

GAHC010140762019



undefined

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

Case No. : WP(C)/4397/2019

ALI AKBAR
S/O- LATE ABDUL JALIL, R/O- VILL- SIALMARI, P.S- MISSAMARI, DIST-
SONITPUR, ASSAM, PIN- 784506

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY, HOME AFFAIRS, NEW DELHI, DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 06

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 01

4:THE SPECIAL COUNSEL FOR NRC
GOVT OF ASSAM
GHY- 01

5:THE SPECIAL COUNSEL FOR FT
GOVT OF ASSAM
GHY- 01

6:THE SUPERINTENDENT OF POLICE(B)
SONITPUR
ASSAM
PIN- 784001

7:OFFICER IN CHARGE

MISSAMARI POLICE STATION
SONITPUR
ASSAM
PIN- 784506

8:THE DEPUTY COMMISSIONER
DIST- SONITPUR
ASSAM
PIN- 78450

Advocate for the Petitioner : MR. R C DAS, MR S C DAS

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

Date on which Judgment was reserved : 30.01.2026

Date of pronouncement of Judgment : 06.03.2026

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. R.C. Das, learned counsel appearing for the Petitioner. Also heard Mr. B. Sarma, learned CGC; Mr. A. I. Ali, learned Standing Counsel, ECI; Mr. P. Sarma, learned Addl. Senior Government Advocate as well as Ms. A. Verma, learned Standing Counsel, F.T. and Border matters.

2. The Petitioner has filed the instant writ petition assailing the Opinion dated 27.03.2019, in F.T. (8) Case No. 3640/18 (Ref. TZP (B) F.T. Case No. 20/18),

passed by the learned Foreigners' Tribunal (In short, the Tribunal) No. 8, Tezpur, whereby the learned Tribunal opined the Petitioner/Proceedee to be a Foreigner who entered Assam on or after 25.03.1971.

3. The instant case was forwarded by the Superintendent of Police (B), Sonitpur, vide Reference TZP (B) F.T. Case No. 20/18, expressing doubt about the validity of the Petitioner, namely, Md. Ali Akbar with a prayer to decide as to whether the Petitioner is or, is not a Bangladeshi national. The aforesaid reference was registered as F.T. (8) Case No. 3640/18 on 13.06.2018. After receipt of the notice, the Petitioner appeared before the learned F.T and filed his written statement. Thereafter, the Petitioner deposed himself as DW-1, DW-2 is the mother of the Petitioner, i.e., Nechabi Khatun, DW-3 is the maternal uncle of the Petitioner, namely, Md. Abdul Rahman, DW-4 is the Gaon Bura, namely, Sri Kanak Karmakar, DW-5 is the RMO, Election Office, Tezpur, namely, Prabhat Bora, DW-6 is the Govt. Gaonbura of Lakhupara and Sialmari village, namely, Usuf Ansari, DW-7 is the Gaon Panchayat Secretary, namely, Jagadish Deka and DW-8 is the Sr. Asstt., Sr. Sub-Registrar Office, namely, Gagan Bania.

4. The Petitioner has exhibited the following documents in support of his defence and pleaded himself not to be a Foreigner but, an Indian national: -

EXT. 1 is the NRC of 1951.

EXT. 2 is the Sale Deed.

EXT. 3 is the Sale Deed.

EXT. 4 is the voter list of 1965.

EXT. 5 is the voter list of 1971.

EXT. 6 is the voter list of 1975.

EXT. 7 is the voter list of 1997.

EXT. 8 is the voter list of 2010.

EXT. 9 is the voter ID.

EXT. 10 is the Affidavit.

EXT. 11 is the Gaonburah Certificate.

EXT. 12 is the Gaonburah Certificate.

EXT. 13 is the Land Revenue Receipt.

EXT. 14 is the Marriage Link Certificate.

5. The Petitioner's case in his written statement is that the Petitioner is a genuine citizen of India by birth. The names of the Petitioner's parents are Late Abdul Jalil and Musstt. Nechabi Khatun and they originally resided at village Bhergaon, P.S. Dhekiajuli, now Thelamara, District Sonitpur, Assam, wherein the Petitioner's father name appeared in the NRC Legacy Data in the year 1951. The Petitioner is the only son of Late Abdul Jalil. His father died during his childhood, therefore, his father's name never appeared in the Voters' list of 1966 and thereafter, after the death of his father, the Petitioner's mother, namely, Mustt. Nechabi Khatun came to stay in the house of his maternal grandfather, namely, Late Intaj Ali at village Kalakuchi, P.S. Missamari, District-Sonitpur, Assam. The Petitioner's maternal grandfather, Late Intaj Ali purchased a plot of land by a registered Sale Deed on 04.02.1949. The paternal grandfather of the Petitioner was Late Adam Kha, who originally resided at village Khelmati, District Sonitpur, Assam and he possessed a plot of land at village-No. 1 Bahumari, District-Darrang now Sonitpur, Assam and the said land was sold by him to one Md. Hazarat Ali, vide a registered Sale Deed dated 08.02.1961. His maternal grandfather's name appeared in the Voters' list of 1965 at 76 Missamari LAC. His maternal grandfather's name also appeared in the Voters' list of 1971 and 1975 at 71 Dhekiajuli LAC respectively. The Petitioner, subsequently, shifted to village Sialmari, P.S. Missamari, District-Sonitpur along with his mother, wherein his name appeared in the Voters' list of 1997 at 71 Dhekiajuli LAC. His name also

appeared in the Voters' list of 2010 at 71 Dhekiajuli LAC along with his mother and his wife. The maternal uncle of the Petitioner, namely, Md. Abdul Rahman, who resided at village No. 1. Jiagabharu, P.S. Missamari and his name appeared in the Voters' list of 2010 at 71 Dhekiajuli LAC. The Petitioner's maternal grandparents expired prior to the year 1980, as such, their names were not exhibited in the Voters' list after the year 1975. The Govt. Gaonbura, Sri Kanak Karmakar of village-Kalakuchi, P.S. Missamari, issued a certificate on 30.06.2018 in the name of Md. Ali Akbar, stating that he was born at village-Kalakuchi but he shifted to village-Sialmari about 20 years ago. A Marriage Link Certificate has been issued in the name of the mother of the Petitioner, stating that she got married on 11.02.1963 to one Late Abdul Jalil, which was issued by the Gaon Panchayat Secretary, namely, Jagadish Deka of Bashbera Gaon Panchayat, on 08.07.2015. The Petitioner's mother's name also appeared in the Voters' list of 2019 at 71 Dhekiajuli LAC. By filing the aforesaid written statement, the Petitioner has claimed that he is a bonafide citizen of India and therefore, the proceeding against him should be dismissed.

6. The Petitioner has filed his Affidavit-in-Evidence as DW-1, wherein the Petitioner has claimed that the proceeding against him is not maintainable as he is a genuine citizen of India by birth. In his affidavit, he has reiterated the statements that he has made in his aforesaid written statement. The Petitioner has also exhibited 15 documents, which have already been listed above. In addition to the aforesaid list given above, the Petitioner has exhibited Ext. No. 15, being the Voter ID card of his mother.

7. The projected mother of the Petitioner, namely, Musstt. Nechabi Khatun as the DW-2, has submitted her Affidavit-in-Evidence, wherein, she has reiterated the

same statement as has been made by the Petitioner in his Affidavit-in-Evidence. Md. Abdul Rahman, the projected maternal uncle of the Petitioner has filed his Affidavit-in-Evidence as the DW-3 and he also reiterated the same statement as has been made by the Petitioner in his Affidavit. Sri Kanak Karmakar, Gaonbura of village-Kalakuchi deposed as DW-4, wherein he has stated that he knows the Petitioner and Ext. 11 is the certificate issued by him, wherein his signature appeared as Ext. 11(1). He stated that the Petitioner was born at Kalakuchi village and at present, he has been staying at Sialmari for the last 20 years. Sri Prabhat Bora, RMO, Election Office, Tezpur deposed as DW-4, wherein he stated that he has confirmed/authenticated the Electoral Roll of the years 1965-1971 as genuine document. Usuf Ansari, the Govt. Gaonbura of Lakhupara and Sialmari village deposed as DW-6, wherein he stated that he knows the Petitioner and he is the son of Late Abdul Jalil, who is, at present, residing at Sialmari village. He stated that the Petitioner earlier stayed at village Kalakuchi. He stated that Ext. No. 12 is the certificate issued by him. Jagadish Deka, the Gaon Panchayat Secretary deposed as DW-7 and stated that Ext. No. 14 was issued by his office on the basis of Gaonbura's certificate dated 08.07.2015. He issued the same in the name of Nechabi Khatun. Gagan Bania, Sr. Asstt in Sr. Sub-Registrar's Office deposed as DW-8 and stated that Ext. No. 2 is the certified copy of the original registered Sale Deed No. 383 of 1949. He stated that he has produced the original records before the learned Tribunal for verification.

8. On a query made by the learned Tribunal, the Petitioner, as DW-1 stated that he was born in between the year 1963 and 1964 at Kalakuchi. He stated that his mother's name is Nechabi Khatun and his grandfather's name was Adam Kha. He stated that he shifted to Sialmara along with his mother. Nechabi Khatun, DW-3,

on a query by the learned Tribunal has stated that the Petitioner is her son who was born at Kalakuchi. She stated that she does not know his date of birth. She stated that her husband died when the Petitioner was a small child and Late Adam Kha was her father-in-law. Abdul Rahman, DW-3, on a query by the learned Tribunal stated that the Petitioner is his nephew and he was born in Kalakuchi. He stated that the Petitioner's father's name was Abdul Jalil who died when the Petitioner was a child of 1½ years of age. He stated that he does not know when his sister Nechabi Khatun got married to Abdul Jalil, as at that point of time, he was a small child. Kanak Karmakar, DW-4, on query by the learned Tribunal stated that the Petitioner's father's name was Late Abdul Jalil and he knew the Petitioner from his childhood. Usuf Ansari, DW-6, on query by the learned Tribunal stated that he knew the father of the Petitioner, Abdul Jalil on the basis of documents. Jagdish Deka, DW-7, on a query by the learned Tribunal stated that he knew about the date of marriage mentioned in Ext. No. 14, by way of the "advice" of the certificate holder.

9. The learned counsel for the Petitioner submits that he is directly linked to his mother who is a citizen of India and through his mother, to his maternal grandfather, whose presence is traceable in India prior to 25.03.1971. Therefore, he submits that the Petitioner could not have been declared as a Foreigner by the learned Tribunal. He submits that his maternal grandfather possessed land in Assam, which is evident from Ext. No. 2, which was registered in the year 1949. He submits that as his father died prior to the year 1971 and his paternal grandfather also died prior to that, it is impossible for him to bring on record any Voters' list, wherein his name along with either father or paternal grandfather appeared. However, he submits that he has submitted sufficient documents to show

his maternal grandfather's presence in India prior to 1971. Therefore, he submits that a clear link has been established by him through his mother and maternal grandfather. He submits that the deposition of the Gaonbura and Gaon Panchayat Secretary also makes it clear that the Petitioner is the son of Abdul Jalil and grandson of Adam Kha, whose name appeared in the registered Sale Deed dated 08.02.1961 (Ext. No. 3.)

10. In view of the aforesaid submissions, the learned counsel for the Petitioner submits that the learned Tribunal has wrongly declared the Petitioner as a Foreigner post 1971 stream. Therefore, the opinion rendered by the learned Tribunal is liable to be set aside and quashed.

11. Per contra, the learned Standing Counsel, F.T. & Border matters, submits that the Petitioner has failed to establish himself as a citizen of India by any cogent and reliable documents. He submits that though the Petitioner tried to connect himself to one Late Intaj Ali, whom he has projected as his maternal grandfather, the same, will not help the Petitioner to establish himself as an Indian citizen as he is required to link himself to his father or grandfather whose presence is traceable prior to the year 1971. He submits that though the name of Adam Kha, whom the Petitioner has projected to be his paternal grandfather, he could not submit any document or any evidence to link himself to the aforesaid Adam Kha. Therefore, he submits that the Petitioner has miserably failed to establish his case under Section 9 of the Foreigners' Act 1946, before the learned Tribunal and therefore, the instant writ petition should be dismissed and rejected.

12. We have heard the submissions made by the respective learned counsel appearing for the parties and have also gone through the records of the learned Tribunal relating to the instant case.

13. The learned Tribunal rejected the copy of the NRC, 1951 (Ext. No. 1), in the name of Abdul Jalil, whom the Petitioner claimed to be his father due to the fact that the NRC, 1951 is not admissible in evidence which is a settled position of law.

14. Ext. No. 2 is the certified copy of the registered Sale Deed of the year 1949, executed before the Sub-Registrar, Tezpur in the name of one Intaj Ali, whom the Petitioner has projected as his maternal grandfather. Ext. No. 2 has been authenticated by DW-8, namely, Gagan Bania, Sr. Asstt., Sr. Sub-Registrar's Office, Tezpur. In his deposition before the learned Tribunal, he stated that Ext. No. 2 is the certified copy of the original Sale Deed No. 383 of 1949. He produced the original record before the learned Tribunal for verification of the aforesaid document. Therefore, there is no doubt that one Intaj Ali existed in India in 1949, whom the Petitioner has claimed to be his maternal grandfather. However, there is material to show the link between the aforesaid Intaj Ali and his mother, Nechabi Khatun. There is no document to show Nechabi Khatun to be the daughter of Intaj Ali. Though a certificate was issued by the Gaon Panchayat Secretary, Jagadish Deka, DW-7, wherein Nechabi Khatun was shown to be the daughter of Intaj Ali, he specifically stated that his office issued the certificate on the basis of a Gaon Burha's certificate. Therefore, the contents of the certificate cannot be relied upon as no Gaon Burha's certificate is on record which says that aforesaid Nechabi Khatun is the daughter of Intaj Ali. Therefore, Ext-2 does not help the petitioner.

15. Ext. No. 3 is the registered Sale Deed of 1961, executed by one Md. Adam Khan, son of Late Chasu Kha of Khelmati village, whom the Petitioner claimed as his paternal grandfather. This document was rejected by the learned Tribunal as the same was executed without presence of any witnesses. We have perused Ext. No. 3, which is available in the records of the learned Tribunal, which was proved by

the Member of the learned Foreigners' Tribunal, in original. It is seen from the document that 2(two) persons, namely, Mojijuddin and another person whose name could not be read, had identified the aforesaid Adam Kha after enquiry. Therefore, this document cannot be rejected only on the basis that no witnesses were present while executing the document. However, though the aforesaid Adam Kha was projected to be the paternal grandfather of the Petitioner, we do not find any document or reliable and cogent evidence linking the Petitioner to the aforesaid Adam Kha. Therefore, in our considered opinion, this document shall not provide any help to the Petitioner to establish his linkage to the aforesaid Adam Kha, whom the Petitioner claimed as his paternal grandfather. In this connection, it is relevant to mention that one Kanak Karmakar, DW-4, who is the Gaonbura of village Kalakuchi and Kalakuchi Bagan came to depose before the learned Tribunal. However, he did not mention anything about aforesaid Adam Kha being the grandfather of the Petitioner. Similarly, one Usuf Ansari, DW-6, who is the Govt. Gaonbura of Lakhupara and Sialmari village, came and deposed before the learned Tribunal. He also did not depose or stated anything about Adam Kha being the grandfather of the Petitioner. Further to this, the Petitioner projected one Abdul Jalil as his father. However, no documents and/or Voters' list has been submitted by the Petitioner to show any linkage between said Abdul Jalil and Adam Kha. Therefore, the contention of the Petitioner that Adam Kha, whose name appeared in the aforesaid Sale Deed (Ext. No. 3), is his grandfather, cannot be accepted bereft of any reliable material brought on record.

16. Ext. No. 4 is the certified copy of the Electoral Roll of 1965 in respect of Missamari, 76 LAC, wherein the name of one Intaj Ali, son of Awash Ali appeared, whom the Petitioner has projected to be his maternal grandfather.

Similarly, Ext. No. 5, the Electoral Roll of 1971 in respect of Dhekiajuli, 71 LAC, also shows the name of Intaj Ali, however, his father's name was mentioned as Ardur Ali. The projected maternal grandfather of the Petitioner, namely Intaj Ali's name also appeared in the Electoral Roll of 1975 in respect of Dhekiajuli, 71 LAC, (Ext. No. 6) along with one Hasen Banu, wife of Intaj Ali. These 3 exhibits were rejected by the learned Tribunal. We do not find any infirmity in the aforesaid findings as no linkage could be established by his mother to the projected maternal grandfather with those documents.

17. Ext. No. 7 is the certified copy of the Electoral Roll of 1977 in respect of Dhekiajuli, 71 LAC, wherein the name of one Ali Akbar and Jahera Khatun, whom the Petitioner claimed as himself and his wife. Similarly, Ext. No. 8 also is the Electoral Roll of 2010 in respect of Dhekiajuli, 71 LAC, wherein the name of the Petitioner and one Jahera Khatun and one Nechabi Khatun appeared, whom the Petitioner claimed as himself, his wife and his mother. Ext. No. 9 is the Voter ID in the name of Md. Abdul Rahman, whom the Petitioner claimed to be his maternal uncle. The learned Tribunal did not consider these documents to be relevant as none of the documents proved any linkage of the Petitioner with any Indian parent prior to the cut-off date of 25.03.1971. Moreover, the petitioner must establish his linkage with his projected father. We have also examined the aforesaid Electoral Rolls and found no infirmity in the findings of the learned Tribunal.

18. Ext. No. 10 is an affidavit executed by the Petitioner on 06.04.2015 before the Notary Public at Tezpur, stating that his father Abdul Jalil died after his birth and he was residing with his mother, namely, Nichabi Khatun. This document does not provide any evidence of the Petitioner's citizenship, therefore, the same was rightly rejected by the learned Foreigners' Tribunal. Ext. No. 11 is the certificate

issued by the Gaonbura of Kalakuchi village, Sri Kanak Karmakar, who certified that he knows the Petitioner, who was born in Kalakuchi. However, the Petitioner has been staying in Sialmari village for the last 20 years. In his answer to query by the learned Tribunal, the aforesaid Gaonbura (DW-4) stated that the Petitioner's father was Late Abdul Jalil. We do not find any relevance of this certificate to prove the citizenship of the Petitioner as his projected father Abdul Jalil's presence could not be traced prior to 25.03.1971 in India. Therefore, though the aforesaid DW-4 came and deposed before the learned Tribunal, that the Petitioner is the son of Late Abdul Jalil and had been residing at Sialmari village and that he knows the father of the Petitioner on the basis of the documents, there is no relevance to such statement. Thus, the statement shows that the said Gaonbura did not know the Petitioner's father personally. These certificates and the deposition of the said Gaonbura, in no way, establish the fact that either the Petitioner or his projected father, Abdul Jalil, could be traced in India prior to 25.03.1971.

19. Ext. No. 13 is a Land Revenue Receipt dated 27.02.2017, in the name of the Petitioner. However, this document being post 25.03.1971, does not help the Petitioner in establishing his citizenship and therefore, rightly rejected by the learned Tribunal. Ext. No. 14 is the Marriage Link Certificate in the name of Nechabi Khatun, issued on 08.07.2015 by the Secretary, Bashbera Gaon Panchayat. One Jagadish Deka, Secretary, Bashbera Gaon Panchayat (DW-7), came before the learned Tribunal. and deposed that their office issued the aforesaid Marriage Link Certificate on the basis of a Gaonbura Certificate, on 08.07.2015, in the name of Nechabi Khatun. However, the aforesaid Jagadish Deka, who issued the certificate, stated that he came to know about the date of marriage as stated by the certificate holder. Therefore, whatever information was available in the

certificate dated 08.07.2015, cannot be relied on as the same had been included on the basis of the information given by the certificate holder, i.e., Nechabi Khatun.

20. Now, coming back to the depositions of DW-2, i.e. Mustt. Nechabi Khatun, whom the Petitioner claimed to be his mother, it is seen that she stated the Petitioner to be her son, who was born on Kalakuchi village. As mentioned above, she reiterated the statements made by the Petitioner in his written statement as well as in his Affidavit-in-Evidence. Though the aforesaid Nechabi Khatun, who is claimed to be the mother of the Petitioner has stated in her evidence that Adam Kha is the paternal grandfather of the Petitioner and he could be linked through the aforesaid Sale Deed dated 07.02.1961, in absence of any corroborative evidence or materials to link Adam Kha with the Petitioner only on the basis of oral evidence of the projected mother of the Petitioner, the same cannot be relied upon.

21. One Md. Abdul Rahman, DW-2, whom the Petitioner projected to be his maternal uncle also reiterates the same statement and evidence as stated by the Petitioner and his projected mother. The DW-2 deposed that the Petitioner's father died when the Petitioner was 1½ years of age and the Petitioner shifted to Sialmara village about 35 years ago along with his mother. DW-3 also did not produce any document or material to show any connection of the Petitioner with his projected paternal grandfather, Adam Kha. Therefore, the oral evidence of DW-3 does not help the Petitioner's cause.

22. In view of the aforesaid discussions and the materials brought before the learned Tribunal by the Petitioner as well as the statements made before the learned Tribunal, it is seen that the Petitioner could not bring on record any cogent and reliable evidence material to the fact in issue to prove his lineage to his projected paternal grandfather, Adam Kha, whose name finds mention in the

registered Sale Deed dated 08.02.1961. Though the Petitioner tried to link himself through his mother to his maternal grandfather, whose name, he claimed to have appeared in the Electoral Roll of 1965, 1971 and 1975, as we have already mentioned that the same cannot decide his citizenship in his favour without any document to show his linkage. Therefore, we are of the considered view that the order/opinion dated 27.03.2019, rendered by the learned Foreigners' Tribunal (8), Tezpur, in F.T. (8) Case No. 3640/18 does not suffer from any infirmity.

23. Accordingly, the instant writ petition being without any merit is dismissed. The consequences of the impugned Opinion dated 27.03.2019, referred above would follow.

24. Registry to send back the TCR immediately.

JUDGE

JUDGE

Comparing Assistant