

GAHC010258032018



2026:GAU-AS:624

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

Case No. : WP(C)/8037/2018

KAMAL UDDIN @ KAMAL SK.
S/O- LT KHUSUT ALI @ KHUSUT ALI SK., R/O- VILL- DUDHNATH, P.S.
CHAPOR, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY ITS SECY., GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW
DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTORAL OFFICER
ASSAM
DISPUR
GHY-06

3:THE REGISTRAR GENERAL OF INDIA
REP. BY THE STATE CO-ORDINATOR
NRC (NATIONAL REGISTER OF CITIZENS)
ASSAM
ULUBARI
GHY-05

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

5:THE DIRECTOR GENERAL OF POLICE (ADMN.)
ASSAM
ULUBARI

GHY-07

6:THE DY. COMMISSIONER
DHUBRI
ASSAM
P.O.
P.S. AND DIST- DHUBRI
ASSAM
PIN- 783301

7:THE DY. COMMISSIONER OF POLICE (B)
DHUBRI
ASSAM
P.O.
P.S. AND DIST- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. A RAHMAN,

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the petitioner	: Mr. A. Rahman, Advocate.
For the Union of India	: Ms. R. Devi, CGC.
For ECI	: Mr. A.I. Ali, standing counsel.
For FT and Border matters	: Mr. J. Payeng, standing counsel.
For the State respondent	: Mr. H.K. Hazarika, Govt. Advocate.

Date on which judgment is reserved : **07.11.2025**

Date of pronouncement of judgment : **21.01.2026**

Whether the pronouncement is of the operative part of the judgment? : **No**

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

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Mr. A. Rahman, learned counsel for the petitioner. Also heard, Ms. R. Devi, learned CGC appearing for respondent no.1, Mr. A.I. Ali, learned standing counsel for the Election Commission of India, Mr. J. Payeng, learned counsel for the FT and Border matters, representing respondent nos.3, 4, 5 and 7 and Mr. H.K. Hazarika, learned Government Advocate for respondent no.6.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Kamal Uddin @ Kamal Sk, has assailed the opinion dated 11.01.2017, passed by the learned Member, Foreigners Tribunal 7th, Dhubri at Bilasipara, in F.T.7th Dhubri Case No. 109/CPR/16 [corresponding to F.T. Case No. 361/CRP/11, arising out of "D" Voter Case No. 2276/D/08], thereby declaring him to be a foreigner entering into Assam from the specified territory after 25.03.1971.

3) The petitioner has projected in his written statement that his father, Khusut Ali Sk @ Khusut Ali, son of Late Monai Sk and his grandfather, Monai Sk, son of Late Pelku Sk were permanent resident of Vill. Udmari Pt-III (374) under Bilasipara P.S., Dist. Dhubri, under No.27 Bilasipara East LAC. After his father's death in 2003, he had shifted to Vill. Dudnath, under Chapor P.S., Dhubri. He had married Musstt. Hafeza Begum, daughter of Mohammad Ali of the said village and he is residing there permanently. Along with his written statement, he has annexed a copy of (i) the Panchayat resident certificate; (ii) registered Kabin Nama no. 653/31693/2004 dated 07.01.2004; (iii) voter list of 1966; (iv) NRC of 1951.

4) In support of his defence, the petitioner had examined himself as DW-1 and he had submitted his evidence-on-affidavit and by reiterating the statements made in his written statement, he had exhibited the following documents, viz., (i) voter list of 1966 of 36 Bilasipara LAC containing the name of his father Khusut Ali Sk, son of Monai Sk (Ext.1); (ii) residence certificate of the petitioner, issued by the President of Udmari Gaon Panchayat on 28.10.2015 (erroneously written as 28/10/015) (Ext.2); (iii) registered marriage Kabin Nama no. 653/31693/2004 dated 07.01.2004 (Ext.3); (iv) NRC of 1951 containing the name of his grandfather, Monai Sk. bearing Legacy Data Code No. 340-0009-1261 of Vill. 76 Charjugipara, P.S. Dhubri, issued by the Office of the State Coordinator of NRC (Assam) (Ext.4). He had stated that his name is Kamal Uddin @ Kamal Sk and his father's correct name is Khusut Ali Sk, but in Kabin Nama, his name has wrongly appeared as Khusut Ali and that both Khusut Ali Sk and Khusut Ali are same and one person. In reply to the queries by the learned Tribunal under Section 165 of the Evidence Act, the petitioner had stated that the LTI on the evidence-on-affidavit was of him and that he knows the contents of the evidence-on-affidavit.

5) In support of his defence, the petitioner had also examined two villagers, namely, Umar Uddin Sk and Shukuddin Sheikh @ Shukuddin Sk, both sons of Late Kitabdi Sk @ Kitabdi as DW-2 and DW-3 respectively. The petitioner had also examined Rehna Bibi, the President of Udmari Gaon Panchayat as DW-4 and Hasan Ali, son of Late Gulam Hussain as DW-5.

6) DW-2 had stated that he is the village uncle of the petitioner. He had reiterated the statements made by the petitioner. Moreover, towards his own identity, DW-2 had exhibited his Elector Photo Identity Card (EPIC for short) (Ext.A); certified copy of electoral roll of 1966 (Ext.B); and *kacha patta*

no. 19/29 (Ext.C). In reply to the Tribunal's query under Section 165 of the Evidence Act, the DW-2 had stated that his affidavit is regarding Kamal Uddin. Kamal Uddin was born in the year 1982 and in the year 1982, he was residing at Village- Udmari.

7) DW-3 had also stated that he is the village uncle of the petitioner. Towards proof of his own identity, had exhibited his EPIC bearing ID No. DBG3139240 (Ext.D); certified copy of electoral roll of 1966 of Udmari Part-III (Ext.E); land document of *miyadi patta* no. 160 (Ext.F); and revenue receipt (Ext.G). DW-3 had also reiterated the statements made by the petitioner and he had stated that he was a neighbour of petitioner's father, Khusud Ali Sk @ Khusud Ali and he called him as brother and he knows the petitioner since his birth. The father of petitioner was Khusud Ali Sk @ Khusud Ali and mother was Sahera Bibi and the petitioner was born at Village- Udmari Part-III and after his father's death, the petitioner migrated to Village- Dudhnath and got married to Musstt. Hafeza Khatun of village- Dudhnath and started to permanently reside there. In reply to the Tribunal's query under Section 165 of the Evidence Act, the DW-3 had stated that his affidavit is regarding Kamal Uddin. Kamal Uddin was born in the year 1982 and when he was born, his father was residing at Village- Udmari. He has been staying at Udmari for the last 85 years since his birth.

8) Rehana Bibi (DW-4) had stated that She is the President of Udmari G.P. She had not brought her identity card as proof. She knows the petitioner and had issued a certificate (Ext.2) and Ext.2(i) is her signature. She had stated that at present the petitioner stays at Sonamukhi, Dudhnath and that the contents of Ext.2 are true. In reply to the Tribunal's query under Section 165 of the Evidence Act, DW-4 had stated that the office of the Udmari Gaon

Panchayat is a public office (Govt. Office), and she was the elected President of the Gaon Panchayat. She had not been given any written order/ instructions by the Government to issue certificate.

9) DW-5 had stated that he was the Qazi and Secretary of Anchalik Emarate Shariyah & Nadwatul Tamir, Dhubri. He had come on receipt of notice. He had produced his appointment letter as Qazi and Secretary and exhibited the same as Ext.3(i). He had stated that on 07.01.2004, marriage of Md. Kamal Uddin, son of Khusut Ali and Hafeza Khatun, daughter of Md. Ali was solemnized and registered vide Kabin No. 653/31693/2004. He had stated that the whole contents of Ext.3 tallies with the original record (Vol. Book) and he had exhibited the photocopy of the original record (Vol. Book) as Ext.3(ii). In reply to the Tribunal's query under Section 165 of the Evidence Act, DW-4 had stated that he had not brought any documents to prove himself.

10) The learned Tribunal upon analyzing the evidence, found that in the voter list of 1966, the age of the voter Khusud Ali Sk (also spelt as Khusut Ali Sk) is 22 years. Though the petitioner had projected that he had shifted from Udmari Part-II village to Dudhnath village after the death of his father, but the petitioner had not pleaded the date of death of his father and did not produce any document for the same. As the petitioner had projected his age to be 34 years, his year of birth was presumed to be 1982 and thus, the learned Tribunal had opined that the father of the petitioner was alive till 1982 but, the petitioner had not produced other voter list containing his name. Thus, the learned Tribunal had opined that the names of Khusud Ali Sk and Khusut Ali were similar and therefore, the petitioner had picked up the document of a person whose name resembled his father and used the document to claim Indian citizenship. The evidence of DW-4, being his residential certificate (Ext.2) was disbelieved

because no instructions/order has been issued by the Government to authorize him to issue certificates. The evidence of DW-5 and the kabin nama (Ext.3) was disbelieved as untrustworthy because he had not produced his identity card. The evidence of DW-2 and DW-3 was disbelieved because by their evidence, they could not establish the link of the petitioner with Indian parents. Thus, the learned Tribunal had opined that the petitioner is a foreigner who had entered into India (Assam) on or after 25.03.1971 from the specified territory and liable to be pushed back.

11) The learned counsel for the petitioner had submitted that the learned Tribunal had mechanically decided the reference by discarding the evidence of all five witnesses and the relevant document exhibited by the petitioner like the link certificates, voter lists, land documents etc aforesaid, which establishes and conclusively proves that the petitioner is a bona fide citizen of India, whose father's name appears in the voters list of 1966 and his grandfather's name appears in the NRC of 1951. Accordingly, it has been prayed that the impugned opinion be set aside and the petitioner be declared as an Indian.

12) Per contra, the learned standing counsel for the FT and Border matters has made his submissions in support of the impugned opinion.

13) The petitioner has examined five witnesses and the following documents were exhibited:-

- a. *Certified copy of voter list of 1966 of 36 Bilasipara LAC containing the name Khusut Ali, son of Monai Sk, projected as father of the petitioner (Ext.1);*
- b. *Certificate dated 28.10.015 (sic. ought to have been 28.10.2015), issued by the President, Udmari Gaon Panchayat (Ext.2), stating that Kamal Sk, son of Late Khusud Ali Sk is inhabitant of Udmari Part-III, and that his father's name Late Khusud Ali Sk is found in the electoral roll of 1966;*

- c. *Marriage Kabin Nama, bearing Book No. 653, Serial no. 653/31693/2004 dated 07.01.2004 (Ext.3) of petitioner and Musstt. Hafeza Khatun;*
- d. *NRC of 1951 of Monai Sk, son of Pelku Sk, bearing Legacy Data Code No. 340-0009-1261, Image Id: 24122576 of Vill. Charjugipara (76), P.S. Dhubri, issued by the Office of the State Coordinator of NRC (Assam) (Ext.4).*
- e. *EPIC of Umar Uddin (DW-2) (Ext.A);*
- f. *Certified copy of electoral roll of 1966, amongst others, containing the name of Umar Uddin (Ext.B);*
- g. *Kacha patta no. 19/29 in the name of Umar Uddin (Ext.C);*
- h. *EPIC of Shukhuddin Sheikh (DW-3) (Ext.D);*
- i. *Certified copy of electoral roll of 1966, amongst others, containing the name of Shukhuddin Sheikh (Ext.E);*
- j. *Periodic Khiraj Patta no. 160 in the name of Sukur Uddin Sheikh, issued in the year 2009 (Ext.F);*
- k. *Land Revenue receipt dated 30.03.2016 (Ext.G).*

14) The documents exhibited as Ext.A to Ext.G does not help the petitioner to establish his own citizenship because Ext.A to Ext.C belongs to DW-2 and Ext.D to Ext.G belongs to DW-3. Thus, in order to find out as to whether the impugned opinion is sustainable, the Court is required to examine Ext.1 to Ext.4 only.

15) The provision of Section 9 of the Foreigners Act, 1946, casts the burden of proof on the proceedee against whom reference is made. In this regard, the Court would be guided by the case of *Sarbananda Sonowal v. The Union of India & Ors., (2005) 5 SCC 665*. Paragraph 26 thereof is quoted below:-

“17. 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."

16) In this case, the petitioner has merely stated the name of his father and grandfather in his written statement. He has not stated when they died. The petitioner has not given any statement about the siblings of his father or grandfather. The petitioner has exhibited the certified copy of the voter list of 1966, which contains a single entry of the name of Khusud Ali, son of Monai Sk. However, the petitioner has not exhibited the voter list of any other family member of his projected grandfather and father. The age of father in the voter list of 1966 is 22 years. Therefore, the learned Tribunal has rightly considered the age of the petitioner as 34 years on 29.11.2016, as stated in his evidence-on-affidavit and has correctly observed that the petitioner was born in the year 1982 and thus, the existence of petitioner's father ought to have been at least till 1982, for which no document has been exhibited. Thus, there is no pleading as to what happened to his father after 1966. The petitioner has not disclosed the name of his grandmother and mother and did not explain why the name of his grandmother and mother did not appear in any voters list. Thus, the certified copy of voter list of 1966 (Ext.1) of 36 Bilasipara LAC, containing the name Khusut Ali, son of Monai Sk, projected as father of the petitioner, does not help the petitioner to establish his relationship with the person whose appears in Ext.1.

17) The petitioner (DW-1) and the President of Udmari Gaon Panchayat (DW-4) had exhibited the certificate dated 28.10.015 (sic. ought to

have been 28.10.2015) (Ext.2), issued by DW-4, wherein it has been stated that Kamal Sk, son of Late Khusud Ali Sk is an inhabitant of Udmari Part-III, and that his father's name Late Khusud Ali Sk is found in the electoral roll of 1966. Apparently, the statement is inconsistent and/or contradictory to the pleadings and evidence of the petitioner (DW-1). The petitioner, had pleaded and gave evidence to the effect that after the death of his father, he had shifted from Udmari Part-III to Dudhnath and married Musstt. Hafeza Khatun and since then he was living there. The said statement is also reiterated by DW-2 and DW-3 and also stated by the DW-4 in her examination-in-chief. Therefore, as the petitioner was not a resident of Village- Udmari Part-III, on the date the said certificate (Ext.2) was issued, the contents of the said document is rendered false and unreliable.

18) The petitioner (DW-1) and the Qazi and Secretary, Anchalik Emarate Shariyah & Nadwatul Tamir (DW-5) have exhibited the Kabin Nama, bearing Book No. 653, Serial no. 653/31693/2004 dated 07.01.2004 (Ext.3), to prove two things, firstly, the marriage of the petitioner and Musstt. Hafeza Khatun and secondly, to prove that the petitioner, namely, Md. Kamal Uddin is the son of Khusut Ali, the projected father of the petitioner. However, in this regard, the petitioner and DW-5 did not prove that the said institution is the Registrar of Moslem Marriages, as envisaged under the erstwhile Assam Moslem Marriages and Divorces Registration Act, 1935 (since repealed) and the erstwhile Assam Moslem Marriages and Divorces Registration Rules, 1935 (since repealed). Thus, the said Anchalik Emarate Shariyah & Nadwatul Tamir is not proved to be the holder of Licence granted by the State Government to solemnize Moslem Marriage as provided under Section 3 of the said Act. Thus, Ext.3 and Ext.3(ii), being a private document and a photocopy thereof, cannot

be accepted as a public document. Hence, the said document was rightly not relied by the learned Tribunal as a proof that Late Khusut Ali, erstwhile resident of Udmari Part-III village is the father of the petitioner.

19) The petitioner had exhibited the NRC of 1951 of Monai Sk, son of Pelku Sk, bearing Legacy Data Code No. 340-0009-1261, Image Id: 24122576 of Vill. Charjugipara (76), P.S. Dhubri, issued by the Office of the State Coordinator of NRC (Assam) as Ext.4. In the said regard, it may be mentioned that this Court, in the case of *Abdul Mojid @ Mojid Ali v. Union of India, 2019 (2) GLT 45*, has held that NRC extract produced to prove domicile in India is inadmissible in evidence. Moreover, the NRC of 1951 was prepared under the Census Act, 1948 and as per the provision of Section 15 of the said Act, the records of census are not open to inspection nor are they admissible in evidence. Moreover, the NRC of 1951 (Ext.4) contains a remark that its Image Id is 24122576 and the said print out is "generated by DLDD Version 6.0". Thus, in this case, the said document is a computer generated printout and hence, the ratio of the case of *Ahitan Nessa v. Union of India & Ors., W.P. (C) 6443/2017*, decided by this Court on 19.12.2017, is found to be squarely applicable. In the said decision, this Court had held to the effect that the NRC legacy data, besides being inadmissible evidence, is a computer generated statement and therefore, the provision of Sub- Section 65-B (4) of the Evidence Act, 1872 would be applicable. Thus, Ext.4 is also rendered inadmissible.

20) It may be further stated that it is too well settled that by oral evidence of the petitioner (DW-1) and of DW-2 to DW-5, the citizenship of a person as Indian citizen cannot be established. If one needs any authority on the point, the case of *Bijoy Das v. Union of India & Ors., (2018) 4 GLR 599: 2018 (3) GLT 118* may be referred to. In the said case, the Division Bench of

this Court has observed to the effect that it is trite that mere filing of written statement and oral testimony in a proceeding under Foreigners Act, 1946 would not be enough, further holding that the fact-in-issue would have to be proved by the proceedee by adducing documentary evidence which are admissible and relevant. Moreover, in the case of *Basiron Nessa v. Union of India, 2018 (4) GLT 692*, this Court had held to the effect that documentary evidence must be proved from record and not solely by oral testimony. Therefore, the oral testimony of DW-2 and DW-3 does not help the petitioner in any way. It may be reiterated that the documents exhibited by the said witnesses as Ext.A to Ext.G, being not the document of the petitioner, also does not help the petitioner in any manner whatsoever.

21) Thus, the Court does not find any fault with the finding recorded by the learned Tribunal that there are no documents to link the petitioner with his Indian grandparents and parents.

22) Therefore, in light of discussions above, this Court does not find that the impugned opinion rendered by the learned Tribunal is vitiated by any jurisdictional error or that there was any failure of giving opportunity of hearing to the petitioner. Therefore, as the Court is exercising supervisory jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned Tribunal with the view of the Court. This is not a case where the learned Tribunal had refused to admit admissible evidence or that it's finding is *dehors* the evidence on record.

23) Hence, this writ petition fails and the same is dismissed. It is held that the opinion dated 11.01.2017, passed by the learned Member, Foreigners Tribunal 7th, Dhubri at Bilasipara in F.T.7th Dhubri Case No.

109/CPR/16 [corresponding to F.T. Case No. 361/CRP/11, arising out of “D” Voter Case No. 2276/D/08] does not warrant any interference by the Court. Accordingly, the consequences of the said opinion shall follow.

24) The parties are left to bear their own cost.

25) The Registry shall send back the Tribunal’s record expeditiously along with a copy of this order so as to enable the learned Tribunal to make it a part of the record for future reference.

JUDGE

JUDGE

Private Secretary

Comparing Assistant