GAHC010113542020

2026:GAU-AS:17268

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

Case No. : WP(C)/3446/2020

JAYNAL ABEDIN @ JAINAL ALI
S/O- KERAMAT ALI, R/O- VILL- LUNGJHAR, P.S. MANIKPUR, DIST.- BONGAIGAON, ASSAM, PIN- 784148

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF INDIA, DEPTT. OF HOME, SHASTRI BHAWAN, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
INDIA
NEW DELHI
PIN- 110001

3:THE STATE OF ASSAM
REP. BY ITS COMM. AND SECY. TO THE GOVT.OF ASSAM
DEPTT. OF HOME
DISPUR
GHY-6

4:THE STATE CO-ORDINATOR
ASSAM
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-5
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON

P.O. AND DIST.- BONGAIGAON
ASSAM
PIN- 783380

6:THE DY. COMMISSIONER
BONGAIGAON
P.O. AND DIST.- BONGAIGAON
ASSAM
PIN- 78338

Advocate for the Petitioner : K U AHMED, MS. N HASAN

Advocate for the Respondent : ASSTT.S.G.I., SC, ELECTION COMMISSION.,SC, NRC,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE PRANJAL DAS

For the petitioner : Mr. K.U. Ahmed, Advocate
For the respondents : Mr. D. Doley, CGC
: Mr. A.I. Ali, SC, ECI
: Mr. J. Payeng, SC, FT and Border
: Ms. R.B. Borah, Govt. Advocate

Date on which judgment is reserved : 18.08.2026.

Date of pronouncement of judgment : 23.11.2026.

Whether the pronouncement is of the operative part of the judgment? : NO.

Whether the full judgment has been Pronounced? : YES.

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J)

Heard Mr. K.U. Ahmed, learned counsel for the petitioner. Also

heard Mr. D. Doley, learned CGC for respondent no.1; Mr. A.I. Ali, learned standing counsel for respondent no.1; Mr. J. Payeng, learned standing counsel for F.T. and Border matters, appearing for respondent nos. 3, 4 and 5; and Ms. R.B. Bora, learned Government Advocate for respondent no.6.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Jaynal Abedin @ Jainal Ali has assailed the impugned opinion dated 29.01.2020, passed by the learned Member, Foreigners Tribunal No.1, Bongaigaon, in Case No. BNGN/FT/210/09, arising out of Ref. P.E. Case No. 37/09, by which he was declared to be a foreigner of post 25.03.1971, who had entered into India (Assam) through unauthorised route after 25.03.1971 from the specified territory and hence, he is liable to be deported.

3) On being served with notice, the petitioner had appeared before the learned Tribunal and filed his written statement, *inter alia*, denying that he was a foreigner and claimed to be a citizen of India. He had stated that his name is Jaynal Abedin and not Jainal Ali as mentioned in the case. He had stated that his grandfather is Jan Sheikh, whose name is recorded in the NRC of 1951 at village- Salmara Gaon, P.S. Bijni, Dist. Kokrajhar. The name of his father, Keramat Ali is recorded in the electoral roll of 1997 and 2008 of 34 No. Abhayapuri North LAC at village- 22 Lungjhar, Dist. Bongaigaon. His name is recorded in the electoral roll of 2011 and 2017 of 34 No. Abhayapuri North LAC at village- 22 Lungjhar, Dist. Bongaigaon. He is the holder of Elector Photo Identity Card issued by the Election Commission of India, having permanent address at village- 22 Lungjhar, P.S. Manikpur, Dist. Bongaigaon. The petitioner had also filed an additional written statement, *inter alia*, stating that his grandfather, Jan Sheikh was a permanent resident of village- Salmara Gaon, P.S.

Bijni, in erstwhile Kokrajhar District, now Bongaigaon District and his name was enlisted in the voter list of 1959 and he possessed a plot of land measuring 1 katha- 16 lecha of A.P. No. 30 at village- Lungjhar in the year 1964, which the petitioner is possessing by inheritance, which was informed to him by the Circle Officer, Bijni Revenue Circle vide RTI information, sought for by his father, Keramat Ali, son of Jono Sheikh @ Jan Sheikh. The petitioner had also stated that his father used to study upto IIIrd standard at 490 No. Barbakhara Prathamik School, Sub-Division Manikpur, Dist. Bongaigaon in the year 1970 and left the school due to death of parents, Jono Sheikh (father) and Tafiran Bewa (mother). The petitioner had reiterated that the name of his father appeared in the voter list of 1985, 1997 and 2008. He took birth at village Lungjhar in the year 1987, which is mentioned in PAN Card issued by the Income Tax Department, and he is residing in village- Lungjhar and accordingly, his name was recorded in the voter list of 2011 and 2017.

4) In his two evidence-on-affidavits filed on 15.12.2017 and 25.11.2019 , the petitioner had reiterated the statements made in his written statement and additional written statement and had exhibited the following documents:-

a. *NRC (Ext.A).*
b. *NRC Details (Ext.A1).*
c. *Electoral roll of 1997 (Ext.B).*
d. *Electoral roll of 2008 (Ext.C).*
e. *Electoral roll of 2011 (Ext.D).*
f. *Electoral roll of 2017 (Ext.E).*
g. *Electoral Photo Identity Card (Ext.F).*
h. *Voter list of 1959 (Ext.G).*
i. *RTI Reply (Ext.H).*
j. *Land revenue payment clearance certificate (Ext.I).*
k. *School Certificate issued in the name of Keramat Ali (Ext.J).*

l. *Uncertified copy voter list of 1985 (Ext.C-1)*
m. *Elector Photo Identity Card of Keramat Ali (Ext.K).*
n. *PAN Card of petitioner (Ext.L)*.

5) The petitioner had also examined Keramat Ali, son of Jan Sheikh @ Jono Sheikh, his projected father as DW-2. He had also reiterated the statements made by the petitioner in his evidence-on- affidavit as DW-1. However, it may be mentioned that at the foot of his evidence-on- affidavit, the DW-2 had stated that he was swearing additional evidence-on-affidavit. In addition to documents exhibited by the petitioner, the DW-2 had also exhibited the following documents:-

a. *Certified copy of voter list of 1997 (Ext.B-1).*
b. *Certified copy of voter list of 2008 (Ext.C-3).*
c. *Certified copy of voter list of 2011 (Ext.D-1).*
d. *Certified copy of voter list of 2017 (Ext.E-2)*.

6) It is, thus, seen that on conjoint reading of the evidence-on-affidavit by DW-1 and DW-2, no document was exhibited and marked as Ext.C-2 and Ext.E-1. Moreover, if the evidence-on-affidavit of DW-2, referred above is the additional evidence-on- affidavit, then the petitioner has neither annexed evidence-on- affidavit by DW-2 nor the same is available in the Tribunal's record.

7) It may be mentioned that apart from the evidence-on- affidavits referred above, the learned Tribunal had also permitted the DW-1 and DW-2 to have their evidence-in- chief recorded before their cross-examination.

8) The petitioner had also examined Jai Ram Ray, Retired Head Teacher of Barbakhara L.P. School as DW-3. He had exhibited the school certificate (Ext.I) issued by him, his signature thereon as Ext.1(i), and the counterfoil of the said certificate as Ext.M. He had also exhibited the School

admission register as Ext.L and entry relating to Keramat Ali as Ext.L(i). DW-3 had stated that he had joined 490 No. Barbakhara L.P. School in the year 1995 as Assistant Teacher and from 2008, he became as Head Teacher till December, 2017. He had issued Ext.L certificate. He had also exhibited his bank pass-book as Ext.N. In his cross-examination, DW-3 had stated that he had not brought authorisation letter from present Head Master. He had simply brought the admission register. He had denied that using State Emblem in the certificate is not admissible as per law. He had not brought any document that he was the Head Master at the said school. He had denied that he had issued the said certificate on 09.11.2017. He had denied that giving division in primary school is maintainable. He had denied that Ext.I was not a genuine document.

9) The learned Tribunal, on appreciation of the pleadings and evidence, held that Ext.A, Ext.A(i), Ext.B, Ext.B(i), Ext.F, Ext.G, Ext.H, Ext.I, Ext.K and Ext.L does not establish any linkage of the petitioner with either Keramat Ali or Jono Sheikh, whom he claims to be his father and grandfather respectively. It was held that the voter list of 2011 [Ext.C and Ext.C(i)], voter list of 2017 [Ext.D and Ext.D(i)], EPIC (Ext.E), PAN Card (Ext.J) indicate the name of Keramat Ali. In respect of Ext.C, Ext.C(i), Ext.D and Ext.D(i), it was observed that though the name of father of the petitioner is written as Keramat Ali, but it cannot be said that the said Keramat Ali and the elector Keramat Ali of Ext.A and Ext.A(i) is one and the same person.

10) The learned Tribunal had referred to the evidence of the petitioner, where he had stated that his father Keramat Ali was still living in village Lungjhar where the petitioner is also residing. Keramat Ali came and deposed as DW-2, but his name was absent in the voter list of 2011 (Ext.C) and

voter list of 2017 (Ext.D), which contained the name of the petitioner and his wife Mortobhanu, which created doubt about the truthfulness of the petitioner's version. Hence, the evidence of DW-2 was not accepted as trustworthy. It was held that statement without any document was no evidence at all. The EPIC (Ext.E) was discarded because appearance of a name in the voter list or long stay in the Country are not a proof of citizenship. The PAN Card (Ext.J) was also discarded as untrustworthy because the petitioner was not an Income Tax payee and the same was not proved by calling the Income Tax authorities and in the absence of particulars contained in the application for PAN Card, for which no credence could be given to the PAN Card.

11) Accordingly, it was held that if the voter list of 2011 [Ext.C and Ext.C(i)], voter list of 2017 [Ext.D and Ext.D(i)], voter list of 1959 (Ext.E), PAN Card (Ext.J) are excluded from consideration, there remains nothing on record to prove petitioner's relationship with Keramat Ali, the voter in voter list of 1997 [Ext.A and Ext.A(i)]. It was held that the petitioner had failed to establish that he was born out of Indian parents. Thus, it was held that the petitioner had failed to discharge his burden under Section 9 of the Foreigners Act, 1946 to prove that he is not a foreigner but a citizen of India. Accordingly, the petitioner was held to be a foreigner of post 25.03.1971, who had entered into India (Assam) through unauthorised route after 25.03.1971 from the specified territory and hence, liable to be deported.

12) The learned counsel for the petitioner had submitted that the petitioner had exhibited all relevant documents and had also examined his father, Keramat Ali as DW-2 and also the Head Master of the 490 No. Barbakhara L.P. School, where his father had studied upto Class-III and had

duly proved his linkage as son of Keramat Ali and grandson of Jono Sheikh, who were all residents of same village- Lungjhar, but the learned Tribunal had rejected the evidence on irrelevant and untenable considerations. It was submitted that the evidence of DW-3, the retired Head Master of the said 490 No. Barbakhara L.P. School was also discarded only on the ground that he had brought the admission register without any authority letter, which is not a tenable ground. Accordingly, it was submitted that the writ petition deserves to be allowed and the petitioner is liable to be declared as Indian.

13) Per contra, the learned standing counsel for the petitioner had made his submissions in support of the impugned opinion and had cited the case of *C. Doddanarayana Reddy (Dead) by LRs. & Ors. v. C. Jayarama Reddy (Dead) by LRs & Ors., 2020 SCC OnLine SC 186*.

14) Perused the record of the case, called for from the learned Tribunal. Considered the statements made in the writ petition and documents annexed therein and also considered the submissions of all appearing learned counsel and the case cited by the learned standing counsel for the FT and Border matters.

15) It is seen that though the petitioner had taken a stand that his projected father is Keramat Ali, son of Jono Sheikh and that he and his projected father were continuously residing at village- Lungjhar, but their names do not appear together as voters in any common voter list. The petitioner did not take a stand in his written statement that he was living separately from his father. The petitioner had exhibited the School certificate (Ext.I) in respect of Keramat Ali, the projected father of the petitioner. However, the said document does not help the petitioner in any manner because the said certificate contains

State Emblem, which a Head Master of the School is not authorised to use. Under Rule 10(2) of the State Emblem of India (Prohibition of Improper Use) Rules, 2007 framed under Section 11 of the State Emblem of India (Prohibition of Improper Use) Act, 2005, a Headmaster is not authorised to use State Emblem of India in any manner. Under such circumstances, this Court, in the case of *Jalaluddin v. Union of India & Ors., (2018) 6 GLR 513: 2018 (4) GLT 354: (2018) 0 Supreme (Gau) 1376*, had held that unauthorised use of State Emblem of India has rendered the particular document as inadmissible in evidence.

16) It is also noticed that in his written statement filed on 29.11.2017 and additional written statement filed on 25.11.2019, the petitioner has not disclosed the names of (i) his grandmother, (ii) his mother, (iii) his father's siblings, (iv) his siblings, (v) his wife, and (vi) his children. The non-disclosure of the entire family by the petitioner, who was accused of being a foreigner, has to be viewed with some suspicion.

17) In his additional written statement, the petitioner had referred to a plot of land belonging to his grandfather at Lungjhar, which he had inherited. However, instead of producing and proving any (i) document relating to land being inherited by him and/or (ii) land revenue record, the petitioner had referred to an RTI reply that Jono Sheikh had possessed land in the year 1964. The said RTI reply, which was exhibited as Ext.G, is not primary evidence regarding land revenue records. If the petitioner had inherited the land, the same should have been recorded in the land revenue records, which were not called for and exhibited. Similarly, land revenue report (Ext.H) is also not primary evidence and at best it is secondary evidence. Be that as it may, Section

61 of the Evidence Act, 1872 requires that contents of documents has to be proved by primary or by secondary evidence. The RTI reply (Ext.G) and Land Revenue Report (Ext.H), by no extent of imagination, can be held to be a piece of primary evidence, which can only be land revenue records. Thus, the fact as to whether Jono Sheikh had owned a plot of land or whether land revenue was paid, is a point that was required to be proved by primary evidence, which was not done in this case. It would be relevant to quote paragraph 21 of the decision of this Court in the case of *Borhan Ali @ Barhan Ali v. Union of India & Ors., (2018) 6 GLR 491: 2018 (4) GLT 392: (2018) 0 Supreme(Gau) 1372*, on the point:-

> ***21**. At this stage, we may advert to the decision of the Orissa High Court in Ganesh Swain (supra). That was an appeal against a preliminary decree for partition. In the context of that case, reliance was placed on an entry in the voters list. Trial Court did not place any reliance on the voters list on the ground that two of its pages did not bear any seal of the Panchayat office or election office but instead had the seal of the Sadar Police Station without signature. Orissa High Court held that voters list prepared under the Representation of the People Act, 1951 was a public record within the meaning of Section 35 of the Evidence Act and a public document within the meaning of Section 74(1)(iii) of the Evidence Act and was, thus, admissible in evidence. It was, therefore, not necessary to call in evidence the author thereof or the person supplying the information to prove its genuineness.*
>
> ***21.1**. With respect, we are unable to agree with the above observations of the Orissa High Court. It is no doubt true that voters list is a public record within the meaning of Section 35 of the Evidence Act and is a public document within the meaning of Section 74(1)(iii) of the Evidence Act. Section 61 of the Evidence Act says that contents of documents may be proved either by primary or by secondary evidence. This Section does not make any distinction between a public document and a private document. Therefore, when a party seeks to rely upon a document, the contents of the document would have to be proved either by primary or by secondary evidence.*
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> ***21.2**. What is primary evidence is dealt in Section 62 of the Evidence Act. Primary*

evidence means the document itself produced for the inspection of the Court. Section 63 deals with secondary evidence. Secondary evidence means and includes certified copies.

***21.3**. Ordinarily, a document has to be proved by primary evidence (please see Section 64). But in certain cases enumerated in Section 65 of the Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is a public document within the meaning of Section 74 [Section 65(e)]; when the original is in possession or power of any person legally bound to produce it but despite notice under Section 66, such person does not produce it [Section 65(a)]; when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force to be given in evidence [Section 65(f)]:, etc. This Section itself mentions that when the original is a public document within the meaning of Section 74 or when the original document is a document of which a certified copy is permitted by law to be given in evidence i.e., clauses (e) and (f), a certified copy of the document but no other kind of secondary evidence is admissible.*

***21.4**. As noticed above, Section 66 requires giving of notice to the party in possession of the document to produce the same before the Court.*

***21.5**. That brings us to Section 76 of the Evidence Act. Every Public Officer having custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor together with a certificate written at the foot of such a copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.*

***21.6**. As per Section 77 of the Evidence Act, such certified copies may be produced in proof of contents of the public document or part thereof.*

***21.7**. Therefore, if a proceedee relies on a voters list, only a certified copy of such voters list or extract thereof would be admissible in evidence. Filing of an unsigned or unauthenticated or uncertified copy of voters list sought to be relied upon as proof of citizenship would not be admissible in evidence. Therefore, we would respectfully disagree with the view taken by the Orissa High Court.*

***21.8**. There is one more aspect. Though under Section 79 of the Evidence Act, there is presumption as to the genuineness of certified copies provided that such document is substantially in the form and purports to be executed in the manner*

directed by law in that behalf, it is in the public domain that citizenship is a contentious issue in so far the State of Assam is concerned. There are 100 Foreigners Tribunals functioning in the State of Assam which are mandated under the law to answer references made to them by the referral authority, i.e., concerned Superintendent of Police (Border) as to whether the proceedee is a foreigner or not. Simultaneously, process is on for finalizing or rather updating National Register of Citizens (NRC) in the State of Assam. In both the processes, proceedee or the claimant, as the case may be, primarily rely upon voters lists to prove their citizenship. It is also in public domain that a large number of voters lists have been detected which have been suspected to be not genuine. Therefore, notwithstanding the presumption of genuineness under Section 79, it would be safe for the Tribunals and the Courts to insist on proof of contents of such certified copies by comparing with the primary evidence, i.e., electoral roll in original produced and testified before the Tribunal or the Court by the lawful custodian of such primary evidence i.e., by the concerned Electoral Registration Officer or by his authorized officer or personnel.

***21.9**. Thus no reliance can be placed on exhibits C, D and E. Notwithstanding the same, a comparison of the contents of the above documents would reveal the absurdity of the narrative presented by the petitioner. For example, in Ext.D, age difference between Atakjan and Borhan Ali i.e., mother and son was 9 years whereas in Ext.E, Hayat Ali and Atakjan were conspicuous by their absence.*

18) The School Certificate (Ext.I) and the School Admission Register (Ext.L) were not produced by from proper custody, by former Headmaster, without any letter of authority.

19) The PAN Card (Ext.J) was not proved by calling for Income Tax records, which was necessary because the petitioner did not prove that the holder of the PAN Card was an Income Tax assessee and the Income Tax authorities do not issue PAN card after any enquiry, but on the basis of application made by the applicant and thus, when the record relating to issuance of PAN Card was not proved, the said document was of no assistance to the petitioner.

20) In respect of PAN Card (Ext.J) and EPIC (Ext.K), this Court, in

the case of EPIC and PAN Card is not a valid piece of evidence in absence of supporting evidence. In the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) No. 3547/2016, decided on 09.05.2018*, this Court had held that those were post reference document. Moreover, PAN Card and EPIC are not proof of citizenship.

21) The contents of various exhibited voter lists are as under:-

Name of voter and voter list year	**Relative**	**Village**	**Ext. No.**	**Age**
VL- 1997 Md. Keramat Ali Musstt. Sahara Bibi	 Lt. Jon Sheikh Keramat Ali	Lungjhar	Ext.A	 36 30
VL- 2008 Kermot Ali	 Jan Sheikh	Lungjhar	Ext.B	 38
VL- 2011 Joynal Abedin Mottobhanu Bibi	 Joynal Abedin	Lungjhar	Ext.C	 26 25
VL- 2017 Joynal Abedin Mottobhanu Bibi	 Kermat Ali Joynal Abedin	Lungjhar	Ext.D	 29 29
VL- 1959 Jan Sheikh Jarimal Bewa Dhati Nessa	 Mashar sheikh Lt. Pani Sheikh Ahejddi	Shalmara	Ext.F	 32 79 29

22) The petitioner, as mentioned hereinbefore, had not divulged the names of various family members in his written statement and therefore, the petitioner had failed to show his projected family together. The petitioner had exhibited the voter list of 1959 (Ext.F) in the name of Jono Sheikh, age- 32 years, and voter list of 1997 [Ext.A and Ext.A(i)], which is after a gap of 38 (thirty eight) years, where the name of Keramat Ali appears at the age of 36 years. The name of the petitioner appears in the voter list for the first time in the voter list of 2011, at the age of 25 years, which is after a gap of 14

(fourteen) years from the previous voter list of 1997. Thus, the petitioner has not been able to show continuous stay of his projected father and grandfather in the territory of Assam, as per the requirement of Section 6-A(2) of the Citizenship Act, 1955, which is a special provision for the State of Assam. Hence, the finding of the learned Tribunal that voter list of 1997 [Ext.A and Ext.A(i)], voter list of 2008 [Ext.B and Ext.B(i)], voter list of 1959 (Ext.F), RTI information (Ext.G), Land revenue report (Ext.H), School certificate (Ext.I), PAN Card (Ext.J), EPIC (Ext.K) and School admission Register (Ext.L) does not establish the link of the petitioner with Keramat Ali and Jono Sheikh, whom the petitioner claims to be his father and grandfather, cannot be faulted with.

23) The name of the petitioner appears in the voter's lists of 2011 [Ext.C and Ext.C(i)] and 2017 [Ext.D and Ext.D(i)]. However, the petitioner has failed to prove that the name of his father appearing therein is the same person, whose name appears in the voter list of 1997 (Ext.A) and 2008 (Ext.B).

24) Thus, in light of discussions above, the petitioner has failed to show how the opinion passed by the learned Tribunal is vitiated. Hence, the challenge to the impugned opinion fails. Consequently, the writ petition is dismissed. The parties are left to bear their own cost.

25) The interim bail granted by order dated 15.09.2020, is revoked and recalled. The consequences of the opinion dated 29.01.2020, passed by the learned Member, Foreigners Tribunal No.1, Bongaigaon in Case No. BNGN/FT/210/09, arising out of Ref. P.E. Case No. 37/09, by which the petitioner, namely, Jaynal Abedin @ Jainal Ali was declared to be a foreigner of post 25.03.1971, shall follow.

26) The Registry shall return back the Tribunal's record along with a copy of this order, to be made a part of record by the said learned Tribunal.

27) The learned standing counsel for the FT and Border matters shall transmit a downloaded copy of this order to the concerned authorities for their information.

JUDGE **JUDGE**

Digitally signed by Champak Rajbongshi
Date: 2026.11.23 14:11:14 +05'30'

Comparing Assistant **Private Secretary**