

GAHC010071942021



2026:GAU-AS:6348-DB

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

Case No. : WP(C)/2741/2021

JIBON ALI
S/O- LT. AHSAN ALI, R/O- VILL- MALIBARI PATHAR P.S. BOKO, DIST.-
KAMRUP (R), ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY., GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW
DELHI, PIN- 110001

2:ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
PIN- 110001

3:THE STATE OF ASSAM
REP. BY THE SECY.
GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA (1ST FLOOR)
BHARALUPAR
BHANGAGARH
GHY-05

5:THE DY. COMMISSIONER

KAMRUP (R)
PIN- 781031
ASSAM

6: SUPERINTENDENT OF POLICE
DIST.- KAMRUP (R)
PIN- 781031
ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner : Shri S. Choudhury

Advocates for the respondents : Shri J. Payeng, SC- Home Deptt & NRC,
Shri P. Sarma, GA, Assam;
Shri A.I. Ali, SC, ECI
Shri. S. Kakati, CGC

Date on which judgment is reserved : 04.05.2026

Date of pronouncement of judgment : 08.05.2026

Whether the pronouncement is of the operative part of the
judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT AND ORDER (CAV)

(Shamima Jahan, J.)

Heard Shri S. Choudhury, learned Counsel for the petitioner. Also heard, Shri J. Payeng, learned Standing Counsel, Home Deptt. & NRC, Shri.

P.Sarma, learned Government Advocate, Assam, Shri. A.I. Ali, learned Standing Counsel, ECI and Shri S. Kakati, learned CGC.

2. By this application filed under Article 226 of the Constitution of India, the petitioner has challenged the opinion dated 25.04.2019 passed by the learned Member Foreigner's Tribunal No.2. Kamrup (Rural) at Boko, Assam in B.F.T. case no. 1750/2016 corresponding to Police no.1246/1998 (IMDT) (NAL)C/No.2194/1998 by which the petitioner was declared a foreigner of post 25.03.1971 stream.

FACTS:

3. The petitioner stated that his grandfather late Hakimuddin Sheikh had a landed property at village Uttar Godhuni, P.S. Tarabari, Mouza-Boguribari in the district of then Kamrup, now Barpeta, Assam and that an annual Khiraj Patta bearing no. 77 covered by Dag no.24 was issued to him by the authorities concerned in the year 1942. The petitioner further stated that his father's name was late Ashan Ali and that the name of his father was enrolled in the NRC details showing him as son of Abul Haki. He also stated that he was born in the year 1956 and brought up in the above mentioned village and that in the year 1957, his mother namely Reshma Khatun expired and that his father also expired three years later i.e. in the year 1960 and that he was under the care and protection of his paternal uncle namely late Shanejuddin. He thereafter stated that due to erosion caused by Brahmaputra river, he shifted to a different village being village no.3 Malibari Pathar in the district of Kamrup (Assam). He then stated that on attaining majority, his name was recorded as a voter in 1977 voters list, at the aforesaid village under the 48 No. Boko, L.A.C. Thereafter, in the voters list of 1985, his name was enlisted along with his wife's name and

that his name was shown as son of Ashan instead of Ashan Ali and that both the names belong to one and the same person i.e. his father. Thereafter, in the year 2005, the name of the petitioner along with his wife was recorded in the voters list of the said year and his name was reflected as son of Ashan Ali. Apart from the said voters list, the petitioner, in order to establish his citizenship had relied on the certificate issued by the Gaonburah of his village on 09.01.2019 certifying that petitioner is a permanent resident of the said locality and that his name appeared in the voters list of 1977.

4. However, he stated that the Superintendent of Police (Border) Boko made a Reference to the learned Tribunal, on suspicion that the petitioner is not a citizen of India and subsequent thereto, the learned Tribunal issued notice to the petitioner and on receipt of the same, the petitioner appeared and submitted his written statement along with documents.

5. Today when the matter is heard, the learned Counsel stated that he had filed an additional affidavit to bring on record the written statement as well as evidence on affidavit filed by the petitioner before the Tribunal but the same was not found in the records. However, the said additional affidavit filed in the month of February, 2022 was placed and the said written statement was annexed with the said affidavit and perused.

6. In the said written statement, the petitioner stated that his grandfather was late Hakimuddin Sheikh, who had a plot of land and to whom annual Khiraj Patta was issued as stated above and that his father's name was enrolled in the NRC details. He also stated that he was born in 1956 and that his mother and father expired in the year 1957 and 1960 respectively and further that he was brought up by his uncle. He also stated that due to erosion by river Brahmaputra, he shifted his residence to another place and that he married

after attaining majority. He also stated that his name appeared in voters lists of 1985, 1997 as well as 2005. He further relied on the certificate issued by the Gaonburah, wherein it was stated that he is a permanent resident of the aforesaid locality and that his name appeared in the voters list of 1977.

7. Thereafter, the petitioner submitted his evidence on affidavit wherein he stated similar statement as that in his written statement and further stated that in the voters list of 1977, he was shown to be the son of Ashan instead of Ashan Ali but he further states that Ashan Ali and Ashan is one and the same person i.e. his father.

8. Apart from the petitioner being examined as a witness, the Gaonburah of village no.1. Malibaripathar under Boko P.S. was examined as DW2, who stated during his cross-examination that he knew the petitioner as well as his father.

9. The petitioner had submitted the following documents which were exhibited by the Court:

- i) Exhibit-A annual Khiraj Patta;*
- ii) Exhibit-B NRC details;*
- iii) Exhibit-C, certified copy of voters list of 1977;*
- iv) Exhibit-D, certified copy of voters list of 1985;*
- v) Exhibit-E, certified copy of voters list of 1997;*
- vi) Exhibit-F, uncertified copy of voters list of 2005;*
- vii) Exhibit-G, certificate issued by the Gaonburah;*

10. The learned Tribunal, after considering the written statement as well as the evidence on affidavit filed by both the petitioner and DW2 together with the documents submitted had reached a finding that the petitioner is not an

Indian citizen but a foreigner post 1971 stream on the following grounds:

- i) In 1977 voters list the age of the petitioner was reflected as 30 years of age and that his name should have been in earlier voters list prior to 1971.
- ii) The petitioner could not establish his link with his projected grandfather Hakimuddin Sheikh.
- iii) The Gaonburah certificate contains no stipulation as to how the Gaonburah came to know that the petitioner was an Indian.

On these grounds, the learned Tribunal had rendered this opinion as stated above.

Submissions:

11. Mr. S. Choudhury, learned Counsel appearing for the petitioner submitted that the grandfather of the petitioner namely Hakimuddin Sheikh had a plot of land for which annual Khiraj Patta no. 77 was issued to his grandfather on 11.11.1942 and that in the copy of the NRC details, the father of the petitioner Ashan Ali is shown to be son of Abul Haki which according to the counsel is none other than Hakimuddin Sheikh to whom annual Khiraj Patta was issued in the year 1942. The learned Counsel for the petitioner thereafter relied on the copy of the written statement wherein it was stated and the document was exhibited that petitioner is the son of Ashan Ali and that he appeared in the voters list of 1977 and his father's name was also reflected therein.

12. The learned Counsel further submitted that the certificate issued by the Gaonburah establishes the link of the petitioner to his father namely Ashan Ali in as much as in the said certificate, it is stipulated that petitioner is the son of late Ashan Ali.

13. On the other hand, Ms. Anita Verma, learned Standing Counsel for F.T. matters submitted that on a bare perusal of 1977 voters list, it becomes crystal clear that the petitioner being shown of 30 years of age must have been born in 1947 and that his name should have been enlisted in the earlier voters list i.e. before 1971 which however was not present in the instant case. She therefore submits that there is doubt regarding the identity of the petitioner as reflected in the voters list. She further stated that the petitioner also could not place any voters list wherein his father's name was reflected before the year 1971. It is also submitted that the certificate issued by the Gaonburah cannot establish citizenship of any person.

14. To substantiate her argument, she relied on a decision rendered in **Romila Khatun Vs. Union of India** reported in **2018 (4) GLT 373** wherein it was stated that proof of document is required in two stages, one on the authenticity of the said document and the other on the proof of the contents of the document. She also relied on a judgment delivered on 06.05.2019 by this Court in WP(C) 576/2019 i.e. in Mohiruddin Vs. Union of India, wherein this Court held that to interpret the certificate as well as the deposition of the Gaonburah, two things have to be seen, one whether the Gaonburah has personal knowledge of the petitioner as well as his family and second whether the Gaonburah has the authority to issue the said certificate.

ANALYSIS AND FINDINGS

15. It is noticed that the petitioner had relied on an annual Khiraj Patta being patta no. 77 granted to the projected grandfather of the petitioner for the revenue year 1942. A bare perusal of the said annual Khiraj Patta reflects that one of the condition attached to the same is that the person to whom the said

patta was granted should pay the revenue within the time given but the petitioner had not placed any revenue receipt paid by his projected grandfather for the year 1942 much less the continuation of the same by the heirs of his said projected grandfather. It is further stipulated in the said annual Khiraj Patta that if the person to whom it was granted expires during the period of the said annual Khiraj, his legal heirs would get the possessory right during the remaining period, however, the petitioner had nowhere mentioned as to what happened to the said annual Khiraj Patta after the death of his said projected grandfather.

16. The petitioner had thereafter relied on the NRC details wherein the petitioner was shown as the son of Abul Haki. The same is again not admissible in evidence. In a recent decision delivered by this Court in WP(C) no. 1837/2025 Md. Abu Bakkar Siddique Vs. Union of India and Ors. had held that NRC document has no value in the eye of law in considering the citizenship of the person like the present petitioner. In the said case, this Court by relying on an earlier decision, quoted the same as follows:

“33. In the case of Abul Mozid (supra), it was held as follows-

11. Ext.1 is stated to be a true copy of national register of citizens (NRC), 1951 issued by the Deputy Commissioner of Police(B), Dhubri on 17.10.1985 containing the names of Haru Dewani, Belaton Nessa, Madan Sheikh (Matin) and Hanif Sheikh. NRC, 1951 was prepared on the basis of the Census Act, 1948. As per Section 15 of the Census Act, 1948, records of census are not open to inspection and thus not admissible in evidence. Therefore, in Bhanbhasa Sheikh Vs. Union of India, 1970 Assam LR 206, a single Bench of this Court categorically held that NRC extracts produced to prove domicile in India is not admissible in evidence for any purpose. We are in complete

agreement with the views expressed by the learned Single Judge in Bhanbhasa Sheikh (supra). Therefore, Ext.1. is not evidence in the eye of law."

17. Further the name of the projected grandfather of the petitioner was Hakimuddin Sheikh whereas the name of the grandfather as reflected in the said NRC details was Abul Haki for which there are no corroborative evidence that Abul Haki and Hakimuddin Sheikh is one and the same person apart from bald submission by the petitioner.

18. The petitioner had relied on the voters list of 1977 to show that he is the son of Ashan as well as the subsequent voters list which showed that he is the son of Ashan Ali. However, he could not show a single voters list wherein he appeared along with his father to which the learned Counsel for the petitioner submitted that Ashan Ali died in the year 1960 and as such there could not be any voters list showing the name of the father and the son. Accepting the same, it is also not seen that there is any voters list where his projected father and his projected grandfather were enlisted. As such the voter lists of 1977, 1985, 1997 are of no help to the petitioner in establishing the link required under the law.

19. The only link the petitioner has sought to establish between him and his projected father is the certificate issued by the Gaonburah of the place where he resided. However, on a simple reading of the said certificate, it could be discerned that the Gaonburah had not stipulated anything regarding his personal knowledge about the petitioner or his family or that he knew the petitioner or his projected father personally. He simply wrote that Jibon Ali, the petitioner, father's name is late Ashan Ali and the address where the petitioner resided. He did not write that petitioner or his projected father were resident of the said locality. The further stipulation is also on the basis of the information given by the petitioner. The said certificate cannot establish the link of the

petitioner with his projected father more so in absence of any voters list where the name of the projected father of the petitioner was reflected. It is seen that neither the projected father of the petitioner nor the projected grandfather of the petitioner were ever enlisted in any voters list prior to 1971. It is no res integra that to establish the linkage under the Foreigners Act of 1946, an individual must establish a direct blood line connection to an Indian ancestor whose name appears in documents prior to 25th of March, 1971. In the instant case, the petitioner could not establish his link with his projected father and projected grandfather by showing their names in documents prior to 25th of March, 1971. A fragile attempt was made by exhibiting documents such as annual Khiraj Patta as well as NRC details but then the same are not admissible piece of evidence and further that there were many discrepancies in the said documents. In view of the same, this Court does not find any illegality in the opinion of the foreigners tribunal dated 25.04.2019.

CONCLUSION:

20. On the available materials, we find that the Tribunal rendered opinion upon due appreciation of the entire facts, evidence and documents brought on record. We would also like to observe herein that the certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal although for the ends of justice, some exercise has been done to the said effect. We are, in view of the aforesaid facts and circumstances, of the opinion that impugned order dated 25.04.2019, passed by the learned Member, Foreigners' Tribunal No.2, Kamrup (Rural) at Boko in B.F.T. Case No. 1750/2016 in IMDT (NAL)C/No.2194/1998 F.T.(7) -491/D/15 does not call for any interference and

the instant writ petition being devoid of merits, stands dismissed.

21. The actions consequent upon the opinion rendered by the learned Tribunal would follow in accordance with law.

22. A copy of this order, be sent to the learned Foreigner's Tribunal No.2, Kamrup (Rural) at Boko, forthwith.

JUDGE

JUDGE

Comparing Assistant