

GAHC010242092017



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

Case No. : WP(C)/6291/2017

MD. SHUNAHAR ALI
S/O. MD. IBRAHIM ALI, VILL. KASHIMPUR, P.S. NALBARI, DIST. NALBARI
ASSAM, PIN-781

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY OF HOME AFFAIRS, NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE SUPERINTENDENT OF POLICE B
NALBARI

ASSAM
PIN-781337.

4:THE DEPUTY COMMISSIONER
NALBARI

ASSAM
PIN-781335

Advocate for the Petitioner : MR.S C PANDIT, MR.S SARKAR

Advocate for the Respondent : GA, ASSAM R. 2,3 and 4., ASSTT.S.G.I.(R. 1.)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

Date : 24-04-2026

For the petitioner:	Mr. S. C. Pandit, Advocate
For Respondent no.1:	Ms. B. Sarma, CGC
For respondent nos.2 and 3:	Mr. G. Sarma, S.C., FT, Border & NRC.
For respondent no.4:	Mr. P. Sarmah, Addl. Senior Govt. Adv.
Date on which judgment is reserved	17.03.2026
Date of pronouncement of judgment	24.04.2026
Whether the pronouncement is of the operative part of the judgment	No.
Whether the full judgment has been pronounced	Yes.

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JUDGMENT AND ORDER

(K.R. Surana, J)

Heard Mr. S.C. Pandit, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC for respondent no.1; Mr. G. Sarma, learned standing counsel for respondent nos. 2 and 3; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for respondent no.4.

I. Opinion assailed:

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Shunahar Ali, has assailed the impugned opinion dated 30.08.2017, passed by the learned Member, Foreigners Tribunal 1, Nalbari, in F.T. (Nal) Case No. (N) 21/2012, arising out of S.P. Reference No. 73/11, by which he was declared to be a foreigner of post 25.03.1971 stream.

II. Submissions on behalf of the petitioner:

3. The learned counsel for the petitioner has submitted that the

petitioner was not served with the main grounds on which he was suspected to be a foreigner and therefore, the petitioner did not get a reasonable opportunity to defend himself. Moreover, it was submitted that as the petitioner was born in India in the year 1985, he is a citizen of India by birth and the proceeding was not maintainable.

4. It has also been submitted that the petitioner was born in India in the year 1987 and therefore, as per Section 3 (1)(a) of the Citizenship Act, 1955, the petitioner would be a citizen of India, having acquired citizenship by birth. Accordingly, it was submitted that the petitioner could not have been suspected to be a foreigner.

5. It has also been submitted that the case of the petitioner was that Ibrahim Ali, son of Sangser Ali, had come to village- Kasimpur, where he had married Fatema and the petitioner was born, but while Fatema continued to reside in Kasimpur, the projected father of the petitioner, Ibrahim Ali, went to his original village at Baruajhar and he occasionally used to visit Fatema. Accordingly, this Court, by order dated 29.03.2023, had directed the Superintendent of Police (Border), Darrang, as well as the Superintendent of Police (Border), Nalbari, to conjointly make a verification and enquiry on the aforesaid aspect and to submit a report before the Court. In the aforesaid context, it was submitted that the reports by the Superintendent of Police (Border), Darrang, as well as the Superintendent of Police (Border), Nalbari, that are available on record, establish that Ibrahim, son of Sangser, was the father of the petitioner, Md. Shunahar Ali.

6. It was also submitted that the petitioner had examined himself as OPW-1 and had exhibited 16 (sixteen) documents. Moreover, to prove the link document, the petitioner had examined his projected mother, Musstt.

Fatema Bibi, as OPW-2, Md. Ibrahim Ali, his projected father as OPW-3, Sri Dipul Boro, *Gaonburah* of village-Kasimpur as OPW-4, and Md. Muslem Ali, Head Master of Kasim Ali L.P. School, Kedukuchi, Nalbari, as OPW-5. It may be stated that the *Gaonburah* (OPW-4), in his examination-in-chief, had stated he knew the petitioner from his childhood and that Ext. 15(1) is his signature and had stated that Ext. 16 was his certificate issued on 26.04.2017 in respect of Fatema Bibi, daughter of Hajarat Ali and mother of the petitioner of village-Kasimpur under P.S. and Dist. Nalbari, who was a permanent resident of village-Kasimpur. He had stated that he knew her since his childhood. He had stated that Ext. 16(2) was his signature. He had issued the certificate on the basis of the register and Ext. 15(3), serial no. 76 and that register is maintained since his father. Accordingly, it was submitted that the petitioner has been able to establish his link with his projected father beyond reasonable doubt.

7. It was submitted that Ext.14, a school certificate was discarded though Md. Muslem Ali, the then Head Master of Kasim Ali L.P. School, Kedukuchi was examined as OPW-5, who had stated that he had issued Ext. 14 certificate dated 21.01.2011 to the petitioner as and as per the certificate, the petitioner had passed Class-IV in 3rd Division in the year 31.12.1997 and Ext. 14(1) was his signature.

8. To support his submission that (a) the oral evidence of the witnesses, (b) the School certificate (Ext.14), (c) two certificates issued by the *Gaonburah* (Ext.15 and Ext.16), were wrongly discarded, and (d) on the point that he was not furnished the grounds for suspecting him to be a foreigner, the learned counsel for the petitioner has placed reliance on the case of *State of Assam v. Moslem Mondal, 2013, (1) GLT 809*. Paragraph nos. 121.1, 122.1, 124.1 and 125.1 thereof, on which reliance was placed are quoted below:-

121.1. The appellant in order to prove that she is an Indian citizen and not a foreigner examined two witnesses, namely, the appellant herself as well as the village Headman of village Kapoha. The appellant also proved 10(ten) documents, which are marked as Exts.-A to J. The appellant by proving the electoral rolls (Exts.-B, C and D) could prove the names of her father and mother appeared in such rolls of 1966 and 1970 in respect of Jania LAC and thereafter her name appeared in the electoral roll of 1989 in respect of Baghbar LAC. The appellant also could prove the certificate issued by the village Headman (Ext.-F) certifying that the appellant is the daughter of Saheb Ali. The appellant, therefore, proved that her father's name is Saheb Ali, whose name appeared in the electoral rolls of 1966 and 1970, which are relevant for the purpose of answering the reference made under the provisions of 1946 Act and the 1964 Order. Though the State has cross examined the witnesses, there was absolutely no cross-examination relating to the claim of the appellant that Saheb Ali is her father, whose name appeared in the electoral rolls of 1966 and 1970 in respect of Jania LAC. In the evidence adduced by the State i.e. the deposition of the S.I. of Police (Enquiry Officer) apart from examining the Ext.-1 report, no rebuttal evidence also could be led by the State to demonstrate that Saheb Ali is not the father of the appellant, whose name appeared in the aforesaid electoral rolls.

122.1. As discussed earlier, the initial reference made under Section 8(1) of 1983 Act was against the appellant No. 1 only. The IM(D) Tribunal also issued notice to the appellant No. 1 only. In the reference there was no allegation that the appellant Nos. 2, 3 and 4 are either illegal migrants or foreigners within the meaning of 1983 Act or 1946 Act, respectively. That being the position, though the appellant Nos. 2, 3 and 4 are the children of the appellant No. 1, in the proceeding registered on the basis of the aforesaid reference, no opinion could be recorded against the appellant Nos. 2, 3 and 4 i.e. holding that they are foreigners. The said aspect of the matter has been overlooked by the Tribunal as well as by the learned Single Judge. The Tribunal's order as well as the judgment passed by the learned Single Judge in WP(C) 5393/2002 as regards the appellant Nos. 2, 3 and 4, therefore, cannot be sustained in law and hence set aside.

124.1. As discussed above, pursuant to the interim order passed, the appellant examined 3(three) witnesses apart from proving 6(six) documents (Exts.-1 to 6). The Tribunal, considering the evidence adduced by the parties, answered the reference in favour of the State by refusing to place reliance on the documents proved by the appellant on the grounds stated in the order passed by it. Ext.-1 i.e. the school certificate has not been believed on the ground that the same was issued on 06.04.2004 without the counter signature or the authentication by the school authority and no serial number has also been found in the said certificate.

The Tribunal has also found that the retired headmaster of the school, who has been examined to prove the Ext.-1, did not bring the school register, which was also not called for by the appellant.

125.1. It appears from the record of the Tribunal in the aforesaid proceeding that the appellant was issued with the notice dated 10.07.2008 suspecting her to be a foreigner coming to Assam from the specified territory between 01.01.1966 and 25.03.1971 and as such is a foreigner within the meaning of 1946 Act. It was not the allegation against the appellant that she came to Assam from the specified territory, namely, erstwhile East Pakistan (now Bangladesh) on or after 25.03.1971. The Tribunal, however, in the ex-parte order dated 07.11.2008 opined that in the absence of any proof of coming of the appellant into Assam between 01.01.1966 and 25.03.1971, she has to be regarded as foreigner coming to Assam after 25.03.1971. Such finding recorded by the Tribunal is, on the face of the reference made as well as the aforesaid notice issued to the appellant on 10.07.2008, illegal and contrary to the stand taken by the State in the proceeding. The said aspect of the matter has not been considered by the learned Single Judge while dismissing the writ petition filed by the appellant vide judgment and order dated 04.06.2010.

9. Accordingly, on the ground that the evidence of the petitioner was wrongly discarded and that the grounds for suspecting the petitioner to be a foreigner were not provided to the petitioner, the learned counsel for the petitioner has prayed for interfering with the impugned opinion and to declare the petitioner as an Indian citizen.

III. Submissions on behalf of the FT and Border matters:

10. Per contra, the learned Standing Counsel for the FT and Border matters, in respect of the claim of the petitioner that since he was born in India, Section 3 of the Citizenship Act, 1955 would be applicable, has submitted that the special provision of Section 6A of the Citizenship Act, 1955, which is applicable for the State of Assam, would override the general law regarding Section 3 of the said Act. Hence, it was submitted that unless the petitioner is able to demonstrate that he is a *bona fide* citizen of India, by application of

Section 6-A of the Citizenship Act, 1955, the petitioner is liable to be declared to be a foreigner. Moreover, it was submitted that the petitioner has not been able to establish his link with Md. Ibrahim Ali, his projected father, and the petitioner has also failed to show the link of Md. Ibrahim Ali with his projected father, Sangser.

11. In support of his submissions that oral evidence of the projected parents would not be sufficient to prove citizenship, reliance is also placed on the decision of this Court in the case of *Nur Begum v. Union of India & Ors.*, 2020 (3) GLT 347. Paragraph 6 thereof is quoted below:-

6. *The statement of D.W. 2 i.e. Jahurun Begum, who claimed to be the mother of the petitioner, cannot be relied upon in the absence of any documents showing her relationship, either to the projected grandfather, father or to the petitioner herself. Oral testimony of D.W. 2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. Surprisingly, the petitioner failed to produce a single voter list in her name even until the age of 50 years. We would reiterate that in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of D.W. 2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected grandfather, grandmother and father. The petitioner utterly failed to prove her linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents.*

12. For the same legal proposition, paragraph 7 of the case of *Asia Khatoon v. Union of India & Ors.*, W.P.(C) No. 4020/2017, decided on 21.11.2019, is quoted below:-

7. *As the primary issue in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not, the relevant facts being especially within the knowledge of the proceedee, therefore, the burden of proving citizenship absolutely rests upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872. This is mandated under section 9 of the aforesaid Act, 1946.*

In the instant case and as observed above, the petitioner not only failed to discharge the burden but also utterly failed to make proof of the most crucial aspect, that is, in establishing linkage to her projected father and/or the grandfather.

13. To counter the submission of the learned counsel for the petitioner that the notice issued by the learned Tribunal did not disclose the grounds for suspecting the petitioner to be a foreigner, the learned standing counsel for the FT and Border matters has placed reliance on paragraphs 28 and 29 of the case of *Dukhu Ali @ Dukhu Miah, W.P.(C) 3805/2016, decided on 08.03.2018*, which are quoted below:-

28. *After referring to the various dictionary definitions of the term notice, Supreme Court summarized as under:-*

“16. "Notice", in its legal sense, may be defined as information concerning a fact actually communicated to a party by an authorized person, or actually derived by him from a proper source, or else presumed by law to have been acquired by him, which information is regarded as equivalent to knowledge in its legal consequences.

Dictionary further states: Co. Lit 309 Tomlin's Law Dictionary

17. Notice is making something known, of what a man was or might be ignorant of before. And it produces diverse effects, for, by it, the party who gives the same shall have same benefit, which otherwise he should not have had; the party to whom the notice is given is made subject to some action or charge, that otherwise he had not been liable to; and his estate in danger of prejudice.

18. Notice is a direct and definite statement of a thing as distinguished from supplying materials from which the existence of such thing may be inferred." (Per Parke, B. Burgh v Legge)

19. The Dictionary gives some other definitions of "Notice" as: - The legal instrumentality by which knowledge is conveyed, or by which one is charged with knowledge. 2018:GAU-AS:3686-D The term "notice" in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief, as well as direct information of that fact.

- In its popular sense, "notice" is equivalent to information intelligence, or knowledge.”

29. *Therefore, on a thorough consideration of the matter, we have no hesitation in our mind to hold that petitioners in both the cases had due notice of the nature of proceeding registered against them before the Tribunal and what were the main ground(s) on which the allegation was made because those were mentioned in the notices itself. Moreover, we also feel that both the petitioners are trying to confuse and delay the proceedings by taking up one untenable ground after the other which cannot be appreciated.*

14. In respect of the limitations while exercising certiorari jurisdiction, the learned Standing Counsel for the FT and Borders matters has placed reliance on the case of *Moslem Mondal (supra)*. Paragraphs 112 and 113 are quoted below:-

112. *The Apex Court in Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd. reported in (2010) 13 SCC 336, reiterating the grounds on which a writ of certiorari can be issued, has opined that such a writ can be issued only when there is a failure of justice and cannot be issued merely because it may be legally permissible to do so. It is obligatory on the part of the petitioners to show that a jurisdictional error has been committed by the statutory authority. There must be an error apparent on the face of the record, as the High Court acts merely in a supervisory capacity and not as the appellate authority. An error apparent on the face of the records means an error which strikes one on mere looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matters to show its incorrectness. Such error may include giving reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant consideration into account and failing to take relevant consideration into account, and wrongful admission or exclusion of evidence as well as arriving at a conclusion without any supporting evidence. Such a writ can also be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to exercise the jurisdiction vested in him by law.*

Question (i): Whether the Civil Court has jurisdiction to entertain a suit for declaration that the plaintiff is not a foreigner?

113. *The contention raised by the learned counsel for the parties as to whether the Civil Court has the jurisdiction to entertain a suit for declaration of his status as the citizen of India has not been gone into in the present*

appeals as the said question does not arise for consideration in these appeals. Hence, the decisions cited by the learned counsel appearing for the parties in that regard are not discussed.

IV. Discussions and decision:

15. Perused the materials available in this writ petition as well as in the Tribunal's record. Also considered the submissions made and cases cited at the Bar.

16. The petitioner, as OPW-1, had exhibited 13 (thirteen) following documents:-

- a. *Certified copy of voter list of 1985 of Village- 1/2 Baruajhar, with elector's name as Ibrahim, son of Sangser (Ext.1);*
- b. *Certified copy of voter list of 1997 of Village- 1/2 Baruajhar, with elector's name as Ibrahim, son of Sangser (Ext.2);*
- c. *Certified copy of voter list of 1966 of Village- 1/2 Baruajhar, with elector's name as Sangser Ali, son of Kachar Munchi (Ext.3);*
- d. *Certified copy of voter list of 1985 of Village- Kasimpur, with elector's name as (i) Hazarat Ali, son of Tarifulla, (ii) Tusta Bibi, wife of Hazarat, and (iii) Fatema Bibi, wife/daughter of Ibrahim Ali (Ext.7);*
- e. *Elector Photo Identity Card (EPIC for short) of Phatema Bibi (Ext.8);*
- f. *Income Tax PAN Card of Phatema Bibi (Ext.9);*
- g. *Certified copy of voter list of 1965 of Village- Kasimpur, with elector's name as (i) Hazarat Ali, son of Tariff, and (ii) Rustajan Musalmani, wife of Hazarat (Ext.10);*
- h. *Income Tax PAN Card of Shunahar Ali, son of- Ibrahim Ali (Ext.12);*
- i. *EPIC of Shunahar Ali (Ext.13);*
- j. *School Certificate dated 21.01.2011, issued by Muslem Ali, Head Teacher of Kashim Ali L.P. School, Kendukuchi, Nalbari, stating that Shunahar Ali studied in the school till 31.12.1997 (Ext.14);*
- k. *Certificate dated 22.03.2017, issued by Dipul Boro, Gaonburah of village- Kasimpur, stating that Shunahar Ali, son of Ibrahim Ali and Fatema Bibi is a permanent resident of Kasimpur area (Ext.15);*
- l. *Certificate dated 26.04.2017, issued by Dipul Boro, Gaonburah of village- Kasimpur, stating that Fatema Bibi, daughter of late Hazarat Ali is a permanent*

resident of Kasimpur area (Ext.16).

17. Thus, from the above referred list of exhibits, it is observed as follows:-

- a. As per the impugned opinion, no documentary exhibit has been marked as Ext.4, Ext.5, Ext.6 and Ext.11.
- b. However, it may be stated that in his evidence-on-affidavit, the petitioner had marked NRC voter details of Sangser Ali for the years 1971, 1966 and 1951 as Ext.4, Ext.5 and Ext.6, and the NRC details of 1965 in the name of Hazrat Ali, the projected maternal grandfather of the petitioner, were referred as Ext.11.
- c. However, as per the Tribunal's record, the said exhibit marking in the evidence-on-affidavit by OPW-1, has been struck off by pen and re-written as Annexure nos. 4, 5, 6 and 11 respectively.
- d. Moreover, in his evidence-on-affidavit, apart from referring to exhibits, the petitioner has also referred to (i) the voter slip of Shunahar Ali of 2011, (ii) voter list of 2013, (iii) voter slip of Fatema Bibi of 2011, and (iv) copy of voter list of 2013, as Annexure nos. A, B, C and D respectively.
- e. It may also be mentioned that in the evidence-on-affidavit of Musstt. Fatema Bibi (OPW-2) and of Md. Ibrahim Ali (OPW-3), the NRC voter details of Sangser Ali for the years 1971, 1966 and 1951 are marked as Ext.4, Ext.5 and Ext.6 respectively, and the NRC details of 1965 in the name of Hazrat Ali, the projected maternal grandfather of the petitioner, are marked as Ext.11.
- f. However, it has been mentioned at the end of the affidavit-in-opposition of OPW-2 and OPW-3 that the original documents were

submitted with OPW-1 (which would mean the evidence-on-affidavit of OPW-1).

IV(a) On the evidentiary value of National Register of Citizens:

18. In respect of NRC extracts, which were marked as Ext.4, Ext.5, Ext.6 and Ext.11 and/or Annexure- nos. 4, 5, 6 and 11, this Court, in the case of *Abdul Mojid @ Mojid Ali v. Union of India, 2019 (2) GLT 45*, while approving the decision in the case of *Bhanbhasa Seikh v. Union of India, 1970 Assam LR 206*, held that NRC extract produced to prove domicile in India is inadmissible in evidence.

19. It may be stated that NRC details are a computer generated print-out. The said NRC was prepared under the Census Act, 1951 and not under the Citizenship Act, 1955 and therefore, the NRC details cannot be held to be a proof of citizenship. In any event, the said 4 (four) NRC's (Annexure/Ext. 4, 5, 6 and 11), apart from being computer generated image id print-out, do not contain the digital signature of the authority issuing the said NRC. The said four NRC's were not duly proved in accordance with the requirements of Section 65-B of the Evidence Act, 1872. In this regard, it would be appropriate to refer to paragraph-5 of the case of *Saidul Islam v. Union of India, W.P.(C) 4830/2018*, decided by this Court on 22.02.2019 and reported in (2019) 0 Supreme (Gau) 1154, which is quoted below:

“5. We have taken note of that the electronically generated ration card details, which is relied upon does not contain a digital signature of the person concerned and therefore, the same would only be a public document within the meaning of Section 74 of the Indian Evidence Act of 1872. It being a public document, the contents thereof are required to be proved as required under Section 65 of the Indian Evidence Act of 1872.”

IV(b) On evidentiary value of voter lists:

20. In the present case in hand, the name of the petitioner was not enrolled as voter in any voter's list which contains the name of Md. Ibrahim Ali (projected father) and/or Musstt. Fatima Bibi (projected mother of the petitioner) as a voter. For the said reason, (i) the voters list of 1985, containing the name of Md. Ibrahim Ali, petitioner's projected father (Ext.1), (ii) the voter list of 1997 containing the name of Md. Ibrahim Ali, the projected father of the petitioner (Ext.2), (iii) the voter list of 1966 containing the name of Sangser Ali, the projected grandfather of the petitioner (Ext.3), (iv) the voter list of 1985 containing the name of Fatema Bibi, projected mother of the petitioner (Ext.7), and (v) the voters list of 1965 containing the name of Hazrat Ali, projected maternal grandfather of the petitioner (Ext.10) do not help the petitioner in any way. The petitioner has not exhibited any document showing the name of the petitioner and his projected father together. Thus, the petitioner is found to have failed to satisfy the learned Tribunal that Md. Ibrahim Ali, whose name appears in the voter list of 1985 and 1997 (Ext.1 and Ext.2), is his father.

21. In the case of *Bhanwaroo Khan v. Union of India*, (2002) 4 SCC 346, the Supreme Court of India has held that long stay in Country and enrolment in voters lists do not confer citizenship. In the case of *Md. Fakharuddin v. Union of India & Ors.*, W.P.(C) 4512/2016, decided on 28.02.2018, this Court has also held that just because name of a person is enlisted in the voter list, it would not mean that he is a citizen of India and that enlistment of name in voter list or long stay in the Country *per se* are no proof of citizenship.

IV(c) On evidentiary value of EPIC and PAN Card:

22. The Elector Photo Identity Card (EPIC for short) (Ext.8) and PAN Card (Ext.9) in the name of petitioner's mother Phatema Bibi; PAN Card in the

name of the petitioner (Ext.12); EPIC of the petitioner (Ext.13) also do not help the petitioner in any way. The petitioner has not led any evidence to show that his projected mother, Phatema Bibi and he himself, whose Income Tax PAN Cards (Ext.9 and Ext.12) were issued, were Income Tax payers or had any taxable income. The Income Tax PAN Cards (Ext.9 and Ext.12) and the EPIC (Ext.8) are documents which were issued after 25.03.1971 and therefore, the said 3 exhibits also do not help the petitioner in any way to establish his link with his projected parents.

23. It may be mentioned that *Musstt. Rabiya Khatun v. Union of India & Ors., W.P. (C) 4986/2016*, PAN Card was filed as proof of citizenship, as in this case. In the said context, it was held that PAN card not a trustworthy document. She is not an Income Tax payee. Secondly, PAN card not proved by calling Income Tax official regarding application for PAN card. Also held, the PAN card contains the date of birth. If it was known to the petitioner, she should have mentioned it in her written statement. In the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) 3547/16, decided on 09.05.2018*, this Court had held that EPIC and PAN Card is not a valid piece of evidence in absence of supporting evidence. It was also observed that if the date of birth is known to the petitioner, it should have been mentioned in the written statement. In this case, the PAN Cards (Ext.9 and Ext.12) and EPIC (Ext.8 and Ext.13) are both post reference document.

IV(d) On evidentiary value of Gaonburah's certificate:

24. The petitioner had placed reliance on the certificate by the *Gaonburah* (Ext.15 and Ext.16). In so far as the *Gaonburah's* certificate (Ext. 15) is concerned, Sri Dipul Boro (OPW-4) had stated in his cross-examination that the entry was made on the basis of personal knowledge and not based on

records. Although the OPW-4 had produced a register, but he had stated in his cross-examination that it is not written in the register since which date the petitioner and his family are residing in the village. He also does not know why the register was returned. In his cross-examination, the OPW-4 had further admitted that he does not know why the register was written and he had admitted that the register is in torn condition and pages were not in order and the register does not contain any certificate. He does not know whether his father, who was the previous *Gaonburah*, had prepared the *hathsitha* (loosely translated, would mean "handwritten register") or not. He could not state about the new entrants in the village and births and deaths of villagers. He had further admitted that he does not know whether the entries made in the register were genuine or not. Thus, it is highly questionable why the *Gaonburah* would be maintaining records of residents and yet fail to update the register with descriptions of persons who are the new inhabitants of the village and recent births and deaths of villagers. In so far as the *Gaonburah's* certificate (Ext. 16) is concerned, the said certificate is in respect of Fatema Bibi. The said Fatema Bibi, daughter of Hazarat Ali, is the projected mother of the petitioner. As the petitioner cannot draw his lineage from his mother, the said Ext.16 certificate issued in her favour does not come to the aid of the petitioner. In any case, a *Gaonburah's* certificate cannot be said to be a documentary proof of citizenship, which must be established by cogent and admissible evidence.

25. In respect of the *Gaonburah's* certificates (Ext.15 and Ext.16), it would be appropriate to refer to the case of *Basiron Nessa v. Union of India & Ors., 2018 (4) GLT 692*. In the said case, the *Gaonburah* had issued a certificate, stating that Basiron Nessa (petitioner in that case) was the daughter of Late Abdul Barek and Rabia Khatun. The *Gaonburah* had stated in his cross-

examination that he had issued the certificate after looking at the voters lists of 1966 and 1971. In light of those facts, it was held by this Court that documentary evidence must be proved from records and not solely by oral testimony. It may be mentioned that under the Assam Land and Revenue Regulation, 1886 and Executive Instructions issued thereunder, the *Gaonburah* is not assigned any statutory duty to maintain a population register or register of citizens. The learned counsel for the petitioner has not been able to show any law under which the *Gaonburah* maintains a population register or register of citizens. Therefore, such a certificate is in the nature of a private document, which is required to be proved by other cogent and admissible evidence. Accordingly, the Court is of the considered opinion that oral evidence by a *Gaonburah* and certificates by the *Gaonburah* (OPW-4) (i.e. Ext.15 and Ext.16) are not sufficient to prove citizenship in the absence of other cogent and reliable corroborative evidence.

IV(e) *On evidentiary value of the school certificate:*

26. The school certificate dated 21.01.2011 (Ext.14) was issued by Muslem Ali, Head Teacher of Kashim Ali L.P. School, Kendukuchi, Nalbari, stating that Shunahar Ali had studied in the school till 31.12.1997. The said Muslem Ali was examined by the petitioner as OPW-5. In his cross-examination, OPW-5 had stated that Musstt. Fatema Bibi, daughter of Late Hajarat Ali was his neighbour in Village- Kasimpur. He had stated that at the request of the villagers and Fatema Bibi, he had issued Ext.14 certificate. He had further stated that Ibrahim Ali was staying in Dalgaon also and insisted on issuing certificate giving the address at Dalgaon. He had also stated in his cross-examination that he had not brought the admission register and any other records of the school before the learned Tribunal and while denying that he had issued a false certificate, had

stated that he had consulted the *Gaonburah* at the time of issuing the said certificate.

27. On examination of the school certificate (Ext.14), it is seen that the said certificate is not an official letter-pad or on printed school stationery. As per the said certificate, the date of birth of the petitioner is 01.01.1987, but contrary to the said certificate, his date of birth is recorded as 01.02.1985 in his Income Tax PAN Card (Ext.12) and as per his EPIC (Ext.13), issued on 01.10.2013, the petitioner was 28 years of age, i.e. his year of birth would be 1985. Be that as it may, the OPW-4 had not produced the school admission register showing the original entry of admission and transfer of the students. The OPW-4 had also not produced the counterfoil of the school certificate (Ext.14). The Tribunal's record reveals that at the time of enquiry, the Enquiry Officer had issued notice dated 04.02.2011, 14.02.2011 and 28.02.2011 to the petitioner to produce documents. The statement of the petitioner was purportedly recorded on 08.03.2011 by the Enquiry Officer, but it seems that the petitioner had not produced any document before the Enquiry Officer though the said School certificate (Ext.14) was issued on 21.01.2011. In the case of *Birad Mal Singhvi v. Anand Purohit*, AIR 1988 SC 1796: (1988) 0 Supreme(SC) 471, the Supreme Court of India, in the context of date of birth recorded in school certificate or school register, had held that the said document would have no evidentiary value unless the person who furnished the information regarding the date of birth or parents are examined. Moreover, it was further held that the author of the certificate would have to prove the certificate on the basis of school register. In this case, the school register was never produced. In respect of "certificate", this Court, in the case of *Momtaj Begum v. Union of India & Ors.*, W.P.(C) 2629/2023, decided on 17.05.2023, and reported in (2023) 0

Supreme(Gau) 513, had held as under:-

5. A certificate depicts the existence of a fact which is vouched upon by the person issuing the certificate. In other words, the existing fact that may be reflected in a certificate would have to be within the knowledge of the person who issues the certificate meaning thereby, either the person concerned is a custodian of a public record from which the information can be derived or the person concerned may have personal knowledge about the existence of the fact.

28. In this case, the OPW-5 had stated in his cross-examination that he was the Head Master of Kasim Ali L.P. School from 1996 to 19.06.2011. Thus, on 04.07.2017, when he had been examined as OPW-5, he was not the custodian of official records of the said school. In the opinion of the Court, as held in the case of *Momtaj Begum (supra)*, in this case, the school certificate (Ext.14) would at best be secondary evidence of the contents of the admission register and/or any other register where the leaving of students are recorded. Thus, the said school certificate (Ext.14), not being a certificate issued as per the requirement of any statutory Act or rules in force, could only have been proved in accordance with the provisions of Section 65 of the Evidence Act, 1872. Therefore, the school certificate (Ext.14) also does not help the petitioner in any way.

IV(f) *On oral evidence of projected father and mother:*

29. The petitioner had examined Md. Ibrahim, his projected father as OPW-3, and he had examined Musstt. Fatema Bibi, his projected mother as OPW-2.

30. On an examination of the Tribunal's record, it is seen that Musstt. Fatema Bibi OPW-2 had admitted in her evidence-on-affidavit that her name had appeared in the voter list for the first time in the year 1985 and she had cast her vote in village- Kasimpur. Her age was 51 years as on 23.07.2017,

when her evidence-on-affidavit was filed. Thus, her year of birth would be 1966 and the age to exercise adult suffrage was 21 years till the year 1989 and as such, the petitioner's mother could have exercised her right to adult suffrage only in the year 1987. However, in her voter list of 1985 (Ext.7), her age is recorded as 25 years. The name of OPW-3 appears in the voter list of 1985 (Ext.1) and 1997 (Ext.2) and after that his name does not appear in any voter list. The voter list of 1997 (Ext.2) contains the name of only one voter, Ibrahim Ali. The petitioner has not stated what is his relation with and/or what had happened to 4 (four) other voters whose name appears in Ext.1. As the name Ankima appears as wife of Ibrahim Ali (OPW-3) in Ext.1, the petitioner has projected that his father had two wives and Ankima was his first wife and Fatema Bibi, his own mother was the second wife. But as it is seen that the projected first wife of Ibrahim Ali had disappeared after 1985, there was no reason for the projected mother of the petitioner, namely, Musstt. Fatema Bibi (OPW-2) to live separated from Md. Ibrahim Ali (OPW-3).

31. The petitioner has not disclosed anything about his family, his father's family or about the family of his parental grandfather. Thus, in this case, reliance cannot be placed solely on the oral testimony of OPW-2 and OPW-3 as a proof that the petitioner is a citizen of India. The ratio of the case of *Nur Begum (supra)*, cited by the learned standing counsel for the FT and Border matters and *Basiron Nessa (supra)*, referred hereinbefore, are found to be squarely applicable in this case.

IV(g) On non furnishing of grounds to suspect the petitioner to be a foreigner:

32. It is seen that the contents of notice of the proceeding that was served on the petitioner is as follows:-

“A reference has been made to the Tribunal alleging that when asked by the authority you failed to produce documents/ proof of citizenship and so it is suspected that you have entered into to India illegally on or after 01.01.1966 to 24.03.1971/25.03.1971 and for that reason you are a foreigner.

Take notice that unless you produce sufficient proof of your Citizenship in India from relevant period you will be treated and dealt as a foreigner as per Foreigners Act, 1946. The entire burden of proving that you are not a foreigner lies on you. ... (omitted).”

33. Thus, it cannot be said that the petitioner was not informed about the grounds of suspecting him to be a foreigner.

34. Moreover, the petitioner did not take any such plea in the written statement. Had such a plea been raised before the learned Tribunal, the learned Tribunal would have provided the petitioner with the relevant material. In this case, the petitioner was aware that he had failed to produce any material in support of his defence of not being an illegal migrant/ foreigner when the enquiry was made. Therefore, at this stage, when the Court is exercising certiorari jurisdiction, it is only permissible to examine whether the opinion expressed by the learned Foreigners Tribunal is vitiated on account of perversity. Without raising such plea before the learned Tribunal, the State cannot be non-suited on such a plea taken for the first time before this Court. If one needs any authority on the point of the extent of power that can be exercised under certiorari jurisdiction, the decision of the Supreme Court of India in the case of *Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 INSC 733: (2023) 0 Supreme(SC) 763*, may be referred to. Paragraph 77 thereof is quoted below:-

“77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which

crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334 observed:

“26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

35. It is common knowledge that a culprit would ordinarily admit his guilt and similarly, it cannot be expected that an illegal foreigner/ migrant would admit that he is a foreigner and would voluntarily disclose about his address in Bangladesh. Under such circumstances, as per Section 9 of the Foreigners Act, 1946, the burden of proof is on the suspected illegal migrant to prove that he is not a foreigner but an Indian.

36. In this regard, it would be relevant to quote below paragraph nos. 22, 24 to 26, 29, 51, 56, 62 of the case of *Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665*.

22. *This Act confers wide ranging powers to deal with all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including his arrest, detention and confinement. The most important provision is Section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person. Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person. In Union of India (UOI) Vs. Ghaus Mohammad, , the Chief Commissioner of Delhi served an order on Ghaus Mohammad to leave India within three days as he was a Pakistani national. He challenged the order before the High*

Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order u/s 3(2)(c) of the Foreigners Act, 1946. In appeal the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent.

24. *It needs to be emphasized that the general rule in the leading democracies of the world is that where a person claims to be a citizen of a particular country, the burden is upon him to prove that he is a citizen of that country. In United Kingdom, the relevant provision is contained in the Immigration Act, 1971 and sub-Section (1), (8) and (9) of Section 3 thereof read as under:*

"3. - General provisions for regulation and control. - (1) Except as otherwise provided by or under this Act, where a person is not a British citizen

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under this Act;

(b) he may be given leave to enter the United Kingdom (or when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both.

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(8) When any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

(9) A person seeking to enter the United Kingdom and claiming to have the right of abode there shall prove that he has that right by means of either -m

(a) a United Kingdom passport describing him as a British citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; or

(b) a certificate of entitlement."

25. *Somewhat similar provision is contained in Immigration and Nationality Act of USA and Section 291 places the burden of proof upon the person concerned in any removal proceeding. Section 318 provides that no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of the Act and the burden of proof shall be upon such person to show that he entered the United States lawfully. The Immigration and Refugee Protection Act, 2001 of Canada contains a provision of placing the burden*

upon the concerned person to establish his right to have a permanent residence in the said country. Section 188 of the Migration Act, 1958 of Australia provides that an officer may require a person whom the officer knows or suspects is a non-citizen to (a) show the officer evidence of being a lawful non-citizen; or (b) show the officer evidence of the person's identity.

26. *There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like u/s 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

29. *In State of West Bengal Vs. Mir Mohammad Omar and Others etc., , it was held that the legislature engrafted special rule in Section 106 of the Evidence Act to meet certain exceptional cases in which not only it would be impossible but disproportionately difficult for the prosecution to establish such facts which are specially and exceptionally within the exclusive knowledge of the accused and which he could prove without difficulty or inconvenience. This principle was reiterated in Sanjay @ Kaka Vs. The State (NCC.T. of Delhi), and Ezhil and Others Vs. State of Tamil Nadu.*

51. *The foremost duty of the Central Government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure. The Government has also a duty to prevent any internal disturbance and maintain law and order. Kautilya in his masterly work "The Arthashastra" has said that a King had two responsibilities to his state, one internal and one external, for which he needed an army. One of the main responsibilities was Raksha or protection of the state from external aggression. The defense of the realm, a constant preoccupation for the king, consisted not only of the physical defense of the kingdom but also the prevention of treachery, revolts and rebellion. The physical defensive measures were the frontier posts to prevent the entry of undesirable aliens and forts in various parts of the country. (Arthashastra by Kautilya - translated by Shri L.N. Rangarajan, who was in Indian Foreign Service and ambassador of India in several countries - published by Penguin Books - 1992 Edn. - page 676). The very first entry, namely, Entry 1 of List I of*

the Seventh Schedule is "Defense of India and every part thereof including preparation for defense and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization". In fact entries 1 to 4 of List I of Seventh Schedule mainly deal with armed forces. Article 355 of the Constitution of India reads as under:-

355. Duty of the Union to protect States against external aggression and internal disturbance. - It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."

The word "aggression" is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, "an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes."

*The word "aggression" is not to be confused only with "war". Though war would be included within the ambit and scope of the word "aggression" but it comprises many other acts which cannot be termed as war. In *Kawasaki v. Bantahm S.S. Company* 1938 (3) All ER 80, the following definition of "war" as given in Hall on International Law has been quoted with approval :-*

"When differences between States reach a point at which both parties resort to force, or one of them does acts of violence, which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants may use regulated violence against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant."

56. There was a large scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak war. On 3rd November, 1971, one month before the actual commencement of the war, Dr.Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said :-

".....The first consideration, in the view of the Indian Delegation, is that aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms..... We would

accordingly support the categorical view expressed by the distinguished delegate of Burma, the U.K. and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous.

.....

For example, there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence, I am afraid, Mr. Chairman, it would have to be categorized as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order..... What I wish to convey, Mr. Chairman, is the complexity of the problem which does not permit of a four-line definition of aggression much less an ad-interim declaration on it."

62. The very first sentence of the Statement of Objects and Reasons of the IMDT Act says "the influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North- Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region." It further says that "continuance of these persons in India has given rise to serious problems." The Preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India." The Governor of Assam in his report dated 8th November, 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. Pakistan's I.S.I. is very active in Bangladesh supporting militants in Assam. Muslim militant organizations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of Deputy Chief of the Army Staff and is very well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy

the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people in Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources."

37. Thus, the said plea that the petitioner was served with the grounds of suspecting him to be a foreigner is repelled and rejected.

IV(h) On the plea that the petitioner was born in India:

38. The plea urged by the learned counsel for the petitioner that the petitioner was born in India and therefore, he is an Indian within the meaning of Section 3 of the Citizenship Act, 1955, is without any merit.

39. In this regard, in the foregoing paragraphs, reference has been made to the observations made by the Supreme Court of India in the case of *Sarbananda Sonowal (supra)*, where the problem of illegal influx has been equated to external aggression. The State of Assam had witnessed a long-drawn agitation, demanding expulsion of illegal foreigners/ migrants, which led to the Assam Accord, which is elaborately discussed in the case of *Sarbananda Sonowal (supra)*, for which it is not reiterated in this order. It would suffice to mention that as a consequence of the Assam Accord, Section 6-A came to be inserted in the Citizenship Act, 1955. It is needless to state that if a person is suspected to be an illegal foreigner/ migrant from the specified territory, i.e. the present Bangladesh, such a suspect would be dealt with under Section 6-A of the Citizenship Act, 1955, which is a special provision as to citizenship of persons covered by the Assam Accord. Therefore, as the petitioner has not

exhibited any document showing that he was born in India before the commencement of Citizenship (Amendment) Act, 1985, which came into effect on and from 07.12.1985, as per the provisions of Sub-Section (7) of Section 6-A of the Citizenship Act, 1955, the provisions of Section 2 to Section 6 of the Citizenship Act would not apply to the petitioner. As per the provision of Sub-Section (8) of Section 6-A of the Citizenship Act, 1955, the said provisions shall have effect notwithstanding anything contained in any other law for the time being in force.

40. As per the contents of the School Certificate (Ext.14), the petitioner was born on 01.01.1987, which is after the commencement of Citizenship (Amendment) Act, 1985, which came into effect on and from 07.12.1985.

41. Therefore, the plea of the learned counsel for the petitioner is without any merit and is repelled and rejected.

IV(h) Conclusion:

42. In this case, the only documents which could have established the link of the petitioner with his projected father were the school certificate (Ext.14), and the *Gaonburah's* certificate (Ext.15). However, in light of the evidence, as discussed hereinbefore, the Court is constrained to hold that in this case the said two link documents (Ext.14 and Ext.15) are not sufficient to prove that the persons, whose names appear in the voter lists (Ext.1 and Ext.2) are the father of the petitioner. Apart from Ext.1 and Ext.2, the petitioner has not exhibited any voter list of his projected father to show his continuous stay in India, which is the requirement of Section 6-A (3) (b) of the Citizenship Act, 1955. Thus, the petitioner has failed to discharge his burden under Section 9 of

the Foreigners Act, 1946 to prove that he is not a foreigner but he is the son of an Indian father, whose existence is in India before the cut-off date of 25.03.1971 and since then, has been ordinarily residing in the Country. As discussed hereinbefore, the remaining exhibited documents, viz., (i) voter list of 1985 (Ext.1), voter list of 1997 (Ext.2), (ii) voter list of 1966 (Ext.3), (iii) voter list of 1985 (Ext.7), (iv) EPIC (Ext.8), (v) PAN Card (Ext.9), (vi) voter list of 1965 (Ext.10), (vii) PAN Card (Ext.12), and (viii) EPIC (Ext.13), are not sufficient to connect the petitioner to his projected father.

43. Accordingly, in light of the discussions above, this writ petition fails.

44. Accordingly, the Court is inclined to pass the following-

O R D E R

a. The challenge to the opinion dated 30.08.2017, passed by the learned Member, Foreigners Tribunal 1, Nalbari, in F.T. (Nal) Case No. (N) 21/2012, arising out of S.P. Reference No. 73/11, by which he was declared to be a foreigner of post 25.03.1971 stream, fails.

b. Resultantly, this writ petition is dismissed.

c. The consequences of the said opinion dated 30.08.2017, would follow.

45. The Registry shall return back the Tribunal's record along with a copy of this order, to be made a part of the record of F.T. (Nal) Case No. (N) 21/2012, arising out of S.P. Reference No. 73/11.

46. The learned standing counsel for the FT and Border matters shall send a downloaded copy of this order to the Home and Political (B) Department.

JUDGE

JUDGE

Comparing Assistant