

GAHC010013442017



DB

2026:GAU-AS:7442-

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

**Case No. : WP(C)/1009/2017**

MUSSTT. HAJIRA KHATUN @ MUSSTT. HAJIRA BEGUM  
W/O. AFTAR UDDIN, R/O. VILL. CHARLOCK, P.S. JAMUNAMUKH, DIST.  
NAGAON 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  
GUWAHATI- 06.

3:THE DY. COMMISSIONER OF NAGAON

DIST.- NAGAON ASSAM.

4:THE SUPERINTENDENT OF POLICE BORDER  
NAGAON

DIST.- NAGAON ASSAM.

5:THE OFFICER-IN-CHARGE  
NAGAON POLICE STATION

DIST.- NAGAON  
ASSAM

**Advocate for the Petitioner** : MR.A M ALAMAN, MR.A S TAPADER,MR.D HUSSAIN,MRH I  
CHOUDHURY

**Advocate for the Respondent** : , ASSTT.S.G.I.(R. 1.),GA, ASSAM(R. 2,3,4 & 5.)

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**  
**HONOURABLE MR. JUSTICE PRANJAL DAS**

**JUDGEMENT AND ORDER (CAV)**

For the Petitioner : Mr. A.S. Tapadar

For the Respondent(s) : Mr. G. Sarma, SC, Home  
Department, Ms. R.B. Bora, GA, Assam, Mr. N.  
Kalita on behalf of Mr. A.I. Ali, SC, ECI and Mr. K.K.  
Parasar, CGC.

Date on which judgment is reserved : 19.05.2026

Date of pronouncement of judgment : 27.05.2026

Whether the pronouncement is of the

operative part of the judgment ? : N/A

Whether the full judgment has been : Yes

pronounced?

**(Pranjal Das, J)**

Heard Mr. A.S. Tapadar, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing counsel, Home Department; Ms. R.B. Bora, learned Government Advocate, Assam; Mr. N. Kalita, learned counsel appears on behalf of Mr. A.I. Ali, learned Standing counsel, ECI and Mr. K.K. Parasara, learned CGC.

2. Invoking the provisions of Article 226 of the Constitution of India, the petitioner herein namely, **Musstt. Hajira Khatun @ Musstt. Hajira Begum** has assailed the order dated 30.07.2016 passed by the learned Member Foreigners' Tribunal No. 10, Doboka, Nagaon in FT(D) Case No. 213/2015 – whereby the reference was answered in the affirmative, holding that the petitioner is a foreigner who had illegally come into India from the specified territory after 25-03-1971.

3. The facts in brief are that based on an inquiry, a reference was preferred seeking an opinion from the Foreigners' Tribunal about the citizenship of the petitioner, as the police authority after the enquiry suspected her to be a foreign national who had entered into India without valid documents. Accordingly, based on the reference, the aforementioned case was registered before the learned Tribunal and adjudicated, resulting in the impugned judgment and opinion.

4. During the proceedings before the learned Tribunal, the petitioner as proceedee upon receipt of notice, appeared and filed a written statement denying that she was a foreign national and stated that she was a Indian citizen by birth. She also stated that her father's name was mentioned in the voters' list of 1966 as Md. Asab Ali and also in the voters' list of 1971 as Ahmed Ali. During the proceedings before the learned Tribunal, the proceedee adduced evidence of only herself as DW1.

5. In her evidence-on-affidavit, she stated that her father's name was enlisted in the voters' list of 1966 as Md. Asab Ali at serial No. 194. She also stated that her father's name was also enlisted in the voters' list of 1970 at serial No. 197 as Ahmed Ali. However, in cross-examination, referring to the 1966 voters' list which she had exhibited as Exhibit -1, she stated that the said Md. Asab Ali is her uncle (*Khura*). She also stated in her cross-examination that the 1970 voters' list exhibited as Exhibit- 2 enlists the name of her father as well as mother.

6. The learned Tribunal has held that the aforesaid testimony of the proceedee regarding her father suffers from discrepancy – in her written statement and evidence-on-affidavit, she

has stated the person Md. Asab Ali appearing in the 1966 voters' list to be her father, but in her cross-examination clearly mentioned him to be her uncle (*Khura*).

7. We have carefully perused the copy of the 1966 voters' list available in the case record and noticed the name Md. Asab Ali at serial No. 194. Similarly, in the 1970 voters' list, the name of Ahmed Ali appears at serial No. 197. It may be mentioned here that the proceedee/petitioner has stated in her written statement as well as evidence-on-affidavit that the name of her father appearing in the 1970 voters' list at serial No. 197 is Ahmed Ali.

8. However, as already mentioned above, the name that appears at serial No. 197 of the 1970 voters' list is Amad Ali rather than Ahmed Ali. The proceedee during the proceeding has submitted an affidavit clarifying that her father's name is Ahmed Ali and his nickname is Asab Ali and that in the 1966 voters' list, his name was wrongly mentioned as Asab Ali instead of Ahmed Ali and that both are one and the same person. The learned Tribunal discarded the affidavit, referring to Section 3 of the Indian Evidence Act, as not having evidentiary value.

9. The proceedee exhibited as Exhibit-4, a Gaonburah certificate, mentioning her name and her being the daughter of Ahmod Ali and being a resident of the Charlock Gaon Panchayat. It is stated in the certificate that she got married with one Aftar Uddin and has migrated from the said Gaon Panchayat. The certificate has a disclaimer which reads as follows –

*It may be added that this certificate shall be accepted only as a supporting document for establishing linkage with the parent(s) of the aforementioned person, for whom the certificate is issued. These documents shall be valid only if accompanied by a legacy date or any of the other admissible documents issued for the person with whom linkage is claimed for inclusion in update NRC.*

10. Now in view of this disclaimer, the learned Tribunal did not accept this document (Exhibit- 4) as establishing any link evidence between the proceedee/petitioner and her father.

11. The learned counsel for the petitioner submits that the petitioner is a *bona fide* citizen of India by birth and has been wrongly declared as a foreigner. It is submitted that the discrepancies which were held to be fatal by the learned Tribunal were common mistakes made in voter lists and should not have been held to be fatal to the detriment of the petitioner.

12. On the other hand, Mr. G. Sarma, the learned Standing counsel, Home Department submits that upon perusal of the voters' lists of 1966 and 1967, the two persons cannot be one and the same person and the testimony of the petitioner suffers from discrepancies and her documentary evidence has been rightly discarded by the learned Tribunal. It is submitted that the proceedee has been unsuccessful in establishing her linkage with any Indian citizen ancestor, prior to 1971, through proper documentary evidence.

13. Under Section 9 of the Foreigners' Act, 1946, when a question arises regarding a person being a foreign national, the burden is upon the said person to prove that he is not a foreign national. In the legal regimen that prevails with regard to the law governing such adjudication by Foreigners' Tribunals in Assam, a proceedee is required to establish her linkage with an ancestor who is an Indian citizen, prior to 25.03.1971. Such linkage evidence has to be proved through proper evidence, including essentially documentary evidence.

14. In the instant case, two different versions emerge from the side of the petitioner about relationship with the person Asad Ali, finding mention in the voters' list of 1966. The said discrepancy has already been discussed.

15. Thus, in her written statement and evidence-on-affidavit, *Asad Ali* has been mentioned as her father, while in her cross-examination, she has clearly stated him to be her uncle (*Khura*). The person projected to be her father in the 1970 voters' list being Amad Ali bears a totally different name from the person Asad Ali, even if the discrepancy mentioned above is overlooked for the moment. In all her statements, the proceedee has stated the name of her father to be Ahmed Ali, whereas the name which appears in the 1970 voters' list is Amad Ali. It cannot be automatically assumed that *Ahmed Ali* and *Amad Ali* are one and the same

person on a matter as vital as link evidence for the purpose of establishing citizenship.

16. Therefore, in the given facts and circumstances and in view of the background of the above discussion and keeping in mind the ambit of a certiorari jurisdiction under Article 226 of the Constitution of India – we come to the considered finding that there is no infirmity in the judgment of the learned Tribunal requiring interference or setting aside.

17. Accordingly, the impugned judgment and order dated 30.07.2016 passed by the learned Member Foreigners' Tribunal No. 10<sup>th</sup>, Doboka, Nagaon in FT(D) Case No. 213/2015, is hereby **upheld** and **confirmed**.

18. The consequential steps directed in the impugned order shall follow.

19. The writ petition stands dismissed.

20. Send back the original records.

21. Interim order passed on 23.02.2017 stands vacated.

**JUDGE**

**JUDGE**

**Comparing Assistant**