GAHC010302132019

undefined

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

Case No. : WP(C)/9121/2019

MAKBUL HUSSAIN @ MAGBUL HUSSAIN
S/O. KURPAN ALI @ KURPAN @ KURFAN ALI, VILL. CHANDANPUR, P.S. KASUMARA, P.O. BARGHOL, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TRILOK MARG, NEW DELHI-01.

2:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-110001.

3:THE COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

4:THE SUPDT. OF POLICE (B)

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

5:THE DY. COMMISSIONER OF BARPETA

P.O. BARPETA

DIST. BARPETA
ASSAM
PIN-781301.

6:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS

BHANGAGARH
GUWAHATI
ASSAM
PIN-781004

Advocate for the Petitioner : MR. N UDDIN, MR G SAROWAR,MR. M ISLAM

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Advocate for the Petitioner :

Mr. N. Uddin

Advocate for the Respondents :

Mr. P. Lhamu, learned Advocate on behalf of Mr. B. Kaushik, learned CGC
Mr. A.I. Ali, learned Standing Counsel, ECI
Mr. G. Sharma, learned standing counsel for the FT matters and NRC
Mr. P. Sarmah, learned Additional Senior Government Advocate

Date of hearing – 31.07.2026
Date of judgment – 08.10.2026

JUDGMENT & ORDER (CAV)

(Susmita Phukan Khaund., J)

Heard Mr. N. Uddin, learned counsel for the applicant. Also heard Mr. P. Lhamu,

learned Advocate on behalf of Mr. B. Kaushik, learned CGC, Mr. A.I. Ali, learned Standing Counsel, ECI, Mr. G. Sharma, learned standing counsel for the FT matters and NRC; and Mr. P. Sarmah, learned Additional Sr. Govt. Advocate for the respondents.

Factual matrix:-

2. The petitioner, namely, Makbul Hussain @ Magbul Hussain has filed this application under Article 226 and 227 of the Constitution of India with prayer to issue a writ of certiorari or mandamus to set aside and quash the final orders/opinion dated 17.09.2018, passed by the learned Member, Foreigners Tribunal No.7, Barpeta in Case No. F.T.262/2016 [Corresponding to R/IM(D)T Case No.6248/98], thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream. .

3. A reference was made by the Superintendent of Police (B), Barpeta under the IM(D)T Act vide Reference IM(D)T No. 6248/98, expressing doubt regarding the nationality of the petitioner, and praying for an enquiry to determine the petitioner's nationality.

4. In the case of ***Sarbananda Sonowal Vs. Union of India,*** reported in ***(2005) 5 SCC 665,*** the IM(D)T Act, 1983 was declared to be *ultra vires* and all the cases were transferred to the Foreigners Tribunal to be tried under the Foreigners Tribunal Act, 1946 and the Foreigners (Tribunal) Order, 1964. Subsequently, this case was transferred from F.T 2, Barpeta to the newly created Tribunal No.7.

5. After registration of this case, notices were issued to the petitioner, who appeared before the Tribunal and contested the proceeding and filed his written statement (WS, for short). Thereafter, the petitioner filed evidence-in-

chief on affidavit and adduced the evidence of 3(three) witnesses, including himself, to substantiate his stance.

6. The petitioner examined the following witnesses and exhibited the following documents :-

i) DW-1 - Makbul Hussain @ Magbul Hussain

ii) DW-2 – Kurpan Ali @ Kurpan

iii) DW-3 – Gao Burah/Zakir Hussain

Exhibits :-

a) Ext.A – voter list of 1966;

b) Ext.B – voter list of 1970;

c) Ext.C – voter list of 1977;

d) Ext.D – voter list of 1997;

e) Ext.E – voter list of 2008;

f) Ext.F – voter list of 2016;

g) Ext.H – Gaon Burah Certificate;

h) Ext.I – Self sworn affidavit

Decision of the Tribunal:-

7. It was held by the learned Tribunal that there was no disclosure of the place of birth of the petitioner's grand-parents nor had the petitioner disclosed the names of his grandfather's siblings. The Tribunal further held that the petitioner had not specifically mentioned in his pleadings about the names of his paternal grandparents. It was only on the basis of the voters list of 1966 that the petitioner stated that the names of his paternal grandparents were Jan

Mamud and Aymona Khatun. The Tribunal also observed that the petitioner had not disclosed his date of birth or the names of his siblings or children.

7.1 It was observed that the pleadings were inadequate and insufficient to assert citizenship as per Section 9 of the Foreigners Tribunal Act, 1946 (F.T Act, for short). It was held by the Tribunal that these material facts, which were within the domain and knowledge of the petitioner, had not been placed before the Tribunal. It was also observed that it is a settled proposition of law that what is pleaded alone can be proved. Accordingly, the Tribunal held that the petitioner's evidence had no probative value or credibility, and that he had failed to discharge his onus and fulfill the mandate of Section 9 of the Foreigners Act, as held in paragraph 26 of the *Sarbananda Sonowal's* case *(supra)*.

7.2 The Gaon Burah, Zakir Hussain deposed as DW-3, but the certificate issued by him was not accepted as valid evidence, as the certificate was not based on any public record maintained by the Gaon Burah. As per the executive instructions contained in Part-VIII of the Assam Land and Revenue Regulation, 1886, the Gaon Burah has no statutory right to issue a residential certificate. Accordingly, the certificate was held to have been issued without legal sanctity and was inadmissible in evidence.

7.3 Elaborately discussing the relationship between the petitioner, DW-1 and his father DW-2, the learned Tribunal pointed out the discrepancies in the names and age of the petitioner. In some voters list,

the petitioner’s grandfather’s name is shown as Janu Miya, whereas, in other voters list, his grandfather’s name appears as Jan Mamud. Discrepancies in their ages were also pointed out. The Tribunal, after comparing all the voters lists found that, the age of Kurpan Ali was 17 years in 1966 and 21 years in 1970. However, the voters list of 1966, at Sl.40 depicts the name or Kurfan Ali as son of Jan Mamud and his age appears as 24 years. It was held that if, Kurfan Ali was 17 years of age in 1966, then he was not eligible to vote, whereas the entry of Kurfan Ali in the voters list of 1966 reflects his age as 24 years. Accordingly, the said entry was held to be a doubtful entry.

7.4 It is apt to mention at this juncture that the petitioner’s projected father was Kurpan Ali, who deposed as DW-2. It was also observed by the learned Tribunal that Kurpan Ali, while deposing as DW-2, testified in his cross-examination on 01.08.2018 that his father had passed away about 8 years back. If, his father had passed away about 8 years back, his father would have been alive in the year 2010. However, his father's name does not appear in the voters' lists of 1970, 1977, 1997, and 2008. The Tribunal has observed that in various voters list, the petitioner was shown to be the son of Jan Mamud @ Jamu @ Janu @ Janu Miah. However, the petitioner failed to justify why discrepancies in his father's name or in the names of his relatives had appeared in different voters list, as it was the bounden duty of the petitioner to discharge his burden as per Section 9 of the F.T Act. The voters' lists of 1966 and 1977 is of village of Niz-Paruwa and Champupara, whereas the voters' list of 1997 is from the village of Duramari. The petitioner's father, Kurpan Ali in his cross-examination as

DW-2 had admitted the fact that before shifting from Niz-Paruwa, he was staying on his own land, and it was held by the learned Tribunal that non-production of the land document in spite of being in ownership and possession of the land makes the entry of voters list of 1966, a doubtful voters list. An affidavit relating to discrepancies in names was marked as Ext.I, but this affidavit was not accepted as evidence by the Tribunal, being a self-sworn affidavit. The learned Tribunal held that as per Section 3 of the Indian Evidence Act, 1872 (the Evidence Act, for short) facts have to be proved either by oral or documentary evidence and this affidavit was not sufficient to prove the discrepancies in the names. The Tribunal observed that a person who is suspected to be an illegal migrant can collusively match similar names and can pick up voters lists of 1967 and 1970 with the help of internet communication system by collecting data of the Electoral Roll from the computer in a suitable manner to serve his purpose and can easily become a citizen of India in the process.

7.5 The learned Tribunal relied on the decision of this Court in *Isiran Nessa Vs. Union of India in WP(C) No. 2460/2016* and held that the petitioner in this case has failed to prove the authenticity of the voters lists of 1970 (Ext.B), 1977 (Ext.C), 1997(Ext.D), 2008 (Ext.E) and 2016(Ext.F) by comparing with the primary evidence of the lawful custodian and as such, the extract translated copies of the voters list were held to be not proved.

Case of the petitioner:-

8. It is argued on behalf of the petitioner that the learned Tribunal has

erroneously discarded the public documents which clearly establishes the petitioner's citizenship. The shifting of the petitioner and his family on three counts have already been mentioned in the written statement. The petitioner also mentioned the names of his grandparents in the written statement. The discrepancies in the petitioner's parents and grandparents names have been explained in the written statement. The petitioner was also able to establish a linkage with his parents and grandparents as the names of his parents and grandparents appear in the voters' list of 1970. Thus, the pleadings have been substantiated by the evidence. It is submitted that this is not a case where the evidence is beyond pleadings.

9. It is submitted by the learned counsel for the petitioner that the discrepancies in the names of the petitioner's father and grandfather was explained. The petitioner's pleadings and evidence was substantiated by the evidence of the petitioner's father as DW2. When his father had appeared as a witness and when his father is an Indian citizen, the citizenship of the petitioner cannot be doubted. It is also emphasized through the argument that the Gaonburah had proved his certificate as DW3. It is submitted that this erroneous opinion of the Tribunal is liable to be set aside.

Arguments for the respondents:-

10. The learned standing counsel for the FT and Border Matters, Mr. G. Sharma, laid stress in his argument that the petitioner could not establish any link between his father and grandfather. After 1970, there is no evidence of existence of the petitioner's grandfather and the petitioner’s father deposed as DW2, that his father (petitioner’s

grandfather) died about eight years back. There ought to have been voters' lists reflecting his grandfather's name, even after 1970, but the petitioner failed to prove any voters' list after 1970, which had his grandfather's name. It is further contended by the learned standing counsel, Mr. G. Sharma, that all the villages in the different voters' lists are different, and the Gaonburah mentioned about two villages only. There is no continuity from 1977 up to 1997. No voters' list for a gap of 20 years could be produced after 1970.

11. Merely, on oral statements or oral evidence of the petitioner's father, the petitioner cannot be held to be an Indian citizen.

Analysis and conclusion:-

12. We have given our thoughtful consideration to the submissions at the bar.

13. It is reflected in the written statement that the petitioner's family had shifted from Niz-Paruwa to village Champupara Pathar, due to erosion of the Brahmaputra River, and before 1997, his family members shifted from Champupara Pathar to Duramari, (Ka) Dighalchura. However, the written statement of the petitioner depicts that the petitioner did not mention his date of birth and he did not reveal the names of his siblings or the names of his uncles and aunts. The petitioner tried to bridge the gap from 1977 to 1997 with the certificate of the Gaonburah of Village Niz-Paruwa.

14. Let us examine if the petitioner was able to bridge the gap of 20 long years from 1977 up to 1997 and establish a linkage with his parents or with his grandparents. He adduced his evidence as DW1 and he had

mentioned the names of his grandparents and his parents in his written-statement and evidence-in-chief. He also tried to explain the discrepancies in the names of his parents and grandparents in the voters lists. He also tried to explain the change of addresses in the voters lists by stating that his family had shifted from one village to another due to erosion. Through his evidence and pleadings, the petitioner stated that he was born and brought up at Village Niz-Paruwa and soon after his birth, his family members shifted from Village Niz-Paruwa to Village Champupara Pathar due to erosion of the Brahmaputra River and after 1970, his family members again shifted from Champupara Pathar to Ujan Duramari. He further stated that after 1997, his family members again shifted from Duramari (Dighalchura), to the Village Bhitar Duwar under Kamrup District and since then his family members have been residing in Bhitar Duwar. Assuming that the petitioner's family members have changed three villages, even then if the voters lists are taken into consideration, it can be safely held that the petitioner could not establish any linkage with his parents or grandparents.

15. Even if the argument of the learned counsel for the petitioner is considered that the certified copies of voters lists are public documents and the certified copies are secondary evidence which is not required to be compared with primary evidence, the voters lists do not establish that the petitioner is an Indian citizen. The DW1 proved the voters list of 1966 as Exhibit A. The voters list of 1966 is of village, Niz-Paruwa and his father's name appears as Kurfan Ali, son of Jan Mamud and his age is shown as 28 years. Apart from the names of his grandparents, DW1 did not explain who are the other members shown as residents of house No. 8 in the voters list

of 1966 in his written statement or even in his evidence-in-chief. There is a slight discrepancy in the spelling of names in the voters list of 1966, *qua* the voters list of 1970 where the father's name of DW1 is shown as Kurpan Ali instead of Kurfan Ali as shown in the voters list of 1966. Here, the age of Kurfan Ali, after a span of 4 years is shown as 26 years whereas his age was 24 years in the voters list of 1966.The village here is Champupara and not Niz-Paruwa.

16. The grandfather's name of DW1 in the voters list of 1970 is shown as Janu Miya instead of Jan Mamud. The voters list of 1970 is marked as Exhibit-B. The voters list of 1977 is marked as Exhibit-C and this voters list is of village Ujan Duramari within the district of Kamrup. The voters list depicts the name of the petitioner's father as Kurpan Ali, son of Janu Miya and his age is shown as 38 years. Now after 7 years, the age of Kurpan or Kurfan ought to have been 26 + 7 years i.e. 33 years, but here the age of Kurfan Ali with a different name is shown as 38 years instead of 33 years. In Exhibit-C i.e., the voters list of 1977, the wife of Kurfan Ali is shown as Mayar Nessa and her age is shown as 37 years. The petitioner's mother's name does not appear in any other voters list. The petitioner's grandparent’s names appear in the voters list of 1966. The petitioner has identified only his grandparents and his father in the voters list of 1966 but he has not identified the other voters mentioned in the voters list of 1966 at house No. 8.

17. It would be apt to reiterate that in the voters list of 1966 the name of petitioner's grandfather is shown as Jan Mamud and his grandmother's name is shown as Aymona Khatun. It is noticeable that not a single voter's list is of the same village. There is indeed an explanation in the written

statement that the petitioner's parents have shifted from village to village due to erosion of the Brahmaputra. Again, there are discrepancies in the names in the voters list of 1977 *qua* the voters list of 1997 as well as the other voters lists.

18. Here, in the voters list of 1997 marked as Exhibit-D, the petitioner's father's name appears as Kurpan Ali and his grandfather's name appears as Janu Miya. His father's age is shown as 48, whereas his mother's name instead of Moyar Nessa is shown as Moiron Nessa in the voters list of 1997. The petitioner's name appears for the first time in the voters list of 1997 and his age is shown as 26 years. This led the Tribunal to hold that the voters list of 1977 relates to another family. The names of the petitioner's parents in the voters list of 1997 is not similar to the voters list of 1977. A wide gap of 20 years cannot be ignored. Moreover, the petitioner was eligible to vote at the age of 21 years, but his name appears for the first time in the voters list of 1997.

19. The petitioner's father, Kurpan Ali, @ Kurpan, deposed as DW2 that before 1997, his son again shifted from Duramari (Ka) Dighalchura to Chandanpur and at present his son is residing at Chandanpur. This evidence of DW2 supports the evidence and pleadings of the petitioner as DW1 that the petitioner had shifted his residence from Duramari to Chandanpur. The voters list of 2008 is marked as Exhibit-E. Here, the petitioner's father's name appears as Kurpan Ali and his age is shown as 68 years and his mother's name appears as Moiran Nessa's whose age is shown as 63 years, revealing age discrepancies in the petitioner's parents' age if compared to the voters list of 1997. After a gap of 8 years, the petitioner's father's age which was shown as 68 years in the

year 1997, his age ought to have been 56 years and not 68 years and his mother's age ought to have been 53 years and not 63 years as shown in the voters list of 2005. Thus, too many discrepancies in the age and names of the petitioner's parents has surfaced in the voters list starting from Exhibits-A, B, C, D & E.

20. Therefore, the Tribunal has not erred while holding that though the names appear to be similar, the age discrepancies depict that the voters lists are of different individuals and not of the petitioner's parents. The petitioner had also exhibited an affidavit which was correctly not accepted as evidence by the Tribunal. This affidavit was exhibited by the petitioner to explain and justify all the discrepancies in the petitioner's name as well as the names of the petitioner's parents and grandparents, including the age discrepancies of the petitioner's parents and grandparents. Indeed a self sworn affidavit will not serve as proper evidence to brush aside the glaring discrepancies in the names and age of the petitioner’s parents and grandparents.

21. As the petitioner's name does not appear in the voters list along with his father, he tried to establish his linkage through the elector photo identity card and also a Gaonburah’s certificate. It is trite law that Elector Photo Identity card does not prove a person's citizenship. Now, the Gaonburah, Zakir Hussain deposed as DW3 and he proved his certificate as Exhibit-H. He stated that he issued the certificate on 24.11.2016, and he proved his signature on the certificate. He stated that the petitioner is known to him and the petitioner Makbul Hussain was born in the village Niz-Paruwa and is presently residing at Chandanpur. In the year 1985, the village Niz-Paruwa and Chandanpur got merged and it is

currently known as Chandanpur village.

22. The residents of the village Niz-Paruwa are now certified as residents of the village Chandanpur. In his cross-examination, he admitted that he had issued the certificate as a residential certificate and that he did not maintain any public record.

23. It has been held by this Court in ***Romila Khatun Vs. Union of India reported in 2018 (4) GLT 373*** that:-

> "*It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge…."*

24. In the light of the decision of ***Romila Khatun (Supra),*** it is held that merely oral evidence is not sufficient to prove citizenship of an individual. The place of residence or the identification of an individual, if proved by any Gaonburah has to be proved with the help of contemporaneous records. The cross-examination of the Gaonburah as DW3 also clearly depicts that he had issued the certificate on the basis of the voters list. He also admitted in his cross-examination that he did not know the mother's name of Kurfan Ali. Thereby, it has been correctly held by the learned Tribunal that this certificate cannot be accepted as a valid piece of evidence.

25. It is also pertinent to mention at this juncture that evidence of DW2 reveals that his son shifted from Chandanpur to Duramari before 1997, but

the voters list of 1997 reveals that DW2 and his son Makbul Hussain were voters at Duramari. This discrepancy has remained unanswered.

26. Apart from the glaring discrepancies in the names and age of the petitioner's parents and grandparents in the voters lists, it is also clear that the Gaonburah certificate and the EPIC were not sufficient to establish the linkage of the petitioner with his grandfather Janu Miya whose names appears in the voters list of 1970 along with his father Kurpan. However, in the voters list of 1970, Janu Miya's name is shown as Janu. The petitioner's name appears with his father and his projected grandfather in the voters list of 1997 whereas his father's name appears as Kurpan Ali, son of Janu Miya. The voters list of 1966 reflects the petitioner's fathers' names as Kurfan Ali and his grandfathers' name as Jan Mamud. The discrepancies in the age has already been reflected in the foregoing discussions and it is not required to repeat the same. The wide gap of the missing linkage from 1977 to 1997 could not be explained by the petitioner to the satisfaction of this Court. It is true that the petitioner had produced an EPIC and a Gaonburah certificate but as has been already discussed in the foregoing discussions, the petitioner failed to bridge the gap of the missing linkage from 1977 to 1997.

27. The evidence of DW2 reveals that the petitioner's grandfather probably passed away in the year 2008 but not a single voters list after 1966 could be produced by the petitioner reflecting his grandfather's name as a voter. The petitioner's father as DW2 categorically admitted in his cross-examination, which was recorded on 01.08.2018, that his father had passed away about eight years back. Thus failure of the petitioner to produce voters lists after 1966 with the name of the petitioner's

grandfather as a voter renders the evidence doubtful.

28. Learned counsel for the petitioner has laid stress in his argument that the oral evidence of DW2 is relevant. The oral evidence of DW2 whose name appears in the voters list substantiates the fact that the petitioner is an Indian citizen as the petitioner, DW1 is the son of an Indian citizen. On this aspect, the decision of this Court in ***Nur Begum Vs. The Union of India, reported in 2020 (3) GLT 347***, is relevant.

29. Learned Standing Counsel for the FT and Border matters has relied on the decision of ***Nur Begum's case (Supra),*** wherein it has been held that:-

> "*The statement of D.W. 2 i.e. Jahurun Begum, who claimed to be the mother of the petitioner, cannot be relied upon in the absence of any documents showing her relationship, either to the projected grandfather, father or to the petitioner herself. Oral testimony of D.W. 2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. Surprisingly, the petitioner failed to produce a single voter list in her name even until the age of 50 years. We would reiterate that in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of D.W. 2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected grandfather, grandmother and father. The petitioner utterly failed to prove her linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents."*

30. In view of the foregoing discussions, it is thereby held that the evidence of DW2 was not sufficient to prove that the petitioner is an Indian citizen due to lack of substantiating documents to prove continuous residency or continuous eligibility as a voter from 1970.

31. Now, a suspect has to prove his case as per Section 9 of the

Foreigners Act which the petitioner has miserably failed. With regard to the aspect of burden of proof as laid down in Section 9 of the Act of 1946, the law is well settled that the burden of proof that a proceedee is an Indian citizen is always on the said proceedee and never shifts. In the said Section, there is non-obstante clause that the provisions of the Indian Evidence Act would not be applicable. For ready reference, Section 9 is extracted hereinbelow-

> *"9. Burden of proof:-If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person."*

32. In the instant case, the written statement is absolutely vague and apparently, has not met the requirements, as laid down by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal Vs. the Union Of India reported in 2005 5 SCC 665***. There is a requirement to disclose the following:

(i) date of birth,

(ii) place of birth,

(iii) name of the parents,

(iv) their place of birth and citizenship.

Further, there may be a requirement to give the details of the parents and siblings. It has been stated that all these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities

of the State.

33. Reverting back to this case, it is reiterated that the petitioner had failed to disclose his date of birth, place of birth, the names of his mother and siblings. Even if the certified copies of the voters lists are held to be admissible in evidence, it can be safely held that the petitioner had failed to prove his case with the help of the voters lists which were exhibited in the Tribunal.

34. This Court cannot be oblivious of the fact that each of the voters list, Exhibits- A, B, C, D & E are of different villages.

35. The lack of continuity of the residence of the petitioner's grandfather from 1966 onwards cannot be ignored. Continuous residence in the Country is *sine qua non* to establish citizenship. On the basis of different voters lists for different villages, after a gap of every 5 years with conspicuous variations in names and age of voters and absence of disclosure of/about entire family dislodges the continuous presence of a particular person in a particular area as a voter.

36. In view of the foregoing discussions, we record our concurrence to the decision of the Tribunal that the petitioner is not an Indian citizen and he is a foreigner of Post 25.03.1971 Stream.

37. The challenge to the impugned opinion fails and resultantly, this writ petition is dismissed. Accordingly, the consequences of the impugned order dated 17.09.2018, passed by the learned Member, Foreigners Tribunal No.7, Barpeta in Case No. F.T.262/2016 [Corresponding to R/IM(D)T Case No.6248/98], thereby holding the petitioner above-named as a foreigner of post 25.03.1971 stream, shall follow. Bail order dated 13.05.2020 stands

cancelled.

38. There shall be no order as to costs.

39. The Registry shall send back the Tribunal's record along with a copy of this judgment and order, to be made a part of the record by the learned Tribunal for future reference.

JUDGE **JUDGE**

Comparing Assistant