

GAHC010009792019



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

Case No. : WP(C)/310/2019

NURJAHAN BEGUM AND 3 ORS.
W/O- MD. NURUL ISLAM, VILL- BAHA UNNATPARA, P.S. MAYONG, DIST-
MORIGAON (ASSAM)

2: MD. NUR MOHAMMAD
S/O- MD. NURUL ISLAM
VILL- BAHA UNNATPARA
P.S. MAYONG
DIST- MORIGAON (ASSAM)

3: MD. NUR AMIN
S/O- MD. NURUL ISLAM
VILL- BAHA UNNATPARA
P.S. MAYONG
DIST- MORIGAON (ASSAM)
(BEING MINOR REP. BY THEIR MOTHER NURJAHAN BEGUM i.e.
PETITIONER NO. 1)

4: MUSSTT. ROJINA BEGUM
D/O- MD. NURUL ISLAM
VILL- BAHA UNNATPARA
P.S. MAYONG
DIST- MORIGAON (ASSAM)
(BEING MINOR REP. BY THEIR MOTHER NURJAHAN BEGUM i.e.
PETITIONER NO. 1)

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI- 110001

2: THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN

ASHOKA ROAD
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPPT.
DISPUR
GHY-6

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZEN
GS ROAD
BHANGAGARH
GHY- 5

5:THE MEMBER
FOREIGNERS TRIBUNAL NO. 1
MORIGAON
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
ASSA

Advocate for the Petitioner : MR S M ABDULLAH P, MR. MD S HOQUE,MS. A BORUAH,MR.
M DEKA

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

Linked Case : WP(C)/1104/2019

NURUL ISLAM
S/O. LT. JAMAL UDDIN
VILL. BAHA UNNATPARA
P.S. MAYONG
DIST. MORIGAON
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF HOME AFFAIRS
SHASTRI BHAWAN
TILAK MARG
NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

4:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZEN
G.S. ROAD
BHANGAGARH
GUWAHATI-781005.

5:THE MEMBER

FOREIGNERS TRIBUNAL NO.1
MORIGAON
ASSAM.

6:THE SUPDT. OF POLICE (B)

MORIGAON
ASSAM.

Advocate for : MR. MD S HOQUE
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 06-01-2026

(K.R. Surana, J)

Heard Mr. Md. S. Hoque, learned counsel for the petitioner as well as Mr. G. Sarma, learned standing counsel for the Foreigners Tribunal and NRC, Mr. A.I. Ali, learned standing counsel for the Election Commission of India, Ms. J. Sarma, learned CGC, and Mr. P. Sarma, learned Addl. Senior Govt. Advocate.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 12.09.2013, passed by the learned Member, Foreigners' Tribunal, 1st, Morigaon, in F.T. Case No. 49/2009, corresponding to Police Reference F.T. Case No.17/07, by which the petitioner, namely, Md. Nurul Islam, was declared a foreigner under section 2(a) of the Foreigners Act, 1946, who had illegally migrated into India (Assam) from village Tazpur under P.S. Dhari in the district of Sylhet, Bangladesh after 25.03.1971 and had illegally stayed at Baha Unnatapara under Mayang police station since the date of entry into India.

3. Having noticed that the affidavit in support of the writ petition has not been sworn by the petitioner, on a query of the Court, the learned counsel for the petitioner submitted that after the rendition of the opinion dated 12.09.2013, the petitioner was taken into custody on 04.05.2018 and therefore, the affidavit in support of the writ petition has been sworn by Musstt. Nur Jahan Begum, his wife.

4. Although the learned standing counsel for the FT matters has raised objection to the maintainability of the writ petition on account of affidavit being sworn by some other person, but considering the explanation rendered, paragraph-13 of the writ petition, the Court has proposed to examine the matter on merit instead.

5. While the learned counsel for the petitioner has made his submission in support of the writ petition, the learned standing counsel for the FT matters has opposed the challenge to the impugned opinion.

6. On a perusal of the records, it is noticed that the proceedings before the learned Foreigners Tribunal were registered against the petitioner, his wife, 2 (two) sons and a daughter and a common written statement was filed by the petitioner on behalf of all the proceedees on 04.06.2013 amongst others, denying that they are foreigners. It was stated that the name of the father of the petitioner was enrolled in the Voter list of 1970 under 83 No. Bokjani (AJ) Constituency of Village Satkhapari Doloni, Mouza Mayong, under Morigaon Police Station in the district of Nagaon and his name was enrolled in the Voter list of 2010 under 79 No. Jagiroad (AJ) Constituency of the same village. The other statements made in the writ petition relate to other proceedees who are not parties to the present writ petition, however, they have filed a separate writ petition being WP(C) 1104/2019. The petitioner examined himself as OPW-1. In support of his defence, the petitioner exhibited a School Certificate showing that he had studied upto Class VII at Baha Barjari ME School (Ext. Ka) and he exhibited the Voter list of year 1965 and 1975 of his father at Sat Khapari village (Exts. Kha and Ext.Ga) and he also exhibited the Job Card (Ext. Ga). It may be stated that Exts. Gha, Unga, Ja, Cha relate to the other proceedees, who are not parties in the present writ petition and therefore, reference to the contents of the said exhibits is not relevant in this case. The petitioner exhibited the Gaon Burah Certificate regarding his permanent residence at Baha Unnat Para (Ext. Ja). Moreover, Ext. Jha, Ext. Nia and Ext. Ta are the School Certificates of his three children, which are not available in the present writ petition. All the documents not discussed hereinbefore are also post 25.03.1971 document.

7. Though in the written statement, the petitioner has not disclosed the name of his grandfather and mother or that his father had died, but in the cross-examination, the petitioner has disclosed the name of his grandfather as Sahedali and his mother as Sokia Khatun and has stated that his father is dead.

8. The learned Tribunal, upon appreciation of the evidence on record, arrived at a conclusion that the documents exhibited to support the claim of the petitioner were not sufficient to ascertain the nationality of the petitioner out of those documents and accordingly it was held that the petitioner has miserably failed to establish his Indian nationality by sufficient proof.

9. Considered the submission made at the Bar by the appearing learned counsel.

10. In so far as the School Transfer Certificate is concerned, the author of the said certificate did not come before the learned Tribunal to depose in support of the School Transfer Certificate issued by the concerned school. Therefore, Ext. Ka, which is the School Transfer Certificate has not been proved in accordance with law. In support of the name of the petitioner, he has relied on the Voter List of 1965 (Ext. Kha), Voter list of 1975 (Ext. Ga), which do not establish a family consisting of the projected grandfather and mother of the petitioner together. Therefore, stand-alone voters list of the projected father of the petitioner for the year 1965-1975 not establish the link between the person whose name is contained in the said Voters list to the petitioner. It would be relevant to mention that the petitioner had also exhibited a Marriage Certificate between him and his wife, which was issued by the Gaonburah, which is marked as Ext. Cha. However, the said certificate has not been proved by the author. Moreover, a Gaonburah is not an authority to issue Marriage Certificate.

11. The petitioner has not been able to show the provision of law by virtue of any case laws, that a Job Card or the School Transfer Certificate otherwise establishes the citizenship of the petitioner as a citizen of India.

12. Under section 9 of the Foreigners Act, 1946, the burden of proof lies on the persons suspected to be a foreigner to establish that he is not a foreigner. In this case, the exhibited documents fail to establish that the petitioner is a citizen of India. Before the learned Tribunal, the examination-in-chief of the petitioner was recorded on 04.09.2013 and it was disclosed that his age was 34 years. Therefore, the petitioner would have been born sometime in the year 1979 and he would otherwise become eligible to cast his vote in 1997. However, no such document has been exhibited to show that the petitioner exercised his right franchise after becoming eligible to exercise his such right.

13. Accordingly, as the only supporting documents exhibited by the petitioner to prove his link with his father are the School Transfer Certificate (Ext.Ka), Voters list of 1965 (Ext.Kha), Voters list of 1975 (Ext. Ga), Job Card (Ext. Gha), Marriage Certificate (Ext. Cha) and Residential Certificate (Ext. Jha), but as the authors of the said private documents were not examined to prove the same, those documents failed to establish that the petitioner is a citizen of India.

14. Resultantly, the opinion impugned in this writ petition is not found to be vitiated by any perversity whatsoever and therefore, no case is made out by the petitioner for interference with the impugned opinion dated 12.09.2013, passed by the learned Member, Foreigners' Tribunal, 1st, Morigaon, in F.T. Case No. 49/2009, arising out of Police Reference F.T. Case No.17/07.

15. Accordingly, the writ petition fails and the same is dismissed.
16. The consequences of the impugned opinion shall follow.
17. The Registry shall send back the records of the Tribunal along with a copy of the order to be made part of the record of the learned Tribunal.
18. The learned Standing counsel for the FT and Border matters shall transfer a copy to the concerned authorities.

JUDGE

JUDGE

Comparing Assistant