GAHC010051932020

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

Case No. : WP(C)/1668/2020

OMAR ALI @ OMAR BEPARI
S/O LT. ABDUL HAKIM @ A HAKIM @ HAKIM ALI, R/O VILL. BORAKHAT
P.S. CHHAYGAON, DIST. KAMRUP ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT OF INDIA MINISTRY OF HOME
DEPTT. NEW DELHI-1

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

3:THE SUPERINTENDENT OF POLICE (B) KAMRUP
AMINGAON
PIN-781031

4:THE DEPUTY COMMISSIONER
KAMRUP (R)
AMINGAON
PIN-781031

5:ELECTION COMMISSION OF INDIA
REP.BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-1

6:STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA

BHARALUPAR
BHANGAGARH
GUWAHATI-78100

Advocate for the Petitioner : MR. S ALIM,

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

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MR. JUSTICE PRANJAL DAS

Advocate for the petitioner	: Shri. S. Alim
Advocate for the respondent No.1	: Shri. H.K Baishya, CGC
Advocate for respondent No. 2, 3 & 6	: Shri. G. Sarma, SC
Advocate for the respondent No.5	: Shri. A.I Ali, SC, ECI
Advocate for the respondent No.4	: Shri. P. Sarma, Govt. Adv.

Date on which judgment is reserved	: **12.08.2026**
Date of pronouncement of judgment	: **17.09.2026**
Whether the pronouncement is of the operative part of the judgment ?	: No
Whether the full judgment has been pronounced?	: Yes

JUDGMENT & ORDER (CAV)

Date : 17-09-2026
(*Pranjal Das, J*)

Heard Shri. S. Alim, the learned counsel for the petitioner. Also heard Shri. K. Deka, learned CGC for the respondent No.1; Shri. N. Kalita, learned counsel representing Shri. A.I Ali, the learned Standing counsel, ECI for the respondent No. 5; Shri. G. Sarma, learned Standing counsel, Home and NRC for the respondent Nos. 2, 3 & 6 and Shri. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No.4.

2. Invoking the jurisdiction under Article 226 of the Constitution of India, the petitioner, ***Omar Ali @ Omar Bepari***, has assailed the impugned judgment and opinion dated 22-08-2019, passed by the learned Member, Foreigners Tribunal No. 2, Kamrup (Rural) at Boko, in BFT Case No. 4053/2016, whereby the petitioner was declared to be a foreigner post 25-03-1971.

3. During the proceeding, the petitioner had relied upon a school certificate which was issued from the Borakhat Girls' M.E. Madrassa, where he is stated to have studied and being a girls' school, the learned Tribunal held that it speaks for itself and that the same is a fraudulent document. After perusing and appreciating the other evidence, including documents, also, the learned Tribunal also opined that the petitioner/proceedee had tried to establish his citizenship by fraudulent means. Accordingly, all his contentions were rejected and the reference was answered against him, as already mentioned above.

4. The case was originally registered by the Tribunal under the I.M.D.T. Act vide I.M.D.T. Case No. 424 of 2003. Subsequently, upon setting aside of the I.M.D.T. Act by the Hon'ble Apex Court, the matter was received in the particular Tribunal, re-registered, and numbered as B.F.T. Case No. 4053 of 2016. Upon being noticed, the petitioner, Omar Ali, appeared and filed a written statement along with documents. Thereafter, the proceeding started, during which he adduced evidence of himself as DW-1; his purported sister as DW-2; the Gaonburah of Village Borakhat as DW-3; and one co-villager as DW-4.

5. As part of his evidence, the petitioner/proceedee exhibited as many as 17 documents, the details of which may be narrated herein below:

I. Exhibit-A is the copy of Jamabandi.

II. Exhibit-A(i) is the copy of land record.

III. Exhibit-B is the certified copy of voter list for the year 1966.

IV. Exhibit-C is the certified copy of voter list for the year 1970.

V. Exhibit-D is the certified copy of voter list for the year 1977.

VI. Exhibit-E is the certified copy of voter list for the year 1979.

VII. Exhibit-F is the certified copy of voter list for the year 1985.

VIII. Exhibit-G is the certified copy of voter list for the year 1993.

IX. Exhibit-H is the certified copy of voter list for the year 1997.

X Exhibit-I is the certified copy of voter list for the year 2005.

XI. Exhibit-J is the certified copy of voter list for the year 2010.

XII. Exhibit-K is the certified copy of voter list for the year 2014.

XIII. Exhibit-L is the certified copy of voter list for the year 2017.

XIV. Exhibit-M is the copy of Voter Identity Card.

XV. Exhibit-N is the copy of School Certificate

XVI. Exhibit-O is the Gaonburah Certificate.

XVII. Exhibit-P is the affidavit.

6. All the witnesses were duly cross-examined by the State. However, as mentioned above, the Tribunal was not persuaded by the evidence led by the proceedee, and he was declared a foreigner.

7. The petitioner's contention before the Tribunal was that he is the son of one Hakim Ali alias Abdul Hakim, with regard to whom there was a land document in the nature of Jamabandi dating back to 1957 and 1964. The petitioner also contended about his mother, Ujala Khatun, and his stepmother, Bahaton Nessa, as his father is stated to have had two wives.

8. Mr. S. Alim, the learned counsel for the petitioner, submitted that the Tribunal unfairly discarded the entire evidence on the ground of fraud. He submitted that even with regard to the certificate, there is a cogent explanation on the part of the petitioner in the written statement as well as in his evidence that the Girls' Madrassa came into being only upon the earlier school being amalgamated into it, and that the petitioner had studied in that earlier school which was subsequently amalgamated into the Girls' Madrassa. It is submitted that the petitioner had adduced proper linkage evidence in Court to show his connection with his father, whose presence was recorded in India before 25-03-1971. The learned counsel contends that the finding of the Tribunal is erroneous and liable to be interfered with.

9. On the other hand, Mr. G. Sharma, the learned Standing counsel for respondent Nos. 2 & 6 (Home and NRC), submits that linkage evidence is missing; that there is a discrepancy in the name of the petitioner's father, and also that there is a discrepancy in the petitioner's own name.

The learned Standing counsel, Mr. Sharma, contends that there is no infirmity in the impugned opinion.

10. In Exhibit-A and Exhibit-A(i) and also the Jamabandi copy (Exhibit 2), pertaining to land in village Borakhat, the purported father's name of the petitioner is mentioned as Hakim Ali, son of Khalek Munshi, and the name of Ujala Khatun and Bahaton Nessa are also mentioned. The document is purportedly issued on 13-04-2018, and though in the typed copy, Omar Ali is mentioned against Serial No. 8 with regard to the column for name of Pattadars, in the copy which is available in the record and was exhibited, the same names are not very legible. Nevertheless, from a combined reading of the typed document as well as the document available in the case record, the name of one Hakim Ali appears with regard to a land document of the period 1957 to 1964 along with Bahaton Nessa and Ujala Khatun and in the typed copy, the name of Omar Ali is shown against serial number 9 as son of Hakim Ali.

11. It may be mentioned herein that the petitioner has contended in the written statement as well as in his evidence that his mother's name is Ujala Khatun and Bahaton Nessa is his stepmother, as his father had two wives.

12. We have perused the voters list of 1966, exhibited as Exhibit B, with regard to No. 56 Chhaygaon LAC. Therein, we find the name of Abdul Hakim indicated as son of Khalek. The names of Ujala Khatun and Bahaton Nessa also appears and indicated against the name of Hakim. The voters list of 1970 exhibited as Exhibit C of the same constituency has an identical narration, inasmuch as, the name of Abdul Hakim is indicated as son of Khalek; Ujala Khatun and Bahaton Nessa indicated as the wife of Hakim. Going by the aforesaid documents, one can deduce that the said Abdul Hakim along with his wives Ujala Khatun and Bahaton Nessa were present in India in and around 1966 and 1970, as revealed by the enlisting of their names in the voters list of the said years.

13. In his testimony, the petitioner has contended and deposed that Hakim Ali and Abdul Hakim are one and the same person being his father, and after he performed Haj pilgrimage and also due to his other religious performances, he also came to be known as Alhaj Moulavi Abdul Hakim.

14. It is contended on behalf of the petitioner that in the voters list of 1977, 1979, 1985 and 1997, his name figures in the voters list of the said LAC along with his father Abdul Hakim and in some of these lists, he also appears along with his biological mother and stepmother.

15. To ascertain these contentions, we perused these voters list. We find that in the voters list of 1977, A. Hakim is indicated as son of Khalek appears along with Ujala Khatun and Bahaton Nessa, both of whom have been indicated as wives of Hakim. However, Omar Bepari is listed, therein as the son of Hakim.

16. In this context, the petitioner has also deposed in his evidence that Omar Ali and Omar Bepari are one and the same person, being himself.

17. In the voters list of 1979 also, Omar Bepari is indicated as son of Hakim; A. Hakim is indicated as son of Khalek; and Ujala Khatun and Bahaton Nessa indicated as wives of Hakim. In the voters list of 1985, Abdul Hakim is indicated as son of Khalek; Ujala Khatun and Bahaton Nessa indicated as wives of Abdul; Omar Bepari is indicated as son of Abdul and Firoza Khatun is indicated as wife of Omar. In the voters list of 1993, Omar Ali is indicated as the son of Abdul Hakim and Firoza Khatun is indicated as the wife of Omar Ali. Similarly, in the voters list of 1997, Abdul Hakim appears as the son of Abdul Khalek; Omar Ali is indicated as the son of Abdul Hakim and Firoza Khatun is indicated as the wife of Omar Ali.

18. Thus, in the list of 1977, 1979 and 1985, the names of Abdul Abdul Hakim, Bahaton Nessa and Ujala Khatun consistently appear along with Omar Bepari and Omar Bepari is indicated as the son of Abdul in the Abdul; in the voters list of 1993 and 1997, the name Omar Ali appears along with Abdul Hakim, indicated as his son. Similarly, in the voters list of 1985, Firoza Khatun is indicated as the wife of Omar, whose own name is mentioned as Omar Bepari, but in the voters list of 1993 Firoza Khatun is indicated as the wife of Omar Ali, and the said name Omar Ali also appears separately as son of Abdul Hakim. Therefore, perhaps the contention of the petitioner about discrepancy in the name of Omar Bepari and Omar Ali being the same person can be accepted. The name of Bahaton Nessa is also mentioned as Baharon Nessa in 1985 voters list, which also appears to be an error in view of the earlier consistency in her name as Bahaton Nessa.

19. In the land document of 1957 and 1964, the projected father of the petitioner appears as Hakim Ali, but in the said projected father appears as Abdul Hakim in 1966 and 1970 and thereafter, consistently appears as father of the petitioner Omar Ali in the voters list of 1977, 1979, 1985, 1993 and 1997.

20. In the voters list of 2005, 2010, 2014 and 2017, the name of Omar Ali is indicated as the son of Abdul Hakim and in this voters list, the name of Firoza Khatun also appears and indicated as the wife of Omar Ali. Thus, *prima facie* the name of Abdul Hakim @ Hakim Ali figures in a land document prior to 1966 and thereafter, his name as Abdul Hakim appears in the voters list of 1966 and 1970 along with the projected mother and stepmother of the petitioner.

21. Then, in the voters list of 1977, 1979, 1985, and 1997, the name of the petitioner as Omar Ali @ Omar Bepari appears along with his father Abdul Hakim.

22. With regard to the school certificate which was discarded by the learned Tribunal as fraudulent, the petitioner as proceedee in paragraph- 22 of his written statement stated that he studied in Borakhat L.P. School up to Class IV in 1967 and subsequently, the said school was amalgamated with Borakhat Girls M.E. Madrassa, and the certificate which was exhibited was issued by the headmaster of the said Girls Madrassa.

23. In his testimony also as DW-1, the petitioner in para-22 thereof has provided the same explanation regarding the issue. The said testimony has stood its ground in cross-examination. Therefore, we are of the opinion that the learned tribunal erred in discarding the said evidence on the ground of being fraudulent (Exhibit-N).

24. The petitioner as DW-1 has supported his case in his testimony contending that he is an Indian citizen by birth and testified about his linkage with his father Abdul Hakim. *Saleha Khatun* is stated to be the sister of the petitioner and she has also supported his case as DW-2 stating that the petitioner is her younger brother and that they are the children of Hakim Ali alias Abdul Hakim and mother Ujala Khatun. She has stated about her father's name being recorded in the land document of 1957 and 1964, in the voters list of 1966 and 1970. She has reiterated some of these facts in her cross-examination.

25. One *Abdul Alim*, Gaonburah of village Borakhat, adduced evidence as DW-3 wherein he has stated Omar Ali to be the son of Abdul Hakim of village Borakhat, and due to erosion, the family has shifted to village Tukurapara under the jurisdiction of Chhaygaon Police Station as well. He has testified about the certificate issued to the petitioner about his father's name appearing in the voters list of 1966. From his cross-examination, it is revealed that the petitioner's father expired in 2005. He has also stated about Ujala Khatun being the mother of the petitioner.

26. One *Akbar Ali* adduced evidence as DW-4, and he has testified about the petitioner being from a neighbouring village. He has also stated about Hakim Ali being the father of the petitioner. He further stated that the petitioner first cast his vote in 1977. From the materials, it is found that the name of the petitioner figures in the voters list of 1977 for the first time amongst the voters list adduced in evidence in the proceeding.

27. The above-discussed evidence on its own may not be sufficient to prove linkage and citizenship. However, along with the link evidence *vis-à-vis*, the legacy evidence, which has already been discussed in the preceding paragraphs, the subsequently discussed pieces of evidence could constitute sufficient corroborative evidence to fortify the case of the petitioner.

28. Upon perusing the impugned judgment and opinion passed by the learned Member Foreigner’s Tribunal, we are of the considered opinion that there was error in discarding the relevant evidence by way of the certificate from the school which was adduced in evidence by the petitioner as proceedee. Further, with regard to the voter's list adduced in evidence along with the land document, there was some misreading of evidence by the Tribunal.

29. We are of the opinion that the overlooking of the relevant evidence and the misreading of the evidence would make it justified on our part to set aside the impugned judgment and opinion in exercise of certiorari jurisdiction in this writ petition under Article 226 of the Constitution of India, and it would be correct to remand the matter to the learned Tribunal for a fresh adjudication.

30. Accordingly, the impugned judgment and opinion dated 22-08-2019, passed by the learned Member, Foreigners Tribunal No. 2, Kamrup (Rural) at Boko, in BFT Case No.

4053/2016 is hereby set aside and the case is remanded back to the learned Tribunal for a fresh adjudication and appreciation of evidence with findings thereupon. The said exercise may be done by the learned Tribunal expeditiously, keeping in mind the principles under Section 3(14) of the Foreigners (Tribunals) Order, 1964.

31. Further, till the fresh adjudication is completed, no coercive action shall be taken against the petitioner by way of detention or deportation. To that extent, the interim order passed on 07.03.2022 in this writ petition stands modified.

32. Return the original records to the learned Tribunal.

33. The writ petition stands disposed of on the aforesaid terms.

JUDGE **JUDGE**

Comparing Assistant