GAHC010213522019

2026:GAU-AS:15326

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

Case No. : WP(C)/6682/2019

JAMSED ALI
S/O- LATE MAKBUL HUSSAIN, R/O- VILL- PALAHJURI, P.O- GARUKHUTI,
P.S- LAHRIGHAT, PIN- 782106, DIST- MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY SECRETARY TO THE GOVT OF INDIA, MIN OF HOME AFFAIRS,
NEW DELHI- 110001

2:THE CHIEF ELECTION COMMISSIONER OF INDIA
ASHOK ROAD
NEW DELHI- 110001

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

4:THE DGP
ASSAM
ULUBARI
GUWAHATI- 781007

5:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA

GS ROAD
BHANGAGARH
GUWAHATI- 781005

6:THE DEPUTY COMMISSIONER
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782104

7:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. K M HASSAN, MR I AHMED

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

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

For the petitioner : Mr. K. Lahkar, Advocate.
For State respondents : Mr. A.K. Dutta, CGC.
: Mr. A.I. Ali, ECI.
: Mr. J. Payeng, FT and Border.
: Mrs. R.B. Borah, Jr. G.A.

Date on which judgment is reserved : 23.06.2026.

Date of pronouncement of judgment : 12.10.2026.

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. K. Lahkar, learned counsel for the petitioner. Also heard Mr. A.K. Dutta, learned CGC for respondent no.1; Mr. A.I. Ali, learned standing counsel for respondent no.2; Mr. J. Payeng, learned standing counsel for respondent nos.3 to 5 and 7; and Mrs. R.B. Bora, learned Junior Govt. Advocate for respondent no.6.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Jamsed Ali has assailed the opinion dated 22.10.2018, passed by the learned Member, Foreigners Tribunal 2nd Morigaon, Assam, in Case No. F.T. (C) 390/12 [arising out of Police Ref. IM(D)T Case No. 1050/02 dated 30.10.2002], declaring him to be a foreigner of post 1971 stream, who had entered into India (Assam) from the specified territory i.e. Bangladesh on or after 25.03.1971.

3) The petitioner has projected in his written statement that he was born and brought up at village- Palahjuri, P.S. Laharighat, Dist. Morigaon. His father is Magbul Hussain, son of Ishab, who also resided permanently in the said village. The other opposite parties were not his relatives. The name of his father appeared in the voter list of 1966 and 1971 from village- Palahjuri under 84 No. Laharighat LAC. He has landed property and Elector Photo Identity Card (EPIC for short). He had stated that the case was false and denied that he was a foreigner and claimed to be Indian citizen and thus, the case was liable to be dismissed.

4) In his evidence-on-affidavit as DW-1, the petitioner had reiterated the statements made in his written statement and further claimed that his mother's name is Amena Khatun. He had also stated that his grandfather was also a resident of Palahjuri village and was casting his vote from the said village since many years. He also claimed that he and his father had landed property in the same village and he has a sale deed of his land. He claimed to be a voter along with his brothers and mother in the year 2005. The Secretary, Borchala Gaon Panchayat and the Village Headman of Palahjuri village had issued their certificates as an inhabitant of the said village. He had exhibited the following documents, viz., (i) certified copy of voter list of 1971 of village- Palahjuri of his father (Ext.1); (ii) certified copy of voter list of 1966 of village- Palahjuri of his paternal uncle, aunt and grandmother (Sahar Banu) (Ext.2); (iii) certified copy of voter list of 2005 of village- Palahjuri of his own, his mother and his brother (Ext.3); (iv) Proved in original copy of his PAN Card (Ext.4); (v) copy of EPIC in his name (Ext.5); (vi) Certificate issued by village Headman (Ext.6); (vii) certificate issued by the Secretary, Borchala Gaon Panchayat (Ext.7).

5) In his cross-examination, the petitioner had stated that his name is Jamshed Ali. His age is 32 years. His father's name is Late Makbul Hussain. Name of his grandfather is Late (illegible) Ali. He was born in village Palahjuri under Laharighat P.S. He has been casting vote since 2005. His father had casted vote since 1971. Name of his elder parental uncle is Late Hasen Ali. He casted his vote in the year 1966. He was an Indian citizen by birth. The other O.P.'s are not members of his family and he does not know them.

6) The learned Tribunal had taken note of the fact that in his

written statement, the petitioner had not disclosed the name of his mother and grandfather and did not state about the date of his birth and accordingly, it was held that the same amounted to concealment of facts. The voter list of 1966 (Ext.2) was rejected as the same was of his paternal uncle and grandmother and the petitioner did not draw his lineage from them, but from his father and grandfather. It was also held that it is not established that Sahar Banu whose name was recorded in the voter list of 1966 was petitioner's grandmother. Hence, it was held that Ext.2 had no relevancy and cannot be accepted in support of the petitioner's claim of citizenship.

7) The learned Tribunal, took into account the claim of the petitioner that Magbul Hussain, son of Isab, whose name appears in the voter list of 1971 was his father, whose age was 28 years and observed that the petitioner ought to have produced his projected father's voter list of 1966, which was not produced. It was observed that if Magbul Hussain was actually petitioner's father, then his name would have appeared along with persons whom petitioner claims to be his grandmother and paternal uncle. It was observed that the petitioner had not produced any land document or tenancy document to show that Magbul Hussain resided at House No. 94 of village-Palahjuri at the time when house to house enumeration was carried out. It was observed that the petitioner did not prove original electoral rolls to prove the contents of the voters' lists. Accordingly, by placing reliance on the case of *Nasir Uddin v. Union of India & Ors., W.P.(C) 3728/2016*, it was held that the document was not reliable and trustworthy.

8) The certificate issued by village Headman (Ext.6) and the certificate issued by the Secretary, Borchala Gaon Panchayat (Ext.7) were

discarded due to improper use of State Emblem, which the concerned persons were not authorized to use as per the State Emblem of India (Prohibition of Improper Use) Act 2005, as held by this Court in the case of *Nasir Uddin (supra)*. Ext.6 and Ext.7 were also discarded as their authors were not examined. Petitioner's PAN Card (Ext.4) was discarded as PAN Card only shows that a person is an assessee of Income Tax Department and apart from PAN Card, the petitioner has not produced any assessment order to show that he was an assessee of Income Tax Department and moreover, PAN Card are issued on the basis of self-declaration form without any investigation regarding relationship declared in the PAN Card. Accordingly, it was held that in the absence of assessment order, the PAN Card (Ext.4) was held to be not trustworthy and does not establish the relationship of the petitioner with Makbul Hussain. The EPIC (Ext.5) was discarded as it was not a reliable and trustworthy document to prove citizenship and it was a post 1971 document and moreover, the issuing authority was also not examined. The voter list of 2005 (Ext.3) was discarded because it was a post 1971 document. It was observed that it contained the name of Amena Khatun, age- 52 years, whom the petitioner projected to be her mother and in the said context, it was observed that if his projected mother was 52 years in 2005, her name ought to have appeared in any voter list prior to 2005 and moreover, in his written statement, the petitioner had not disclosed the name of his mother. Accordingly, it was held that the petitioner had failed to prove that he or his parents were in the Indian soil prior to 25.03.1971; the petitioner could not prove his birth in India; and his parents and grandparents were in Indian soil prior to 25.03.1971. Hence, the petitioner was declared to be a foreigner of post 1971 stream.

9) The learned counsel for the petitioner had submitted that the voter lists were certified copies of public record and therefore, presumption of the said documents is required to be taken under Section 79 of the Evidence Act, 1872 and in the said context, reliance was placed on the case of *Kirtan Sahu v. Thakur Sahu, AIR 1972 Ori 1981*. It was submitted that under Section 36 of the Representation of the Peoples Act, 1951, a voter list is conclusive evidence that the petitioner is a voter/elector of the particular constituency. It was submitted that there was no rebuttal evidence by the State to dispute the documents exhibited by the petitioner. Accordingly, it was prayed that the impugned opinion be set aside and the petitioner be declared to be an Indian citizen.

10) The learned counsel for the FT and Border matters had made his submissions in support of the impugned opinion.

11) Considered the submissions. Also perused the writ petition and the Tribunal's records.

12) In this case, the petitioner had not disclosed in his written statement the name of his mother; name of his grandmother, date or year of his own birth; where his projected father was born; name of the siblings of his projected father; names of his own siblings; name of his wife and children, if any. The petitioner claims that he, his grandfather and father were the residents of village- Palahjuri and if that be so, there was no reason for the petitioner not to disclose the description/details of the land where they had and/or were residing. The petitioner has remained totally silent regarding the date or year when petitioner's grandfather, father, projected grandmother, projected uncle and projected mother had died. If the exhibited voters lists of

1966, 1971 and 2005 are read together, the family of the petitioner is not available.

13) The entries in the exhibited voters lists are as follows: -

Sl.	Name of voter	Name of relation	Age of voter	Village and LAC detail.
1	Voter List 1966 Hasen Ali Amina Khatun Hussain Ali Sahar Banu	(Ext.2) Isab Hasen Isab Isab	 30 25 24 65	Vill. Palahjuri 84 Laharighat LAC
2	Voter list 1971 Magbul Hussain	(Ext.1) Isab Ali	 28	Vill. Palahjuri 84 Laharighat LAC
3	Voter list 2005 Amena Khatun Siddik Ali Rahena Khatun Idris Ali Jamshed Ali	(Ext.3) Makbul Hussain Makbul Hussain Siddik Ali Makbul Hussain Mokbol Hussain	 52 37 25 31 22	Vill. Palahjuri 84 Laharighat LAC

14) It is quote noticeable that between 1971 and 2005, neither the petitioner nor anyone in his parental family were voters for 34 long years. In the said context, it may be stated that as per the provisions of Section 6-A(2) of the Citizenship Act, 1955, which is the special provisions in respect of the State of Assam, the requirement of law is as follows: -

> *6-A. Special provisions as to citizenship of persons covered by the Assam Accord. –*
> *(1) * * **
> *(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.*

15) Therefore, apart from the fact that the petitioner is required to

prove that his grandfather and father had their existence in India (Assam) before 1966, but they were continuously residing in Assam since the date of their entry into Assam.

16) In this case, the petitioner had not made any attempt to disclose his relationship with the voters whose name are entered in the exhibited voters lists of 1966 (Ext.2) and 2005 (Ext.3). The voter list of 1971 (Ext.1) contains only one name. Thus, from a conjoint reading of the statements made in the written statement, statements made in the petitioner's evidence-on-affidavit and the said three voters lists of 1966 (Ext.2), 1971 (Ext.1) and 2005 (Ext.3), the existence of one family is not proved.

17) Thereis no dispute with the submissions made by the learned counsel for the petitioner that under the Representation of the Peoples Act, 1951, a certified copy of the electoral roll is a conclusive proof that the person whose name is entered in the electoral roll is a voter of the concerned constituency. However, the voter list is not a conclusive proof of parentage to draw lineage through the person whose name appears in a particular voter list.

18) It may be stated that in and in his PAN Card (Ext.4) and EPIC (Ext.5), the name of petitioner's father is Makabol Hussain; in the Village Headman's certificate (Ext.6), the name of his father is Makbul Hussain; and in the Borchala Gaon Panchayat certificate (Ext.7), the name of petitioner's father is Magbul Hussain.

19) As held by the learned Tribunal, the certificate issued by the *Gaonburah* (Ext.6) and certificate issued by the Secretary, Borchala Gaon Panchayat (Ext.7) is inadmissible in evidence for two reasons. Firstly, the authors of the said certificates were not examined to prove the contents of their

respective certificates with contemporaneous record. Not only the certificates has to be proved, but the contents thereof are also required to be proved. In this regard, reference may be made to the case of *Manowara Bewa @ Manora Bewa v. Union of India & Ors., 2017 (2) GLT 143: (2017) 2 GLR 632*, wherein it was held by this Court that the certificate issued by the Secretary, Gaon Panchayat has got no statutory sanction, rather such a certificate would be contrary to the mandate of the Assam Panchayat Act, 1994 and Citizenship (Registration of Citizens and Issue of National Identity Card) Rules, 2003, besides opposed to national interest. It was also held that such a certificate would not partake the character of a "public document" merely on account of counter-signing of the same by the Block Development Officer. Therefore, contents as well as the execution have to be proved by examining the person issuing the same. It was held that such a certificate partakes the character of a "private document" in which event the author of the document would have to come and testify to prove the truthfulness of the contents of the said document. In the case of *Basiron Nessa v. Union of India & Ors., 2018 (4) GLT 692*, this Court had held that certificate issued by the *Gaonburah* must be proved from record and not solely by oral testimony.

20) The certificates by the *Gaonburah* (Ext.6) and Secretary of Gaon Panchayat (Ext.7) is *prima facie* inadmissible in evidence because of the fact that the State Emblem i.e. State Seal of Lion Capital of Ashoka at Sarnath has been used in the said certificate. This Court in the case of *Diluwara Khatun v. Union of India & Ors., 2019 (1) GLT 382*, after discussing the various provisions of the applicable Acts and Rules in respect of use of State Emblem, has categorically held that any document or certificate issued by an authority using

the State Emblem, who are otherwise not authorized to use the State Emblem under the Act and the Rules are inadmissible piece of evidence and therefore, no reliance can be placed on such document.

21) In respect of PAN Card, this Court in the case of *Mustt. Rabiya Khatun v. Union of India & Ors., W.P. (C) No. 4986/2016, decided on 09.02.2018*, had held that PAN card not a trustworthy document as the petitioner therein was not an Income Tax payee and the PAN card not proved by calling Income Tax official regarding application for PAN card. In the case of *Md. Babul Islam v. Union of India & Ors., W.P.(C) 3547/2016, decided on 09.05.2018*, this Court had held that EPIC and PAN Card is not a valid piece of evidence in absence of supporting evidence. It was also held that the PAN card contains the date of birth and if the same was known to the petitioner, the petitioner should have mentioned it in the written statement.

22) Thus, 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 and parents.

23) Therefore, in light of discussions above, this Court does not find 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 Foreigners 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.

24) Hence, this writ petition fails and the same is dismissed, leaving

the parties to bear their own cost. The consequences of the impugned opinion dated 22.10.2018, passed by the learned Member, Foreigners Tribunal 2nd Morigaon, Assam, in Case No. F.T. (C) 390/12 [arising out of Police Ref. IM(D)T Case No. 1050/02 dated 30.10.2002], declaring the petitioner, namely Md. Jamsed Ali to be a foreigner of post 25.03.1971 stream, would follow.

25) Interim bail granted to the petitioner by order dated 17.12.2019, stands vacated and revoked.

26) The Registry shall return back the Tribunal's records along with a copy of this judgment and order to be made a part of the record by the learned Tribunal.

JUDGE **JUDGE**

Digitally signed by Champak Rajbongshi
Date: 2026.10.12 14:33:07 +05'30'

Comparing Assistant **Private Secretary**