

GAHC010179312019



2026:GAU-AS:6347

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

Case No. : WP(C)/5514/2019

ABU KAMAL TALUKDAR @ ABU KALAM TALUKDAR
S/O- ABDUL REZZAK @ REZAK, PERMANENT R/O- VILL- BHOGRANDA,
P.O. GAJIA P.S. BARPETA, SUB-DIVISION- BARPETA, DIST- BARPETA,
ASSAM, PIN- 781314

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001

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

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

4:THE DY. COMMISSIONER OF POLICE (B)
GHY-1

5:THE DY. COMMISSIONER
KAMRUP (M)

GHY-01

6:THE DY. COMMISSIONER
BARPETA
781301

7:THE SUPERINTENDENT OF POLICE (B)
BARPETA
781301
ASSAM

8:COORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY- 5

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. A.W. Aman

Advocate for the respondent(s):Mr.G.Sarma,
SC Home Department& NRC
Ms. R. B Bora, GA, Assam,
Mr.N.Kalita, on behalf of
Mr. A.I. Ali, SC, ECI,
Ms. S. Baruah, CGC.

Date on which judgment was reserved :**05.05.2026**

Date of pronouncement of judgment :**08.05.2026**

Whether the pronouncement is of the :

operative part of the judgment?: **NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (CAV)

(Shamima Jahan, J.)

Heard Mr. A.W. Aman, learned counsel appearing for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel, Home Department and NRC, Ms. R. B. Bora, learned Government Advocate, Assam, Mr. N. Kalita, learned counsel

representing Mr. A. I. Ali, learned Standing Counsel for the ECI; and Ms. S. Baruah, learned CGC appearing for the Union of India.

2. By this application filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the opinion dated 04.04.2019, passed by the learned Member, Foreigners' Tribunal, Kamrup (M) 2nd, Guwahati, in FT Case No. 87 of 2018, whereby the petitioner was declared a foreigner of post-25.03.1971 stream.

FACTS

3. The petitioner stated that a reference case was made against him by the Deputy Commissioner of Police (Border) Guwahati, suspecting the petitioner to be a foreigner from the specified territory, who entered Assam, India, illegally without valid travel document after 24th of March, 1971, and the same was referred to the Foreigners' Tribunal and a case has been registered as FT Case No. 87 of 2018. The learned Tribunal issued notice to the petitioner and on receipt of the same, the petitioner filed his written statement, placed documents and examined 3 (three) witnesses.

4. In the said written statement, the petitioner stated that his grandfather, namely, Dil Mohammad @ Dilo Miya @ Dilo, lived at Village-Balikuri Nonke in the sub-division of Barpeta, in the then district of Kamrup and that the father of the petitioner, namely, Abdul Rezzak @ Rezak @ Rezzak, also lived in the same village. He further stated that he was born on 01.10.1978 and was brought up in the said village. However, he stated that his family shifted from the said place to Village-Bhograndha in the district of Barpeta, Assam, in the year 1992, due to river erosion and that since then, the petitioner has been living in the said

village.

5. He stated that his grandfather appeared in the NRC of 1951 from House No. 138 of Village-Balikuri Nonke as stated above, and that in voters' list of 1966, his grandfather as well as his grandmother's names appeared in the said list from the said place, i.e., Balikuri Nonke under No. 51, Jania LAC. Similarly, in the voters' list of 1970, the names of the petitioner's grandfather and grandmother appeared from the same place under the same constituency.

6. Thereafter, in the voters' list of 1985, the petitioner stated that the names of his grandparents as well as his uncle, namely, Atowar Rahman and the name of his aunt, appeared in the said voters' list from the same place, as stated above, under No. 44, Jania LAC. The petitioner stated that the name of his grandfather was wrongly written as Dilo Miah, due to the fault of the enumerators. He, however, stated that the father of his grandfather's name was the same as in earlier voters' list, which shows that Dilo Miah and Dil Mohammad is one and the same person.

7. The petitioner subsequently stated that the name of his father first appeared in the voters' list of 1989 from House No. 791, Part-82 of Village-Balikuri Nonke, and that his mother's name, Nabiran Nessa, was also included in the said voters' list. He further stated that his father was shown to be the son of Dilo in the said voters' list and that the said mistake was committed by the enumerators.

8. The petitioner then stated that there was river erosion and that his family shifted to another village, namely, Bhograndha, in the district of Barpeta, in the year 1992, and that in the year 1997, his mother's name was reflected in the

voters' list of said year, along with his and his wife's name from house No. 63, under 44 Jania LAC. He further stated that both his father's and mother's name was wrongly written in the said voters' list, i.e., in place of Abdul Rezzak, Rezak was written and in place of Nabiran Nessa, i.e., his mother, Nabiya Begum was written, which was again, as submitted by the petitioner, was the fault of the enumerators. Thereafter, he placed the voters' list of 2005, wherein, he and his wife appeared along with his mother. He then again placed the voters' list of 2011, wherein he and his wife along with his mother and the other family members were included in the said list. He then placed the voters' list of 2015, wherein the same position continued, i.e., his wife's, his mother's and names of other relatives were included in the list.

9. To establish his identity, the petitioner has submitted the Elector Photo Identity Card, wherein he was shown as the son of Nabiya. He again stated that in the voter ID Card, his mother's name was reflected instead of his father, which was stated to be the fault of the officials, who were involved in printing.

10. He further stated that his grandfather had a landed property covered by Patta No. 149, at Village Baliuri Nonke, in the district of Barpeta, and that the grandfather of the petitioner paid the land revenue regularly. He then stated that his father married his mother and that after the marriage, his mother and father lived separately, and as such, the name of the petitioner was not listed along with his parents in the voters' list.

11. The petitioner, thereafter, narrated that his father had 7 brothers and sisters and that he has five brothers and sisters including him and that there are discrepancies in the age of the relatives in the voters' list.

12. The petitioner had also submitted an additional written statement stating certain similar statements narrated in the written statement mentioned above and further stated that he obtained the certificate from the Gaonburah, to prove his residential status as well as linkage with his father.

13. The petitioner, thereafter, submitted his evidence-on-affidavit, stating the same facts as stated in the written statement and he was examined as DW No. 1. Thereafter, on 01.12.2018, the learned Tribunal had put certain questions to the petitioner to which the petitioner replied that he has six children and that he had five siblings and that his father had seven siblings and that his grandfather had six siblings.

14. Apart from the petitioner being examined as DW-1, the projected mother of the petitioner was also examined as DW-2 and she stated in her evidence-on-affidavit that petitioner is her son and that grandfather of the petitioner lived at Village-Balikuri Nonke, in the sub-division of Barpeta, in the then district of Kamrup, and that father of the petitioner also lived in the said village and also that the petitioner was born and brought up in the said village, and further that, the family of the petitioner shifted to another village in the year 1992, due to river erosion. She, thereafter submitted that the grandfather of the petitioner appeared in the NRC of 1951, in the voters' list of 1966, along with the grandmother as well as in the voters' list of 1970. She then stated about the other voters' lists. She further stated that her name is Nabiya Begum, wife of Rezzak, and that she appeared along with her sons as well as later with the petitioner in the subsequent voters' list. She also stated about the Voter ID card issued to the petitioner as well as the land owned by the grandfather of the petitioner.

15. On 01.12.2018, the learned Tribunal had put questions to the said witness, to which the witness replied that petitioner is her eldest son and that she has five children and that her husband had seven siblings and that her father-in-law had six siblings and further that, she casted her vote first in 1992.

16. On 05.03.2019, yet another witness was examined, i.e., the Gaonburah of Village-Baghbar, in the district of Barpeta, and he stated that he issued the certificate to the petitioner showing his permanent residence and that the petitioner had shifted to village-Bhograndha from Village-Balikuri Nonke, and that the petitioner has been residing at Bhograndha since 1992. In answers to query put by the Tribunal, he stated that he issued the resident certificate to the petitioner as he requested for the same and that the petitioner showed him some documents on the basis of which, he issued the certificate.

17. The petitioner has submitted the following documents which were exhibited by the learned Tribunal:-

- i) Exhibit-A, copy of the NRC details
- ii) Exhibit-B, 1966 voters' list
- iii) Exhibit-C, 1970 voters' list
- iv) Exhibit-D, 1985 voters' list.
- v) Exhibit-E, 1989 voters' list.
- vi) Exhibit-F, 1997 voters' list
- vii) Exhibit-G, 2005 voters list.

- viii) Exhibit-H, 2011 voters' list.
- ix) Exhibit-I, 2015 voters' list.
- x) Exhibit-J, voter ID Card of the petitioner.
- xi) Exhibit-K, revenue paying receipt, paid by the projected grandfather.
- xii) Exhibit-L, copy of the old chitha, showing property owned by projected grandfather.
- xiii) Exhibit-M, copy of the Gaonburah certificate.

18. The learned Tribunal considered the said documents along with the evidence of the petitioner, his mother and the Government Gaonburah and by opinion dated 04.04.2019, had answered the reference in the affirmative, i.e, by declaring the petitioner as foreigner of post-25.03.1971 stream mainly on the following grounds:

- i) From the exhibits, it cannot be ascertained that the projected grandfather of the petitioner is the father of the petitioner's father.
- ii) It cannot be ascertained that Dil Mohammad appearing in voters' list of 1966 and 1970, is the same person as that of the one, mentioned as Dilo Miah in other voters' list.
- iii) The father of the petitioner appeared in the voters' list of 1989, on attaining the age of 34 and his mother too appeared in the said list, on attaining the age of 29 years, should have appeared in earlier voters' lists, considering the age.

On these grounds, the learned Tribunal declared the petitioner as a foreigner and the same is challenged in the instant petition.

SUBMISSIONS:

19. Mr. A.W. Aman, learned counsel for the petitioner submitted that the grandfather and grandmother of the petitioner appeared in the voters' list of 1966, while residing in village-Balikuri Nonke, in the sub-division of Barpeta, and in the subsequent voters' list of 1970, both grandfather and grandmother of the petitioner appeared by residing at the same place, and that, thereafter, in the voters' list of 1985, grandfather and grandmother of the petitioner appeared as voters with uncle and aunt of the petitioner. He then stated that the name of the grandfather was written as Dilo Miah and that the name of the grandmother and the father of the grandfather is same as stated in the other voters' list and the same corroborates the fact that Dilo Miah is the grandfather of the petitioner, although the name was differently written. He further stated that in the voters' list of 1989, the name of the father and mother of the petitioner were included and then in the voters' list of 1997, the name of the petitioner was recorded along with his mother and wife. He then stated that although the name of the mother was differently written, i.e., Nabiya Begum, instead of Nabiran Nessa, but seeing the husband's name and the age, said Nabiya Begum is the actual mother of the petitioner. Thereafter, in the voters' list of 2005, the petitioner along with his mother and wife was included in the said list and that in 2011 voters' list, same is the position. Further, in the voters' list of 2015 again, the petitioner appeared with his mother, wife and other family members. By referring to the said voters' list, the counsel for the petitioner has tried to establish a linkage of the petitioner with his father as well as to his grandfather.

20. The learned counsel, thereafter, placed reliance on the certificate issued by the Gaonburah, in favour of the petitioner, wherein it was written that petitioner's father's name was Abdul Rezzak and that the petitioner is a resident of village-Bhograndha and that he knew the petitioner. He, thereafter, relied on the statement of the Gaonburah, who was examined as DW No. 3, and who had stated that he had issued a resident certificate in favour of the petitioner, son of Abdul Rezzak, and that petitioner is a resident of the village of which, he is the Gaonburah.

21. On the other hand, Mr. G. Sarma, learned counsel for the FT matters, submits that the name of the father of the petitioner, having appeared in the voters' list of 1989, at the age of 34 years, his name should have appeared as a voter in the earlier voters' list. He further stated that the petitioner had not placed the voters' list issued in between 1970 and 1985, and that there was a long gap of 15 years. He then submitted that the petitioner had not placed any voters' list, where the petitioner appeared along with his father and grandfather, and as such, there was no link between them. He then submitted that Gaonburah, in his statement as DW No. 3, stated that the petitioner has been residing at Village-Bhograndha, since 1991-1992, which shows that the Gaonburah did not know the petitioner or his family before 1991-1992. To substantiate his argument, he relied on a judgment delivered by this Court in ***Aziz Miah -Vs- Union of India and Others***, reported in **2023 (4) GLT 246**, wherein it was held that referring to a voters' list is not sufficient to establish the link of the proceedee without any corroborative evidence.

These were the submissions of the learned counsels for the parties.

ANALYSIS AND FINDINGS

22. Although the learned counsel for the petitioner had not argued on Exhibit-A, which is the NRC details, and where the name of the projected grandfather appears, however, since the same has been produced and exhibited before the learned Tribunal, this Court holds that the same is not an admissible piece of evidence. This Court in a recent decision of ***Mazam Ali -vs- Union of India***; reported in **2024 (4) GLT 274**, had held that an entry made in the NRC is not admissible in evidence with regard to the issue of citizenship. In yet another judgment delivered in ***Abdul Mozid -vs- Union of India, i.e., WP(C) No. 6090/2016***, this Court held as follows –

"11. Ext.1 is stated to be a true copy of national register of citizens (NRC), 1951 issued by the Deputy Superintendent of Police (B), Dhubri on 17.10.1985 containing the names of Haru Dewani, Belaton Nessa, Madan Sheikh (Matin) and Hanif Sheikh.NRC, 1951 was prepared on the basis of the Census Act,1948. As per Section 15 of the Census Act, 1948, records of census are not open to inspection and thus not admissible in evidence. Therefore, in Bhanbhasa Sheikh Vs. Union of India, 1970 Assam LR 206, a single Bench of this Court categorically held that NRC extracts produced to prove domicile in India is not admissible in evidence for any purpose. We are in complete agreement with the views expressed by the learned Single Judge in Bhanbhasa Sheikh (supra). Therefore, Ext.1 is no evidence in the eye of law."

23. We also endorse the view that the NRC extracts produced to prove domicile in India is not admissible in evidence for citizenship.

24. Now coming to the voters' list, it is noticed that Dil Mohammad and Hajera Khatun, the projected grandfather and grandmother of the petitioner appeared in the voters' list of 1966 and 1970, from the same house number and from the same place. However, after 15 years, in the voters' list of 1985, the name of the projected grandfather underwent a change and his name was reflected in the

said voters' list as Dilo Miah with a different house number, but from the same place. Thereafter, in the voters' list of 1989, the name of the projected grandfather and the grandmother were not recorded and that the said list only displayed the name of the projected father and mother of the petitioner. The father's name was written as Abdul Rezzak and mother as Nabiran Nessa. However, the petitioner stated and had placed the voters' list of 1997, wherein the petitioner's name appeared at Serial No. 929, and shown as son of Rezak, along with his wife at Serial 930. The petitioner stated that the name of the voter recorded at Serial No. 928, i.e., before the petitioner, was the mother of the petitioner and her name was stated as Nabiya Begum, and further shown as related to Rezak, and her age is shown to be 31 years. It is as such, seen that the projected mother of the petitioner, as reflected in the 1989 voters' list, was named as Nabiran Nessa and it was stated that she was the wife of Abdul Rezzak and she was aged 29 years and that after 8 years, the petitioner stated that his mother's name is Nabiya Begum, related to Rezak and was aged 31 years. A big difference is seen in three aspects, first, the name of the projected mother, the person she is related to and her age. As far as age is concerned, she should have been 37 years. The petitioner had stated in his written statement as well as in his evidence-on-affidavit that he and his family had shifted from Barikuri Nonke to Bhograndha and with the change in place, the name of his projected father and mother also changed. Further, the petitioner was shown to be the son of Nabiya, whereas the normal practice is that the voter is shown against the name of his father.

25. Further, in the electoral roll of 2011, same position was reiterated in the said list as far as the name of the projected mother and projected father of the petitioner is concerned. Further, same is in case of electoral roll of 2015. It is,

therefore, seen that the name of the portioner was never recorded with his projected father, Abdul Rezzak, to which there can be an argument that the petitioner became eligible for voting in the year 1995, by considering his age as per the voters' list of 1997, wherein he was shown to be of 20 years, but be that as may, in 1997 voters' list, the name of the petitioner was recorded along with one Nabiya Begum, who was projected as his mother, but neither her name tallies, nor her husband's.

26. Further, the projected father of the petitioner, namely, Abdul Rezzak, is also not seen with his father, i.e., petitioner's grandfather in a voters' list, while there can be every possibility of both being together in a single list, inasmuch, as the projected grandfather of the petitioner appeared in the voters' list of 1985, and the projected father of the petitioner appeared in the voters' list of 1989 and the age of the projected father in the said list of 1989, was shown to be 34 years and by considering the age, the projected father of the petitioner should have appeared in the voters' List of 1985, along with his father. As such, the link between the petitioner with his grandfather whose name appeared in the voters' list, prior to 1971, is not established. It is a settled law that to prove linkage under the Foreigners' Act of 1946, an individual must establish a direct bloodline connection to an Indian ancestor, whose name appears in documents, prior to 25.03.1971. In the instant case, even if it is considered for the sake of argument, that link between petitioner and his father is established, but in absence of the link of the projected father of the petitioner to his grandfather, the link of the petitioner to his grandfather is not established. As such, the link is absent in the instant case.

27. The petitioner has exhibited the voter ID card to establish the link, but it is

no res integra that voter ID Card or any other similar documents, which is used for identification, cannot be considered for establishing citizenship. Similarly, the revenue receipt exhibited by the petitioner as Exhibit -K is again not amissible in evidence due to the fact there is nothing on record to show that after payment of revenue by the projected grandfather in the year 1962, the father of the petitioner or the petitioner had ever paid revenue for the said eksona plot of land.

28. The petitioner had further relied on the certificate issued by the Gaonburah, which is exhibited as Exhibit No. M, wherein the Gaonburah had stated petitioner as son of Abdul Rezzak, of the concerned locality, and that the petitioner was living in Bhograndha village under his charge. The said Gaonburah was examined as DW No. 3, and he stated that he had issued a resident certificate in favour of the petitioner and he also deposed that petitioner has been residing at Village-Bhograndha since 1991-1992, and in answers to the questions put by the learned Tribunal, he stated that he had issued the said certificate on the basis of documents placed by the petitioner. As such, it is seen that although the first requirement that in order to prove a certificate, the author has to be examined, the same is done, but the contents of the certificate is not proved to the extent required, inasmuch, as, although in the certificate, DW No. 3 stated, which is of course, in a format that he knew the petitioner, but in his statement, he stated that the petitioner has been residing in the said village, since 1991-1992, which implies that the witness did not know him before hand or since long. Further, there is a statement of the said witness that he had issued the certificate on the basis of documents placed by the petitioner, which again implies that he had not issued the certificate from his own knowledge. These facts raise doubt regarding the authenticity of the

said certificate, as it was not proved according to law.

29. The projected mother of the petitioner was examined as DW No. 2 and she, in answer to the question put by the Tribunal, stated that she had first casted her vote in the year 1992 and that she stated that she was also known as Nabiran Nessa. The name of Nabiran Nessa was reflected in the voters' list of 1989, which is exhibited by the petitioner as Exhibit No. E, whereas DW-2 said she voted first in the year 1992. This shows that Nabiran Nessa and Nabiya Begum is not one and the same person. In that count, the voters' lists submitted by the petitioner of 1997, along with Nabiya Begum, projecting her as his mother does not appear to be a correct projection.

30. In view of the said discrepancies mentioned above, and due to the lack of linkage between the petitioner and his projected grandfather, the opinion of the learned Tribunal cannot be interfered. We would also like to observe herein that the certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal although for the ends of justice, some exercise has been done to the said effect. We are, in view of the aforesaid facts and circumstances, of the opinion that impugned order dated 04.04.2019, passed by the learned Member, Foreigners' Tribunal, Kamrup (M) 2nd, Guwahati, in FT Case No. 87 of 2018, does not call for any interference and the instant writ petition being devoid of merits, stands dismissed.

31. The actions consequent upon the opinion rendered by the learned Tribunal would follow in accordance with law.

32. The records of the aforesaid FT Case be returned to the learned

Foreigners' Tribunal, Kamrup (M) 2nd, Guwahati forthwith, along with a copy of this order.

JUDGE

JUDGE

Comparing Assistant