

GAHC010009402025



DB

2025:GAU-AS:6038-

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

Case No. : WP(C)/305/2025

MUSSTT MORIOM @ MORIOM NESA
W/O- MD. ROSHID @ ABDUL RASHID,
VILL.- JAMUGURI,
P.S.- JURIA, DIST.- NAGAON,
ASSAM, PIN- 782142.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY,
HOME AFFAIRS, NEW DELHI,
DELHI-01.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA

NIRVACHAN ASHOKA ROAD
NEW DELHI.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE SPECIAL COUNSEL OF NRC
GOVT. OF ASSAM.

5:THE SUPERINTENDENT OF POLICE

BORDER
NAGAON
ASSAM
PIN- 782003.

6:THE OFFICER-IN-CHARGE
POLICE STATION
NAGAON
ASSAM. PIN- 781335.

7:THE DISTRICT COMMISSIONER
NAGAON
DISTRICT- NAGAON
ASSAM
PIN- 782003

Advocate for the Petitioner : MR S HUSSAIN, A JUBARIA,MR. H RAHMAN

Advocate for the Respondent : DY.S.G.I., SC, ECI,SC, F.T,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT & ORDER (CAV)

Date : 15-05-2025

(M. Nandi, J)

Heard Mr. R.C. Das, learned counsel assisted by Mr. S. Hussain, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel, F.T.; Mr. M.R. Adhikari, learned CGC; Mr. M. Kalita, learned counsel appears on behalf of Ms. P. Barua, learned Standing Counsel, ECI; and Mr. P. Sarmah, learned Additional Senior Government Advocate, Assam.

2. By filing this application under Article 226 of the Constitution of India, the petitioner has challenged the impugned order dated 28.02.2023, passed by the

learned member, Foreigners Tribunal 4th, Nagaon, Jura, Assam in F.T. Case No.130/2016 [corresponding to Police Reference "D" Case No.2990/98, declaring the petitioner as foreigner].

3. The petitioner's case, in brief is that the petitioner is a citizen of India by birth. The petitioner inadvertently did not append her own voter list before the learned Tribunal but exhibited some other relevant documents to link her with her projected parents. It is also the case of the petitioner that the name of her father has been reflected in the voter lists of 1966 and 1970. Her elder brother and sisters had also casted their votes in their respective constituency. Even though the petitioner produced linked documents with her father like school certificate, migration certificate and land documents but the learned Tribunal without applying judicial mind declared the petitioner as a foreigner vide opinion dated 28.02.2023. Hence, this writ petition.

4. On receipt of the notice from the Tribunal, the petitioner appeared and contested the case by filing written statement. As per written statement, the petitioner is the bonafide citizen of India and permanent resident of village – Jamuguri, P.S- Jura, Mouza - Alitengni, District – Nagaon, Assam, The petitioner was born and brought up in the village – Bherbheri, Mouza & P.S - Batadrava, District- Nagaon, Assam. The name of the petitioner's parental grandfather was Akadil Sheikh and name of grandmother is Sayed Jan. The name of the petitioner's parents are Muslem Uddin and Majida Khatun.

5. It is also stated in the written statement that the petitioner got married to one A. Rashid, s/o A. Hashen of village - Jamuguri, PS- Jura, district- Nagaon, Assam. The name of petitioner's father has been recorded in the voter lists of 1966, 1970 from Bherbheri village under Dhing Police Station, Nagaon.

6. The petitioner has adduced evidence as DW-1 and DW-2 is one Mainul Hoque as projected brother of the petitioner. The petitioner also exhibited some documents vide **Ext.I** – voter list of 1966, **Ext.II** – voter list of 1970, **Ext.III** - Periodic Khiraj Patta in the name of Muslem Uddin, **Ext.IV**- Jamabandi, **Ext.V**- Panchayat certificate and **Ext.VI**- Affidavit filed by the petitioner. The evidence of DW-2 is nothing but a replica of the evidence of DW-1.

7. Learned counsel for the petitioner has argued that the petitioner is a lady, being 50 years of age, is originally hailing from village – Bherbheri, P.S- Batadrava under Nagaon district. And the marriage of the petitioner was solemnized with one Abdul Rashid on 01.01.1996. It is also submitted that the name of the petitioner's father has appeared in the voter list of 1966 and 1970.

8. Further submission of the learned counsel for the petitioner is that the name of the petitioner's parents and elder brother's name have been enlisted in the voter list of 1989 under the same Dhing constituency. And the name of the petitioner's mother and the elder brother has appeared in the voter lists of 1997 and 2011.

9. It is also submitted that the Secretary of Dhupaguri Gaon Panchayat, Nagaon has issued certificate regarding permanent resident of the petitioner and the land documents also shows the name of the petitioner along with her family members being the owner of the said land. The learned counsel for the petitioner also contended that the petitioner studied in Dhupaguri Kalani Basti M.E School and the Headmaster also issued a certificate in favour of the petitioner showing her date of birth in the document.

10. According to learned counsel for the petitioner, in spite of producing several documents to prove the citizenship of the petitioner, but the Tribunal did

not consider such documents and declared the petitioner to be a foreigner. Under such backdrop, the petitioner was compelled to file this writ petition with a prayer to set aside the order of the Tribunal as above. The alternative submission of the learned counsel for the petitioner is to remand the matter to the Tribunal giving another opportunity to the petitioner to produce some documents to prove her citizenship.

11. In response, learned counsel Mr. G. Sarma has submitted that the petitioner has not come with clean hands. The petitioner exhibited only 6 (six) documents before the Tribunal as above which are not sufficient to prove her citizenship. It is further submitted that the petitioner has failed to prove the fact that she is the daughter of Muslem Uddin. It is also stated that the written statement is totally silent when the petitioner had casted vote in the Indian soil. As the petitioner has failed to discharge his burden under Section 9 of Foreigners Act, 1946, as such, there is no scope of this Court to interfere with the opinion rendered by the Tribunal.

12. Mr. G. Sarma also submits that even after certain documents have been filed, it is the onus of the proceedee to prove the same and if the proceedee fails to do so, it would render such documents not admissible in law. In other words, irrespective of whether objection is raised to any document or not, it is the bounden duty of the proceedee to discharge the obligation by proving the same as held by this Court in the case of ***Rukia Begum Vs. Union of India***, reported in ***(2018) 4 GLT 763***.

13. Having heard the learned counsel for the parties and on perusal of the records received from the Tribunal, it reveals that though the petitioner has submitted that her mother, elder brothers have casted vote in the year 1989, 1997 and 2011 but the said voter lists were not exhibited before the Tribunal.

According to the petitioner, Headmaster of Dhupaguri Kalani Basti M.E School also issued certificate showing her date of birth as 2nd February, 1970 but all such documents were not proved before the Tribunal. As such, this Court in exercising the jurisdiction of writ of certiorari is not in a position to consider such documents with a liberty to exhibit the same for fresh adjudication.

14. Coming to the documents vide **Ext. I** and **Ext. II** i.e. 1966 and 1970 voter lists showing the name of one Muslem Uddin, S/o Akdil. Though the petitioner claimed that she is the daughter of Muslem Uddin and Majida Khatun but no any documents are available in the record connecting the petitioner with her projected parents Muslem Uddin and Majida Khatun.

15. As observed by this Court in **(2018) 3 GLT 118, Bijay Das Vs. Union of India and Ors.**, mere filing of written statement and the oral testimony are not sufficient to prove the citizenship of a person, as necessary documentary evidence is required to be proved in support of the oral evidence. In the present case apart from oral evidence, no other documentary evidence has been relied on or proved to show that the present petitioner is a daughter of Muslem Uddin.

16. As per judgment of **Nur Begum Vs. Union of India and Ors.**, reported in **(2020) 3 GLT 347**, the fact in issue has to be proved by the proceedee by adducing documentary evidence which are admissible and relevant and the oral testimony alone does not prove the citizenship of a person.

17. Proceeding to **Ext.III** - periodic khiraj patta no.98 in the name of Muslem Uddin, S/o Akdil issued by the Deputy Commissioner, Nagaon in the year 1998 granting lease of 30 years. Vide **Ext.IV**, as per order of Circle Officer dated 20.04.2002, vide Dag No.446, the land was mutated in the name of Mainul Hoque, Inul Hoque, Mariam Nessa, Ajufa, Aafia Khatun in place of late Muslem

Ali. It is not reflected in the order of Circle Officer, whether the name of the petitioner along with the aforesaid persons were entered in the jamabandi by right of inheritance or purchase.

18. It is also not known whether Muslem Ali and Muslem Uddin is one and the same person. In 1966 and 1970 voter lists, the name of one Muslem Uddin has appeared, S/o Akdil. The Tribunal has rightly held in the opinion which is reproduced as follows –

“.....Therefore, it is crystal clear that OP’s name are mutated in land after the year 25.03.1971 and in this regard, Gauhati High Court observed that it is no longer res integra that entries made in the revenue records is not a document of a title. Thus, in the absence of any proof tendered to show a sale deed or order of settlement of land in favour of the projected father of the proceedee and in the absence of proof of payment of land revenue ETC, entry made in jamabandi cannot be treated as a proof of existence of any relationship between the proceedee and the projected father, as such, jamabandi cannot be accepted as a valid linkage between the proceedee and the projected father...”

19. Regarding Gaon Panchayat certificate issued to the petitioner vide **Ext.V** which reveals that the petitioner is the daughter of late Mulem Uddin of village – Dhupaguri/ Bherbheri Gaon Panchayat under Dhing Revenue Circle of Nagaon district, who is aged about 38 years and got married to A. Rashid on 01.01.1996, resident of village – Jamuguri, Ward - 6 under Nagaon Revenue Circle.

20. It is seen that **Ext.V** was issued by Secretary, Dhupaguri Gaon Panchayat and countersigned by the Block Development Officer, Batadrava Development Block, Dhing, Nagaon, which is nothing but certifying the residence of the petitioner and her marriage with one A. Rashid.

21. In the WP(C) 2634/2016 (*Manowara Bewa Vs. Union of India and Ors.*), this Court held that no reliance can be placed on a certificate of residence and relationship issued by the Secretary Gaon Panchayat and countersigned by Block development officer and/or a Village Headman (Gaonburah) as such certificate has no statutory sanctity being beyond the mandate of Assam Panchayat Act, 1994 and the rules laying there under, besides being contrary mandate of citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 and would not be in national interest. At the most, it would be a private document as per Section 74 and 75 of Indian Evidence Act, 1872. And being a private document, the author of the certificate would have to take full responsibility as to the contents of the certificate. This is also applicable in case of school certificate vide **Ext.VII**, as the headmaster of Dhupaguri Kalani Basti M.E School who issued the school certificate, was not examined before the Tribunal.

22. In the case of **Rupjan Begum Vs. Union of India**, reported in **(2018) 1 SCC 578**, the Hon'ble Supreme Court has made it clear that a certificate issued by Gaon Panchayat Secretary, by no means establishes the claim of citizenship. It is only a link of document which has to be supported by other evidence. Such a certificate has to be verified at two stages namely, authenticity of the document itself and secondly authenticity of the contents which is bound to be an exhaustive process. Otherwise no reliance can be placed on the same.

23. We have also appreciated other documents and exhibits as discussed above wherein the petitioner has also failed to establish her link along with her projected parents. The version of the petitioner suffers from multiple material contradictions rendering the same highly improbable. Under such backdrop, it cannot be said that the petitioner has discharged her burden as required under Section 9 of the Foreigners Act, 1946.

24. In view of the above, the Court does not find any merit to interfere with the opinion as rendered by the Tribunal. Hence, the writ petition is dismissed. There shall be no order as to costs.

25. Transmit the case records to the Tribunal.

JUDGE

JUDGE

Comparing Assistant