. There is no perversity in the decision of the Tribunal. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20200212-Munidra-Biswas-vs-UoI-Case-No-WP-C-7426_2019.pdf
11	WP(C) 1900/19	NUR BEGUM v/s UOI	The documents brought on record for the purpose of establishing linkage to the projected father Raju Hussain was the School Certificate at Exhibit-1 issued by the Headmaster of Dooria Bagicha School, where petitioner read upto Class-IX in the year 2000; Certificate at Exhibit-2issued by the Government Gaonburah of village-Duliagaon in favour of the projected father Raju Hussain by certifying that the petitioner is the daughter of Raju Hussain and the Caste Certificate atExhibit-3 issued in favour of the petitioner by certifying that the petitioner is the daughter of Raju Hussain and she belongs to Jolha Community. However, all the certificates rendered itself as inadmissible in evidence, inasmuch as, the authors were not examined to prove the Certificates and the contents thereof.

			Although an argument can be made that since the school in question at Exhibit-1 is a provincialised school and on that account the Certificate is admissible in evidence, the court observed that a document which is found admissible is not the end of the matter. The content of the same has to stand proved through the legal testimony of the Issuing Authority. In the present case the Headmaster of the school in question was not examined to prove the contents of the Certificate. The Voter Lists of 1997, 1966 at Exhibits-4 and 5 reflects the names of the projected grandmother, father and grandfather of the petitioner. The Court observed that reflection of a name in a document is wholly insufficient and without relevance if the proceedee/writ petitioner is unable to connect herself to such entity by means of cogent, reliable and admissible document/evidence. Moreover, the petitioner did not produce a single voter list in her name by showing relationship with the projected parents. The name of the projected father is shown for the first time in the Voter List 1997 at the age of 45 years. The name of the projected grandmother is shown in the Voter List of1997 at the age of 60 years but not with the projected grandfather in the Voter List of 1966 at Exhibit-5. Exhibit-6 is of no use for the petitioner as the name of the person appearing in Voter List 1966 is not related to her family. The document brought on record for the purpose of establishing linkage to Rajen Ali is the Jamabandi at Exhibit-7 which, however, did not stand proved by means of any related Sale Deed. Besides, there is no order of mutation showing that name of the petitioner of having inherited the land. The Jamabandi document, thus, has no relevance as it does not serve to link the petitioner with the projected father. Finally the Elector Photo Identity Card at Exhibit-8 remained as a document inadmissible in evidence as it is too well settled that such document is no proof of citizenship.

			The statement of DW-2 i.e. Jahurun Begum, who claimed to be the mother of the petitioner, cannot be relied upon in the absence of any documents showing her relationship, either to the projected grandfather, father or to the petitioner herself. Oral testimony of DW-2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. Surprisingly, the petitioner failed to produce a single voter list in her name even until the age of 50 years. It was held that in proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964, the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of DW-2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected grandfather, grandmother and father. The petitioner utterly failed to prove her linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents. **Link to Judgement** https://cjp.org.in/wp-content/uploads/2022/05/20200218-Nur-Begum-vs-UoI-WP-C-1900_2019.pdf
12	WP(C) 6594/19	PRATAP SAKHARU v/s UOI	In this case, there is no dispute that Bahadur Sakharu, the father of the petitioner, was declared as an Indian by a Tribunal on 30.11.2012. The petitioner has filed a certified copy of another opinion given by a Foreigner Tribunal, Dhemaji on 25.01.2019, whereby, Lakhi Sakhar, the mother of the petitioner, was declared an Indian. If father and mother are both declared Indian by Foreigner Tribunals the court held that it was foreclosed against all options, but to hold that the petitioner is also an Indian citizen. The Tribunal erroneously held that the petitioner to be foreigner and therefore the opinion of the Tribunal is not sustainable in law. Petition allowed.

			Link to Judgement: https://cjp.org.in/wp-content/uploads/2022/05/20200219-Pratap-Sakharu-vs-UoI-Case-No-WP-C-6594_2019.pdf
13	WP(C) 7818/19	SAHINUR ISLAM v/s UOI	Petitioner was not available in the given address in the notice dated 05.02.2010 which was returned unserved. Having regard to the admitted fact that service of notice was not effected in any manner on the petitioner, as required to be done under Paragraph 3(5) of the Foreigners (Tribunals) Order, 1964, the court held that the petitioner was denied opportunity of hearing to contest the case on merits. In view of the above, the impugned order dated 06.04.2010 was set aside with direction to the petitioner to appear before the Foreigners Tribunal, Jorhat, on 20.03.2020, on which date he shall file his written statement without fail. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20200228-Sahinur-Islam-vs-UoI-Case-No-WP-C-7818_2019.pdf
14	WP(C) 4116/19	IDRISH ALI V UOI	The Exhibit-6 is the Voter List of 1985, wherein, the name of the petitioner appears as a son of Ali Box. The age of the petitioner has been stated to be 28 years. On the other hand, Exhibit-7 is the Voter List of 1989, wherein, the name of the petitioner appears. While tendering oral evidence, the petitioner claimed to be 65 years. Therefore, the Tribunal held that the petitioner should have been born sometime in the year 1953 and by the year 1974, he should have attained the capacity of casting vote. The Tribunal noticed that in the Voter List of 1975, marked as Exhibit-5, the petitioner's name does not appear. The Tribunal also noticed that post 1971 Voter List have no proper linkages in any manner with "pre-cut of Voter List" and therefore, Exhibits 6 & 7 are of no help to the petitioner. The Court held that "We have no doubt that the Tribunal has committed an error while appreciating Exhibits 6 & 7." "…… the difference between a Tribunal and a Court must be stated. The Tribunal is established for quick disposal of the matters sent to it. Unlike a regular Court, the laws of evidence are not strictly applicable in a Tribunal.

			"Courts exercise judicial power to the State to maintain and uphold the rights of the citizens. It punishes the wrong doers and adjudicates upon disputes. "The Tribunal, on the other hand, are special alternative institutional mechanisms usually established under a Statute to decide disputes arising with reference to that particular Statute. "In Union of India Vs. R. Gandhi reported in (2010) 11 SCC 1, the Supreme Court has held asunder – Though both Courts and Tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and Tribunals. "They are :(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are Tribunals. But all Tribunals are not courts. "(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a Judicial Member and a Technical Member who is an `expert' in the field to which Tribunal relates. Some highly specialized fact finding Tribunals may have only Technical Members, but they are rare and are exceptions. "(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and Evidence Act, requiring an elaborate procedure in decision making, Tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of Evidence Act. "Reverting to the case in hand, the strict rules of evidence are not applicable in a tribunal. Nothing is required to be proved beyond all reasonable doubt. …… the observation of the Tribunal pertaining to Exhibits 6 & 7 is perverse and therefore, the entire opinion of the Tribunal suffers from perversity. Such an opinion must not sustain.

			"Therefore, we find merit in this writ petition and the impugned opinion stands set aside. The matter was remanded to the Tribunal for a fresh opinion after considering/appreciating the Exhibits 6 &7 on merit and at the correct perspective. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20200227-Idrish_Ali_GauhatiHC.pdf **Link to Cited Judgement:** Union of India Vs. R. Gandhi reported in (2010) 11 SCC - https://cjp.org.in/wp-content/uploads/2022/05/UOI-vs-R-Gandhi-Presi-Madras-Bar-Assn-2010_11_scc_1.pdf
15	**WPC193 /22**	**MD MAYNUL @ MOINUL HOQUE @ MD. MOINUL**	In Abdul Kuddus vs Union of India (2019) 6 SCC 604, It has been clearly mentioned that if there had been an order by the Foreigners Tribunal in favour of a person determining the citizenship, the said decision will be binding on subsequent proceedings against the same person and there cannot be another proceeding to re-determine the citizenship of the person, by applying the principle of res judicata. Only when the Tribunal comes to a finding that the present proceedee is not the same person who was proceeded and was found to be an Indian in F.T.(D) Case No.8312/2012, the impugned order will be revived and the order of the Tribunal can be challenged by the petitioner both on the issue of identity of the petitioner and other grounds raised in this petition.to examine whether the petitioner is the same person who was proceeded in 1st, F.T.(D) Case No.8312/2012by the Foreigners Tribunal, Tezpur Sonitpur. The Foreigners Tribunal Tezpur No.1, Sonitpur shall decide first as to whether the petitioner is the same person who was proceeded in F.T.(D) Case No.8312/2012 or not, for which the petitioner shall appear before the Foreigners Tribunal on 14.02.2022 to enable the Tribunal to examine that he is the

			same person who was proceeded in F.T.(D) Case No.8312/2012 . **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20220111-Gauhati-HC-Order-Mainul-Hoque-vs-UoI.pdf **Link to Cited Judgement:** Abdul Kuddus vs Union of India (2019) 6 SCC 604 https://cjp.org.in/wp-content/uploads/2022/05/Abdul-Kuddus-Vs.-Union-of-India-2019-6-SCC-604.pdf
16	**WPC 7229/17**	**BABLU PAUL @ SUJIT PAUL**	The petitioner when he was about 2 years old had entered India with his father Boloram Paul along with his grandfather Chintaharan Paul on 30.09.1964 from the then East Pakistan and they were given refugee status by the Government of India as clearly evident from the certificate issued by the Government of West Bengal to the members of the minority community in East Pakistan desiring to stay in India. since the petitioner's grandfather was an Indian citizen who was casting vote since 1966, the petitioner is to be treated as an Indian. Tribunal, on the basis of the materials on record did not believe the plea of the petitioner on finding certain discrepancies in the records regarding his grandfather, his father as well as his mother and took the view that these documents were collusively obtained by the petitioner and declared the petitioner to be an illegal immigrant from Bangladesh who entered India after 25.03.1971. The court observed that "As far as the entry of the petitioner is concerned, there appears to be credible evidence on record. So we also hold that the petitioner entered India from East Pakistan sometime in the year 1964 along with his father and grandfather. "Under the circumstances, we are of the view that even if the petitioner is able to prove that he had entered India from East Pakistan on 30.09.1964, he cannot avail the benefit of deemed citizenship under Section 6A(2) of the Citizenship Act, 1955

			as he does not fulfills all the conditions stipulated in the said Section. The question which naturally will arise is, what will be the status of the petitioner, who had entered India in the year 1964 from East Pakistan and continued to stay in India? Is he to be declared a foreigner? "…….since the petitioner did not enter from the specified territory in Assam, but West Bengal, and also as he has not been shown to be a resident of Assam ordinarily after his date of entry in 1964, he cannot get the benefit of deemed citizenship conferred under Section 6A(2) of the Citizenship Act, 1955. "The court though did do not agree with the finding of the learned Tribunal that he was an illegal migrant of post 25.03.1971 stream, the court was of the view that the present petitioner is a Hindu who entered into India before 31.12.2014 and he was given permission to settle in India, he can get the benefit of citizenship if he applies for citizenship by way of registration under Section 5 of the Citizenship Act, 1955 as he fulfills the conditions mentioned under Section 5. "Since the petitioner cannot be considered to be an illegal migrant by virtue of the Citizenship (Amendment) Act, 2019 and since he had been staying in India for more than seven years from now having entered in 1964, he will be entitled to be considered for grant of citizenship by registration under Section 5 of the Citizenship Act, 1955. "The aforesaid Section has been incorporated in the Citizenship Act, 1955 to deal with certain claims for citizenship in terms of the Assam Accord which is beneficial in nature to those persons who had come from East Pakistan/Bangladesh prior to 01.01.1966 and those who entered thereafter, upto 25.03.1971. The aforesaid Section has been incorporated in the Citizenship Act, 1955 to deal with certain claims for citizenship in terms of the Assam Accord which is beneficial in nature to those persons who had come from East Pakistan/Bangladesh prior to 01.01.1966 and those who entered thereafter, upto 25.03.1971. "However, if the person does not come to Assam soon after entering to any other State from the specified territory, but chooses to remain in that part of the State, as in the present

			case, perhaps such a person may not get the benefit of deemed citizenship as granted under Section 6A(2) of the Act. "In the present case, the petitioner entered India from the specified territory before 01.01.1966, but in the territory of West Bengal and opted to stay and settle there for a long period, and came to Assam belatedly only in the year 1984. Thus, it cannot be said that he came to Assam from Bangladesh i.e. from the specified territory "The petitioner to make an application for registration as citizen of India under Section 5 of the Citizenship Act, 1955 immediately, before the competent authority, and the competent authority on receipt of the such an application will pass appropriate orders regarding citizenship of the petitioner **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20211214-Gauhati-HC-Order-to-Foreigner-to-apply-under-CAA.pdf.
17	**WP(C)/1293/2021**	**SONA KHA @ SONA KHAN**	It is now well settled that the proceeding before the Tribunal will be initiated by the Tribunal only when a reference is made. It is also settled by this Court in many decisions that the Tribunal gets the jurisdiction to decide only in respect of the reference and if reference is made for opinion of the Tribunal as to whether a person is a foreigner or not within the meaning of Section 2(a) of the Foreigners Act, 1946 and having entered India during a particular period of time, the reference has to be answered only with reference to the period of time referred to. Referral authority has to make a specific query and seek opinion from the Tribunal with reference to the period of entry of the concerned proceedee. In the case of Santosh Das vs. Union of India reported in 2017 (2) GLT 1065) being WP(C) No.7551/2016, the High Court referring to the provisions of Foreigners Act, 1946 as well as Foreigners (Tribunal) Orders, 1964 under which the Tribunals are constituted to decide the issue, makes the following observations and directions: "14. Section 3 of the Foreigners Act, 1946 empowers the Central Government to make Orders dealing with foreigners.

			In exercise of powers conferred under Sect ion 3 of the aforesaid Act, Foreigners (Tribunals) Order, 1964 was framed. Order 2 deals with constitution of Tribunals. "As per Order 2(1), Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose for its opinion. Order 2(1A) also confers such power on a registering authority appointed under Sub-Rule (1) of Rule 16(F) of the Citizenship Rules, 1956. "Para 15. We have been informed at the Bar that the power of the Central Government to make reference in terms of Order 2(1) has since been delegated to the concerned Superintendents of Police. " Para 16. From a careful reading of Order 2(1), what is discernible is that a reference is made to a Tribunal for its opinion whether a person is or is not a foreigner within the meaning of Section 2(a) of the Foreigners Act, 1946. The Tribunal gets its jurisdiction to render its opinion only when a reference is made to it. Without a reference being made, Tribunal cannot exercise its jurisdiction to opine that a person is or is not a foreigner. It is only when a reference is made as above that the Tribunal assumes jurisdiction to render its opinion. Therefore, to our mind, Tribunal would have to confine to the terms of the reference made to it and cannot go beyond the same. Admittedly, in this case, reference was that petitioner was a foreigner who had illegally entered into India (Assam) from the specified territory during the period 01.01.1966 to 24.03.1971. The Tribunal was required to answer the reference either in favour of the State or in favour of the proceedee. If the reference was to be answered in favour of the State and it was answered rightly so by the Tribunal, the natural corollary would be that petitioner is a foreigner belonging to the 01.01.1966 to 24.03.1971 stream. Therefore, the view taken by the Tribunal that the Foreigners Act, 1946 or the Orders framed there under do not bind it to the terms of the reference is not correct." "Form the above it is very clear that the referral authority has to make a reference to the Tribunal as to whether a proceedee has entered Assam during the period of 01.01.1966 to

			24.03.1971, or, on or after 25.03.1971, as the case may be and accordingly, the Tribunal has to give his opinion. "In this case the petitioner's name was already included in the 'D' voters list i.e. a person whose nationality is doubtful, because of which the petitioner had to face various hurdles in getting benefits which have been denied to him on account of his name being included his name in 'D' Voter list. In that regard, in order to purge himself from the category of 'D' Voter, the petitioner approached the High Court by filing a writ petition being WP(C) No.8232/2017. In the said petition, this Court noted the submission advanced by the learned Standing Counsel, Election Commission of India (ECI) that certain consequential steps have already been taken in respect of the petitioner who was marked as doubtful (D) voter. But it was also clarified that there was no proceeding pending before any Foreigners Tribunal against the petitioner. "In view of the submission advanced by the learned Standing Counsel, ECI, therein, the Court took the view that it would be open to the petitioner to take up the matter with the Superintendent of Police (B) Baksa. "Though the petitioner had approached the concerned authority for doing the needful in terms of the direction issued by the Court in WP(C) No.8323/2017 on 18.09.2018, the authorities did not take any concrete step and accordingly, being aggrieved, the petitioner again approached this Court by filing a writ petition, being WP(C) No.4639/2019. "It appears that during the pendency of the said writ petition i.e. WP(C) No.4639/ 2019, the Superintendent of Police (B), Baksa vide Memo No.BSA/B27/ 2019/1045 dated 18.11.2019 made a reference in terms of the earlier direction passed by this Court in WP(C) No.8232/2017 to the Member, Foreigners Tribunal, Baksa, Tamulpur and as such, it was submitted on behalf of the learned Senior Counsel for the petitioner that direction may be issued to the concerned Tribunal to dispose of the reference as per law. "Accordingly in view of the above submissions made, the Court disposed of the said writ petition i.e. WP(C) No.4639/ 2019 on 01.02.2021 with a direction to the Member, Foreigners Tribunal, Baksa to take up the reference referred

			to in the said order and pass appropriate order as against the reference. "Though reference was already made, the proceeding was initiated in terms of the order dated 01.02.2021 passed by the High Court, referred to above. The petitioner then challenged the correctness of the notice issued by the Foreigners Tribunal, which has been mainly on the ground that there was no such reference made by the referral authority that the petitioner is an illegal immigrant of post 25.03.1971 stream and as such, the Tribunal could not have issued any such notice for the purpose of considering the case of the petitioner to be an illegal immigrant of post 25.03.1971 especially when it was never the case of the referring authority as well. "Reference was made in terms of the direction of this Court referred to above by the Superintendent of Police (B), Baksa vide letter dated 18.11.2019. "In the said letter, the Superintendent of Police(B), Baksa, however, mentioned that an inquiry has been conducted and having gone through the inquiry report and on scrutiny of the inquiry report and document submitted by the petitioner, *it was found that the opposite party /petitioner seems not to be an illegal migrant.* However, still the Superintendent of Police(B), Baksa proceeded to refer the case to the Foreigner Tribunal for favour of opinion. "On Perusal of the reference the court observed that "there was no specific reference by the Superintendent of Police (B) Baksa that the petitioner is an illegal immigrant of post 25.03.1971 stream and to that extent we agree with the submission advanced by the learned counsel for the petitioner that such a notice could not have been issued by the Tribunal, which has been challenged in this petition. "……we are of the view that the reference made by the Superintendent of Police(B), Baksa cannot be said to be proper reference Since, there is already a direction of this Court that reference be made in accordance with law, we will not enter into this issue as to whether any reference could have been made at all in respect of the petitioner on the basis of the investigation so made which has been reflected in the letter of reference dated 18.11.2019. However, we are of the view that

			the referral authority must make a specific reference to the Tribunal for his opinion as to the period during which the petitioner allegedly entered into India, which is not discernible from the referral letter dated 18.11.2019. In the absence of any such specific reference being made by the Superintendent of Police (B), Baksa, obviously the Tribunal will not be able to understand as to the nature of reference." "Accordingly, the Superintendent of Police (Border) Baksa was directed to make a specific reference on the basis of the documents available with him including the inquiry report as well as the documents submitted by the petitioner as to during which period the reference has to be made vis-à-vis the petitioner. "The Court further observed that the referral authority cannot make a reference merely to ascertain as to whether a person is a foreigner or not without making any specific reference of a period, which has a basis in terms of the Section 6A of the Citizenship Act, 1955. It may be also noted that the Tribunal also cannot give any opinion beyond the reference as already held by this Court in the case of Santosh Das (Supra). Thereby meaning that there has to be a specific reference as regards the period of alleged entry in case of a doubtful immigrant. "The Court further went on to observe that the investigation or reference cannot be mechanical for the simple reason that it is the legal basis for conferring jurisdiction to the Foreigners Tribunal to give its opinion as to whether any person is a foreigner or not, in that context, investigation and reference assume great significance. "As a corollary, if no proper investigation or reference is made, it may vitiate the entire subsequent proceeding taken up by the Foreigners Tribunal if the investigation does not indicate that a concerned person under investigation is not a foreigner or does not appear to be a foreigner. The Court further recorded- "We failed to understand how a reference can be made concerning that person unless there are other additional materials available on record to create a doubt about the citizenship of a person. …….

			"We are of the view that if no materials are available before the Referral Authority to doubt or question the citizenship of the person concerned, no reference can be made to the Tribunal for the simple reason that it is only when the citizenship of a person is doubtful or questioned by the investigating authority and the referring authority, the requirement of making the requirement of making a reference to the Tribunal arises for its opinion. "Accordingly, in the present case, if the Referral Authority makes the reference, it must produce all the materials collected during the investigation before the Foreigners Tribunal as the Tribunal is required to satisfy itself prima facie about the existence of the grounds before issuing notice to the proceedee as held by the Full Bench of this Court. "Consequently, if any such reference is made to the Tribunal and the Tribunal does issue notice to the proceedee, the proceedee will have a preliminary right to question the validity or legality of such reference being made before the Tribunal, before the Tribunal proceeds to consider on merit about the issue of citizenship, on the ground that no such case. has been made out for making a reference against the petitioners. "In view of above, the present petition is allowed by setting aside the impugned notice dated 19.02.2021 issued by the Foreigners Tribunal, Baksa, Tamulpur in F.T. Case No.159/BAKSA/2019 and the respondent No.7 shall make a fresh reference only, if necessary, on being satisfied, on the basis of the records available with him in accordance with law to the aforesaid Tribunal for his opinion." **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210324-Sona-Khan-vs-UoI-Case-No.-WP-C-1293_-2021.pdf **Link to cited judgement:**

			https://cjp.org.in/wp-content/uploads/2022/05/20170403-FT-Order-by-Ujjal-Bhuyan-in-Santosh-Das-case-WP-C-7551_2016.pdf
18	**Case No. : WP(C)/1818/2019**	**HAIDAR ALI V UNION OF INDIA**	The Tribunal examined the originals of the documents which were produced before the Tribunal and after comparing with the copies filed before the Tribunal, returned the original documents. These documents were exhibited. It appears that there was no objection to the admissibility of any of these documents and the State also did not lead any evidence to rebut these evidences adduced by the petitioner. Learned Tribunal, on consideration of evidence and materials on record, however, held that the petitioner had failed to discharge his burden of proving that he is an Indian as required under Section 9 of Foreigners Act, 1946 and accordingly, declared him to be a foreigner under Section 2(a) of the Foreigners Act, 1946. Thus, according to the Tribunal, the proceedee petitioner had failed to mention the link of the petitioner with the other persons mentioned in the voters list of 1970 and also with his father and grandparents Nadu Miya and Aymona in his written statement. Accordingly, the Tribunal held that the proceedee could not establish the linkage in a proper manner. 18. In the written statement as well as in the examination-in-chief, the petitioner had mentioned the names of his grandparents whose names were reflected in the voters list of 1965 with the necessary details, viz., name of the village, house number, mouza, police station etc. In the voters list of 1970, the names of the grandparents of the petitioner, are also shown, with similar descriptions but, along with the names of the other voters. This crucial judgement has held that: “ Para 19. In our opinion, non-explanation of the linkage of the petitioner with others whose names were shown along with his grandparents in the voters list of 1970 does not affect the credibility or genuineness of the evidence in

			the form of voters list of 1970, to show the linkage of the petitioner with his grandparents. "What was crucial and required of the petitioner was to prove before the Tribunal was that Harmuz Ali was his father and that his father, Harmuz Ali was the son of Nadu Miya, who were admittedly Indians. The fact that Harmuz Ali was the son of Nadu Miya has been already duly proved by the aforesaid voters lists of 1970 and 1965, genuineness of which was not questioned by the State. Thus, non explanation of relationship of the petitioner with other persons mentioned in the voters list of 1970 cannot be a ground for disbelieving the correctness of the entry of the names of the grandparents in the voters list, when the correctness of the entry of the names of the petitioner's father and grandfather was not questioned. Thus, the plea of the petitioner that his father, Harmuz Ali was the son of Nadu Miya stands proved. What is, thereafter, required to be proved was whether Harmuz Ali was the father of the petitioner, which in our view was also proved as will be discussed hereinafter. "Thus, non-mentioning of his other relatives as well as that of his father cannot be a ground for disbelieving his testimony and the documents relied upon by the petitioner. Of course, if the petitioner had disclosed in more detail the family tree, it would rather strengthen his claim, but failure to disclose the names of all the members of the family cannot weaken his case and render his evidence unreliable, nor reduce the credibility of his evidence, when there are other corroborating evidences. "If the petitioner is able to prove on the basis of reliable and cogent evidences that the petitioner is the son of Harmuz Ali and Harmuz Ali was in turn, the son of Nadu Miya, the petitioner can be said to have successfully established his linkage with his father and with his grandfather who were undisputedly Indians and as such, he can be said to have established his case as a citizen of this country. All the evidences are corroborative in nature and failure to disclose all the relevant facts does not ipso facto lead to the inference that his evidence is unreliable. The more evidences one adduces, the better for him. But there is no law nor dictum that if the proceedee does not disclose the names of all the other relatives, other than what matters and does not produce all the

			relevant evidences other than what matters, his evidence cannot be believed. "Written statement" as used in the proceeding before the Tribunal is a misnomer, which is not to be confused with "written statement" as understood under the Code of Civil Procedure, 1908. "Written statement" under the CPC is a statement of defence submitted by the defendant in response to the averments, allegations and claims made in the plaint filed by the plaintiff. As provided under Order VIII Rule (2) CPC, the defendant must raise by his pleading all the matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and must raise all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise. Further, as provided under Order VIII Rule (3), the defendant in his written statement is to specifically deal with each allegation of fact of which he does not admit to be true, as it is not sufficient for a defendant to deny generally the grounds alleged by the plaintiff. It has been also provided under Order VIII Rule 1A that where the defendant bases his defence upon a document in his possession or power, in support of his defence, or claim for set off or counter-claim, he shall enter such document in a list and shall produce it in court, when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement. It hasbeen further provided under Order VIII Rule 1A(3) that a document which ought to be produced in court by the defendant under this rule, but, is not so produced shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit. Thus, the aforesaid Rule 1A(3) does not prohibit production of document at a later stage which, however, can be done with the leave of the court, but the defendant is to file the document which is in his possession or power. Thus, a defendant is not expected to file the document which is not in his possession or power at the time of filing of written statement, but he can file it later also, however, with the leave of the court. Order VIII Rule 9 CPC also provides that no pleading subsequent to the written statement of a defendant other than

			by way of defence to set off or counterclaim shall be presented except by the leave of the court and upon such terms as the court thinks fit, meaning thereby that subsequent pleading is also permissible, however, with the leave of the court. "Para 27. Therefore, under the scheme of the CPC, the written statement is to be filed setting up his case in response to the averments, allegations and reliefs claimed in the plaint and the documents also should be produced alongwith the written statement so that the plaintiff is not taken by surprise. It is to be noted that, however, in a proceeding under the Foreigners Tribunal, as the practice at present appears to be that the proceeding is initiated only after a reference is made by the competent referral authority to the Tribunal and the Tribunal after taking cognizance of the reference made to it, merely issues a notice without any other document to the proceedee, only informing that after necessary investigation done in this regard, the proceedee is considered to be an illegal immigrant either during the period of 01.01.1966 and before 25.03.1971, or on or after 25.03.1971, as the case may be. In fact, no other document, other than the notice is given to proceedee as in the present practice. Thus, the proceedee does not know under what circumstances the reference has been made and as to how the Tribunal has decided to initiate the proceedings against the proceedee and what response is to be made except to prove that he is an Indian and not a foreigner. In fact, in this petition, the petitioner has also taken the plea that he had raised objection before the Tribunal that no proper investigation was done nor any authority asked the petitioner to produce any document in support of his citizenship. "Thus, while "written statement" as understood under the CPC is a defence put up by the defendant with reference to and in response to the specific averments and allegations made in the plaint in response to the plaint, in the case of a proceeding before the Tribunal, no such plaint or the charge is filed except for informing the proceedee through a mere notice or summon issued by the Tribunal issued by making an allegation that the proceedee is not an Indian but a foreigner who came to India on a certain specific period of time. "In fact, what is happening so far before the Tribunal is that a notice is merely issued to the proceedee informing that he or she is an illegal entrant to the State, in the territory of Assam

			and India from the specified territory. and certain specific period of time, without any other facts and documents being furnished to him. "From the records, it is also seen that after issuing summons to the proceedee or before issuing summons to the proceedee, the Tribunal does not examine any of the persons who had made the reference or who had conducted the investigation against the proceedee to hold that the proceedee is a foreigner. Thus, the proceedee is totally in dark as to how he came to be considered to be a foreigner and not an Indian. "However, since this petition is disposed of on consideration of other grounds raised, the issue whether a proceedee is entitled to more than mere notice will be considered in an appropriate case. "Para 28. It may be also mentioned that the principle behind Order VIII Rule 2 CPC is that all the facts must be specifically pleaded, to avoid taking the opposite parties by surprise by having new plea or introducing any fact which was not raised earlier. Same is the case of filing of documents which are in possession or power of the defendant. However, in the proceeding under the Foreigners Tribunal, the onus has been squarely put on the proceedee to prove that he is not a foreigner but an Indian and apart from the notice, no other document is furnished to the proceedee by the Tribunal and as such if the proceedee introduces new facts to discharge his onus, it cannot be said to take the State by surprise, as the proceedee is merely trying to prove his case and is not responding to any other allegation, other than that he is a foreigner. "Para 29. From the above, what is important to note is that the Foreigners Tribunal constituted under the Foreigners (Tribunals) Order, 1964 merely provides a proceedee a reasonable opportunity for making a representation and producing evidence in support of his case before the Tribunal and as such, normally, the rules of pleadings including that of "written statement" as provided under the CPC are not applicable. "As a corollary, the principles contained in the CPC relating to the scope of written statement and limitations placed

			thereon cannot be strictly applied in the proceedings before the Tribunal though the principles may generally be applied. "In fact, all opportunities should be given to a proceedee to enable him to produce all such documents which come to his possession even at a later stage also, to substantiate his claim that he is an Indian. No pedantic view should be taken, if there has been some delay or if the same is not mentioned in the written statement. Even under the scheme of the CPC, the right to file any document at a later stage, even if at the appellate stage, is always there, subject to leave of the court and if such documents are relevant and highly necessary and could not be produced earlier after exercise of due diligence (vide Order XLI Rule 27 CPC). "Thus, if the proceedee is able to make out a case for filing a document at a later stage, the same cannot be denied and no adverse inference can be drawn. Similarly, if any fact is introduced at the time of adducing evidence, though the same is not mentioned in the written statement, no exception can be made. It cannot be said to be improvement and adverse inference accordingly taken thereof. "Non-mentioning of any person or fact or document in the written statement, if mentioned later, cannot be said to cause any surprise or prejudice to the State so as to ignore such new fact or document. In any event, liberty is always with the State to rebut any evidence after the proceedee has completed adducing evidence. "We have also noted that the witnesses who adduced evidence are cross-examined by the State and as such, if such deposition cannot be shaken during the cross-examination, no adverse inference can be drawn against the petitioner. "Para 33……it has been also clarified by the Hon'ble Supreme Court that Section 106 of the Indian Evidence Act can be invoked only when the prosecution has been able to prove the charge beyond reasonable doubt. In absence of any such proof by the prosecution, provisions of Section 106 cannot be invoked and as a corollary, no adverse inference can be drawn against the accused, under such circumstance.

			"Para 36. What is also to be noted is that in any proceeding, whether, criminal or civil, the fact allegedly concealed and not disclosed must be something which is detrimental to the person expected to disclose, which is the reason the person is avoiding disclosure. If the fact is not detrimental, but rather beneficial to the interest of the person concerned, it defies logic that such beneficial fact should be kept undisclosed. That is the reason, a person knowingly conceals and does not disclose certain fact which is within his personal knowledge, as the person thinks that it may prove detrimental to his interest, if disclosed. Accordingly, non-disclosure of such incriminating facts may warrant drawing of adverse inference against such a person. "However, the said principle cannot be applicable in the present case in as much as the facts which the petitioner is alleged to have not disclosed in the written statement but subsequently disclosed during the cross- examination, cannot be said to be adverse or incriminating to the claim of the petitioner for the reason that existence of other relatives of the petitioner or that of his father does not in any way impeach upon credibility of his statement. Neither, such a disclosure is inconsistent with or contradict any previous evidence. Nor does it make any difference to the "fact in issue". Of course, if the petitioner deliberately gives false information or avoids giving correct information when asked, the issue of drawing adverse inference may arise. But that is not the case here. "Reference to Section 106 of the Evidence Act is only to show that it is responsibility of the proceedee to prove that he is a citizen of this country by disclosing such relevant facts which are within his knowledge. It does not however, mean that failure to disclose all facts, will lead to drawing of adverse inference. Adverse inference will be drawn against him that he is a foreigner and not an Indian if sufficient cogent materials are not disclosed and proved by the proceedee. "Para 41. It may not be out of context to refer to the decision in Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665 wherein it was held that, "26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of

			a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." "Para 42. On proper analysis of the aforesaid observation of the Hon'ble Supreme Court, the following aspects emerge: (i) In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. However, the Supreme Court nowhere states that the aforesaid facts must be proved only by documents. The expression used is "normally he may be required to give evidence". Thus, it is not mandatory to prove all these to show that he is an Indian citizen. These are, however, relevant facts, if one proves, can establish beyond doubt that he is a citizen of this country. Yet, he may be able to prove his citizenship by other evidences as well. (ii) Further, disclosure of facts or information other than the ones mentioned in para 26 does not mean that adverse inference can be drawn. (iii) One may prove one's citizenship without referring accurately to all (iv) Further, it is nowhere mandated that he must prove all these facts by documentary evidence only. Section 59 of the Evidence Act, 1872 says that all facts, except the contents of document or electronic records, may be proved by oral

			evidence. There may be cases, where the proceedee is an illiterate, and the birth is not registered with any authority, in which event, it would be impossible to produce any documentary evidence to prove his date of birth and place and other facts accurately and one may rely on oral evidence only. In such case, can a claim be thrown out merely because only oral evidence has been led? (v) Further, after he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. "Para 43. It may be also noted that the standard of proof in discharge of the onus by a proceedee under Section 9 of the Foreigners Act is preponderance of probability as has been also reiterated in the Full Bench decision of this Court in State of Assam vs. Moslem Mondal, 2013 (1) GLT 809. Thus, the standard of proof being preponderance of probability, there could be minor inconsistencies here and there in the evidence of the proceedee which would not warrant rejection of the claim. This is what the Hon'ble Supreme Court held in Sirajul Hoque v. State of Assam, (2019) 5 SCC 534: **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210330-Haider-Ali-vs-UoI.pdf
19	**WP(C)/1093/2021**	**PAPU ROY V UNION OF INDIA**	The petitioner's father Ranjeet Roy having died on 15.01.2007 could not have been proceeded in the aforesaid case which was registered in the year 2011 under FT(K) Case No. 1056/2015 [Corresponding to SP (Ref.) IMDT Case No. 1132/2004] [Corresponding to F.T. Old Case No. 1131/2011], though the reference was made in the year 2004. There could not have been any proceeding against a dead person. Since the aforesaid Ranjeet Roy had died on 15.01.2007, no proceeding could have been initiated against the aforesaid late Ranjeet Roy in the Foreigners Tribunal in the year 2011 or 2015, as the case may be. **Link to Judgement:** https://cjp.org.in/wp-content/uploads/2022/05/20210715-Gauhati-HC-sets-aside-order-declaring-dead-man-foreigner.pdf

20220218 T Takano vs SEBI Civil Appeal 487-488 of 2022

Another Relevant Judgement:

2022 SCC OnLine SC 210, 18.2.2022; T. Takano v/s Securities and Exchange Board of India & Anr.

Judgement may be read here

https://cjp.org.in/wp-content/uploads/2022/05/20220218-T-Takano-vs-SEBI-Civil-Appeal-487-488-of-2022.pdf

Headnotes of the Judgement relevant for the limited purpose of how/what the Quasi-Judicial authorities have to disclose so as to cater to the requirement of following the principles of natural justice

C. 2 Duty to Disclose Investigative Material

Para 22. While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest. An identification of the purpose of disclosure would lead us closer identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:

(i) Reliability: The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information;

(ii) Fair Trial: Since a verdict of the Court has far reaching repercussions on the life and liberty of an individual, it is only fair that there is a legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings;

(iii) Transparency and accountability: The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity – principles that are antithetical to transparency. It is of utmost importance that in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability. The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgement or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order. Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the concerned party and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry.

Para 23. The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.

Para 24. It would be fundamentally contrary to the principles of natural justice if the relevant part of the investigation report which pertains to the appellant is not disclosed. The appellant has to be given a reasonable opportunity of hearing.

….

Para 35. However, merely because the investigating authority has denied placing reliance on the report would not mean that such material cannot be disclosed to the noticee. The court may look into the relevance of the material to the proposed action and its nexus to the stage of adjudication. Simply put, this entails evaluating whether the material in all reasonable probability would influence the decision of the authority.

Para 39. The following principles emerge from the above discussion:

(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and

(ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.

Para 40. The investigation report forms the material considering which, the Board arrives at a satisfaction regarding whether there has been a violation of the regulations. If it is satisfied that there has been a violation of the regulations, after giving a reasonable opportunity to be heard, the Board is empowered to take action according to Regulations 11 and 12. **It would not suffice for the first respondent to claim as it did before the High Court that it did not rely on the investigation report. The ipse dixit of the authority that it was not influenced by certain material would not suffice.** If the material is relevant to and has a nexus to the stage at which satisfaction is reached by an authority, such material would be deemed to be important for the purpose of adjudication.

C.3. Exceptions to the Duty to Disclose

Para 45. ...The right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected.

Para 46. In Natwar Singh (supra), this Court has observed that there are exceptions to the general rule of disclosing evidentiary material. This Court held that such exceptions can be invoked if the disclosure of material causes harm to others, is injurious to public health or breaches confidentiality. While identifying the purpose of disclosure, we have held that one of the crucial objectives of the right to disclosure is securing the transparency of institutions. The claims of third party rights vis-à-vis the right to disclosure cannot be pitted as an issue of public interest and fair adjudication. The creation of such a binary reduces and limits the purpose that disclosure of information serves. The respondent should prima facie establish that the disclosure of the report would affect third party rights. The onus then shifts to the appellant to prove that the information is necessary to defend his case appropriately.

D. Conclusion

Para 51. The conclusions are summarised below:

(i) The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in Natwar Singh (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;

…..

(iii) The disclosure of material serves a three- fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions;

(iv) A focus on the institutional impact of suppression of material prioritises the process as opposed to the outcome. The direction of the Constitution Bench of this Court in Karunakar (supra) that the non-disclosure of relevant information would render the order of punishment void only if the

aggrieved person is able to prove that prejudice has been caused to him due to non-disclosure is founded both on the outcome and the process;

(v) The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. It should prima facie be established that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the appellant to prove that the information is necessary to defend his case appropriately."