GAHC010116622020

2026:GAU-AS:15219

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

Case No. : WP(C)/3451/2020

SAMSUN NEHAR @ SOMSUN NEHAR
D/O- FOKOR UDDIN @ MD. FOKER UDDIN R/O- VILL- NAHAR GAON, P.O. AND P.S. DOBOKA, DIST.- HOJAI, ASSAM, PIN- 782440

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, THE MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN (NRC) ASSAM
1ST FLOOR ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
KAMRUP (M) ASSAM
GHY-05

5:THE DY. COMMISSIONER
HOJAI

P.O. AND P.S. SANKARDEV NAGAR
HOJAI
DIST.- HOJAI
ASSAM
PIN- 782442

6:THE SUPERINTENDENT OF POLICE (B)
HOJAI
P.O. AND P.S. SANKARDEV NAGAR
HOJAI
DIST.- HOJAI
ASSAM
PIN- 782442

7:THE MEMBER
FOREIGNERS TRIBUNAL
NAGAON COURT NO. 10TH AT SANKARDEV NAGAR
HOJAI
P.O. AND P.S. SANKARDEV NAGAR
HOJAI
DIST.- HOJAI
ASSAM
PIN- 78244

Advocate for the Petitioner : MR. L R MAZUMDER, MD. I HUSSAIN,MR. H A TALUKDAR

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

-BEFORE-
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the Petitioner : Mr. L. R. Mazumdar, Adv.
Advocate for the Respondent No.1: Mr. D. Doley, CGC
Advocate for the Respondent Nos. 2, 4, 6 & 7: Mr. J. Payeng, SC, Home Dept. & NRC
Advocate for the Respondent No. 3 : Mr. A. I. Ali, ECI
Advocate for the Respondent no. 5 : Mr. P. Sarma, Sr.Govt. Adv.

Date on which judgment is reserved : **18.08.2026**

Date of pronouncement of judgment : **07.10.2026**
Whether the pronouncement is of the operative part of the judgment ? : N/A

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(*Pranjal Das, J*)

1. Heard Mr. L. R Mazumdar, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned Standing Counsel, Home Deptt., and NRC for the respondent nos. 2, 4, 6 & 7; Mr. A.I Ali, learned Standing Counsel, ECI for the respondent no. 3, Mr. D. Doley, learned CGC for the respondent No. 1 and Mr. P. Sarma, learned Addl. Sr. Government Advocate for the respondent No.5.

2. Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, namely, Musstt. Samsun Nehar, has challenged the judgment and opinion dated 03.03.2020 rendered by the learned Member, Foreigner's Tribunal No. 10, Nagaon at Sankardev Nagar, Hojai in F.T. (D) Case No. 1695/2018 arising out of S.P.(B) FT Case No. 73/2018.

3. The facts in brief which emerged before the learned Tribunal were that the Superintendent of Police (Border), Hojai made a reference to the Tribunal to adjudicate the issue of her nationality as she was suspected to be a foreigner on or after 25.03.1971 from the specified territory, without any valid documents. Upon receiving the reference, the learned Tribunal registered the aforementioned case and issued notice to the petitioner, whereupon she appeared and filed her written statement. She also filed an additional written statement on 20.03.2019.

4. Subsequently, in support of her case, the petitioner as proceedee

adduced evidence of herself as DW-1. She adduced the evidence of one Md. Fakar Uddin, projected to be her father, as DW-2, and one school Headmaster also adduced evidence on her behalf as DW-3. Further, in support of her contentions, the petitioner as proceedee exhibited as many as 10 documents. However, the learned Tribunal did not accept her contentions and declared her to be a foreigner post the stream of 25.03.1971. Hence, the present writ petition.

5. Mr. Mazumdar, the learned counsel for the petitioner, submits that a transfer certificate which was adduced in evidence by the petitioner was erroneously discarded by the Tribunal; that, the school certificate adduced in evidence was also not correctly appreciated; that, though her father had adduced evidence in her favor, merely because his name figured for the first time in the voters list in 1993, he was disbelieved and that the same is an erroneous interpretation; and that, her father was also wrongly declared as a foreigner.

6. On the other hand, Mr. Payeng, the learned Standing Counsel, Home & NRC, submits that the petitioner adopted a different lineage to escape the D-voter bar; that, there was a change in the name of her father, and that the ARNs are also different. It is submitted that there is no mention as to what happened to the projected grandfather and his family members who appeared in the voters lists of 1966 and 1970. It is also submitted that it is not clear as to when the different family members shifted, as contended, and that the appearance of the projected father in 1993 is also doubtful. It is further submitted by Mr. Payeng that no linkage has been established between the father and grandfather as well. Summing up his

submissions, the learned Standing Counsel contends that there is no infirmity in the judgment and opinion rendered by the learned Tribunal, and therefore, the same should be upheld and confirmed.

7. We have perused the pleadings of the writ petition, the written statement, the evidence of the witnesses adduced during the proceeding, the documents exhibited, and other relevant materials. We have also considered the submissions of the learned counsels on both sides.

8. During the proceeding before the learned Tribunal, the petitioner as proceedee strongly asserted that she was not an illegal migrant and that she was a citizen of India by birth. She stated in the written statement that she was born and brought up at village Nam Doboka Gaon under Doboka Police Station in the district of Nagaon. She mentioned about one Moktar Ali being her grandfather. She stated that Md. Fakar Uddin is her father, and Aklima Begum is her mother, and that her father was also born in the year 1963 in village Bahadurpur No. 1 under Hailakandi Police Station in the then Cachar district, and that her mother was born in 1970 in village Paschim Jaruni under Murajhar P.S. in the district of Nagaon, Assam. She stated that her grandfather and his family members were enrolled in the voters list of 1966 under No. 9 Hailakandi LAC. She stated about shifting of her father from Hailakandi to village Nam Doboka Gaon in the district of Nagaon, and that his name figured in the voters list of 1993 under No. 91 Hojai LAC against Serial No. 1180 of the said village Nam Doboka Gaon in the district of Nagaon.

9. The petitioner as proceedee stated in the written statement that she had studied in M. Ibrahim Ali L.P. School till Class 4 and left the school on

31.12.1995, and her date of birth was 10.03.1983, for which the Headmaster had issued a certificate. She also stated about one Secretary of Hindu Block Gaon Panchayat issuing a certificate in her name, stating in the said certificate that her father was stated to be Fakar Uddin of village Nam Doboka Gaon, was issued on the basis of evidence.

10. In her testimony as DW-1, the petitioner as proceedee reiterated about her being a citizen of India by birth, having been born in the aforesaid Nam Doboka Gaon. She stated about her grandparents, and also about her father being born in 1963 and about his shifting from Hailakandi to Nagaon district of Assam. She also testified about her marriage. As mentioned at the outset, she exhibited the voters list of 1966 in the name of her projected grandfather and also the voters list of 1970 in his name.

11. Exhibit-1 is the voters list of 1966 figuring the name of Moktar Ali, and Exhibit-2 is the voters list of 1970 again figuring the name of Moktar Ali. All that this evidence shows is that the said Moktar Ali, the projected grandfather of the petitioner, was present in India prior to the cut-off date and hence an Indian citizen. From the point of view of the petitioner, what is most important to prove is linkage evidence with the said Indian citizen ancestor by cogent evidence, including essentially documentary evidence. This is the position of law as laid down in a catena of decisions of this Court.

12. From the records and the evidence adduced during the proceeding, it is revealed that the name of Fakar Uddin, the projected father, appears in the voters list of 1993 against No. 91 Hojai LAC. As the said Fakar Uddin is stated to have been born in 1963, his name should have appeared in earlier voters lists, but no such voters lists prior to 1993 have been

exhibited. To put it more specifically, a person born in 1963 would have attained the age of franchise in 1984, but his name figures in the voters list approximately 9 years after the age of franchise. The petitioner also exhibited some subsequent Voters lists of 1997, 2005, and 2014 figuring the name of the said Fakar Uddin. In the said voters lists, the father's name of Fakar Uddin is mentioned as Moktar in the voters list of 1997 and as Moktar Ali in the voters lists of 2005 and 2014.

13. Now, the question is whether mentioning of such father's name would automatically prove that Fakar Uddin is the son of the projected grandfather Moktar Ali. Whether the possibility be ruled out that the Fakar Uddin indicated as son of Moktar or Moktar Ali in the voters lists of 1993, 1997, and 2005 is a different person having the same father's name. However, if there was a Voters list where the name of projected grandfather, Moktar Ali and projected father Fakar Uddin had appeared together, then it would definitely constitute a linkage evidence to show that Fakar Uddin was indeed the son of projected grandfather Moktar Ali.

14. The school certificate was issued approximately 22 years after the proceedee left the school, purportedly on 31.12.1995. Though the author of the certificate has adduced evidence, the certificate bears the State Emblem, which is not permissible on such a certificate, and it has been held by this Court in the ***Khudeja Khatoon Vs. Union of India & Ors*** reported in ***2018 (3) GLT 347*** that such a certificate bearing the State Emblem would make it inadmissible. In any case, it is not clear from the certificate as to on what basis the petitioner has been mentioned as the daughter of Fakar Uddin and on what basis her date of birth was entered in the admission register as 10.03.1983.

15. Similarly, a Gaon Panchayat certificate has been exhibited as Exhibit-9, indicating her as daughter of Fakar Uddin of Nam Doboka Gaon and being married on 08.04.2003 to one Nur Ahmed. It is stated in the certificate that the same is based on evidence placed before the issuing authority, and the said issuing authority while adducing evidence before the Tribunal has also stated the same. To prove such a certificate, two conditions are required:- (i) The author of the certificate should adduce evidence; and (ii) Contemporaneous records should be shown as to on what basis the contents of the certificate were made. Appreciating the certificate from that perspective, though the author has adduced evidence, he has merely stated about issuing the certificate based on evidence placed before him, but it is not clear as to on what contemporary records or evidence the said certificate was issued.

16. From the perusal of the materials and evidences, we find the following:-

(i) Though the name of the projected grandfather of the petitioner appears in the voter lists of 1966 and 1970, but, there are no voter lists where the name of her projected father, Fakar Uddin appears together with the projected grandfather.

(ii) Though the projected father, Fakar Uddin is stated to have been born in the year 1963, but his name appears for the first time in the voters list of 1993, after about 9 (nine) years of attaining the age of franchise.

(iv) There are no voter lists where the name of the petitioner and her projected father appears together.

(v) The Transfer certificate from school apart from bearing the State Emblem was issued after 22 years of the petitioner purportedly leaving the

school and the said certificate together with the testimony of the author does not reveal as to on what basis she was mentioned as the daughter of Fakar Uddin and as to on what basis her date of birth was mentioned as 10.03.1983.

(vi) Similarly, the Certificate issued by the Secretary though mentions her as the daughter of Fakar Uddin and the author of the document has also adduced evidence but contemporaneous records on the basis of which the contents of the certificate was made are not adduced in evidence. The mere statement in the certificate that it was issued on the basis of evidence produced before the Issuing authority, without throwing light on what these materials were would not suffice.

17. Therefore, we are unable to come to the finding that the petitioner has adduced any material evidence creating the linkage between herself and her projected Indian citizen grandfather. Rather, we find that even the linkage between her projected father and her projected Indian citizen grandfather is very weak or almost nonexistent. The impugned judgment and opinion therefore suffers from no infirmity.

18. Accordingly, the writ petition is found to be devoid of merit and is dismissed.

19. Interim order, if any, stands vacated with consequential steps.

20. Return the original case records to the learned Tribunal.

JUDGE **JUDGE**

Comparing Assistant