

GAHC010106392019



2026:GAU-AS:1531

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

Case No. : WP(C)/3206/2019

NUR MD. SEIKH
S/O. MD. RAHMAN ALI, VILLAGE- DHARAMSHALA, P.S.- DHUBRI,
DISTRICT- DHUBRI, (ASSAM). PIN- 783301.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY OF THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
KAMRUP(M)
GUWAHATI
P.O.- PAN BAZAR
GUWAHATI
DIST- KAMRUP(M)
ASSAM
PIN- 781001.

4:THE COMMISSIONER OF POLICE (B)
CITY
DIST- KAMRUP(M)
ASSAM
PIN- 781001.

5:THE ELECTION COMMISSION OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAVAN
NEW DELHI-01.

6:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZENS (NRC) ASSAM

BANGAGARTH
GUWAHATI-05.

7:THE DISTRICT ELECTION OFFICER
DHUBRI
P.O.- DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

Advocates for the Petitioner	: Mr. K. Bhuyan.
Advocates for the Respondents	: Ms. A. Gayan, CGC. Mr. H. Kuli. Mr. A. I. Ali, SC, ECI. Mr. P. Sarma, Addl. Sr. GA. Mr. G. Sarma, SC, F.T.
Date on which Judgment was reserved	: 19.01.2026
Date of pronouncement of Judgment	: 06.02.2026
Whether the pronouncement is of the operative part of the Judgment ?	: NA
Whether the full Judgment has been pronounced ?	: Yes

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER

(A.M. Kalita, J)

Heard Mr. K. Bhuyan, the learned counsel appearing for the Petitioner. Also heard

Ms. A. Gayan, learned CGC, as well as Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel for the Election Commission of India. Mr. P. Sarma, learned Addl. Sr. Govt. Advocate, Assam and Mr. G. Sarma, learned Standing Counsel, FT & Border matters.

2. By filing this writ petition under Article 226 of the Constitution of India, the Petitioner has assailed the Opinion dated 13.12.2018 rendered by the learned Foreigners' Tribunal (hereinafter referred to as the 'learned Tribunal'), Kamrup (M) 3rd, Guwahati, whereby the Petitioner, namely, Nur Md. Sheikh was declared as a foreigner under Section 2 (a) of the Foreigners Act, 1946.

3. On receipt of a reference, vide Noonmati P.S. Case No.33/2017, from the Deputy Commissioner of Police (B), Guwahati, for Opinion about the nationality of the aforesaid Petitioner, the learned Foreigners' Tribunal, Kamrup (M) 3rd, Guwahati registered F.T. Case No. 71/2017. On receipt of the notice, the Petitioner appeared before the learned Tribunal and submitted his written statement. The Petitioner also adduced evidence on affidavit of himself as DW No.1, evidence of one Rahman Ali, claimed to be the father of the Petitioner as DW No.2 and one Md. Rahizuddin Bepari as DW No. 3.

4. The Petitioner in his written statement stated that he is the 4th son of Rahman Ali. He stated that the name of his grandfather appeared in the Electoral Roll of 1966 in 33 no. Dhubri Legislative Assembly Constituency, wherein, his grandfather's name appeared wrongly as Jaheruddin Sk. He stated that his grandfather's name appeared in the Electoral Roll of 1970 in the aforesaid constituency as well. He further stated that the name of his father appeared in the Electoral Roll of 1977 in 23 no. Dhubri Assembly Legislative Constituency, however, the name of his grandfather was wrongly appeared as Jahaddi. He stated that name of his father appeared in the Electoral Roll of 1989 in 23 no. Dhubri Legislative Assembly Constituency, wherein, the name of his grandfather

was wrongly appeared as Johddi. Similarly, the name of his father appeared in the Electoral Roll of 1997 in 23 no. Dhubri Legislative Assembly Constituency. He stated that his name appeared for the first time in the Electoral Roll of 2010 in 23 no. Dhubri Legislative Assembly Constituency, wherein, his name appeared as Nur Md. Sk.

5. In the aforesaid written statement, the Petitioner stated that he read up to class-IV in 2102 No. Alirgaon Girl's L.P. School and due to financial constraints of the family, he could not pursue his studies any more. He stated that he was working as a Daily Wage Earner in Guwahati. He stated that in the year, 2013, he along with his father was issued an Elector Photo Identity Cards (EPIC). The Petitioner further stated that he was born and brought up in the village Dharmashala and he is a permanent resident of the aforesaid village. His forefathers have been residing in the said locality prior to the independence of India and therefore, there cannot be any doubt about his citizenship. He stated that the police authority has referred his case to the learned Tribunal without any verification of relevant documents regarding his citizenship.

6. In support of the Petitioner's case, the Petitioner (DW-1), his projected father (DW-2) and another person, namely, Md. Rahizuddin Bepari (DW-3) produced and exhibited altogether 10 documents which are marked as Ext. 1 to Ext. 10. The Exhibits are as follows: -

“(i) Ext '1' is the certified copy of the voter list of the year 1966 of village-175 Dharmashala Pt IV, Mouza-Dhubri under no. 33 Dhubri LAC.

(ii) Ext '2' is the certified copy of the Electoral Roll of the year 1970 of village- 175 Dharmashala Pt IV, Mouza-Dhubri under no. 33 Dhubri LAC.

(iii) Ext '3' is the certified copy of the Electoral Roll of the year 1977 of village- 165 Dharmashala Pt-IV, Mouza-Dhubri under no. 23 Dhubri LAC.

(iv) Ext '4' is the certified copy of the Electoral Roll of the year 1989 of village-165 Dharmashala Pt-IV, Mouza-Dhubri under no. 23 Dhubri LAC.

(v) Ext '5' is the certified copy of the Electoral Roll of the year 1997 of village-165 Dharmashala Pt-IV, Mouza-Dhubri under no. 23 Dhubri LAC.

(vi) Ext '6' is the certified copy of the Electoral Roll of the year 2010 of village-165 Dharmashala Pt-IV, Mouza-Dhubri under no. 23 Dhubri LAC.

(vii) Ext '7' is the School Certificate in the name of the petitioner namely Nur Mahammad sheikh S/o- Rahman Ali and Nurbanu Bibi issued by the Head Teacher of 2102 No. Alirgaon Girl's L.P. School.

(viii) Ext '8' is the Elector Photo Identity Card in the name of the petitioner namely Nur Mahammad Sheikh S/o- Rahman Ali.

(ix) Ext '9' is the Elector Photo Identity Card in the name of the father of the petitioner viz Rahman Ali S/o- Jahar Uddin.

(x) Ext '10' is the Elector Photo Identity Card in the name of one Rahijuddin Bepari (DW3) S/o- Kitap Uddin Bepari and a Transfer Certificate issued to Rahiz Uddin Bepari by Dharmashala Islamia Madrassa."

7. The Petitioner in his evidence as DW-1 reiterated the same facts as he had stated in his written statement. In his cross examination, he stated his grandfather's name as Jahuruddin and his grandmother's name as Rupjan Bewa. He stated that he did not see his grandfather as he expired before his birth. He stated that his grandfather married twice. His mother's name is Nur Banu Bibi. He stated that the Headmaster of the School did not come to give his evidence. He stated that he did not submit any documents in between 1970-1977 in support of his case. He stated that he did not submit any land documents in the case. DW-2, the projected father of the Petitioner (Md. Rahman Ali) in his Evidence-on-Affidavit, had stated the same statements as had been stated by the Petitioner in his evidence. He stated that he had been issued an EPIC in 2013. In his cross examination, he stated that his mother's name is Rupjan and his parents died during the flood occurred before 1988. DW-3, Md. Rahizuddin Bepari also stated the same facts as stated by DW-1 and DW-2. He stated that since the Petitioner had been

regularly voting in 23 no. Dhubri Legislative Assembly Constituency, no question could arise about his citizenship. He stated that Ext. 9 is his Transfer Certificate dated 31.12.1968, issued by Head Molana, Dharmshala Islamia Madrasa. He stated that Ext. 10 is his EPIC card. It is seen that DW-3 did not present himself before the Tribunal for his cross examination.

8. Mr. K. Bhuyan, learned counsel appearing for the Petitioner submits that the documents submitted before the learned Tribunal clearly shows that the Petitioner's forefathers have been residing in India prior to 1966, which is evident from the Electoral Roll of 1966. He submits that the Petitioner's father's name appeared in the Electoral Roll of 1977, wherein, his father's name has been shown as Jahaddi. He submits that Petitioner's grandfather's name has been wrongly mentioned as Jahaddi instead of Jaheruddin Sk. He submits that Jahaddi and Jaheruddin Sk is the same person. He submits that in the Electoral Roll of 2010, clearly shows the Petitioner's name along with the name of his father Rahman Ali. He submits that the aforesaid contents of the Electoral Roll of 1966, 1977 and 2010, shows that there is a clear link between the Petitioner and his grandfather, whose name appeared in the Electoral Roll of 1966. He further submits that the father of the Petitioner himself came before the learned Tribunal as DW-2 and adduced evidence, clearly stating that the Petitioner is his son. He submits that there are some discrepancies in the name of the grandfather of the Petitioner in the aforesaid Electoral Roll which should not negate the case of the Petitioner in the instant case. In support of his contention, the learned counsel for the Petitioner has referred to the cases of **Md. Rahim Ali @ Abdur Rahim Vs. State of Assam and Ors.**, reported in **2024 15 SCC 152** and the case of **Sirajul Hoque Vs. State of Assam & Ors.**, reported in **2019 5 SCC 534**, wherein the Hon'ble Supreme Court held that minor discrepancy in the name in the Electoral Roll is not fatal to the case of a Proceedee before a Tribunal. Therefore, the learned counsel submits that the Opinion rendered by the learned Tribunal declaring the Petitioner as foreigner is palpably wrong and hence, the same is liable to

be set aside and quashed.

9. Per contra, Mr. G. Sarma, learned Standing counsel, FT and Border matters submits that the Petitioner has miserably failed to establish himself as a citizen of India. He submits that he could not establish any linkage to his projected grandfather through his father. He submits that the name appeared in the Electoral Roll of 1966 and 1970, whom the Petitioner had claimed to be his grandfather is different from the name, which appeared in the Electoral Roll of 1977, wherein his projected father and projected grandfather's names had supposedly appeared. He submits that there is no authentic evidence adduced by the Petitioner to prove that the name Jaheruddin Sk and Jahaddi is of a same person. He submits that the statement made by the Petitioner at Para-2 of his WS is in contradiction to Para-3 of his WS. He submits that in Para-2 of his WS, he stated that his grandfather was also known as Jahaddi but in Para-3 of his WS, he himself stated that his grandfather's name appeared wrongly as Jahaddi in the Electoral Roll of 1977. He further submits that the projected grandfather's existence prior to 1971, in view of the above, could not have been established by the Petitioner. He submits that father's oral statements cannot be a proof of the Petitioner's citizenship. In support of his aforesaid submissions, the learned Standing counsel for the FT and Border matters has referred to the following cases:

(i) Aziz Miya @ Md. Aziz Miya-vs-State of Assam, reported in 2023 (4) GLT 246;

(ii) Asia Khatoon-vs-The Union of India and 3 Ors., WP(C) 4020/2017, decided by this Court on 21.11.2019;

(iii) Nur Begum-vs-The Union of India and Ors, reported in (2020) 3 GLT 347.

10. We have heard the learned counsel appearing for the respective parties and have also perused the records received from the Foreigners' Tribunal, Kamrup (M), 3rd, Guwahati.

11. It is seen that for establishing the Petitioner's linkage to Indian

grandparents/parents, relatable to a period prior to the cutoff date of 25.03.1971, the Petitioner has projected one Jaheruddin SK as his grandfather and Bachchani Bibi as his grandmother, whose names appeared in the Electoral Roll of 1966 from village 175 Dharmashala PT-IV, Dhubri. The Petitioner has also projected one Rahman Ali to be his father, whose name appeared for the first time in the Electoral Roll of 1977. The Petitioner's name appeared for the first time in the Electoral Roll of 2010 from the village 165 Dharmashala PT-IV.

12. It is the case of the Petitioner that since his grandfather namely, Jaheruddin SK can be traceable to 1966, which is prior to the cut-off date of 25.03.1971 and he can be linked to his grandfather through his father namely, Rahman Ali, he is an Indian national by birth. The Petitioner has not submitted any other document except the above mentioned documents to establish his citizenship in the instant case.

13. The Petitioner has exhibited the Electoral Roll of 1966 (as Exhibit-1) and Electoral Roll of 1970 (as Exhibit-2) of 175 Dharmashala PT-IV, wherein, the name of one Jaharuddin SK along with two other persons namely, Bachchani Bibi and Rupertullah SK appeared. In the Electoral Roll of 1977 (Exhibit-3) of village 165 Dharmashala PT-IV, it is seen that the names of Rapatullah, Rahman Ali and Ramjan Ali appeared, whose father's name has appeared as *Jahaddi*. The Petitioner has projected Rahman Ali to be his father. The Electoral Roll of 1989 (Exhibit-4) of village 165 Dharmashala PT-IV shows the name of Rahman Ali and one Nur Banu Bibi, whom the Petitioner projected as his parents. It may be worthwhile to mention that the name of Rahman Ali's father has been shown as *Johddi* in the aforesaid Electoral Roll. In the Electoral Roll of 1997 of village 165 Dharmashala PT-IV (Exhibit-5), the name of Rahman Ali and Nur Banu Bibi appeared, wherein, Rahman Ali's father's name has been shown as *Jahar Uddin*. In the Electoral Roll of 2010 of village 165 Dharmashala PT-IV, the Petitioner's name appeared for the first time, wherein, his father's name has been shown as Rahman Ali and his name appeared along with his projected father and mother.

14. The Petitioner has submitted another document, i.e., a certificate issued by the Head Teacher of 2102 No. Alirgaon Girl's L.P. School, Dhubri, to the Petitioner, which shows the Petitioner's father name as Rahman Ali and the Petitioner passed the 4th standard examination.

15. It is seen from the records that Election Officer, Dhubri, submitted a verification report dated 19.12.2017, whereby he has authenticated the Electoral Roll of 1966, 1970, 1977, 1989, 1997 and 2010 respectively.

16. From the aforesaid documents, it is seen that though the name of one Jaharuddin SK, whom the Petitioner projected as his grandfather appeared in the Electoral Roll of 1966 and 1970, the Petitioner could not submit any other Electoral Roll, thereafter, to show the presence of the aforesaid Jaharuddin SK. It is seen from the cross-examination of Rahman Ali, whom the Petitioner has projected as his father, that his parents died in the flood which occurred prior to 1988 but, he did not mention any specific date or year of such flood. From the aforesaid statement, a presumption cannot be drawn that the Petitioner's grandparents died long before 1988 or soon after 1970. If Rahman Ali's statement is taken to be true then there should have been certain document showing his parents' presence even after 1970. Since Rahman Ali has mentioned in his cross-examination that the flood occurred prior to 1988, it is probable that the parents of Rahman Ali may have died some time before 1988. Therefore, in that event, it is expected that their names are there in the Electoral Roll subsequent to 1970, but prior to 1988. This creates a doubt whether Jaharuddin SK, whose name appeared in the Electoral Rolls of 1966 and 1970, is actually the grandfather of the petitioner.

17. In the Electoral Roll of 1977, wherein, the projected father of the Petitioner's name appeared as Rahman Ali, however, against his name, his father's name has appeared as *Jahaddi* and not as *Jaharuddin SK*, whom the Petitioner has projected as his grandfather. Another important fact which is noticed from the written statement filed by the Petitioner is that though in Paragraph-2, he has mentioned his grandfather's name as

Jaharuddin Seikh @ Jaheruddin Sekh @ Jahaddi, in Paragraph-3, he stated that his grandfather's name wrongly appeared as *Jahaddi* in the Electoral Roll of 1977. This makes his statement in the written statement contradictory and doubtful, as in one place he has mentioned his grandfather's name as *Jahaddi* whereas in another place he has stated his grandfather's name is not *Jahaddi*. The Petitioner has also failed to bring on record any documents or reliable evidence to show that the aforesaid *Jaharuddin SK or Jaheruddin Seikh* is the same person who was also known as "*Jahaddi*". In the Electoral Roll of 2010, wherein, the Petitioner's name appeared for the first time, the name of Rahman Ali also appeared, wherein, the name of Rahman Ali's father has been shown as *Johruddin*. It is also seen that in none of the Electoral Rolls, the name of the Petitioner's projected grandfather and his father appeared together to directly link his projected father with his projected grandfather. From the above, it is discernible that the Petitioner could not link the aforesaid Jaheruddin SK or Jaharuddin SK with his projected father Rahman Ali and thereby, failed to link himself with his projected grandfather, whose name he claimed to be *Jaheruddin SK* in the Electoral Roll of 1966 or *Jaharuddin SK* in the Electoral Roll of 1970. Therefore, the appearance of his name along with his projected father, namely, Rahman Ali in the Electoral Roll of 2010, does not really help him to link to his projected grandfather, whose presence he claimed to be available in India prior to 25.03.1971.

18. It may be relevant to mention herein that placing of certain voter lists and claiming linkage to a person to be his father or grandfather cannot be taken at its face value without any conclusive proof that the projected father or grandfather is actually his father or grandfather. In this connection, the case of **Aziz Miya (supra)** is referred to. Paragraph-15 of the aforesaid case, being relevant is reproduced herein below: -

"15. We are constrained to observe that a mere claim by a suspected person by referring to a Electoral Roll claiming a person therein to be his father is not a conclusive proof and that by doing so, the person has discharged the burden that he is not a foreigner. This is because there is also a further requirement to prove that the

person who is reflected in the Electoral Roll relied upon is actually the father of the person who makes the claim the claim will have to be substantiated with further material/materials acceptable in law.”

19. The Petitioner has submitted Exhibit-7, a certificate issued by the Head Teacher of Alirgaon Girl’s L.P. School on 24.11.2008. This document has been submitted by the Petitioner to link himself to his projected parents, i.e., Rahman Ali and Nur Bano Bibi. However, since we have seen that Rahman Ali could not link himself to the projected grandfather of the Petitioner by way of any cogent and reliable evidence, this document does not help the Petitioner to establish his citizenship under the Foreigners’ Act, 1946. Moreover, this document was not proved by the author of the document and therefore, the same is not admissible as evidence in the instant case. Other than the aforesaid document, no other Electoral Roll or any other relevant document has been produced and exhibited by the Petitioner to show his linkage and/or relationship with the projected father and the grandfather. The statement of DW-2, i.e., Rahman Ali, the projected father of the Petitioner cannot be relied upon in absence of any documents showing the relationship of DW-2 with the projected grandfather of the Petitioner. It is a settled law that in a proceeding under the *Foreigners’ Act, 1946* and the *Foreigners’ (Tribunal) Order, 1964*, the evidentiary value of oral testimony without support of documentary evidence is not at all reliable. Oral testimony alone cannot be treated as a proof of citizenship. Therefore, the evidence of DW-2 cannot be treated as cogent, reliable and admissible evidence so as to establish the linkage of the Petitioner with his projected grandfather. In this connection, reliance can be made to the case of **Asia Khatoon (supra)** decided by this Court on 21.11.2019. The relevant paragraph of the aforesaid case is extracted herein below for ready reference: -

“The statement of DW-2 i.e. Amir Uddin, who claimed to be the father of the Petitioner, cannot be relied upon in the absence of any documents showing his relationship to the Petitioner. In this, we would observe that in a 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 him."

20. In this context, the case of **Nur Begum (supra)**, being relevant, paragraph-6 of the aforesaid case is reproduced herein below: -

"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. We would reiterate that in a 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 is 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 the period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents."

21. Coming back to the submissions of the counsel appearing for the Petitioner, he relied on the cases of **Md. Rahim Ali (supra)** and **Sirajul Hoque (supra)**, wherein the Hon'ble Supreme Court held that minor discrepancies in the names appearing in the Electoral Roll cannot be a reason to falsify the claim of the Proceedee before a Foreigners' Tribunal.

22. We are in respectful agreement to the observations made by the Hon'ble Supreme Court in the aforementioned cases. However, in the instant case, as discussed above and seen from the records that the discrepancy in the name of the projected grandfather of the Petitioner cannot be termed as minor and the discrepancy is sufficient and material

enough to create a doubt which can falsify the claim of the petitioner and thereby negate the claim of the Petitioner. Therefore, the aforesaid two cases of **Md. Rahim Ali (supra)** and **Sirajul Hoque (supra)** are being not relevant to the facts of the instant case, not discussed any further.

23. As the primary issue in a proceeding under the Foreigners' Act, 1946 and the Foreigners' (Tribunal) Order, 1964, is to determine whether the Proceedee is a foreigner or not, the relevant facts being especially within the knowledge of the Proceedee, the burden of proving his citizenship absolutely rests upon him, notwithstanding anything contained in the Evidence Act of 1972. Section 9 of the Foreigners Act, 1946, mandates that it is the Proceedee, who has to prove his citizenship by way of certain cogent, reliable and admissible evidence before the learned Tribunal.

24. As discussed above, in the instant case, the Petitioner has failed to discharge the burden of proof under Section 9 of the aforesaid Act of 1946 by linking himself to his projected grandfather, whose presence, in India (Assam), is claimed to be prior to 15.03.1971.

25. In view of the aforesaid findings, we are of the considered view that on the available materials, the learned Tribunal rendered its opinion upon due appreciation of the entire facts, evidences and documents brought on record. Therefore, we find no infirmity in the findings and opinion rendered by the learned Tribunal. Hence, finding no merit in the instant writ petition, the same is dismissed. However, without any order as to costs.

26. Consequently, the interim protection granted by this Court, vide it's order dated 29.05.2019 stands vacated.

27. Registry is directed to send back the case records of the learned Tribunal forthwith.

28. A copy of this order be made as a part of the case records of the learned Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant