

GAHC010145092019



2026:GAU-AS:5957

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

Case No. : WP(C)/4467/2019

SAHIDUL ISLAM
S/O. HORMOZ ALI @ HURMUZ ALI, VILL. GAREMARI PATHAR, P.O.
PALHAJI, P.S. BARPETA, DIST. BARPETA, ASSAM.

VERSUS

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

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

3:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

4:THE DY. COMMISSIONER

KAMRUP (M)
GUWAHATI
ASSAM.

5:THE DY. COMMISSIONER

BARPETA
ASSAM.

6:THE DY. COMMISSIONER OF POLICE (B)

GUWAHATI
ASSAM

Advocate for the Petitioner : MR. R ALI, MR. A M KHAN

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the petitioner:	Mr. A.M. Khan.
Advocate for the respondents:	Mr. U.K. Goswami, CGC Mr. G. Sarma, SC, FT & NRC Mr. P. Sarmah, Addl. Sr. Govt. Advocate, Assam, Mr. A I Ali, SC, ECI.
Date on which judgment is reserved	: 25.02.2026
Date of pronouncement of judgment	: 29.04.2026
Whether the pronouncement is of the operative part of the judgment	: N/A
Whether the full judgment has been pronounced	: Yes

JUDGMENT AND ORDER (CAV)

(Susmita Phukan Khaund, J.)

The petitioner in this case is Sahidul Islam, who is aggrieved by the judgment and order dated 14.05.2019 passed in FT Case No. 395/2017 by the learned Member, Foreigners' Tribunal No. 3, Kamrup (M), declaring the petitioner to be an illegal migrant.

2. The Senior Superintendent of Police (B), City Guwahati, made a reference vide Jorabat OP Case No. 3199/2008 to the Foreigners' Tribunal No. 3, Kamrup (M) 3rd, Guwahati, for opinion about the nationality of the suspect Md. Sahidul Islam, S/O - Md. Harmuj Ali. Notices were issued and the petitioner appeared and submitted his written statement in support of his nationality. He also adduced the evidence of three witnesses and exhibited several documents. After careful examination of entire materials on record, it was held by the Tribunal that the petitioner has failed to prove that he is the grandson of his projected grandfather Late Danesh Ali and no linkage evidence was produced to prove his plea. The petitioner was thereby declared to be a foreigner.

3. Aggrieved by the impugned judgment and order, the petitioner is before this Court.

4. Heard Mr. A.M. Khan, learned counsel for the petitioner. Also heard Mr. U.K. Goswami, learned CGC; Mr. G. Sarma, learned Standing Counsel for the FT matters and NRC; Mr. A.I. Ali, learned Standing Counsel for the ECI and Mr. P. Sarmah, learned Additional Senior Government Advocate for the State respondent.

5. It is contended on behalf of the petitioner that the prosecution case is not maintainable since there is no cause of action and no such statement of allegation was furnished to the

petitioner along with the notice issued by the Tribunal and as such, the impugned judgment and order dated 14.05.2019 is liable to be set aside. It is also contended that the petitioner's grandfather, Late Danesh Ali @ Danes Ali @ Dagesh was a voter since 1966 and his name has been enrolled in the voters list of 1966 pertaining to 50 No. Barpeta LAC at Sl. No. 1210 up to 1216 of House No. 378 of village Palhaji under Barpeta Mouza in the then district of Kamrup (now Barpeta). His grandfather's name also appears in the NRC of 1951 and accordingly, a legacy data was provided in favour of his grandfather vide Legacy Data Code Number 120-0023-1554. It is also submitted that the petitioner's father's name has been mutated as Pattadar by way of inheritance in respect of a parcel of land appertaining Patta No. 150(O)/175(N) at village Garehari Pathar under Barpeta Mouza. The authority has also furnished a certified copy of jamabandi for the period of 1958-65 in respect of Patta land appertaining to Kheraj Miyadi Patta No. 175 of village Garehari Pathar under Barpeta Mouza.

6. The local Gaonbura of village Garehari Pathar and Palhaji have also issued certificates dated 15.09.2017 and 17.09.2017, certifying that the petitioner is the son of Harmuz Ali and Pawan Nessa, residents of village Garehari Pathar, P.O. Palhaji in the district of Barpeta. The petitioner has examined three witnesses to substantiate his stance that he is an Indian citizen. Despite the evidence in favour of the petitioner, he was declared to be a foreign national.

7. It is submitted that the petitioner's name appeared for the first time in the voters' list of 1989 and the grandparents of the petitioner died in the year 1975 and accordingly, the petitioner could not produce any voters' lists between the period of 1970 up to 1989. As a linkage, the petitioner exhibited the jamabandi copy of the land covered by Patta No. 175.

8. It is contended that on the day of argument the engaged counsel of the petitioner submitted the land revenue paying receipts of the said land before the Tribunal. The local Gaonbura of village Garehari Pathar also issued certificates in favour of the petitioner. These documents were not considered by the Tribunal, and the Gaonburha's certificate was not accepted merely on the ground that it was issued on the basis of the voters' list of 1997, which is absolutely false. The Gaonbura mentioned that the petitioner's father's name figures in the voters' list of 1997. It is also contended that the petitioner stated that he had four paternal uncles who have passed away, and the petitioner's father is alive, and these facts have been stated in the written statement as well as in the evidence but these statements have not been considered by the learned Tribunal. It is admitted that there was a minor contradiction in the cross-examination of DW-2 who stated that one brother is alive, but the learned Member failed to corroborate the evidence of the other witnesses, DW-1 and DW-3.

9. It is submitted that there are slight discrepancies in recording the age of the petitioner's parents in the Electoral Rolls. Such type of age discrepancies are noticeable in Electoral Rolls. The learned Tribunal has however ignored the fact that there are often discrepancies in recording the ages in Electoral Rolls. Some discrepancies and irregularities could have been easily considered as the petitioner is illiterate and a layman without any knowledge of law. Moreover, the petitioner lost his grandparents before his birth and he also lost his mother. The petitioner, with whatever resources he had, tried to establish his linkage and he was successful in establishing his linkage with his father and his projected grandfather.

10. During the pendency of this case, it was observed that the entries made in Annexure-13 are not serially maintained and instructions were directed to be obtained regarding the

manner in which jamabandi is maintained, specifically because the jamabandi appears to be for the period between 1958-65. Moreover, further query was made whether all subsequent entries after the year 1965 would also be reflected in the jamabandi which is for the period, referred to, above.

11. Relating to paragraph 19 of this writ petition, a reply was forwarded from the Additional District Commissioner, Barpeta that :- *"the original Sadar Jamabandi Book was maintained from the year 1958-65 and continuously updated the subsequent entries in each Jamabandi Book. The certified copy of the Jamabandi issued vide No. 361 dated 15/07/2017 was verified with original Sadar Jama Bandi book and was found to be correct."*

12. Learned counsel for the FT matters, has opposed the argument submitted by the learned counsel for the petitioner. Learned counsel for the other respondents have conceded to the argument submitted by the learned Standing Counsel for FT and NRC matters, Mr. G. Sarma. It is submitted by Mr. G. Sarma that the jamabandi submitted by the petitioner reflects that the names of the owners in the jamabandi are inserted not by way of inheritance but as joint owners "Ankhidar Sutra". The petitioner could produce only voters' lists of 1966 and 1970 and thereafter, there was no record of continuous stay up to 1989. It is further argued that the voters' list as late as 1989 has been submitted, and this does not support the petitioner's case as the age of the petitioner's projected father Hormoz Ali is shown as 30 years and his grandfather's name is shown as Dagesh instead of Danesh. The village is also a different village i.e. Garehari Pathar whereas the village reflected in the voters' lists of 1966 and 1970 is Palhaji. Thus, this Hormoz Ali is not the son of Danesh Ali whose name figures in the voters' lists of 1966 and 1970 of Palhaji village exhibited vide Exhibit-1 and 2 by the

petitioner.

13. It is further submitted that it is mentioned in the written statement that Palhaji and Garemari are adjoining villages, but this cannot be a ground to ignore the fact that the villages are different villages, and the petitioner's father's name appears in a different village in the voters' list of 1989 vis-à-vis the voters list of 1966 and 1970. It is submitted that although it is mentioned in the written statement that the petitioner's grandfather started staying separately in the adjoining village i.e. Garemari Pathar, yet the petitioner did not disclose the time when his grandfather shifted base from Palhaji to Garemari Pathar. It is further contended that the date of death of the petitioner's grandfather is not mentioned. The evidence of Gaonbura as DW-3 is not based on contemporaneous record and his oral statement is not sufficient to prove citizenship. There exists, not only a long gap between the voters' lists of 1970 to 1989, but the other voters' lists relied upon by the petitioner also reveal that the voters' lists are not continuous as the voters' list of 1997 and a voters' list of a much later date of 2005, were relied upon by the petitioner. There are no linking documents connecting the petitioner's lineage with his projected parents and grandparents whose names appear in the voters' list of 1989 and 1997.

14. It is also submitted that from 1970 to 1989, there is a gap of more than 19 (Nineteen) years, but no explanation was offered by the petitioner to prove continuous residence of the petitioner's parents and grandparents as mandated by Section 6A(2) of the Citizenship Act, 1955 (the Citizenship Act, for short).

15. We have given our thoughtful consideration to the submissions at the bar.

16. The petitioner has adduced the evidence of three witnesses, including himself. The evidence of the petitioner Sahidul Islam as DW-1 reiterates his written statement. His evidence and his written statement reveal that he is the son of Hormoz Ali as well as Pawan Nessa and grandson of Danesh Ali @ Danes Ali and Tukijan Nessa. He has exhibited several documents and it is apparent from the documents that the name of Hormoz Ali appears to be typed as Hurmuz Ali in some documents and as Hormoz Ali in some other documents. He has exhibited the following documents :-

- 1) Ext.1. Certified Copy of voters list of 1966
- 2) Ext.2. Certified Copy of voters list of 1970
- 3) Ext.3. Certified Copy of voters list of 1989
- 4) Ext.4. Certified Copy of voters list of 1997
- 5) Ext.5. Certified Copy of voters list of 2005
- 6) Ext.6. Certified Copy of voters list of 2010
- 7) Ext.7. Elector Photo Identity Card (EPIC for short) of Hurmuj Ali S/O Danes.
- 8) Ext.8. EPIC of Shahidul Islam S/O Hurmuj.
- 9) Ext.9. Certified Copy of voters list of 2017
- 10) Ext.10. Certified Copy of voters list of 2017
- 11) Ext.11. Certified Copy of the jamabandi dated 09.08.1972
- 12) Ext.12. Certificate issued by the Goanburah Khorshed Ali

13) Ext.13. Certificate issued by the Goanburah Ekabar Ali

14) Ext.14. PAN card in the name of Sahidul Islam

15) Ext.15. An Affidavit sworn by Sahidul Islam

17. It is pertinent to mention that the petitioner deposed as DW-1 and his father Md. Hormoz Ali deposed as DW-2. There is a significant contradiction when the petitioner stated that all his uncles and aunts have passed away, whereas on the contrary, his father who deposed as DW-2 stated that one of his brother is alive. The learned counsel for the FT matters laid stress in his argument that this significant discrepancy casts a shadow of doubt over the veracity of the petitioner's evidence. It is submitted that it is astonishing that a nephew would not know about his deceased uncles or his uncle who is still alive.

18. It would be pertinent to reiterate that apart from this contradiction, there are documents which depicts the petitioner's name along with his father Hormoz Ali. There are other documents which depicts the name of Hormoz Ali along with his father Danesh Ali. The land document reveals that the petitioner's grandfather Danesh Ali was owner of a plot of land of Patta dating back to the year 1958-65. When there are documents linking the names of the petitioner along with his father, and his father with his grandfather, it was incumbent upon the Tribunal to record reasons while discarding the documentary evidence linking the petitioner to his father, and his father to his grandfather. The petitioner has also exhibited an affidavit ascribing reasons that his grandfather was known as Danesh Ali but in the voters list of 1989, EPIC of 2013 and the voters list of 2017, his grandfather's name is recorded as Dagesh, Danesh and Danes instead of Danesh Ali. Nothing has been discussed by the

Tribunal about the discrepancies appearing in the name of Danesh Ali and the affidavit explaining the discrepancies in the name of Danesh Ali has not been discussed in the evidence. This affidavit has been marked as Exhibit-15.

19. It has been held by the Tribunal that the Sarkari Gaonbura of another village cannot issue a certificate in favour of a person who is a resident of a different village. Ekabar Ali is not the Sarkari Gaonbura of the village Garehari Pathar, but he is the Gaonbura of Palhaji, which is a neighbouring village as is evident from the pleadings and the evidence. Ekabar Ali deposed as DW-3 and he has identified his certificate as Exhibit-13 and his signature on the certificate as Exhibit - 13(i). The learned Tribunal, by a cryptic order disposed of the case of the petitioner. The petitioner has indeed mentioned in his written statement that his grandfather had shifted his residence to an adjacent village abutting the Palhaji village under the same Police Station. There ought to have been some elaborate discussions while discarding the petitioner's submissions of shifting of residence of the petitioner's grandfather to an adjacent village. The Tribunal has also not accorded sound reasonings why despite the appearance of the petitioner's name along with his father and again, the petitioner's father's name along with his grandfather in different documents, the petitioner's plea was dismissed.

20. The documentary evidence submitted by the petitioner has been carefully scrutinized. It is true that there is a contradiction relating to death of one of the petitioner's uncles. Barring this contradiction, it appears that some documents could have been considered by the learned Tribunal. It was held by the Tribunal that the petitioner had failed to produce any revenue paying receipts of the land appertaining to Patta No. 175 (Exhibit-11). The Tribunal has also not spelt out reasons, while discarding the jamabandi of 1958-1965. The petitioner's

father's name Hormoz Ali, son of Danesh Ali, appears in the jamabandi marked as Exhibit-11. No reasons were also attributed why the Tribunal has not accepted the voters list of 2005 wherein the petitioner's name figures along with his father, Hormoz Ali. The petitioner's projected grandfather, Danesh Ali's name appears in the voters lists of 1966 and 1970 in Palhaji village. His age is shown as 55 years in 1966 and 59 years in 1970. His name also appears to be similar, i.e. Danesh Ali, son of Abbesh Ali or Abbesh. After a gap of 19 years, the petitioner's grandfather's name appears in the voters list of 1989 in the village Garehari Pathar as Dagesh, against Hormoz Ali's name. The petitioner's father was 30 years old when the petitioner's father's name appeared for the first time in the voters list of 1989.

21. Through his written statement and his pleadings, the petitioner stated that Palhaji and Garehari Pathar are adjoining villages and the petitioner's grandfather started staying separately after constructing his own house in the Garehari village, abutting Palhaji village. However, the Tribunal did not record any reasons why the patta of 1958-65 was discarded despite the fact that the petitioner has linked his name with his projected father and grandfather. It is true that instead of Danesh, his grandfather's name is shown as Dagesh in the voters list of 1989. Due to a long gap from 1970 to 1989, the Tribunal has held the petitioner to be a foreinger as it was the Tribunal's belief that no linking documents could be produced by the petitioner. However, while discarding the copy of the jamabandi marked as Exhibit-11, the Tribunal ought to have recorded the reasons for not accepting Exhibit-11 as a linking document as the name of the petitioner's father along with his grandfather appears in Exhibit-11. The petitioner's father's name appears as Hormoz Ali, S/O Danesh in the voter's list of 1997 in the same village and in the same assembly constituency, i.e., Barpeta. The petitioner's father's age is shown as 42 years and his grandmother's name, Pawan Nessa, as

wife of Hormoz Ali, is also shown as a voter along with her husband. The petitioner's name appears for the first time in the voters list of 2005 and he is shown as son of Hormoz and his age is shown as 20 years in the same village i.e., Garemari Pathar and the same assembly constituency.

22. The other voters lists are not required to be discussed. Exhibit-15 is the affidavit clearly explaining the discrepancies surfacing in the name of the petitioner's grandfather while recoding the name of the petitioner's grandfather, Danesh Ali as well as while recording the name of the petitioner's father, Harmuz Ali. Exhibit-15 also clarifies that although Hormoz Ali's name is recorded in some documents as Hurmuz Ali and in some documents as Hormuz Ali, there is no discussion in the evidence relating to Exhibit-15.

23. It is also apt to reiterate that while discarding the jamabandi of 1958-65 marked as Exhibit-11, wherein the names of Hormoz Ali, son of Danesh Ali appears in "*Barpeta Mouza, Garemari Pathar, 1958-65 new Patta No. 175*", no reasons were recorded by the Tribunal.

24. On considering the entire aspect of the matter, it appears that this case is required to be remanded back as this Court cannot reappreciate the evidence like an Appellate Court. It appears that some documents are required to be included in the assessment of evidence for proper adjudication of the case of the petitioner in accordance with law. The sustainability or perversity of the decision of the Tribunal can only be assessed after certain nuances in the evidence as well as some documents discussing the core issue is properly dealt with by the Tribunal.

25. Law is well settled in this field. The Hon'ble Supreme Court, after discussing the

previous case laws on the jurisdiction of a Writ Court *qua* the writ of certiorari, in the recent decision of **Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors [Civil Appeal No. 3339 of 2023]** has laid down as follows:-

49. Before we close this matter, we would like to observe something important in the aforesaid context Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

26. Reverting back to this case, it is thereby held that the cryptic judgment of the learned

Tribunal appears to be perverse and requires a thorough and elaborate discussion by dealing with the documentary evidence submitted by the petitioner. Thereby, this Court deems it appropriate to remand this case for consideration of the evidence and the entire aspect of the matter.

27. The judgment and order dated 14.05.2019 passed by the learned Foreigners' Tribunal, Kamrup (M) 3RD, Guwahati, in connection with F.T. Case No. 395 of 2017, arising out of a reference vide Jorabat O.P. Case No. 3199/2008, is hereby set aside.

28. The petitioner, namely, Sahidul Islam, who is duly represented by his learned counsel is directed to appear before the learned Foreigners' Tribunal No. 3, Kamrup (M), on or before 05.06.2026, and by producing a certified copy of this order and also file his written statement of defence. It is clarified that, in the event the petitioner fails to appear before the learned Tribunal within the time allowed, it would be open to the said learned Tribunal to treat the petitioner as absent on call and proceed in accordance with law.

29. The records of the Tribunal be sent back expeditiously.

30. The learned Standing Counsel for the Home and FT matters, shall transmit the downloaded copy of this order to the concerned authorities.

31. Writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant