

GAHC010178042019



2026:GAU-AS:9434

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

**Case No. : WP(C)/5471/2019**

AMINUL HOQUE  
S/O MOHIRUDDIN SHEIKH, A PERMANENT R/O VILL. HASDOBHA, P.S.  
LAKHIMPUR, DIST. GOALPARA, ASSAM, PIN-781017

VERSUS

THE UNION OF INDIA AND 7 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISSIONER OF INDIA  
NEW DELHI-1

3:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
HOME DEPTT. DISPUR  
GUWAHATI-6

4:THE ASSAM CO-ORDINATOR OF NRC  
BHANGAGARH  
ASSAM  
GHY-5

5:THE DEPUTY COMMISSIONER OF POLICE  
KAMRUP (M)  
ASSAM  
PIN-781001

6:THE DEPUTY COMMISSIONER OF POLICE  
KAMRUP (B)  
ASSAM  
PIN-781001

7:THE OFFICER IN CHARGE  
AZARA POLICE STATION  
DIST. KAMRUP (M)  
ASSAM  
PIN-781017

8:THE OFFICER IN CHARGE  
LAKHIPUR POLICE STATION  
DIST. GOALPARA  
ASSAM  
PIN-78101

**Advocate for the Petitioner** : MR. M U MAHMUD, MS F N ZAMAN,MR S ISLAM,MS. R AHMED

**Advocate for the Respondent** : ASSTT.S.G.I., SC, ECI,SC, NRC,SC, F.T

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**  
**HONOURABLE MRS. JUSTICE SHAMIMA JAHAN**

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| For the petitioner               | : Mr. M.U. Mahmud, Advocate.            |
| For the respondent No.1          | : Mr. B. Deka, CGC.                     |
| For the respondent no.2          | : Mr. A.I. Ali, Standing Counsel        |
| For the respondent nos. 3, 4 & 6 | : Mr. J. Payeng, Standing<br>: counsel. |
| For the respondent nos. 5, 7 & 8 | : Ms. R.B. Bora, Govt.<br>: Advocate.   |

**Date on which judgment is reserved** : **02.04.2026.**

**Date of pronouncement of judgment** : **30.06.2026.**

**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. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC for the respondent no.1; Mr. A.I. Ali, learned standing counsel for the respondent no.2; Mr. J. Payeng, learned standing counsel for the FT and Border matters, for respondent nos. 3, 4 and 6, and Ms. R.B. Bora, learned Junior Govt. Advocate for respondent nos.5, 7 and 8.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Aminul Hoque, has assailed the opinion dated 28.02.2019, passed by the learned Member, Foreigners Tribunal No.4, Kamrup (M), Guwahati, in FT Case No. FT[K(M)-4] 1077/2017, arising out of F.T. Case No. 842/2016, which was a reference forwarded by the Deputy Commissioner of Police Kamrup (M), Guwahati (respondent no.6).

3) On receipt of the notice, the petitioner had filed his written statement. In the written statement, the petitioner had stated as follows:-

a. That due to poverty he was working as day labourer in Guwahati by staying in a rented house at village- Borbori under Azara P.S. The Investigating Officer, who had come for enquiry, gave his report without fair or proper enquiry.

b. The name of his father is Mohiruddin Sheikh @ Mahrudin Sheikh @ Mohiruddin @ Mohir Uddin. The name of his mother is Foziron Nessa and nickname is Nesa Khatun @ Nesaton Bibi. The name of his grandfather is Late Pashan Ali Sheikh @ Pashan Ali @ Pashan Sheikh. The name of his grandmother is Late Korimon Nessa. The name of his

step grandmother is Late Kulsum Nessa Bibi and name of his another step grandmother is Sokina Khatun. The name of his father, along with grandparents, step grandmother and other family members had been recorded in the NRC of 1951 at village- Charai Khasara, under Lakhipur P.S., Dist. Goalpara.

c. About 56/57 years ago, due to Brahmaputra river erosion, the petitioner shifted from village Charai Khasara to village- Dhobakura under the same Lakhipur P.S., Dist. Goalpara. The name of Pashan Ali and Korimon Nessa, his grandparents and Sokina Khatun, his step grandmother were recorded in the voter list of 1966 under the then 44 No. Goalpara West LAC in village- 115, Dhobakura, Circle and PS Lakhipur, Dist. Goalpara.

d. The name of Mahrudin Sheikh, his father; Pashan Ali and Korimon Nessa, his grandparents; and other family members were recorded in the voter list of 1970 under the then 44 No. Goalpara West LAC in village- 115, Dhobakura, Circle and PS Lakhipur, Dist. Goalpara.

e. By sale deed dated 12.09.1973, his grandfather had purchased 2 bigha, 1 katha, 6 lessa land, covered by dag no. 4 and 6 was from Md. Jason Ali Mollah at village- Ghugudoba under Lakhipur Revenue Circle.

f. The name of his father, grandparents and other family members were recorded in the voter list of 1979. The name of his father was recorded as Mohiruddin and the name of his mother's name has been recorded as Fojiran Nessa in the voter list of 1979, under the then 39 No. Jaleswar LAC in village- 78, Dhobakura, Circle and PS Lakhipur, Dist. Goalpara. Due to family separation, the parents of the petitioner shifted from village- Dhobakura to village- Ghugudoba about 37 years

ago under the same PS Lakhipur, Dist. Goalpara.

g. The name of Mohir Uddin, father; and Nesa Khatun instead of Fojiran Nesa, mother; grandmother, uncle and aunt of the petitioner has been recorded in the voter list of 1985 in Village- (Ka) Ghugudoba (45), under 39 No. Jaleswar LAC, Circle and PS Lakhipur, Goalpara.

h. The petitioner was born on 01.05.1988 and brought-up in village- Ghugudoba and Hashdoba under Lakhipur P.S., Dist. Goalpara. He has a PAN Card. For better livelihood, the family of the petitioner had shifted from village- Ghugudoba to village- Hashdoba.

i. In the voter list of 1997, the name of his parents and elder brother has been recorded. The name of his father appeared as Mohir Uddin; mother's name is recorded as Fajiron Nessa; elder brother's name is recorded as Fajor Ali. The petitioner has five brothers and sisters, namely, Fajor Ali, Basaton Nessa, Foyjal Hoque, Aminul Hoque (petitioner) and Mohila Khatun.

j. The petitioner had studied in Class-V in the year 1999 from Hashdoba Anchalik High School and his name is entered as Aminul Hoque in the School certificate dated 20.10.2017, in the name of the petitioner, issued by the Headmaster of the said school and counter-signed by the Inspector of Schools, GDC, Goalpara.

k. The name of the petitioner and other family members were recorded in the voter list of 2005 in village- 104 No. Hashdoba under 39 No. Jaleswar LAC. His father's name is recorded as Mohir Uddin and mother's name is recorded as Fajiron Nessa. The name of the petitioner was recorded for the first time in the voter list of 2013 in village- 104 No. Hashdoba under 39 No. Jaleswar LAC. He has Electoral

Photo Identity Card (EPIC for short). The names of the petitioner along with parents and other family members were recorded in the voter list of 2015 in village- 104 No. Hashdoba under 39 No. Jaleswar LAC. Against his name, his father's name was recorded as Mohir Uddin Sheikh instead of Mohir Uddin, but his father's name was written as Mohir Uddin. In the voter list of 2017, the name of the petitioner and his wife was recorded, but against his name, his father's name was recorded as Mohir Uddin Sheikh instead of Mohir Uddin. His wife's name was written as Shahida Khatun.

l. The name of the father of the petitioner is recorded in the NRC of 1951 and petitioner's school certificate as Mohiruddin Sheikh, as Mohiruddin in the voter list of 1970; as Mohir Uddin in the voter list of 1985, 1989, 1997, 2005 and 2015; as Mohir Uddin Sheikh in the voter list of 2013, 2015, 2017 and petitioner's PAN card and EPIC. Therefore, all these are the name of the father of the petitioner. It was also stated that Fajiron Nessa, Nessa Khatun and Nessaton Bibi are the names of petitioner's mother and Pasan Ali Skeikh, Pashan Ali and Pashan Sheikh are the names of his grandfather.

m. Accordingly, it was stated that the petitioner is an Indian citizen by birth and not a foreigner.

4) In support of his defence, the petitioner had examined himself as DW-1. In his evidence-on- affidavit, the petitioner had reiterated the statements made in his written statement and had exhibited the following documents: -

- i. Copy of NRC of 1951 of petitioner's father (Ext.A-1).
- ii. Computerized copy of NRC of 1951 in the name of petitioner's father, along with his grandparents, step grandmother and other family members (Ext.A-

2).

iii. Certified copy of voter list of 1966 in the name of petitioner's grandparents and step grandmother (Ext.B).

iv. Certified copy of voter list of 1970 in the name of petitioner's father, grandparents and other family members (Ext.C).

v. Original land purchase deed dated 12.09.1973 in the name of petitioner's grandfather (Ext.D).

vi. Certified copy of voter list of 1979 in the name of petitioner's parents, grandparents and other family members (Ext.E).

vii. Certified copy of voter list of 1985 in the name of petitioner's parents and other family members (Ext.F).

viii. Petitioner's PAN Card (Ext.G).

ix. Certified copy of voter list of 1989 in the name of petitioner's parents, uncle and other family members (Ext.H).

x. Certified copy of voter list of 1997 in the name of petitioner's parents and elder brother (Ext.I).

xi. School Certificate dated 20.10.2017, issued by the Headmaster of Hashdoba Anchalik High School (Ext.J).

xii. Certified copy of voter list of 2005 in the name of petitioner's parents and other family members (Ext.K).

xiii. Certified copy of voter list of 2013 in the name of the petitioner, his parents and other family members (Ext.L).

xiv. EPIC of the petitioner (Ext.M).

xv. Certified copy of voter list of 2015 in the name of the petitioner, his parents and other family members (Ext.N).

xvi. Certified copy of voter list of 2017 in the name of the petitioner, his wife (Ext.O).

5) In his cross-examination, the petitioner (as DW-1) had stated that the name of his grandfather was Pasan Ali, who were three brothers, namely, Sikkim Ali, Pasan Ali and Iman Ali. He does not know about the sons and daughters of Sikkim Ali and Iman Ali. Pasan Ali had five sons and two daughters, namely, Usman Ali, Mahiruddin Seikh, Mairuddin, Sattar Ali, Abul Hussain, Marium Nessa and Rabia Khatoon. He did not examine the author of Ext.J. He had stated that he had not submitted any document showing him as voter in 2013, but his name figured in the voter list of 2013.

6) In support of his defence, the petitioner had also examined his projected father as DW-2. In his evidence- on- affidavit, DW-2 had reiterated the statements made by the petitioner as DW-1. He had also stated that about 56/57 years ago, due to erosion of Brahmaputra, his family shifted from Charai Khasara to village- Dhobakura. His father had purchased land on 12.09.1973 at village- Ghugudoba and about 37 years ago, due to family separation, he had shifted from village- Dhobakura to village- Ghugudoba and then about 22 years ago, he had shifted to village- Hashdoba and in the year 1999, the petitioner had studied in Class V at Hashdoba Anchalik High School. Accordingly, it was stated that the petitioner is a citizen of India and not a foreigner or an illegal migrant of 1966-1971 stream or after 25.03.1971.

7) In his cross-examination, the DW-2 had stated that the name of his father was Pachan Ali. His father were three brothers, namely, Sikim Ali, Iman Ali and his father. Jainuddin is the son of Iman Ali. They were 5 (five) brothers and 2 (two) sisters, namely, Usman, Guni, Mohoruddin (myself), Sattar Ali, Moinuddin and Abul Hussain. Later states that he does not have any sister from his own mother. Usman Goni has four sons and he does not remember their names. He had voted 18 years back and he cannot remember the date and year. He does not remember in which year his son Aminul Hoque was born.

8) The learned Tribunal, examined the pleadings and evidence on record. The finding and decision of the learned Tribunal are as under:-

- a. The learned Tribunal took note of the fact that the NRC of 1951 (Ext.A-1 and Ext.A-2) were a photocopy/ computer generated details, which was not proved in accordance with law.
- b. The Sale Deed dated 12.09.1973 (Ext.D) in respect of the land purchased by the petitioner's projected grandfather was discarded as



there was no explanation that if the land existed, why the land did not devolve on the legal heirs of petitioner's grandfather.

c. The learned Tribunal took into account the entries made in the voter list of 1979 (Ext.E), which contained 9 (nine names), out of which the names of there was no pleading or evidence that Josimuddin and Asia Khatun were family members.

d. In the voter list of 1979, Faziran Nessa, wife of Mohiruddin is aged 25 years and in the voter list of 1985, Sessa Khatun, wife of Mohir Uddin is aged 29 years. Therefore, the learned Tribunal had doubted as to whether the family of Mohiruddin of Ghugudoba village is same family of Mohiruddin of village Dhobakura in voter list of 1979.

e. Moreover, the learned Tribunal found discrepancies in the age of Faziran Nessa. In the voter list of 1979, the age of Faziran Nessa is 25 years, but in voter list of 1989 the age of Faziran Nessa is 29 years.

f. Moreover, the petitioner had disclosed the names of the siblings of his father, out of which the name of one Osman Ali was not in the voter list of 1989 (Ext.F).

g. Ext.G was the PAN Card of the petitioner, Aminul Hoque, where the date of birth is recorded as 01.05.1988, which was doubted because DW-2, the projected father of the petitioner could not remember in which year his son was born.

h. The learned Tribunal had doubted whether Mohiruddin of the voter list of 1979 was the same Mohiruddin, whose name appeared in the voter list of 1989.

i. Due to change of village, the learned Tribunal had doubted as to whether Mohiruddin and Faziron Nessa, whose name appear in the

voter list of 1997 of village- Hashdoba (Ext.I) are the same Mohiruddin and Faziron Nessa, whose name appear in the voter list of 1989 of village- Ghugudoba (Ext.H).

j. The learned Tribunal had held that the school certificate (Ext.J) was not proved by examining the author.

k. The learned Tribunal had noticed the names of Mohiruddin, Faziron Nessa and other family members were noticed in the voter list of 2005 (Ext.K) and 2013 (Ext.L), and EPIC of Aminul Hoque (Ext.M), and held that the said documents do not establish link of the petitioner with Mohiruddin and Pasan Ali.

l. The learned Tribunal had observed that in the vote list of 2015 (Ext.N), the name of the petitioner appeared for the first time alongwith the family of Mohiruddin and Faziron Nessa of Hashdoba.

m. Moreover, as those names appear in three distinct places i.e. Dhobakura, Ghugudoba and Hashdoba in documentary exhibits, it was held that the family of Pasan Ali of Dhobakura is different from the family at Ghugudoba in 1985 and family at Hashdoba from 1997 onwards.

n. The learned Tribunal had noticed that in voter list of 1970 (Ext.C), one Parbati Nessa was the wife of Osman Ali, but in the voter list of 1979 (Ext.E), one Akiran Nessa was the wife of Osman Ali of Dobakura.

o. Mohiruddin (DW-2) had stated in his cross-examination that he had casted his vote 18 years back and therefore, it was held that Mohiruddin, whose name appeared in the voter list of 1970, was a different person than Mohiruddin, whose name appeared in the voter list of 2015 (Ext.N) from a different village.

p. Accordingly, it was held that the exhibited documents did not prove the existence of the petitioner with his ancestors, whose presence in India is established from 01.01.1966.

q. Accordingly, it was held that the petitioner had failed to discharge his burden under Section 9 of the Foreigners Act, 1946 to prove that he is not a foreigner but an Indian citizen.

9) Assailing the impugned opinion, the learned counsel for the petitioner had submitted that the petitioner is a migrant worker and he has been declared to be a foreigner merely because of some discrepancies in the names of his father and grandfather in some documents, which is not sustainable in light of the decision of the Supreme Court of India in the case of *Sirajul Hoque v. State of Assam & Ors.*, (2019) 5 SCC 534. By referring to the case of *Abdul Matali v. Union of India & Ors.*, 2015 (2) GLT 617, it was submitted that due to some anomalies in the names and age, the citizenship of a person cannot be taken away. It was further submitted that the father of the petitioner had deposed as DW-2, who had admitted that the petitioner was his son and that evidence could not have been disbelieved by the learned Tribunal.

10) It was submitted that the petitioner had disclosed all material facts in his written statement, which was proved through his deposition, which was not dislodged during cross-examination and therefore, the documentary exhibits could not have been discarded by the learned Tribunal. Thus, it was submitted that the entire evidence of the petitioner as DW-1 and by his father as DW-2 was illegally and arbitrarily disbelieved and discarded. Hence, it was submitted that the impugned opinion be set aside and quashed.

11) It was submitted that NRC, though Computer generated, cannot be disbelieved and was admissible in evidence and in support of his submission,

the case of *Shital Krushna Dhake v. Krushna Dagdu Dhake*, 2018 SCC OnLine Bom 206 was cited.

12) In the case of *Shital Krushna Dhake (supra)*, the learned counsel for the petitioner had expressed apprehension that the order dated 20.12.2017 and the order passed on that day, i.e. 02.02.2018, would be available on the official website of the Bombay High Court and there is possibility that as it would not be certified copy of the order, the trial Court may insist upon producing certified copy. It is in the context of the said submission that the Bombay High Court had expressed its view that the apprehension was misplaced since the printout of the orders from the Court's website has sanctity, the trial Courts are expected to consider the orders, if they are cited after taking a printout from the official website. Moreover, it was observed that those orders are also available before the trial Court from the official website and there can be a counter verification to find out whether such an order is actually uploaded to the official website or not and in that backdrop, it was observed that there is no harm if such printout from website are placed before the Court.

13) But the said order was passed on the facts of the case. The said decision in the case of *Shital Krushna Dhake (supra)*, is not an authority on the point that computer generated printout from any official website would constitute an admissible evidence as if the provision of Section 65-B of the Evidence Act, 1872 has been rendered otiose. There are hundreds of orders by this Court, whereby the authorities have been directed to act in accordance with the downloaded copy of the orders passed by this Court, which does not mean that without complying with the statutory requirement of manner and mode of proving an electronic record, the Courts and Tribunals would start accepting such downloaded copies as admissible evidence.

14) Therefore, the submission made by the learned counsel for the petitioner that NRC cannot be disbelieved though it was a computer generated document supported by the case of *Shital Krushna Dhake (supra)*, appears to be misplaced and it pains to record that the said submission rather exposes the ignorance of the learned counsel for the petitioner in respect of manner and mode of proof of an electronic and/or computer generated document in a judicial and/or quasi judicial proceeding.

15) Along with his written statement, the petitioner had filed the NRC of 1951 containing the names of Kulsum Nessa Bibi and 7 (seven) others of village- Charai Khasra No. 266. The said copy was issued by the Officer-In-Charge, Lakhipur P.S. under issue no. 303/94 dated 26.04.1994. However, while the petitioner had exhibited the NRC of 1951 bearing Legacy Data Code: 200-0012-3816, containing the standalone name of Mohiruddin Sheikh, bearing Image Id. No. 10102225.

16) 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.A-1) contains an Image Id bearing 10102225. It also contains a note "Generated by DLDD Version 6.0". The petitioner has also exhibited the printout of the Image Id 10102225, purportedly containing family details as Ext.A-2. Thus, both the said Ext.A-1 and Ext.A-2 are admitted by the petitioner to be computer generated printout. 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.

17) The said two image id are computer generated documents. Thus, without a certificate as required under Section 65B of the Evidence Act, 1872 corresponding to Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023, would have no evidentiary value. If one needs any authority on the point, the decision of the case of Anowar P.V. v. P.K. Basheer, (2014) 10 SCC 473 may be referred to. Thus, Ext.A-1 and Ext.A-2 were inadmissible in evidence.

18) Coming to the voter's lists exhibited by the petitioner, it is observed as under:-

| Name of voter and voter list year                                                                                                                       | Relation                                                                                                           | Village   | Ext.No. | Age                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------|---------|----------------------------------------------------|
| VL- 1966<br>Pasan Ali<br>Sokina Khatun<br>Karimon Nessa                                                                                                 | Relation:<br>Late Patu<br>Pasan<br>Pasan                                                                           | Dhobakura | Ext.B   | 46<br>32<br>33                                     |
| VL- 1970<br>Pasan Ali<br>Sokina Khatun<br>Karimon Nessa<br>Usman Ali Sheikh<br>Mahruddin Sheikh<br>Pabotti Nessa                                        | Relation:<br>Late Patu<br>Pasan Ali<br>Pasan Ali<br>Pasan Ali<br>Pasan Ali<br>Usman Ali                            | Dhobakura | Ext.C   | 49<br>35<br>36<br>22<br>21<br>21                   |
| VL- 1979<br>Pashan Sheikh<br>Sokina Khatun<br>Karimon Nessa<br>Usman Ali<br>Mohiruddin<br>Akiron Nessa<br>Faziron Nessa<br>Joshimuddin<br>Ashiya Khatun | Relation:<br>Patu Sheikh<br>Pashan<br>Pashan<br>Pashan<br>Pashan<br>Usman<br>Mohiruddin<br>Mejuddin<br>Joshimuddin | Dhobakura | Ext.E   | 56<br>42<br>43<br>28<br>28<br>26<br>25<br>35<br>28 |

|                                                                                                                                          |                                                                                                                                           |           |       |                                              |
|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------|-------|----------------------------------------------|
| VL- 1985<br>Mohiruddin<br>Nessa Khatun<br>Moyanuddin<br>Fulbhanu Nessa<br>Karimon Nessa                                                  | Relation:<br>Pasan Ali<br>Mohir Uddin<br>Pasan Ali<br>Moyan Ali<br>Pasan Ali                                                              | Ghugudoba | Ext.F | 35<br>29<br>25<br>23<br>50                   |
| VL- 1989<br>Mohir Uddin<br>Nessaton Bibi<br>Usman Gani<br>Akiton Nessa<br>Moyanuddin<br>Fulbhanu Nessa<br>Karimon Nessa                  | Relation:<br>Pasan Ali<br>Mohir Uddin<br>Pasan<br>Usman<br>Pasan<br>Moyanuddin<br>Pasan                                                   | Ghugudoba | Ext.H | 36<br>29<br>40<br>35<br>28<br>25<br>60       |
| VL- 1997<br>Mohir Uddin<br>Faziron Nessa<br>Fojo Ali                                                                                     | Relation:<br>Pasan Ali<br>Mohir<br>Mohir                                                                                                  | Hashdoba  | Ext.I | 48<br>39<br>18                               |
| VL- 2005<br>Mohir Uddin<br>Faziron Nessa<br>Fojo Ali<br>Mujhila Khatun<br>Foyjal Hoque                                                   | Relation:<br>Pasan Ali<br>Mohir Uddin<br>Mohir Uddin<br>Fojo Ali<br>Mohir Uddin                                                           | Hashdoba  | Ext.K | 55<br>25<br>25<br>18<br>18                   |
| VL- 2013<br>Mohir Uddin<br>Faziron Nessa<br>Fojo Ali<br>Mujhila Khatun<br>Foyjal Hoque                                                   | Relation:<br>Pashan Ali<br>Mohir Uddin<br>Mohir Uddin<br>Fojo Ali<br>Mohir Uddin                                                          | Hashdoba  | Ext.L | 62<br>32<br>32<br>25<br>25                   |
| VL- 2015<br>Mohir Uddin<br>Faziron Nessa<br>Fojo Ali<br>Mujhila Khatun<br>Foyjal Hoque<br>Aminul Hoque<br>Sahida Khatun<br>Sajida Khatun | Relation:<br>Pashan Ali<br>Mohir Uddin<br>Mohir Uddin<br>Fojo Ali<br>Mohir Uddin<br>Mohir Uddin<br>Sheikh<br>Aminul Hoque<br>Fayjal Hoque | Hashdoba  | Ext.N | 64<br>54<br>34<br>27<br>27<br>25<br>21<br>19 |

19) At this juncture, notwithstanding that the father of the petitioner has four names, viz., Mohiruddin Sheikh @ Mahrudin Sheikh @ Mohiruddin @ Mohir Uddin, the Court does not take a serious note of the spelling

discrepancies in the names of the grandfather and father of the petitioner, which appears on a comparative reading of the hereinbefore referred voters' lists.

20) Thus, even after taking into account that the father of Mohiruddin Sheikh @ Mahrudin Sheikh @ Mohiruddin @ Mohir Uddin is shown to be Pasan Ali, but the petitioner has failed to show that all the projected members of the family Pasan Ali or Mohiruddin or Aminul Hoque, the petitioner are not continuously together in all the voters lists of three villages, i.e. Dobakura, Ghugudoba and Hashdoba. It appears that to fill-up the gaps, the defence of the petitioner is structured around the exhibited voter's lists. Without support of any document, it has been pleaded that there was shifting of the family from Dobakura to Ghugudoba and Ghugudoba to Hashdoba. To match with the names in the voter's lists, it has been pleaded that there was mistake in recording of names in voter lists.

21) Therefore, the petitioner has not been able to discharge his burden to prove that Aminul Hoque, whose name appears in the voters list of 2015 (Ext.N) is related to Pasan Ali, whose name appears in the voter list of 1966 (Ext.B) and 1970 (Ext.C) and Mahrudin Sheikh, whose name appears in the voter list of 1979 (Ext..C) of village- Dhobakura. There are age variations in respect of several voters, specifically Faziron Nessa, who is 25 years in the voter list of 1979 of village- Dhobakura, who is 39 years in the voter's list of 1997 of village- Hashdoba and is 25 years in the voter list of 2005 in Hashdoba village. Thus, there are no other family members whose names consistently appear in all the exhibited voters' lists. If the names of other voters in the exhibited voters' lists remain same, then it may be an arguable point on behalf of the petitioner that there is name of age discrepancy in the name or age of one or two voters, which can be disregarded. In this regard, it may be appropriate to



refer to the decision of the Supreme Court of India in the case of *Sirajul Hoque v. State of Assam & Ors.*, (2019) 5 SCC 534, wherein it had been held to the effect that when identity of all members of the family is established including appellant, he cannot be declared a foreigner just because there is a discrepancy in name of his grandfather in some documents. Thus, on facts, the said case of *Sirajul Hoque (supra)*, on which the learned counsel of the petitioner

22) The petitioner had exhibited sale deed of a plot of land which Pasan Ali had purportedly purchased at Ghuguduba. The learned Tribunal had not found it reliable. It is noticed that the petitioner or his father claim their legacy from Pasan Ali. The petitioner had made a vague statement in his written statement and evidence-on-affidavit that after partition of land his father had shifted to Hashdoba. If that be correct then the original sale deed would not be in the custody of the petitioner or his projected father, but it would be in the custody of those persons who had retained the land covered by the sale deed. The petitioner had not produced any land record showing entry to the effect that the projected father of the petitioner had relinquished his share over the property covered by the said sale deed (Ext.D). Therefore, the said sale deed may at best be an evidence of sale, but cannot be a proof that the petitioner had proved his link with the purchaser of the land.

23) The petitioner had exhibited his PAN Card (Ext.G) and EPIC of Aminul Hoque (Ext.M). In that regard, it is well settled that PAN Card and EPIC are not proof of citizenship. The petitioner has not adduced any evidence to show that he is an Income Tax assessee and therefore, as PAN Card was issued on the basis of self declaration by the petitioner, the petitioner ought to have called for the relevant records from the office of the concerned Income Tax Officer to prove from the records regarding the entries contained in PAN Card.

24) In the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) No. 3547/16, decided on 09.05.2018*, this Court had held that PAN Card and EPIC are not a valid piece of evidence in absence of supporting evidence and it was further held that in any case, they were post reference documents.

25) The petitioner had exhibited the School certificate issued by the Headmaster of Hashdoba Anchalik High School on 20.10.2017, stating therein that the pupil named therein had left the school on 20.08.1999. The author of the certificate had not come and deposed to support the certificate and the petitioner had not called for the school admission register to prove the entries made in the said school certificate (Ext.J). In this regard, the Supreme Court of India, in the case of *Birad Mal Singhvi v. Anand Purohit, 1988 (Supp.) SCC 604*, amongst others, had held the author of the certificate would have to prove the certificate on the basis of school register. Therefore, the rejection of the said document as a proof of link of the petitioner with his projected father cannot be said to be held to be perverse.

26) The learned counsel for the petitioner had submitted that Mohiruddin Sheikh, the father of the petitioner was examined as DW-2. Therefore, the oral evidence of DW-2, admitting the petitioner to be his son could not have been ignored or discarded and therefore, the impugned opinion was perverse. In this regard, on the point as to whether by oral evidence, citizenship can be proved, is well settled. In the case of *Basiron Nessa v. Union of India & Ors., 2018 (4) GLT 692*, this Court had held that documentary evidence must be proved from record and not solely by oral testimony. This Court has also held in the case of *Bijoy Das v. Union of India & Ors., (2018) 4 GLR 599, 2018 (3) GLT 118*, that it is trite that mere filing of written statement and oral testimony in a proceeding under Foreigners Act, 1946 would not be

enough. The fact-in-issue would have to be proved by the proceedee by adducing documentary evidence which is admissible and relevant. Thus, the oral evidence of DW-2 cannot be said to be a sufficient evidence to prove that the petitioner has been able to link himself with Mahrudin Sheikh, whose name is recorded in the voter list of 1970 (Ext.C), or with Pashan Sheikh, whose name is recorded in the voter list of 1966 (Ext.B). Moreover, the oral evidence of the DW-2 also does not prove that he is the same person whose name appears in the voter list of 1970 (Ext.C) and in the voter list of 2015 (Ext.N).

27) Thus, though the petitioner had exhibited 15 (fifteen) documents as exhibits, the same does not appear to help the petitioner to establish that he has been able to discharge his burden as required under Section 9 of the Foreigners Act, 1964 to prove that he is not a foreigner but an Indian Citizen.

28) The Supreme Court of India, in the case of *Central Council for Research in Ayurvedic Sciences & Anr. v. Bikartan Das*, (2023) 16 SCC 462, observed and held as under: -

*48. Before we close this matter, we would like to observe something important in the aforesaid context:*

*Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.*

*49. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.*

50. *The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."*

29) On the point of when *certiorari* jurisdiction it would be also relevant to refer to paragraph nos. 20 to 23 of the case of *Hari Vishnu Kamath v. Ahmad Ishaque*, AIR 1955 SC 233: (1954) 0 Supreme(SC) 175, decided by the Constitution Bench of the Supreme Court of India, where it had been held that "... *An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard to the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.*"

30) In this case in hand, the petitioner has not been able to establish that the learned Tribunal had committed any patent error in appreciating the pleadings and evidence on record, or that it considered extraneous materials or that the decision was based on ignorance of law or in disregard to the provisions of law.

31) In the light of the discussions made hereinbefore, the Court

finds no material to hold that the opinion assailed in this writ petition is bad on facts or in law. The learned counsel for the petitioner could not show that the said opinion was perverse on any count whatsoever. Therefore, this challenge fails and consequently, this writ petition is dismissed.

32) The consequences of opinion dated 28.02.2019, passed by the learned Member, Foreigners Tribunal No.4, Kamrup (M), Guwahati, in FT Case No. FT[K(M)-4] 1077/2017, arising out of F.T. Case No. 842/2016, would follow.

33) The Registry shall return back the learned Tribunal's records along with a copy of this judgment and order, so that the learned Tribunal may make it a part of the record.

34) The learned Standing Counsel for the respondents shall also transmit a downloaded copy of this order to the respective respondent authorities.

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

**JUDGE**

**JUDGE.**

**Comparing Assistant**

**Private Secretary**