

GAHC010194102017



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

Case No. : WP(C)/1591/2017

MUSLIM ALI
S/O. LT. BASIR UDDIN, R/O. VILL. SAHARON, P.O. JOYNAGAR, P.S.
MURJHAR, DIST. HOJAI ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI.

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

HOME DEPTT.
DISPUR
GHY.-06.

3:THE DY. COMMISSIONER OF HOJAI

DIST. HOJAI ASSAM.

4:THE SUPERINTENDENT OF POLICE BORDER HOJAI

DIST. HOJAI ASSAM.

5:THE OFFICER-IN-CHARGE

HOJAI POLICE STATION
DIST. HOJAI
ASSAM

Advocate for the Petitioner : MR.A M ALAMAN

Advocate for the Respondent :

Linked Case : WP(C)/1578/2017

FIRUN NESSA
W/O. ABDUL RAJAK and D/O. BASIR UDDIN
VILL. NAHAR GAON
P.O. and P.S. DABOKA
DIST. HOJAI
ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY HOME AFFAIRS
NEW DELHI.

2:THE COMMISSIONER and SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
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GHY.-06.

3:THE DY. COMMISSIONER

HOJAI
DIST. HOJAI
ASSAM.
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HOJAI
DIST. HOJAI
ASSAM.
5:THE OFFICER IN CHARGE

HOJAI POLICE STATION
DIST. HOJAI
ASSAM.

Advocate for : MR.A M ALAMAN
Advocate for : GA
ASSAM appearing for THE UNION OF INDIA and 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (CAV)

Date : 12-06-2024

(S.P. Khaund, J)

Both the petitions are taken up together for disposal as the petitioner of WP(C) No. 1578/2017 Musstt. Firun Nessa and the petitioner of WP(C) No. 1591/2017 Md. Muslim Ali are son and daughter, respectively, of Late Basir Uddin, a resident of village – Saharon, Post Office –Joynagar, Police Station – Murajhar, District Hojai (Assam). The present address of the petitioner of WP(C) No. 1578/2017, Musstt. Firun Nessa is shown as village – Nahar Gaon, Post Office and Police Station – Daboka, District Hojai (Assam).

2. The petitioner Md. Muslim Ali is the elder brother of the petitioner Musstt. Firun Nessa. Both the petitioners are aggrieved by the common opinion/order dated 31.10.2016 passed by the Foreigners' Tribunal, Nagaon Court No. 10TH at Sankardev Nagar, Hojai in connection with FT(D) Case No. 439/2015 and FT(D) Case No. 455/2015, respectively. On being aggrieved by the common order dated 31.10.2016, the petitioners have filed their respective petitions under Article 226 of the Constitution of India, seeking quashing of the impugned order. Both the petitioners have submitted that they are legal heirs of the same ancestors and they have relied upon the same set of documentary evidence and their cases were taken up together for disposal by a common judgment, by the Tribunal.

3. It is contended that on receipt of the references from the Superintendent of Police

being SP's F.T. Case No. 616/2014 and SP's F.T. Case No. 644/2012, Case Nos. FT/H/1929/2012 and FT/H/58/2012 were registered, respectively and notices were issued to the petitioners, calling upon them to file their written replies/written statements (WS for short), if any. Meanwhile, on creation of Foreigners' Tribunal No. 10TH at Sankardev Nagar at Hojai, erstwhile district Nagaon, the aforementioned cases were re-registered as FT(D) Case No. 455/2015 and FT(D) Case No. 439/2015, respectively.

4. When notices were issued to the petitioners they appeared before the Tribunal and submitted their WS claiming thereby that they are Indian citizens by birth. The petitioners had adduced evidence of Muslim Ali and Musstt. Firun Nessa, jointly as DW.1, the evidence of Salima Khatun as DW.2 and had exhibited several documents to substantiate their stance.

Decision of the learned Tribunal:

5. It was observed by the learned Tribunal that the evidence of OPs/DWs had not at all affirmed their Indian citizenship. On a cumulative consideration of the allegation by the referral authority as well as the evidence of the petitioners, it was held that the petitioners failed to discharge their burden as per Section 9 of the Foreigners Act, 1946 (the Act of 1946, for short). The set of documents relied upon by the petitioners were found to be laden with discrepancies and inconsistencies, rendering the same untrustworthy and unreliable.

6. On comparing the cross examination of the petitioners' witnesses and the voters lists of 1966 and 1970, the learned Tribunal held that their grandfather's name appears to be the same as disclosed by them but their grandmother's name is different as reflected through the documentary evidence *vis-à-vis* the cross examination. Their grandmother's name ought to

have been recorded as Jayanab Bibi instead of Habija Bibi or Safia Khatun. It was observed by the Tribunal that the petitioners had never stated that their grandfather Mafij Ali had two wives, namely Habija Bibi and Safia Khatun. It was also observed by the Tribunal that the petitioners' uncle's (Bordeuta's) age i.e. the age of Ajijur Rahman appeared as 60 (Sixty) years in the voters list of 1966 (Ext.-1) and 64 (Sixty Four) years in the voters list of 1970 (Ext.-2), whereas the age of the petitioners' grandmother Safia Khatun in Exhibit-1 is reflected as 58 (Fifty Eight) years which goes to show that she is two years younger than her son Ajijur Rahman. Similarly, the so called grandfather's age in the voters list of 1966 (Ext.-1) is shown as 70 (Seventy) years whereas, in the same year itself the age of the petitioners' uncle (Bordeuta) is shown as 60 (Sixty) years which is not possible moreso, when the petitioners' paternal uncle is older than the petitioners' father.

7. It was further observed by the Tribunal that the certified copy of the voters' list of 1997 reflected the names of the petitioners' parents as residents of Dighaljaruni Forest village, Police Station - Doboka of 90 No. Jamunamukh LAC whereas in cross examination, the petitioners had stated that their father Basir Uddin had shifted to the Dighaljaruni village only after 5 (Five) years of his marriage but the petitioners have not mentioned when their parents got married through their evidence-in-affidavit or through their cross examination. Their uncle Ajijur Rahman's name was also not recorded in Exhibit-3.

8. Exhibit-3 is the certified copy of the Voters list of 1997, in which, merely, the OP's parents names are recorded being the residents of Dighaljarani Forest village, P.S: Doboka in respect of 90 No. Jamunamukh L.A.C. It has been held by the learned Tribunal that as per the statements in cross of the OPs/DWs their father namely, Basir Uddin had shifted to the

Dighaljarani village only after 5 (Five) years of his marriage, but the OPs or the DWs neither in their evidence nor in their cross examination stated when the marriage of their parents took place. Admittedly, the name of the elder brother of the OPs father (Ajijur Rahman) was also not recorded in said Ext.3. The petitioners have also not stated whether their said uncle Ajijur Rahman was alive at the relevant time or not.

9. There are other discrepancies relating to age which shall be discussed at the appropriate stage. The discrepancies of the certified copies of the voters lists marked as Exhibits - 4, 5 and 6 will be discussed at the appropriate stage. All in all, after considering the WS and evidence, it was observed by the learned Tribunal that the petitioners have failed to prove their linkage with their parents and they were declared as foreign nationals who entered into the territory of India after 25.03.1971 without any valid documents.

Petitioners' case:

10. It is submitted on behalf of the petitioners through their petitions and subsequently through their arguments that they have exhibited 14 (Fourteen) documents in support of their linkage with their parents and grandparents, but surprisingly, the learned Tribunal erroneously did not accept these evidence and passed the impugned order. It is contended that the learned Tribunal erroneously pointed out some irrelevant discrepancies with respect to age, name etc., and thus the impugned order/opinion dated 31.10.2016 in FT(D) Case No. 455/2015 and FT(D) Case No. 439/2015, is liable to be set aside. While evaluating Exhibits 1 and 2, the learned Tribunal failed to appreciate that the petitioners produced certified copies of the documents to establish their linkage with their grandparents and parents. The learned Tribunal has failed to verify the voters' lists of 1966 and 1970, but on the contrary has

pointed out some discrepancies relating to omission of the name of the petitioners' grandmothers. The discrepancies relating to age which have surfaced through the documentary evidence are common errors committed by the State authority while entering the names and entries in the voters' lists. The learned Tribunal has in a mechanical manner discarded the Exhibits 3 to 13.

11. The petitioners have emphasized and stressed that they are Indian citizens by birth and they will be greatly prejudiced if the impugned order is not set aside and quashed and they have nowhere to go.

12. It is further contended that the learned Tribunal has failed to appreciate the fact that the petitioners' grandfather Mofij Ali, after performing Hajj earned the title of Haji, and this is the reason why his name was reflected after Hajj, as Haji Mofij Ali.

13. In connection with WP(C) No. 1591/2017, an additional affidavit was filed on behalf of the petitioner Md. Muslim Ali to incorporate certain facts left out in the main petition. The affidavit was filed by Kabir Ahmed, son of Md. Muslim Ali of village Dighaljarani under Doboka Police Station of Hojai district. Through the affidavit it is submitted that certain facts and records which were inadvertently left out at the time of filing the written statement and writ petition has been included. It is submitted that the petitioner could not submit some relevant documents which would have linked the facts of place of original residence of the petitioner and his present place of residence. The petitioner's son who has submitted the affidavit has stated that as the petitioner was in the detention camp he (petitioner's son) had to deal with the case in this Court and he was unaware of the documents submitted by his father before the learned Tribunal at Hojai. The petitioner's son i.e. the deponent of the affidavit was

unable to provide all the documents to the engaged counsel initially.

Submissions for the Respondents:

14. *Per contra*, the Election Officer, Sri Dhrubajyoti Nath filed an affidavit in compliance to the order dated 19.03.2019 passed by this Court. It has been submitted by the Election Officer that there are no records and/or any reasoned order available in the office of the District Election Officer, Hojai, showing how the name of Basir Ali was included in the voters list of 1985 in the village - Dighaljar. The Office of the District Election Officer is in possession of authenticated printed copy of the Electoral Rolls for the year 1985 in respect of the 90 Jamunamukh LAC in question. The procedure adopted for inclusion of the name of a person in the Electoral Roll has been stipulated in the Representation of People Act, 1950 read with the Registration of Electors Rules, 1960. The Election Commission of India, from time to time in, in consonance with the said Act and Rules, issues instructions in the form of Hand Book in electronic form. The inclusion, shifting, modification or deletion in the Electoral Roll is done by submitting Electoral Registration Forms. Applications can be filed by eligible voters online through the portal, mobile applications, SMS, National Call Centre or by submitting the filled in forms to the ERO/ AERO/BLO of his or her constituency in paper or through electronic submission using NVSP portal. The process being clearly stipulated in the Hand Book is submitted and marked as Annexure-A along with the affidavit filed by the Election Officer.

15. Ms. A. Verma, learned counsel for the Home Department of Government of Assam laid stress in her argument that the voters' list of 1985 was not proved. The Jamabandi copy relied upon by the petitioners is a document from after 1971, which is not relevant to this case. The Circle Officer's report on the second page of the Jamabandi reveals that the land

was purchased and the petitioners' father's name was reflected in the Jamabandi in 1998, and thus the said Jamabandi annexed along with the petition cannot be relied upon.

Decision and Conclusion:

16. We have given our thoughtful consideration to the submissions at the bar.

17. The petitioner has relied on the decision of Hon'ble the Supreme Court in *Sirajul Hoque Vs. State of Assam reported in (2019) 5 SCC 534*.

18. The respondents have relied on the following decision of this Court:

i) *Rashminara Begum Vs. Union of India & others*, reported in 2017(4)GLT 346.

19. As both the cases FT(D) Case No. 439/2015 and FT(D) Case No. 455/2015 were amalgamated vide order dated 19.02.2016 by the Tribunal, the evidence-in-affidavit in both the cases were jointly filed. Both the petitioners have adduced their evidence-in-chief jointly as DW.1. They have also adduced the evidence of their projected mother Salima Khatun as DW.2 and further exhibited several documents. Through their WS and their evidence-in-chief, the petitioners have stated that they were born in village - Dighaljaruni. Their father used to reside at village - Saharon under Murajhar Police Station but about 30/32 years ago, their father Basir Uddin came to the village - Dighaljaruni under Doboka Police Station for better livelihood and stayed in Dighaljaruni till his death.

20. The name of the petitioners' father along with the names of his family members have been enlisted in the voters' lists of 1966 and 1970 of village Saharon under No. 93 Hojai LAC at Sl. Nos. 163, 164, 165, 167. Their house No. is shown as 54 of Part No. 103.

20.1. The petitioners' father was a voter in the years 1985, 1989, 1997, 2005 and 2010.

20.2. In the meantime, the petitioner Firun Nessa's marriage was solemnized with Md. Abdul Rezak, son of Late Rois Ali of village Nahargaon under Sutargaon GP of No. 90 Jamunamukh LAC.

20.3. The petitioner Md. Muslim Ali had exercised his right to franchise as an Indian citizen.

20.4. It is further submitted that the petitioner Musstt. Firun Nessa could not cast her vote as her name was entered in the voters list as D-Voter. At the time of hearing she could not appear before the Verification Officer as she was ailing and thus her name was entered as a 'D-Voter'.

21. It is submitted that both the petitioners have compelling evidence to prove their linkage with their parents and grandparents to establish that they are Indian citizens and not foreign nationals.

22. As a ready reckoner, the Voters' List of 1966 is reflected hereinbelow:-

Voters' List 1966

Assam Legislative Assembly Constituency Name & No. 93 Hojai

Polling Station Name & No. 103

State-Assam, District- Nagaon, Part No. 103

State-Assam, District-Nagaon, Part No. 103,

Sub-Division-Mouza- Namati, P.S.-Morajhar, Village-Saharan

Sl. No.	House No.	Voters' Names	Name of related person	Sex	Age
163	54	Hazi Mofij Ali	F-Hussain Ali	M	70
164	-do-	Habija Bibi	H-Mofij Ali	F	29
165	-do-	Safia Khatun	H-Mofij Ali	F	58
166	-do-	Azizur Rahman	F-Mofij Ali	M	60
167	-do-	Basir Uddin	F-Mofij Ali	M	26

23. The Voters' List of 1970 is reflected hereinbelow:-

Voters' List 1970

Assam Legislative Assembly Constituency Name & No. 93 Hojai

Polling Station Name & No. 109

State-Assam, District- Nagaon, Part No. 109

State-Assam, District-Nagaon, Part No. 109,

Sub-Division-Mouza- Namati, P.S.-Morajhar, Village-Saharan

Sl. No.	House No.	Voters' Names	Name of related person	Sex	Age
163	54	Hazi Mofij Ali	F-Hussain Ali	M	74
165	-do-	Safia Khatun	H-Mofij Ali	F	62
166	-do-	Azizur Rahman	F-Mofij Ali	M	64
167	-do-	Basir Uddin	F-Mofij Ali	M	30

24. The Voters' List of 1997 is reflected hereinbelow:-

Voters' List 1997

Assam Legislative Assembly Constituency Name & No. 90 Jamunamukh**Polling Station Name & No. 42, Forest Village L P School****State-Assam, District- Nagaon, Part No. 42, Sub-Division-Hojai,****Mouza- Namati, P.S.-Daboka, Village-Dighaljaroni Forest Village**

Sl. No.	House No.	Voters' Names	Name of related person	Sex	Age
315	94 (A)	Basir Uddin	F-Hazi Mofij Ali	M	50
316	-do-	Salima Khatun	H-Basir Uddin	F	40

25. The Voters' List of 2005 is reflected hereinbelow:-

Voters' List 2005**Assam Legislative Assembly Constituency Name & No. 90 Jamunamukh****Polling Station Name & No. 60, Forest Village L P School (East Part)****State-Assam, District- Nagaon, Part No. 60, Sub-Division-Hojai,****P.S.-Daboka, Village-Dighaljari**

Sl. No.	House No.	Voters' Names	Name of related person	Sex	Age
404	89(A)	Basir Uddin	F-Hazi Mofij Ali	M	65
405	-do-	Salima Khatun	H-Basir Uddin	F	45
406	-do-	Muslim Ali	F- Basir Uddin	M	35
407	-do-	Usman Ali	F- Basir Uddin	M	32
408	-do-	Morom Ali	F- Basir Uddin	M	20
409	-do-	Tazmina Begum	F- Basir Uddin	F	25

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26. The Voters' Lists post-2005 are not discussed as the Voters' Lists of 2010 and 2014, which have been exhibited by the petitioners while adducing their evidence will not help to establish the petitioners' linkage with their parents and their grandparents.

27. The petitioner, Md. Muslim Ali was cross-examined *in extenso*. Through their evidence, both documentary as well as oral, the petitioners have stated that their father's name is Basiruddin, their grandfather's name is Mofij Ali and grandmother's name is Jayanab Bibi. Their grandparents are from the village Saharon under Murajhar Police Station. Thus, the petitioners have reiterated their written statement through their evidence. However, there was a departure from their pleadings when the petitioners exhibited a copy of mutation of land to prove the ownership of the petitioner's father over a plot of land at Mouza-Namati, Village-Saharon.

28. It has been rightly held by the Tribunal that the Voters' Lists of 1966 and 1970 depicts that the petitioner's father's name is Basir Uddin, whereas two different names appear as petitioners' grandmother. In the Voters' List of 1966, Habija Bibi and Safia Khatun are shown as the grandmothers of the petitioners, whereas Safia Khatun is shown as the grandmother of the petitioners in the Voters' List of 1970. Surprisingly, the Voters' List of 1985 was not exhibited before the Tribunal, which is marked as Annexure-4 in both the writ petitions captioned above. Annexure-4 was not exhibited before the Tribunal. Now, there is no explanation relating to the inclusion of Habija Bibi and Safia Khatun's names in the said Voters Lists and exclusion of Jayanab Bibi's name, whom the petitioners have claimed to be

their grandmother. The petitioners' father Basir Uddin's age is given as 36 years in the year 1985 and the petitioners' mother Salima Khatun's age is shown as 39 years in the year 1985.

29. The petitioners' mother has also supported the evidence and the pleadings, stating as DW-2 that they had shifted from Saharon Village to Dighaljaruni Village, under Daboka for their livelihood, about 32/33 years ago. The petitioners' mother/DW-2 has submitted her evidence in affidavit on 19.02.2016, wherein she has given her age as 65 years. Even if the Voters' List of 1985 is relied upon, a discrepancy in the age emerges, because Salima Khatun's age ought to have been 68 years in 2016, when she adduced her evidence as DW-2. When the petitioners have not exhibited the Voters' List of 1985 before the Tribunal, this Voters' List cannot be taken into consideration, while deciding both the writ petitions. It is also apt to mention that the petitioners' father's name appears as Basir Ali instead of Basir Uddin in the Voters' List of 1985.

30. It was observed by the learned Tribunal that the Voters' List of 1985 was marked as Exhibit-3, but no such Voters' List was available in the record.

31. Although the names of the petitioners' uncles and aunts have not been mentioned in the written statement, the petitioners have mentioned in their pleadings/written reply/WS that the names of the petitioners' father and family members are reflected at Sl. Nos. 163, 164, 165, 166 and 167 in the Voters' List of 1966 and 1970. Several contradictions could be elicited through the cross-examination of the petitioner Muslim Ali as DW-1. It is true that in the Voters' List of 1966, the age of the petitioner's uncle, who is older to the petitioners' father Basir Uddin, is shown as 60 years and the petitioners' grandmother Safia Khatun's age is shown as 58 years. Although the Voters' List of 1966 and 1970 are certified copies, yet the

discrepancies in the age of the mother and son casts a shadow of doubt over the authenticity of the Voters' Lists.

32. It cannot be ignored that in the Voters' List of 1966 the petitioners' grandfather's age appears to be only 10 (Ten) years more than the petitioners' uncle's Ajijur Rahman's age. How can a father be only 10 (Ten) years older than his son and a mother be 2 (Two) years younger than her son. It has stemmed from the pleadings and the evidences that the petitioners have given 3 (Three) names as their grandmother without attributing any reasons why they have stated that Jayanab Bibi is their grandmother whereas the Voters' Lists depict the names of 2 (Two) grandmothers. In the Voters' List of 1970, the petitioners' father's age is shown as 30 (Thirty) years, so in 1997 his age ought to have been 57 (Fifty) years and in 2005, 68 (Sixty Eight) years but the Voters' List of 1997 reflects the petitioner's father's age as 50 (Fifty) years and the Voters' List of 2005 reveals the petitioner's father's age as 65 (Sixty Five) years instead of 68 (Sixty Eight) years. All these discrepancies relating to the age and names are incomprehensible.

33. Thus, this case is distinguishable from the decision relied upon by the learned counsel for the petitioners in Sirajul Hoque (supra) wherein it has been held as:

“3. There is no doubt that the great grandfather's name Amtullah appears as Amtullah throughout the document. Equally, there is no doubt about the father's name which appears as Hakim Ali throughout. The only discrepancy found is that in some of the documents Kefatullah later becomes Kematullah. However, what is important to note is that his father's name Amtullah continues as Amtullah and the other family members associated continued as such. Also produced are NRC Registration details of the year 1971 of the grandfather who is noted to be Kefatullah in this document. Other voters lists are then produced where the letter F becomes the letter M with other family names remaining the same. In fact, the appellant has himself produced a document of 1981 from the Income Tax Department giving his Permanent Account Number. Apart from these documents, certain other later documents have also been produced including

photo identity cards issued by the Election Commission of India and identity cards issued to his brother including voters lists in which the appellant's name appears.

4. Having gone through these documents, we are of the view that it is not possible to state that Kematullah is not the same despite being named Kefatullah in some of the documents. This being so, the grandfather's identity, father's identity etc. has been established successfully by the appellant. Further, the mere fact that the father may later have gone to another village is no reason to doubt this document.

5. We, therefore, set aside the judgment of the High Court as well as the Foreigner's Tribunal and allow the appeal. As a result thereof, the appellant is liable to be set free at once."

34. In the case of Sirajul Hoque (supra), the appellant had produced documents before the Tribunal and was successful to establish his linkage with his grandfather and parents. There was only a minor discrepancy relating to an alphabet or a letter in the name of appellant's grandfather, Kematullah which was shown as Kefatullah. There were no discrepancies in the names of the appellant's great grandfather or father, which had appeared as Amutullah and Hakim Ali throughout the proceeding.

35. In the case at hand, there are not only discrepancies relating to age, but the discrepancies which have surfaced from the documentary evidence are incomprehensible and unbelievable. Moreover, the Voters' List of 1985 ought to have been exhibited but the petitioners have refrained from exhibiting the document. Even if the Voters' List of 1985 is taken into consideration, the same will not be able to establish the linkage between the petitioners with their father and grandfather.

36. Relating to the document not exhibited in the Court, the learned Standing Counsel for the Home Department of Government of Assam, Ms. A. Verma has relied on the decision of this Court in the case of *Rashminara Begum Vs. Union of India and others in WP(C) No. 7102/2016* wherein it has been held and observed that:

“31. Law on this aspect is very clear. In Narbada Devi Gupta vs Birendra Kumar Jaiswal, (2003) 8 SCC 745, Supreme Court 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 exhibit cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

32. This proposition was again re-stated by the Supreme Court in L.I.C. vs Ram Pal Singh Bisen, (2010) 4 SCC 491, wherein it has been 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 law. Under the law of evidence, it is necessary that 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. Contents of the document cannot be proved by merely filing in a court. Such a document cannot be relied upon.”

“43..... In the writ petition, in addition to the above documents, a number of other documents have been filed; some more documents have been filed by way of additional affidavit by one Zakir Hussain. The documents which have been annexed to the writ petition were obtained on 04.11.2016 after the reference was decided by the Tribunal on 31.10.2016. In other words these are post decision documents. In any case, documents not exhibited or atleast not filed before the Tribunal cannot be gone into in a writ proceeding to judge correctness of the decision of the Tribunal.....”

37. In the instant case, the Voters' List of 1985 marked as Annexure-4 cannot be taken into consideration at this juncture more so, when the electoral roll of 1985 has not been annexed along with the Voters' List of 1985, which was also not exhibited before the Tribunal.

38. Through the additional affidavit filed by Kabir Ahmed, (petitioner Muslim Ali's son), it is stated that:

39. In the year 1967 the deponent's great-grandfather, Late Basir Uddin solemnized his marriage with Salima Khatun, daughter of Late Ibrahim Ali and Anuwara Begum of village -Dighaljaruni and he stayed in his father-in-law's house permanently, as his in-laws had no son.

40. Basir Uddin and Salima Khatun Begum were blessed with seven children namely:

- (i) Muslim Ali (petitioner in this case),
- (ii) Usman Ali,
- (iii) Maram Ali,
- (iv) Ustar Ali,
- (v) Hazira Begum,
- (vi) Manora Begum and
- (vii) Firun Nessa (petitioner in this case).

41. The deponent had further submitted that the descendent of his great-grandfather Late Haji Mofiz Ali and their children are still residing in Saharan village under Murajhar Police Station but the uncles of the petitioner had passed away. Ayan Uddin, son of Late Moin Uddin of village - Saharan under Murajhar Police Station and also cousin of the petitioner had executed an affidavit declaring the petitioner as his first cousin. The affidavit is marked as Annexure-12.

42. The deponent has also annexed certain certificates issued by the Government Gaonburah of village - Saharan and village - Dighaljaruni marked as Annexure-13-14.

43. The Gaonburah's certificates certifying that the petitioners have earlier resided at Saharan village and thereafter shifted their base to Dighaljaruni cannot be accepted at this stage. Moreover, through their pleadings and evidences, the petitioners have never

mentioned the names of their uncles except the name of Ajijur Rahman. In a tacit manner the petitioners were very silent about the names of their uncles or even the names of their siblings. These documents Annexures-12, 13 and 14 cannot be considered at this stage.

44. It has also been held in the case of Rashminara Begum (supra) that the documents which were annexed with the writ petition filed by the petitioner, Rashminara Begum, were obtained on 04.11.2016, after the reference was decided by the Tribunal on 31.10.2016, and documents which were not exhibited or at least not filed before the Tribunal, cannot be gone into a writ proceeding to judge correctness of the decision of the Tribunal. Similarly, Annexures-12, 13 and 14 of the additional affidavit submitted by the deponent which are of 28.02.2019, 23.02.2019 and 24.02.2019, cannot be accepted at this stage since these documents were sworn and issued and submitted after the impugned order/opinion of the Tribunal dated 31.10.2016.

45. In the Voters' List of 1997 of Jamunamukh LAC [Annexure-5 in WP(C) No. 1578/2017], the petitioner Firun Nessa's name appears as wife of Abdul Razzaque at Serial No. 346. This cannot be considered as a link document with her projected father "Basir Uddin". Moreover, said Annexure-5 is not a certified copy of the Voters List and it was also not exhibited before the Tribunal.

46. The Voters' List of 1997 of Jamunamukh Constituency of No. 42 Polling Centre of Namati Mouza under Daboka PS of Dighaljaroni Forest Village was exhibited before the Tribunal as Exhibit-3. Here, the name of the petitioners' father is shown at Sl. No. 315 at House No. 19 (Ka). In this Voters' List, now the petitioners' grandfather's name appears as "Hazi Mofiz", instead of "Hazi Mofiz Ali". Even in the Voters List of 2005 (Exhibit-4), the

petitioners' grandfather's name appears as "Hazi Mofiz". Here, the petitioners have given an explanation that after observing Haj, the petitioners' grandfather had earned the title of Hazi. It is also apt to mention that the Voters' List of 2005 is of Village-"Dighaljari" and not of village "Dighaljaroni". Similarly, the Voters Lists of 2010 and 2014 (Exhibits - 5 and 6) are of "Dighaljari" and not "Dighaljaroni". It is apparent that the petitioners' projected grandfather has been referred as "Hazi Mofij" in the Voters List of 1997 from village – "Dighaljaroni Forest Village" relating to 90 Jamunamukh LAC (Ext.-3), instead of "Hazi Mufij Ali" as reflected in the Voters' Lists of 1966 and 1970 from Village – Saharon relating to 93 Hojai LAC (Exts. – 1 and 2). It can thus be concluded that the evidence is fraught with discrepancies.

47. Moreover, discrepancies have emerged in the age of the petitioners' projected father. In the Voters' List of 1966 the age of Basir Uddin is shown as 26 (Twenty Six) years and the residential address is shown as village - Saharan. Similarly, in the Voters' List of 1970, the age of Basir Uddin is shown as 30 (Thirty) years and his place of residence is shown as village - Saharan. After 27 (Twenty Seven) years in the Voters list of 1997 (Ext.-3) relied by the petitioners, their father shifted base and his place of residence is shown as "Dighaljaroni Forest village" relating to 90 Jamunamukh LAC, which is a different village. The Voters' List after a gap of 27 (Twenty Seven) years i.e. the Voters' List of 1997 reflects Basir Uddin's age as 50 (Fifty) years instead of 57 (Fifty Seven) years from Dighaljaroni Forest village. Again the petitioners' father's age is reflected in the Voters' List of 2005 as 65 (Sixty Five) years (Ext.4) instead of 68 (Sixty Eight) years showing him to be a resident of village - Dighaljari, which is altogether a different village. The discrepancies in the age and residence of the petitioners' projected father as reflected in the Voters' Lists of 1966, 1970 vis-à-vis 1997 and 2005 is incomprehensible. There is also no proof of residence of Basir Uddin in India after 1970 up-to

1997. Suddenly, after a gap of 27 (Twenty Seven) years, the petitioners' father's name appears in the Voters' List of 1997 in a different village under a different LAC. Through their pleadings and their evidence the petitioners have failed to ascribe adequate reasons and discharge their onus to prove that Basir Uddin whose name appears in the Voters' List of 1997 and 2005, resident of village - Dighaljaroni Forest village and village – Dighaljari respectively is the same person whose name has appeared in the Voters' List of 1966 and 1970 as a resident of village – Saharan.

48. It would be apt to reiterate that the Voters' List of 1985 was annexed in WP(C) No. 1578/2017 to establish the linkage of the petitioners' father Basir Uddin with his grandparents but as the petitioners did not exhibit these documents, they have failed to prove their linkage with Basir Uddin and his projected parents whose names are reflected in the Voters' Lists of 1966 and 1970.

49. Relating to the linkage purported to be established through the Gaonburha's and Panchayat certificates, it is held that those exhibited certificates marked as Exhibits-7, 8, 9, 10, 11 and 12, have not been proved by the Gaonburha and the authorities in the concerned Panchayat, who had issued those certificates.

50. It is also apparent from Exhibit-14 that pursuant to an order dated 22.01.1998, passed by the Land Revenue Authority, the name of Basir Uddin was recorded as one of the Pattadars along with seven of the Pattadars, who are not at all related to Basir Uddin or any of his family members in any manner. The land document also cannot be accepted as a linkage document to prove the legacy of the petitioners with their father and grandfather.

51. Petitioner Muslim Ali by exhibiting Voters list of 2005 relating to village – Dighaljari (Ext.4) of 90 Jamunamukh LAC placed before the Tribunal showing his father Basir Uddin about whom it had already been discussed above. Petitioner's name for the first time figured as a voter in the said Voters List of 2005 from village – Dighaljari at the age of 35 (Thirty Five) years though he was eligible to vote on completion of age of 18 (Eighteen) years since 1989. Said Muslim Ali did not state about his continuous existence in India since his date of birth in 1970 till 2005 accepting his age 35 years reflected in the Voters List of 2005.

52. In the wake of the foregoing discussions, it is thus held that the petitioners have failed to discharge their burden under Section 9 of the Act of 1946 with cogent, reliable and acceptable evidence.

53. It has been observed by this Court *in Jainal Uddin Vs. The Union of India and others in WP(C) No. 3071/2016* decided on 03.04.2018 that:

“This Court has held in several decision that when the citizenship status of a proceedee is questioned, that too by the State, it is the bounden duty of the proceedee to disclose all material facts in his possession at the first instant itself; in this case, in the written statement. Failure to disclose material facts in the written statement by itself may lead to drawal of adverse presumption against the proceedee. However, mere pleading of material facts in the written statement is not enough. If material facts are disclosed, those would then have to be proved by adducing cogent, reliable and admissible evidence.”

54. In the instant case, both the written statements submitted by the petitioners were very cryptic. They have not disclosed the names of their uncles, their grandmother as well as their siblings through their written statements. It is thus held that the petitioners have failed to establish any link with the Voters' Lists of 1966 and 1967 along with the Voters' List of 1997 and the subsequent Voters' Lists.

55. In view of the foregoing discussions, it is thereby held that the petitioners have failed to prove their linkage with their projected parents and grandparents. We thus record our concurrence to the common decision of the learned Tribunal dated 31.10.2016 in both the cases, FT(D) Case No. 439/2015 and FT(D) Case No. 455/2015.

56. Both the writ petitions are dismissed as they are devoid of merits.

57. Interim orders passed earlier on 20.03.2017 in WP(C) No. 1578/2017 and WP(C) No. 1591/2017 are vacated/recalled.

58. Registry to send back the original records of the FT(D) Case No. 439/2015 and FT(D) Case No. 455/2015 to the learned Foreigners' Tribunal, Nagaon Court No. 10TH at Sankardev Nagaon, Hojai along with a copy of this order forthwith and shall also inform the concerned Superintendent of Police (B), Hojai and the Deputy Commissioner, Hojai about this order for their needful.

JUDGE

JUDGE

Comparing Assistant