



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

**WP(C) No. 1137/2024**

Mohij Ali @ Mohed Ali  
S/o- Late Asan Ali @ Asan Uddin,  
Village- Chalanta Para, Part IV,  
(No.5 Char),  
P.S- Jogighopa, P.O.- Jogighopa,  
District- Bongaigaon,  
Assam, Pin-783384

**.....Petitioner**

***-Versus-***

1. The Union of India,  
Represented by the Secretary to the Ministry  
of Home Affairs,  
Government of India,  
Sastri Bhawan, New Delhi- 110001.
2. The State of Assam,  
Represented by the Secretary to the  
Government of Assam, Home Department  
Dispur, Guwahati-6.
3. The District Commissioner,  
Bongaigaon, Pin-783385
4. The Superintendent of Police (Border)  
Bongaigaon, Pin-783385
5. The Election Commission of India,  
Government of India,  
New Delhi-110001.

6. The State Co-Ordinator,  
National Registration of Citizen  
Housefed 2<sup>nd</sup> Floor Assam,  
Guwahati-32 District Kamrup (M)
7. The Foreigners Tribunal,  
Bongaigaon No-2, Abhayapuri  
Represented by the Standing Counsel  
Foreigners Tribunal,  
Pin-783385

**.....Respondents**

For Petitioner : Ms. T. Begum, Advocate  
For Respondent(s) : Mr. G. Sarma, SC, Home Department  
Mr. P Sharma, Additional Senior Government Advocate  
Mr. H. Kuli, SC, Election Commission of India  
Mr. H. K. Hazarika, Government Advocate

Date of Judgment : **20.09.2024**

**BEFORE**  
**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

**JUDGMENT**

*(MRIDUL KUMAR KALITA, J)*

1. Heard Ms. T. Begum, learned counsel for the petitioner. Also heard Mr. G. Sharma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2 & 4; Mr. P Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 3 and Mr. H Kuli, learned counsel appearing on behalf of Mr. A I Ali, learned Standing

Counsel, Election Commission of India for the respondent No. 5.

- 2.** This writ petition under Article 226 of Constitution of India for issuance of a writ in the nature of certiorari has been filed by the petitioner, namely, Mohij Ali, @ Mohed Ali, praying for setting aside and quashing the impugned opinion/order dated 11.01.2021, passed in Case No. BNGN/FT-2/APR/490/17 by the learned Member, Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri, whereby the above-named petitioner was declared as a foreigner under the Foreigners Act, 1946, who had illegally entered into the territory of India (Assam) from the specified territory of Bangladesh on or after 25.03.1971.
- 3.** We have perused the records of Case No. BNGN/FT-2/APR/490/17, which was requisitioned in connection with the instant writ petition from the learned Member, Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri.
- 4.** On perusal of the case records, it appears that suspecting the petitioner, namely, Md. Mohij Ali son of late Ashen Ali to be a foreigner, an inquiry was initiated against him by the Inspector of Police, Border Branch, Bongaigaon.
- 5.** During the police inquiry, it appeared that the proceedee Mohij Ali was suspected to be an illegal migrant, who entered into India (Assam) on or after 25.03.1971. Considering the report of the Inquiry Officer, the Superintendent of Police (Border), Bongaigaon had referred the matter, i.e., the

IM(D)T Case No. 1104/2001, to the learned Illegal Migrants Determination Tribunal, Bongaigaon under Illegal Migrants (Determination by Tribunals) Act, 1983 [hereinafter referred to as IM(D)T Act], during its force, for its opinion as to whether the said Mohij Ali is a citizen of India or not.

6. Later on, after striking down of the IM(D)T Act, 1983 by the Hon'ble Supreme Court of India in the case of "***Sarbananda Sonowal Vs. Union of India & Anr***" reported in **(2005) 5 SCC 665** and as per the direction of Hon'ble Supreme Court of India passed in the said case, the aforesaid case was transferred to the learned Member, Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri for disposal.
7. On receipt of the said case by the learned Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri, it was re-registered as Case No. BNGN/FT-2/APR/490/17 and notice was issued to the proceedee Mohij Ali.
8. On receipt of the notice, the petitioner appeared before the learned Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri, and on 07.11.2017 he had filed his written statement.
9. In his written statement, the petitioner has pleaded that he is a *bonafide* Indian citizen born to the parents, who were also *bonafide* Indian citizens. It is stated in the written statement that the petitioner was born in the Village Char No. 5 in the District of Goalpara in the year 1963. It is also stated by the petitioner, in his written statement, that the name of the

father of the petitioner is Ahsanuddin @ Asan Ali @ Asan Sheikh and the name of his mother is Sakhina Nessa @ Sakina Khatun.

- 10.** It is also stated there in that the name of the grandfather of the petitioner is Ajim Sheikh @ Ajimuddin @ Ajim and he was also a *bonafide* citizen of India.
- 11.** It is also stated there in that the grandfather of the petitioner had four sons namely, (1) Paku Sheikh, (2) Asan Ali @ Ahsan Uddin @ Asan Sheikh (3) Pashan Uddin and (4) Ramzan Ali and one daughter namely, Azirun Nisa and they were staying in the Village No. 210 Mohanpur under North Salmara Police Station in the then District of Goalpara. It is also stated there in that the names of the parents of the petitioner were included in the National Register of Citizens (NRC) of 1951.
- 12.** It is also stated in the written statement by the petitioner that the names of his parents have been recorded in the voter list of 1966 along with his other uncles and aunts in respect of Village Char No. 5 under 43 No. Bongaigaon Legislative Assembly Constituency, wherein the name of the father of the petitioner has been recorded as Asan Sheikh son of Azim. It is also stated in the written statement that the name of the parents of the petitioner has also been reflected in the voter list of 1970 in respect of Village Char No. 5 under Abhayapuri Police Station.

- 13.** It is also stated in the written statement that due to flood and erosion the parents of the petitioner along with other family members had shifted their residence from Mohanpur Village to Village- Char No. 5.
- 14.** It is also stated in the written statement by the petitioner that though, the parents of the petitioner had five sons and one daughter, however, in the year 1980, the parents started living separately from the other sons and daughters, along with the present petitioner and therefore, in the voter list of 1989, the names of the parents of the petitioner has been reflected along with the petitioner's name. However, the names of the other sons and daughters of the petitioner's father are not mentioned therein.
- 15.** It is also stated that in the voter list of 1989, the name of the petitioner has been recorded as "Sohed Ali" instead of Mohid Ali and the name of the father of the petitioner is recorded as Asan Ali and his mother's name has been recorded as Sakina Khatun.
- 16.** It is also stated in the written statement that the father of the petitioner died about 26 to 27 years ago, whereas, his mother is still alive. It is further stated in the written statement that due to flood and erosion, the petitioner shifted his house from Village Char No. 5 to Village Chalanta Para, Part IV in the year 1993 and started living at Chalanta Para, Part IV. Hence, in

the voter list of 2004, the name of the petitioner has been enumerated in respect of Village Chalanta Para, Part IV.

- 17.** It is also stated in the written statement that one of the brother of the petitioner, namely, Shaked Ali is still alive and he resides at village Mohanpur Part-2 and his name has been reflected in the voter list of 2017 of Village Mohanpur Part-2 of No. 35 Abhayapuri South (SC) Legislative Assembly Constituency.
- 18.** It is further stated in the written statement that another brother of the petitioner, namely, Khair Uddin is living at Village Islampur under Jogighopa Police Station and his name has been reflected in the voter list of 1997 for village Islampur under Jogighopa Police Station of No. 35 Abhyapuri South (SC) Legislative Assembly Constituency.
- 19.** It is also stated in the written statement that name of the father of the petitioner, namely, Asan Sheikh has also been recorded in the periodic Patta No. 118, Dag No. 180 in respect of a land situated at village Mohanpur Part 2 under Shrijon-gram Circle in the district of Bongaigaon along with the names of his brothers and sisters. Similarly, name of the father of the petitioner has also been recorded in periodic patta No. 109 Dag No. 113 in respect of land situated at village Mohanpur Part 2 under Shrijon-gram Circle in the District of Bongaigaon along with the names of his other brothers and sisters.

- 20.** It is also stated in the written statement that Mohid Ali, Mohet Ali, Mahet Ali, Mohij Ali and Sohed Ali are the names of one and the same person and they are the names of the present petitioners. Moreover, Ajim Sheikh, Ajimuddin, Ajim and Ajim are the names of one and the same person who is the grandfather of the present petitioners. Similarly, Asan Sheikh, Asan Ali, Asan, Ashen Sheikh, Ahsan Uddin, Ashen, Asen Ali are the names of one and the same person, who is the father of the present petitioner and Sakina Khatun, Sakhina Nessa, Sakhina Bibi are the names of one and the same person who is the mother of the present petitioner.
- 21.** In support of the contentions made by the petitioner in his written statement, he has adduced his evidence as DW-1 as well as he also examined one Shaket Ali, whom he claims to be his brother, as DW-2.
- 22.** The following documents were exhibited by the petitioner while deposing as DW-1:
- i.** Exhibit-A- Voter List of 1966;
  - ii.** Exhibit-B - Voter details of the projected father of the petitioner in the NRC of 1966;
  - iii.** Exhibit-C - Voter List of 1970;
  - iv.** Exhibit-D - Voter-List of 1989;
  - v.** Exhibit-E - Voter Enumeration Letter of petitioner of the year 2004;
  - vi.** Exhibit-F - PAN Card in the name of the petitioner;



- vii.** Exhibit-G - Kachha Patta in respect of land in Village Mohanpur, Part-II, wherein the name of the projected father of the petitioner is reflected;
  - viii.** Exhibit-H - Kaccha Patta in respect of land situated in Mohanpur, Part-II, wherein the name of the projected father of the petitioner is reflected;
  - ix.** Exhibit-I - Copy of Chitha for surveyed villages in respect of Village Mohanpur, Part-II, wherein the name of the present petitioner is shown as son of Ashan Ali;
  - x.** Exhibit-J - Land Revenue Paying Receipt;
  - xi.** Exhibit-K - Notice to the petitioner issued by the learned Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri, in Case No. BNGN/FT-2/APR/490/17.
- 23.** In his evidence on affidavit, the petitioner has stated that his name is Mohid Ali @ Mahed Ali, however he has also stated therein that Mohet Ali, Mahed Ali, Mohij Ali and Sohed Ali are the names of one and the same person which relates to the petitioner only.
- 24.** In his evidence on affidavit, he has reiterated the facts which were stated by him in his written statement. During cross-examination, he has deposed that his name was enlisted with his father's name in the voter list of 1989.
- 25.** DW-1 has also stated that his name was deleted from the voter list in the year 1992 and he submitted an application for

enrollment of his name in the voter list in the said year, however, his name has not been enlisted.

- 26.** In his evidence on affidavit, DW-2 Shaket Ali claimed himself to be the brother of the petitioner. He has also reiterated the facts stated by the petitioner in his written statement. During his cross-examination, he has stated that his father's name was reflected in the list of 1966 in No. 5 Char where his uncles also resided. He has also deposed that his father died about 19 years ago. He also deposed that he and his father and the petitioner had shifted to Chalanta Para after year 1989. He has also stated that he lives in Mohanpur and at present he possesses a plot of land in Mohanpur and the patta in respect of the said land was issued in his name.
- 27.** Ms. T Begum, learned counsel for the petitioner has submitted that the father and the grandfather of the present petitioner were the residents of Mohanpur under North Salmara Police Station in the District of the then Goalpara Assam and around the year 1966 they were living at Village No. 5 under North Salmara Police Station and from where the petitioner has shifted to Chalanta Para due to erosion and flood.
- 28.** Learned Counsel for the petitioner has submitted that the petitioner could prove his linkage with his projected father namely Asan Ali @ Ahsan Uddin @ Asan Sheikh by exhibiting

the voter list of 1989 where the name of the petitioner is shown along with the names of his projected parents.

- 29.** Learned Council for the petitioner has also submitted that the petitioner has exhibited the Chitha of the land covered by Dag No. 180 Patta No. 119 of Village Mohanpur Part 2, as Exhibit-I wherein the name of petitioner has been recorded as successor of late Ashan Ali on the basis of inheritance. Hence, she submits that both these documents have proved that the present petitioner is the son of late Ashan Ali whose name has been recorded in the voter list of 1966, as well as 1970 and 1989.
- 30.** She has also submitted that the voter details of NRC for the year 1966 also shows the name of the father of the petitioner namely, Asan Sheikh son of Ajim, which shows that the father of the petitioner was a citizen of India prior to 1971 and being the son of said Asan Sheikh the petitioner also is the citizen of India and she submits that Learned Tribunal has erred in discarding the documentary evidence as well as oral testimony of DW's on record and holding that the petitioner is a foreigner who came to India on or after 25.03.1971.
- 31.** Learned counsel for the petitioner has also submitted that in the Exhibit-D i.e., the voter list for the year 1989 the name of the petitioner has been recorded as "Sohed Ali" instead of "Mohed Ali" and as the mistake was done by the authorities concerned and the petitioner was not at fault for this.

Moreover, in his oral testimony the petitioner had given clarification regarding this mistake and therefore, the learned Tribunal had erred in discarding the voter list of 1989 as the link document of the petitioner.

- 32.** Learned counsel for the petitioner has also submitted that in the voter list the age of the petitioner's projected father, mother and brother have not been recorded correctly for which the petitioner is not at fault and the discrepancy in age should not be the basis for discarding the voter lists which were exhibited by the petitioner as the same were beyond the control of the petitioner.
- 33.** Learned counsel for the petitioner has also submitted that if the documents were not proved according to the law, the petitioner should not be made to suffer and instead of that an opportunity may be given to the petitioner to legally prove the documents exhibited by him and for the said purpose the Case No. BNGN/FT-2/APR/490/17 may be remanded back to the learned Tribunal.
- 34.** On the other hand, Mr. G. Sarma, learned Standing Counsel, Home Department, Assam, has submitted that while exercising writ jurisdiction wherein a prayer for issuance of writ of certiorari has been made by the petitioner, the Court ordinarily does not interfere with the finding of facts, which is based on appreciation of evidence by the Tribunal. He submits that the jurisdiction exercised by this Court in such a

case, is supervisory and not appellate, and normally the finding of facts based on evidence, which was appreciated by the Tribunal should not be disturbed unless it is perverse.

- 35.** He also submits that in the instant case, the petitioner has failed to show his linkage with the projected parents by adducing reliable, cogent and admissible documentary evidence.
- 36.** Learned Standing Counsel, Home Department has submitted that the voter list exhibited by the petitioner as linked document i.e., the voter list of 1989 does not contain the name of present petitioner, but one Sohed Ali, whom the petitioner claims to be his name. He submits that the contention made by learned counsel for the petitioner that as the mistakes in the voter list were not done by the petitioner but by the officials of the Election Commission, he should not be made to suffer the same does not hold water as the petitioner cannot insist that only those portion of the voter list, which are in his favour should be accepted and those going to adversely affect him should be overlooked as any exhibited document has to be appreciated as a whole. Hence, he submits that the contention raised by the learned counsel for the petitioner is liable to be rejected. In support of his submission, learned Standing Counsel, Home Department, has cited a ruling of this Court in the case of "**Basiron Bibi Vs. Union of India**" reported in **2018 (1) GLT 372**.

- 37.** Learned Standing Counsel has also submitted that in the Exhibit-D, i.e., the voter list of 1989, the age of the projected brother of the petitioner, i.e., Shaked Ali has been shown as 30 years, whereas his projected mother's age has been shown as 40 years, which shows that the age gap between the mother and son is only 10 years, which is very unlikely to be true and he submits that the learned Tribunal has correctly discarded the said voter list as unreliable.
- 38.** Learned Standing Counsel, Home Department has also submitted that apart from oral testimony of DW-1 as well as of DW-2, no documentary evidence has been produced by the petitioner to show that Sohed Ali and Mohid Ali are the names of the present petitioner. It is also submitted that oral testimony, in such cases, are not sufficient unless supported by documentary evidence.
- 39.** Learned Standing Counsel, Home Department has also submitted that the other link document, which the petitioner has relied upon to show his linkage with his projected father, i.e., Exhibit-I, which is the chitha of surveyed villages, wherein the name of the father of the petitioner has been shown as Ashan Ali, however, in the voter list of 1966, exhibited by the petitioner as Exhibit-A, the name of his projected father is shown as Asan Sheikh, and apart from mere assertion that both the names are of a same person, no other evidence has been produced by the petitioner, and

hence, it is submitted that the learned Tribunal was correct in discarding the said link document.

- 40.** Learned Standing Counsel has also submitted that the testimony of DW-2, also has rightly been discarded by the learned Tribunal as the DW-2 could not even correctly depose before the Tribunal the correct date of death of his projected father, as he has deposed before the Tribunal that his father died 19 years ago, whereas, the petitioner has stated in his written statement that his father died 26 to 27 years ago.
- 41.** Learned Standing Counsel, Home Department has thus, submitted that as the petitioner has failed to prove his linkage with his projected father and failed to adduce any other evidence to show that he is a citizen of India, the Tribunal has rightly opined that the petitioner is not a citizen of India, and therefore, he submits that the finding of the learned Tribunal may not be interfered with and this writ petition may be dismissed.
- 42.** We have considered the submissions made by learned counsel for both the sides and have gone through the materials available on record, including the original case record of Case No. BNGN/FT-2/APR/490/17, which was requisitioned in connection with the instant writ petition.
- 43.** In exercise of writ jurisdiction, while considering a prayer for issuance of writ of certiorari, this Court is not supposed to re-weigh or re-appreciate the evidence upon which the findings

of the learned Tribunal is based. It can invoke its powers for issuance of such a writ only if the findings of the learned Tribunal is found to be palpably erroneous or there is an error of law which is apparent on the face of records. However, for our own satisfaction, we have gone through the pleadings as well as evidence adduced by the petitioner in the reference proceeding before the learned Tribunal in support of his contention that he is a citizen of India.

- 44.** Though, the petitioner has exhibited 11 nos. of documents while deposing before the learned Tribunal as DW-1 in support of his contention, however, the main link documents on which he relied upon to show his linkage with his projected father was the Exhibit-D, i.e., Voter List of 1989, and the Exhibit-I, i.e., the Copy of chitha.
- 45.** On the perusal of the Exhibit-D, i.e., the voter list of 1989, it appears that the name of the petitioner is not reflected there, rather the name of one "Sohed Ali" is mentioned there, which the petitioner claims to be his name, and he tries to project that the name Sohed Ali is in fact his name and there has been an error committed by the authorities by wrongly inserting the first letter of his name as "S" instead of "M". However, apart from oral testimony of the petitioner and DW-2, no other evidence has been adduced to show that the name of the petitioner has been wrongly spelled in the voter list of 1989. No authorities from the Election Commission of India has adduced evidence to verify the claim of the



petitioner that in the voter list of 1989, his name has been wrongly spelt in the Exhibit- D.

- 46.** Regarding the submissions made by the learned counsel for the petitioner that the discrepancies in the name and age in the voter list should not be given undue weightage as because the entries were made by the Electoral Authorities and not by the petitioner himself, this aspect was dealt with by this Court in the case of *Basiron Bibi Vs. Union of India*” (*Supra*), wherein it was observed that when the voter list are adduced as evidence by the petitioner himself to prove her or his case that he or she was not a foreigner but a citizen of India, the petitioner cannot insist that only that portion of the voter list which are in her/his favour should be accepted and those portions going against him or her should be overlooked. This is not how a document put forward as a piece of evidence should be examined. A document has to be appreciated as a whole.
- 47.** In the instant case, the documents relied upon by the petitioner, namely Exhibit-D, which is the voter list of 1989 does not show the name of the petitioner therein. Moreover, apart from the oral testimony of the DWs, there is nothing on record to show that Sohed Ali, whose name is reflected in the voter list of 1989, Exhibit-D and the present petitioner are one and the same person. We are, therefore, of the considered opinion that the learned Tribunal was correct in discarding the

said Exhibit -D as the link document as projected by the petitioner.

- 48.** The other link document, which the petitioner has relied upon to show his linkage with his projected father, i.e., Exhibit-I, which is the Chitha of surveyed villages, wherein the name of the father of the petitioner has been shown as Ashan Ali. However, in the voter list of 1966, exhibited by the petitioner as Exhibit-A, the name of his projected father is shown as Asan Sheikh. To show that different names appearing in two different documents are the names of one and the same person, oral evidence is not enough. Otherwise, any person may claim any name appearing in a document to be his or her name. Apart from oral testimony, documentary evidence is necessary in such cases to show that as to why such discrepancy in the name of a person occurred in two different documents. Unless a satisfactory explanation is given for such a discrepancy which is occurring in the names shown in two different documents and unless there are reliable, cogent and admissible materials on record, for the learned Tribunal to come to a finding that the mistake occurring in the names of a person in two different documents is a *bona fide* mistake, it cannot be regarded even as a mistake in the names and such different names appearing in two different documents would be regarded as the names of two different persons.

- 49.** In the instant case, apart from mere oral assertion that both the names i.e., Ashan Ali and Asan Sheikh are the names of a same person, no other evidence has been produced by the petitioner, and hence, we are of the considered opinion that the learned Tribunal was correct in discarding the oral testimony to the effect that both the names i.e., Ashan Ali and Asan Sheikh are the names of a same person. We are, therefore, of the considered opinion that the learned Tribunal did not erred in discarding the oral evidence to the effect that Ashan Ali and Asan Sheikh are the names of a same person, i.e., projected father of the petitioner.
- 50.** In the instant case, the reference has been made against one Md. Mohij Ali son of late Ashen Ali, and the opinion has also been rendered by the Tribunal in respect of the said person.
- 51.** However, the link documents intended to be relied upon by the petitioner to show his linkage with his projected father and other documents does show that there are discrepancies in the name entered in the said documents and therefore, we are of the considered opinion that the learned Tribunal has rightly discarded the same and thus the petitioner has failed to establish his linkage to an Indian parent or grandparent relatable to the period prior to 25.03.1971, which is the cut-off date for identification of foreigners in the state of Assam.
- 52.** The Submissions made by learned Standing Counsel, Home Department, Government of Assam, as discussed in foregoing

paragraphs, appears to have force in it and are acceptable. We are also of the opinion that the learned Tribunal has rightly discarded the evidence, both oral as well as documentary, adduced by the petitioner as it suffers from material contradictions which makes the same highly improbable and unsafe for reliance.

- 53.** For the reasons mentioned in foregoing paragraphs, we do not find any valid reasons to interfere with the impugned opinion/order dated 11.01.2021 passed by the learned Foreigners' Tribunal, Bongaigaon No. 2 at Abhayapuri in Case No. BNGN/FT-2/APR/490/17. As such the instant writ petition being without any merit accordingly, stands dismissed.
- 54.** The Registry to send back the records of Case No. BNGN/FT-2/APR/490/17 to the learned Foreigners' Tribunal, Bongaigaon No. 2 at Abhayapuri along with a copy of this judgment.
- 55.** Let, a copy of this judgment be also furnished to the concerned Deputy Commissioner Bongaigaon and the Superintendent of Police (Border), Bongaigaon for their necessary use.
- 56.** This writ petition is accordingly, disposed of.

**JUDGE**

**JUDGE**

Comparing Assistant