



2026:GAU-AS:5437

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 4755/2019

1. Md. Jaharul Ali @ Jaherul Islam,
S/o Md. Sukumuddin Ali @ Sukumuddin Talkdar
@ Sukumuddin @ Sukumuddin Ali @ Sakimuddin,
R/o- Village-Jharpara Markanda/Merganda,
P.S.-Chaygaon, Dist.-Kamrup (R), Assam.

.....Petitioner.

-Versus-

1. The Union of India, represented by the Secretary,
Ministry of Home Affairs, New Delhi-110001.
2. The State of Assam, represented by the Commissioner & Secretary,
Home Department, Dispur, Guwahati-6.
3. The Superintendent of Police (B), Kamrup (R), Assam.
4. The Election Commission of India, New Delhi-110001.
5. The Co-Ordinator, NRC, Assam, Guwahati-781005.
6. The Deputy Commissioner, Kamrup (M), M.G. Road,
Panbazar, Guwahati-781001.

.....Respondents.

For the Petitioners : Mr. A. Kaddus, Adv.

.....Advocates.

For the Respondents : Mr. B. Deka, CGC,

Mr. A. I. Ali, SC, ECI.
Mr. P. Sarma, Addl. Sr, GA.
Ms. A. Verma, SC, FT.

.....Advocates.

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

Date(s) of Hearing :- 02.02.2026

Date on which judgment is reserved :- 02.02.2026

Date of pronouncement of judgment :- 21.04.2026

Whether the pronouncement is of the operative part of the judgment? :- N/A

Whether the full judgment has been pronounced? :- Yes

JUDGMENT AND ORDER

(A.M. Kalita, J)

Heard Mr. A. Kaddus, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC; Mr. A. I. Ali, learned Standing Counsel for the Election Commission of India; Mr. P. Sarma, learned Addl. Senior Government Advocate, appearing for the State respondent no. 6; and Ms. A. Verma, learned Standing Counsel, Home & Political Department (B).

2. The instant writ petition, under Article 226 of the Constitution of India has been filed by the petitioner, assailing the opinion dated 30.01.2019, passed by the learned Member, Foreigners' Tribunal 4th,

Kamrup (M) in F.T. Case No. FT (K (M)-4)969/17, corresponding to I.M.(D).T. Act Case No. 1331/03, holding that the petitioner is a foreigner who entered the State of Assam after 25.03.1971.

3. The petitioner's case is that he was born in the year 1989 at village Merganda (Jharpara), under P.S. Chaygaon, in the district of Kamrup (R), Assam. It is contended that the petitioner's grandparents were originally belonged to village Natapara, P.S. Lakhipur in the district of erstwhile Goalpara, Assam. Thereafter, his grandparents had shifted their residence in the year of 1956 from village Natapara to village Birsing Helengarchar in the same district due to river erosion and in the year 1956 itself, the father of the petitioner was born at the said village Birsing Helengarchar. In the year 1974, due to the river erosion in the village Birsing Helengarchar, the grandparents of the petitioner shifted their residence to Jamirabari in the same district of Goalpara. It is contended that again in the year 1987, they shifted to village Merganda (Jharpara), under P.S. Chaygaon in the district of Kamrup (R), Assam, due to the river erosion in Jamirabari village. It is contended that since the grandparents of the petitioner are of residence of the State of Assam, the petitioner is an Indian citizen.

4. It is seen that the petitioner's case was referred by the Sr. Superintendent of Police (SSP), Kamrup (M), Guwahati, vide Case 1331/03, dated 08.06.04, expressing doubt about the nationality of the proceedee/petitioner under the Foreigners' Act, 1946, seeking an opinion about the citizenship of the petitioner.

5. The learned Member Foreigners' Tribunal 4th, Kamrup (M), Assam, after following the due procedure of hearing the parties, finally delivered its opinion on 30.04.2019, wherein, the petitioner was found to be a foreigner who had entered the State of Assam after 25.03.1971.

6. During the proceedings before the aforesaid learned Foreigners' Tribunal, the petitioner had filed his written statement, wherein he had stated that he is a citizen of India, born in the State of Assam. He had stated that he is the son of Sukumuddin Talukdar, presently residing at village Merganda (Jharpara), under P.S. Chhaygaon in the district of Kamrup, Assam. He contended that his grandfather, namely, Hosen Ali Talukdar was a resident of 56, Natapara village, under P.S. Lakhipur in the district of Goalpara and his grandfather's name appeared in the National Register of Citizen (NRC) for the year 1951. In the written statement, in support of his case, he has relied on as many as 13(thirteen) documents, including the voter lists, wherein he claimed that his grandparents', his parents' and his name appeared. The petitioner had also filed his evidence on affidavit, wherein he had reiterated the statements that he had made in his written statement and relied on the documents that had been mentioned in the written statement. The documents were exhibited as Exhibit-A to Exhibit-M. The petitioner had also in support of his case, filed evidence on affidavit of the DW-2, i.e., his father, namely, Sukumuddin Talukdar as well as evidence on affidavit of DW-3, the Gaon Burah, namely, Md. Tayab Ali. The DW-1, i.e., the petitioner as well as the DW-2 & 3 were duly examined before the aforesaid learned Foreigners' Tribunal.

7. From the above materials, it is seen that the petitioner had projected one Hussain Ali Talukdar to be his grandfather and one Sukumuddin Talukdar as his father. The petitioner had submitted a copy of NRC 1951, wherein his projected grandfather, namely, Hussain Ali Talukdar, son of Jalal Talukdar appears. However, since the NRC of 1951 is not a document admissible in a case for determination of citizen, the same was not relied upon by the aforesaid learned Foreigners' Tribunal.

8. The petitioner had submitted the voter list of 1966 (Exhibit-C) of 43-Birsing Helengarchar (R.B.) 2nd Part, wherein the name of one Husen Ali and Sabjan Nessa are found. The petitioner had submitted the voter list of 1970 (Exhibit-D) of village 43-Birsing Helengarchar Part-II, wherein also the names of one Hasen Ali and Sobjan Nessa are found. The petitioner had submitted the voter list of 1979 of 45-Jamirabari Part-1, wherein the names of 5(five) persons are found; one Hosen Ali Talukdar, son of Jalal Uddin, whom the petitioner claimed to be his grandfather. The name of one Sabron Nessa is also found whom the petitioner claimed to be his grandmother. The petitioner claimed that Hosen Ali Talukdar, in the voter list of 1979 and Husen Ali of 1966 and 1970 voter lists are the same and one person, whom, he claims to be his grandfather. However, one important aspect which could be seen from the voter list of 1966 and 1979 is the age of aforesaid Hussain Ali Talukdar. It is seen that Husen Ali of 1966 voter list was 48 years, whereas, the Hosen Ali Talukdar of 1979 voter list is shown to be 50 years. If the Husen Ali of 1966 voter list and Hosen Ali Talukdar of 1979 voter list, is the same person, then, Hussain Ali Talukdar's age should have been 61 years in the year 1979. It is also seen that the father of Husen Ali, whose name appeared in the voter list of 1966 was late Jalal Ali, whereas, the name of the father of Hosen Ali Talukdar in 1979 voter list is Jalal Uddin. Therefore, apparently, there is a mismatch about the father of Husen Ali vis-à-vis, the father of Hosen Ali Talukdar. Though the petitioner had claimed that Husen Ali and Hosen Ali Talukdar are the same and one person, the same cannot be accepted due to the aforesaid discrepancies and that too without any corroborative material or evidence to show that Husen Ali, son of Jalal Ali and Hosen Ali Talukdar, son of Jalal Uddin are the same and one

person. The age discrepancy is also an issue as there is a substantial difference in age, i.e., about 13 years which cannot be ignored.

9. Another vital aspect which can be seen from the aforesaid voter list is the name of the projected grandmother of the petitioner. Whereas, in the voter list of 1966, the name of his projected grandmother is shown as Sabjan Nessa but in the voter list of 1979, the name has been shown as Sabron Nessa. Therefore, there remains a doubt whether the Husen Ali of 1966 voter list and Hosen Ali Talukdar of 1979 voter list are one and the same person. Similarly, Sabjan Nessa and Sabron Nessa are one and the same person.

10. The petitioner had submitted a voter list of 1985, wherein the names of 6(six) persons could be seen and the petitioner projected Hosen Ali appearing there, is his grandfather and Sukumuddin Talukdar whose name appeared in the same voter list, to be his father. However, the father of Hosen Ali is found to be one Jalal Uddin. The name of Jalal Talukdar nowhere appeared in the earlier voter lists, exhibited by the petitioner. Therefore, there is a mismatch of the names in the voter list of 1979 as well as 1985. If Hosen Ali, son of Jalal Talukdar, to be taken as the grandfather of the petitioner, then the Hasen Ali, son of late Jalal Ali and Husen Ali Talukdar, son of Jalal Uddin appeared in the voter list of 1966 and 1979 respectively, cannot be the grandfather of the petitioner.

11. The petitioner had submitted the voter list of 2017, wherein the names of 5(five) persons could be found. The petitioner claimed that his name appeared along with his father namely, Sukumuddin Ali, son of Husen Talukdar. Therefore, the basic case of the petitioner is that his father is Sukumuddin Ali, who is the son of Hussain Ali Talukdar and Hussain Ali Talukdar's name appeared in the voter list prior to 1971.

Therefore, the petitioner cannot be termed as a foreigner, entering into the State of Assam after 25.03.1971.

12. The petitioner had submitted the voter list of 2005, 2010, 2015 also. In all these three voter lists, the name of Sukumuddin Ali appeared and his father was shown to be Husen Talukdar but the same Husen Talukdar's name could not be found in any of the voter list prior to 1971. Therefore, without any materials to show that the presence of Husen Talukdar existed prior to 25.03.1971, it is difficult to ascertain that the petitioner's projected grandfather was a citizen of the State of Assam prior to 1971.

13. To support his case, the petitioner had named his father as DW-2, i.e., his projected father, namely, Sukumuddin Talukdar. The DW-2, in his cross-examination, stated that the petitioner is his son. The petitioner has named DW-3, the Gaon Burah, who had issued a certificate (Exhibit-L). In his evidence-in-chief, he stated that the petitioner is the son of Sukumuddin Talukdar and he knows Sukumuddin Talukdar since 1985. He further stated that he has become a Gaon Burah in the year 1991.

14. From the above evidence of the DW-3, it cannot be ascertained that the petitioner's projected grandfather was residing in the State of Assam prior to 1971. In the evidence of DW-2 also, other than just the statement that the petitioner is his son, nothing much can be gathered about the existence of the projected grandfather of the petitioner prior to 1971 in the State of Assam.

15. From the aforesaid discussion, it is seen that though the petitioner had claimed one Hussain Ali Talukdar to be his grandfather and Sukumuddin Ali to be his father, the same will not be sufficient to decide the citizenship of the petitioner to be an Indian on the basis of

the documents that have been relied on by the petitioner. As it is seen that there are major discrepancies in the names, in the relevant voter lists, as discussed before about the projected grandfather of the petitioner. It is seen that the petitioner is unable to provide sufficient evidence to show that Hosen Ali, as projected by the petitioner, to be his grandfather, as the same person whose name appeared in the voter list of 1985.

16. As discussed, the Hosen Ali of 1985 is shown to be the son of Jalal Talukdar, whereas, the Hosen Ali of 1966 voter list is shown to be the son of late Jalal Ali. Therefore, in the considered view of this Court, though the petitioner has claimed that Sukumuddin Talukdar is his father, his father's name along with his grandfather Hosen Ali, cannot be said that the Hosen Ali of 1985 voter list is the same person whose name appeared as Husen Ali in 1966 voter list.

17. In view of the aforesaid discussions, this Court is of the considered view that there is no infirmity in the opinion of the learned Member Foreigners' Tribunal 4th, Kamrup (M), Guwahati, dated 30.04.2019, and hence, the instant writ petition is dismissed.

18. LCR to be sent back.

JUDGE

JUDGE

Miriam