

GAHC010049502019



2026:GAU-AS:823

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

Case No. : WP(C)/1616/2019

KURBAN ALI
S/O. MD. KALUCHAN ALI @ KALACHAN ALI, VILL. BHATKHOWADIA, P.S.
CHAYGAON, DIST. KAMRUP (M), ASSAM-781124.

VERSUS

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

2:STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006.

3:ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:OFFICE OF THE STATE COORDINATOR OF NRC

ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI-781005
KAMRUP (M)

ASSAM.

5:DY. COMMISSIONER

KAMRUP (M)
P.O.
P.S.
DIST. KAMRUP (M)
ASSAM-781001.

6:DY. COMMISSIONER OF POLICE (B)

KAMRUP (M)
P.O. AND P.S. AND DIST. KAMRUP (M)
ASSAM-781001

Advocate for the Petitioner : MR. G PATOWARY, MR. D HAZARIKA,MR. T BARUAH,MR. R PHUKAN

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE ANJAN MONI KALITA

20.01.2026

(K.R.Surana, J)

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Phukan, learned counsel for the petitioner and Mr. J. Das, learned CGC; Mr. A. I. Ali, learned Standing Counsel for ECI; Mr. J. Payeng, learned Standing Counsel for the FT matters; Mr. G. Sarma, learned Standing Counsel for NRC and Mr. H. K. Hazarika, learned Jr. Govt. Advocate, Assam.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Kurban Ali has assailed the opinion dated 06.12.2018 passed by the learned Members, Foreigners' Tribunal No. 3, Kamrup (Metro), Guwahati, in FT Case No.10/2017, arising out of Reference Case bearing Chandmari P.S.

Case No. 564/2016, thereby declaring the petitioner to be a foreigner by holding that the petitioner has miserably failed to discharge his burden to prove that he acquired citizenship of India by birth through genuine Indian parents.

3. The petitioner, on receipt of notice of the proceedings, appeared before the learned Tribunal and filed his written statement on 07.04.2017, stating that he is the son of Md. Kalachan Ali. He has submitted voters list for the year 1966, wherein the names of grandfather and grandmother appear as Abdul Hamid and Kadbhanu Nesa under village Sampupara. He has also submitted the voters list of 1993, where the name of his father appears as Kalachan Ali at village Bhatkhuwa Diya. He has also submitted the NRC Legacy Data where his grandfather's name is recorded as Abdul Hamid. The petitioner has also submitted one Elector Photo Identity Card (for short, 'EPIC') of his projected father and his own EPIC. He has projected by swearing an affidavit filed with the written statement that his name is wrongly recorded as Kurpan Ali instead of Kurban Ali and that his fathers' name is recorded as Kaluchan Ali instead of Kalachan Ali and that his grandfathers' name is recorded as Hamed Ali and Abdul Hamed. Thereafter, on 05.05.2017, the petitioner had submitted his evidence-on-affidavit and by reiterating the statements made in the written statements, executed the hereinbefore the referred documents as Ext. 'A' to Ext. 'G', wherein, Ext. 'F' and Ext. 'G' are the self-declaratory affidavit sworn by the petitioner.

4. In support of his defence, the petitioner has also examined his projected father, Kalachan Ali, as DW-2, who has exhibited his own EPIC as Ext. 'H' by stating that he is living in village Bhatkhuwa Diya and that he is the father of the petitioner, whose correct name is Kurban Ali, which is wrongly written in the EPIC of his son as Kurpan Ali, further stating that both Kurban Ali and Kurpan Ali

are the same person.

5. The petitioner has also examined one Owaj Uddin, a resident of village Kathalguri, as DW-3. The said witness is aged about 72 years and claims to know the projected grandfather of the petitioner, whose name appears in the voters list of 1966, further stating that 'Abdul Hamid' had a nick name of 'Hamid Ali'. All the 3 (three) DW's were cross-examined and discharged.

6. The learned Tribunal had found all the exhibited documents to be not acceptable for the purpose of proving that the petitioner has been able to establish his link between him and his father and his grandfather and accordingly, it was held that the petitioner has failed to discharge his burden of proving that he has acquired citizenship of India by birth through genuine Indian parents.

7. The learned counsel for the petitioner, by referring to the documents appended to the writ petition has submitted that the evidence of the petitioner as DW-1 was discarded owing to discrepancies in his name, his father's name and his grandfather's name. It is submitted that apart from the documents which were exhibited before the learned Tribunal, at the time of filing the present writ petition, the petitioner has provided further documents to show that the documents with the petitioner to link him to his projected parents and grandparents. Accordingly, it is submitted that an opportunity be granted to the petitioner to prove the documents by remanding back the matter to the learned Tribunal. In the said context, it is also submitted that the name of the grandfather of the petitioner appeared in the Land Revenue Recording during the Jamabandi of the year 1952, disclosing the land at village Choudhuripara.

8. Per contra, the learned Standing Counsel for the FT matters submits that

the petitioner has not been able to connect with his projected father and grandfather. It is also submitted that the name of the projected grandfather appeared in the voters list of 1966 and after a long gap of nearly 27 years, the name of his father appears at the age about 40 years in the voters list of 1993. Thus, it is submitted that the name of the parents of the petitioner along with grandparents never appeared in the voters list to show the entire family together. By citing the case of *Asia Khatoon-vs- The Union of India and 3 Ors.*, WP (C) 4020/2017 decided by this Court on 21.11.2019, they emphasized on the point that the documents which was not executed before the learned Foreigners Tribunal cannot be appreciated by this Court. Moreover, relying on the decisions of this Court in the case of *Md. Babul Islam-vs-Union of India*, WP (C) 3547/2016 decided by this Court on 09.05.2018, it is submitted that an EPIC, being a post 25.03.1971 document cannot be accepted as proof of its contents without any supporting evidence. Accordingly, it is submitted that the opinion of the learned Tribunal does not warrant any interference by this Court.

9. Carefully considered the written statement and the evidence of DW-1, DW-2 and DW-3 as well as the documents which are annexed to the writ petition and also considered the submissions made by the learned counsel for the parties.

10. In the evidence-on-affidavit filed by DW-1, there is no positive statement regarding the name of his projected father and grandfather. However, what is stated in the evidence-on-affidavit is that the petitioner is submitting one certified copy of voters list of 1996, where the name of his grandfather is written as Abdul Hamid and name of his grandmother as Kadbhanu Nesa and has submitted the certified copy of voters list of 1993, wherein the name of father appeared as Kalachan Ali. In his cross-examination, the DW-1 has stated

that Late Abdul Hamid is his grandfather from the said documents. Thus, though the petitioner projects existence of his grandmother till the year 2016, yet the petitioner has no personal knowledge about the name of his grandfather, for which he relies on documents alone, which is quite strange.

11. The Court takes notice of the ratio laid down in the case of *Asia Khatoon (supra)*, wherein, the Court is not required to appreciate the documents annexed to the writ petition unless those are exhibited before the learned Tribunal. Yet, on a cursory perusal of the Annexure-20 to the writ petition, which is a "draft consolidated list for NRC (30.07.2018)", it is noted that against the name of Kalachan Ali, the father's name is recorded as Hamed Ali, the mother's name as Rahima Khatoon and the name of the spouse as Kulchan Nessa (rough English translation of names from Assamese), whereas against the name appearing in Serial No. 9, which is Kadbhanu Nesa, her father name is mentioned as Muda Dinu Sheikh and her mother's name as Rahima Begum. Therefore, the projection of the petitioner before the learned Tribunal that his grandfather is Abdul Hamid and that his grandmother is Kadbhanu Nesa cannot be accepted at its face value being contrary to the petitioner's own document annexed as Annexure-20 to the writ petition. Moreover, the voters list of 1966 (Ext.A) showing the names of two voters having their place of residence at village Sampupara, Mouza-Pob-Samaria, in the district of Kamrup, whereas the names of voters list appearing in the list of 1993 (Ext.D) are residents of village Bhatkhuwa Diya, Mouza, South Harubar, in the district of Kamrup. However, in Annexure-20 to the writ petition, the names of persons appearing therein are residents of village Nagumi in the district of Kamrup. Therefore, it appears that the petitioner has obtained the certified copy of the voters list of 1966 and is trying to connect the said voters as his projected father and grandfather, which

prima facie cannot be accepted in view of the contents of Annexure-20 to the writ petition. However, the Court hastens to state that the observation made by this Court by referring to the Annexure-20 to the writ petition has been done on the unique facts and circumstances of the case with no intention to disturb or any disagreement with the ratio laid down in the case of *Asia Khatoon (supra)*. Accordingly, the examination of Annexure-20 to the writ petition is on the unique facts and circumstances of the case, not intended to be treated as a precedent in any other cases.

12. The petitioner had examined his projected father as DW-2. The said DW-2, apart from exhibiting his EPIC did not make any positive statement that the name of his father has an alias of Hamed Ali and he has not given positive statements to support the contents of the two affidavits sworn by the petitioner as Ext.'F' and Ext. 'G'. Moreover, DW-2 had disclosed the name of his mother. Thus, from the evidence of DW-1 and from DW-3, the family of the DW-2 and the grandfather of the petitioner cannot be found.

13. The DW-3 has disclosed his age to be 72 years as on 30.11.2017. Therefore, he would be a voter in the year 1966 having been born in the year 1945. However, he has not proved his existence as a voter in the voters list of 1966 along with the projected grandfather of the petitioner. Therefore, there is no document to show that DW-3, who is stated to be a resident of village Kathalguri had cast his vote along with the grandfather of the petitioner in the year 1966 who was a resident of village Sampupara. In the said context, the Court has referred to the ratio laid down in the case of *Asia Khatoon (supra)*, where this Court has laid down that oral evidence would not be a substantive proof of citizenship. Therefore, the evidence of DW-2 and DW-3 does not come to the assistance of the petitioner in any way.

14. Under the circumstances, as the petitioner has failed to demonstrate that he could be connected to the voters whose names appeared in the voters list of 1966 (Ext.A.), petitioner has miserably failed to prove that he is a citizen of India and born out of bona fide citizens. Accordingly, the impugned opinion rendered by the learned Tribunal is not found to be vitiated by any error on the face of the record and the impugned opinion cannot be held to be perverse on the ground of consideration of any extraneous materials or vitiated due to incorrect appreciation of the oral and documentary evidence filed in the case. Moreover, the family, as projected by the petitioner is demolished by the contents of Annexure-20 to this writ petition, as referred hereinbefore.

15. Resultantly, the challenge to impugned opinion dated 06.12.2018, passed by learned Member, Foreigners' Tribunal No. 3, Kamrup (Metro), Guwahati, in FT Case No.10/2017, arising out of Reference Case bearing Chandmari P.S. Case No. 564/2016 fails and the writ petition stands dismissed. The consequences of the said opinion shall follow.

16. The Registry shall send back the Tribunal's record along with a copy of this judgment and order, to be made a part of the record by the learned Tribunal for future reference.

JUDGE

JUDGE

Comparing Assistant