

(2025) 10 GAU CK 1157
In the Gauhati High Court
Case No : WP(C) Of 1916 Of 2025

Jiban Ali

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 31-10-2025

Acts Referred:

Constitution of India, 1950 — Article 226Foreigners Act, 1946
— Section 9

Citation : (2025) 10 GAU CK 1157

Hon'ble Judges : Kalyan Rai Surana, J; Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : A. Ali, K. Phukan, N. Kalita, A.I. Ali, G. Sarma, P. Sarmah

Final Decision : Dismissed

Judgement

Kalyan Rai Surana, J

1) Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Ms. K. Phukan, learned CGC for the Union of India; Mr. N. Kalita, learned counsel, appearing on behalf of Mr. A.I. Ali, learned standing counsel for the Election Commission of India; Mr. G. Sarma, learned standing counsel for FT, Border mater and NRC; and Mr. P. Sarmah, learned Addl. Senior Govt. advocate.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Jiban Ali, has challenged the opinion dated 11.03.2021, passed by the learned Member, Foreigners Tribunal- 5th, Darrang, Mangaldai, in Case No. F.T.(V)1661/2016, thereby declaring him to be an illegal migrant/ foreigner of the stream of post 25.03.1971.

3) In brief, the case of the petitioner is that on receipt of notice from the Foreigners Tribunal, he had filed his written statement on 03.03.2020, but did not adduce any evidence and therefore, the proceeding against the petitioner was decided ex parte. Thereafter, on an application made by the petitioner, the ex parte opinion was vacated. Accordingly, on 17.02.2021, the petitioner had

examined himself as DW-1 and he had also examined his projected aunt, namely, Johura Khatun as DW-2.

4) In his oral examination-in-chief, the petitioner had stated that his father is Late Kasem Ali and his mother is Musstt. Jabeda Bewa, grandfather is Late Hasen Ali and grandmother is Late Baljan and great grandfather is Late Mohar Ali. His uncle is Late Akbar Ali of Rongrai Chapori under Lahorighat P.S. of the then Nagaon District. He has no brothers and sisters. His father had three sisters and one of his aunt, Johura Khatun is present in the Court as his witness. His father was eldest and his aunt and his uncle are the youngest. His father expired 20 years back at the age of 60 and his uncle had died prior to his father and he had not seen him. His aunts are alive and except Johura, other two live in Lahorighat. His aunt Johura had married Taleb Ali of Sialmari under Dalgaon P.S. His father married his mother in Lahorighat and then shifted to Nadirpar Village under Dalgaon P.S., where he was born in 1976. His father died in the said village and after four years of his father's death, he and his mother shifted to Baruapara village under Dalgaon P.S. and after 6/7 years thereafter, he had married Late Abidan Nessa, who expired after 17/18 years of marriage and with her, he has a son, Md. Abdullah, and two daughters, eldest is Asmina, then aged 18 years and Resmina. After his death he had re-married Musstt. Monowara Begum and has three sons, Md. Moinul (14 years), Minul (9 years) and Ainul (5 years).

5) He had further stated that his grandfather, grandmother, father and uncle had casted vote in 1966 and 1970 under 84 Lahorighat LAC (Ext.1 and Ext.2); name of his father appears in NRC voter details of 1966 and 1970 (Ext.3 and Ext.4) of village- Rongrai Chapori; his wife has a ration card (Ext.5); the name of his grandfather, father and uncle appears in land document of 1957-1958, which is a Government land that has been washed away by Brahmaputra (Ext.6). The petitioner has also exhibited the certificate issued by the Gaonburah of Baruapara (Ext.7); Elector Photo Identity Card of his wife (Ext.8) and aunt, Jahura Khatun (Ext.9), showing them as voter of 68 Dalgaon LAC; and his aunt's, passport issued on 30.04.2014 (Ext.10).

6) The projected aunt of the petitioner, namely, Johura Khatun, had deposed as DW-2. She had stated that the petitioner is her nephew, and the son of Kasem Ali, her elder brother. She has single mother. She had two brothers, Kasem and Akbar and three sisters, Halema, eldest, then Lalbhanu and she was the youngest. They were residing at Lahorighat. After her marriage with Taleb Ali, she had shifted to Salmari village. Her two sisters were still alive and live in Rongrai Chapori under Lahorighat P.S. She had also stated that the petitioner is not a foreigner. In her cross-examination, the DW-2 had stated that Kasem Ali is elder to me and Akbar is younger to her. Akbar Ali expired in Nagaon District prior to Kasem Ali, who had expired in Naderpar and her mother's name is Late Buljan. She had denied that what she had stated is false.

7) The Tribunal's record reveals that the learned Member had relied on the written statement, documents submitted with the written statement and the

evidence-in-chief. Accordingly, in the impugned opinion, the learned Tribunal had analyzed the same.

8) On examination of the exhibited documents, the learned Tribunal had taken note of the fact that the voters in the voter list of 1966 (Ext.1) and 1970 (Ext.2). Referring to Ext.1, it was observed that the voters are Hasen Ali, son of Mohor Ali aged 50 years; Boljan, wife of Hasen, aged 35 years; Kasum Ali, son of Hasen, aged 30 years; and Akbar Ali, son of Hasen, aged 25 years (sic. should be 26 years), who are projected as grandparents, father and uncle. However, it was held that the same were not proved in accordance with law and in this regard, reliance was placed on the law laid down by the Supreme Court of India in the case of *Narbada Devi Gupta v. Birendra Kumar Jaiswal*, (2003) 8 SCC 745, wherein it was held that marking of documents and their proof are two different legal concepts. Accordingly, it was held that mere marking of documents as exhibit cannot be held to be due proof of its contents and that its contents must be proved by admissible evidence of those persons who can vouchsafe for the truth of the facts in issue. It was observed that the said legal proposition was restated by the Supreme Court of India in the case of *L.I.C. v. Ram Pal Singh Bisen*, (2010) 4 SCC 491. Accordingly, it was held that admission of documents may amount to admission of its contents and not the truth and that the contents of the document cannot be proved by merely filing in a Court. The NRC details (Ext.3 and Ext.4) were discarded being computer generated print-out without any certificate by the responsible officer. In this regard, reliance has been placed on the case of *Anowar P.V. v. P.K. Bsheer*, (2014) 10 SCC 473.

9) On analysis of the said four exhibits, it was observed by the learned Tribunal that the said four exhibits contain the name of Kasum Ali, but in photocopy of other voter list and certificate issued by the Gaonburah (i.e. Ext.7) and in all other documents, the name of the father of the petitioner is shown as Kasem Ali. Moreover, the learned Tribunal took note of the fact that in his evidence-in-chief, the petitioner had not disclosed the name of his father and that except for a statement made in the written statement, there is no document to prove that Kasem Ali and Kasum Ali are same and one person. It was held that the petitioner, in his evidence, has stated that his father had died 20 years back, i.e. in the year 2000, but there is no document to show his presence in India after 1970. It was further observed that if the father of the petitioner had died in the year 2000, then his age would be about 65 years, but in photocopy of one voter list of 1997, the voter is Kasem Ali, son of Hasen Ali, aged 75 years, but as per voter list of 1970, Kasum Ali would be 62 years and accordingly, it was held that there is a huge age difference in the voter list of 1997. Furthermore, the learned Tribunal had observed that in the voter list of 1997, there are four voters including the petitioner and his projected father, Kasem Ali, who all are marked as "D" voter (i.e. short form of "doubtful voter") and the presence of Kasem Ali, the father of the petitioner is only from 1997 and that too marked as "D" voter. In the said context, the learned Tribunal had held that filing of some documents and picking up any name from such documents, so as to establish with the said

person as father or mother or even grandfather or grandmother does not establish Indian citizenship of a foreigner. It can be said that it is a matter of convenience to pick up any name from the voter list resembling the shown name of OP's father to project the same as parents.

10) The learned Tribunal had noticed that the date of issuing ration card in the name of Abidan Nessa, wife of the petitioner and it was considered as highly suspect. Moreover, the ration card was discarded as a proof of citizenship. The jamabandi (Ext.6) was discarded as the same contained the name of Kasum Ali and not Kasem Ali, which are not same and one person as discussed hereinbefore and moreover, no up-to-date land revenue paid receipt was produced. Moreover, as the land was a Government land, the learned Tribunal had questioned the absence of any explanation why the land was under his possession. The certificate dated 10.01.2020, issued by the Gaonburah of ½ Baruapara (Ext.7) was discarded having no probative value as the Gaonburah did not depose as witness before the learned Tribunal to prove the said certificate and its contents. In the said certificate, the name of the father is Kasem Ali. In the said context, it was observed that the Gaonburah, knows all the persons in his lot, but he had issued the certificate (Ext.7) in the name of Kasem Ali and not Kasum Ali. The EPIC (Ext.8 and Ext.9) were discarded on the ground that those had not been proved and in the absence of any supporting documents, it cannot be accepted as a genuine piece of evidence.

11) Moreover, the learned Tribunal had observed that it is not known as to why the petitioner had not examined his mother. The learned Tribunal had also referred to the absence of pleading by holding that the written statement was inadequate and did not disclose any material fact and it was also observed that as per the mandate of Section 9 of the Foreigners Act, 1946, it was the bounden duty of the petitioner to disclose material fact which is within his knowledge. It was also held that one cannot be permitted to traverse beyond pleading and that the averments made in the written statement has to be proved by adducing cogent and reliable evidence. Resultantly, as the petitioner had failed to discharge his burden of proof, the writ petition was dismissed.

12) The learned counsel for the petitioner, while making his submissions, did not assist the Court in any manner and did not give a straight answer to any of the Court query. Thus, it appears that the entire effort of the learned counsel for the petitioner was to beat around the bush. In other words, no attempt was made to show that any of the finding by the learned Tribunal was incorrect and not sustainable. Therefore, as the valuable right of citizenship is involved in this case, the Court has taken extra effort to carefully peruse the written statement of the petitioner, the evidence tendered by the petitioner, and the record of the Tribunal, which had been called for.

13) The petitioner has stated in paragraph 3 of his written statement that the name of his mother is Jabeda Khatun. However, in his examination-in-chief, the petitioner has stated that his mother is Jabeda Bewa. However, though the

mother of the petitioner is alive, there is no explanation by the petitioner as to why he had examined Johura Khatun, his aunt as DW-2. The DW-2 had not exhibited any document to prove her identity. The said DW-2 is aged 67 years as on 17.02.2021, when her evidence was recorded. Therefore, she was born in the year 1954, but the petitioner has not exhibited any document showing the family of petitioner's grandparents with his parents, one uncle and three aunts together at any point of time prior to 25.03.1971, which is the cut-off date. As the exhibits and its contents are briefly stated in paragraph 5 of this order, the same is not reiterated again.

14) The petitioner has exhibited a copy of jamabandi (Ext.6). However, the petitioner did not produce land revenue paid receipt. It may be stated that in this State, anybody can obtain certified copy of the land revenue records from the land revenue authorities. Therefore, merely if one holds a certified copy of land revenue records of any person, it would not be sufficient for the Court of Law to presume that such person has the ownership, proprietary right or possession over the said land. Therefore, the decision of the learned Tribunal to discard Ext.6 on the ground that land revenue receipts was not produced, cannot be said to be perverse. Moreover, in his examination-in-chief, it is the case of the petitioner that the land was eroded by river Brahmaputra. Therefore, the petitioner has proved that the land covered by Ext.6 does not exist and there is no pleading or statement in evidence as to when the land of his grandparents was lost to river erosion. The learned counsel for the petitioner has not been able to show as to how the entries made in the jamabandi (Ext.6) would prove existence of citizenship of petitioner, when the land covered by Ext.6 no longer exists.

15) In the case of Sirajul Haque v. Union of India, (2019) 5 SCC 534, the Supreme Court of India has held that the discrepancies in the way the names of persons are spelt can be ignored only when the names of other family members remain the same. In this case, the certified copies of the voters list exhibited by the petitioner for the year 1966 (Ext.1) and 1970 (Ext.2) are of Village- Rangrai Chapori. In paragraph 7 of the written statement, the petitioner has stated as follows:-

"7. That due to erosion of river Brahmaputra, the 2nd party's father came to village- Nadirpar under Dalgaon P.S. of Darrang District and they casted their vote in Rangrai Chapori village in every Assembly election."

16) However, the petitioner has not disclosed the year of elections and the names of members of the family, who had casted their respective votes in Assembly elections after the year 1970. Moreover, no voter list and/or electoral roll, apart from the electoral roll of the year 1966 and 1970 had been exhibited. Instead of examining his mother as witness, the petitioner has examined projected aunt, namely, Johura Khatun as DW-2, whose name does not appear with the projected parents of the petitioner in the exhibited voters lists.

17) Accordingly, in light of the discussions above, and upon considering all the documents exhibited as Ext.1 to 8, 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 grandparents or parents. Moreover, documents proved as Ext.1 and Ext.2 are pre 25.03.1971 documents and all other exhibited documents are post 25.03.1971 documents and therefore, do not help the petitioner to dispel that he is not a foreigner who has entered into India (Assam) from the specified territory after the cut-off date of 25.03.1971.

18) Therefore, in light of discussions above, the petitioner has failed to show 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 its finding is dehors the evidence on record.

19) Hence, this writ petition fails and the same is dismissed, leaving the parties to bear their own cost.

20) The Registry shall send back the Tribunal's record together with a copy of this order so as to enable the learned Tribunal to make it a part of the records for future reference.