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GAHC010095592019

2026:GAU-AS:16234

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

Case No. : WP(C)/3087/2019

SOFIQUL ISLAM
S/O- MD. SADAR ALI, R/O- TENGAGURI KACHARIGAON, P.O- TENGAGURI, P.S- LAHARIGHAT, DIST- MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME
DISPUR
GUWAHATI-06.

4:THE DEPUTY COMMISSIONER
MORIGAON
P.O. AND P.S- MORIGAON
DIST- MORIGAON
ASSAM. PIN- 782105.

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5:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
P.O. AND P.S- MORIGAON
DIST- MORIGAON
ASSAM. PIN- 782105.

6:THE STATE COORDINATOR
NRC
G.S. ROAD
BHANGAGARH
GUWAHATI-05

BEFORE

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

For the petitioner : Mr. N. Haque, Advocate.
For respondents : Mr. U.K. Goswami, CGC.
: Mr. G. Sarma, SC, FT & Border.
: Ms. R.B. Bora, Jr. Govt. Advocate.
: Mr. A.I. Ali, SC, ECI.

Date on which judgment is reserved : 24.09.2026

Date of pronouncement of judgment : 05.11.2026

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. N. Haque, learned counsel for the petitioner. Also heard Mr. U.K. Goswami, learned CGC; Mr. A.I. Ali, learned standing counsel for the ECI;

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Mr. G. Sarma, learned standing counsel for the Border and FT matters; and Ms. R.B. Bora, learned Junior Govt. Advocate for State.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Md. Sofiqul Islam, has assailed the impugned opinion dated 27.08.2018, passed by the learned Member, Foreigners' Tribunal 2nd, Morigaon, in Case No. F.T. 30/2017 [arising out of Police Ref. F.T. Case No. 65/2017, dated 12.09.2017], thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream. Moreover, having declared the petitioner to be a foreigner of post-1971 stream, his son and daughter, namely, Md. Sazit Ahmed and Sabina Khatun, were also declared to be foreigners of post-1971 stream, drawing lineage from their father Md. Sofiqul Islam.

3. On service of notice of the proceedings, the petitioner appeared before the learned Tribunal and filed his written statement wherein, apart from usual denial, he has stated that he is not a foreigner but a citizen of India. The petitioner claims that all the opposite parties born and brought up at village Tengaguri, Kacharigaon under Laharighat Police Station in the district of Morigaon.

4. The petitioner claims that his grandfather, namely, Jahur Ali, son of Tarif Sheikh, finds mention in the voter lists of 1966 and 1970 in respect of village Tengaguri, Kacharigaon, under No. 83 Bokani LAC. The name of the father of petitioner No. 1, namely, Sadar Ali, son of Jahur Ali, also finds mention in the voter lists of 1993, 2005 and 2010 in respect of the same village. The petitioner's own name appears in the voter list of 2010 as well as in his birth certificate.

5. The further statement in the written statement relates to

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respondent Nos. 3 and 4 and, therefore, is not relevant for the purpose of this case, for the reason that as per the opinion dated 27.08.2018, the learned Tribunal had recorded that the reference can be proceeded only against the petitioner Md. Sofiqul Islam, as the endorsement for inquiry was only made against him.

6. Along with his evidence-on-affidavit filed by the petitioner as DW-1, he had reiterated the statements made in the written statement and references were made to twenty exhibits, which are as follows:

(i) The certified copy of Voter List of 1966 containing the name of Jahur Ali (Ext. A).

(ii) The certified copy of Voter List of 1970 containing the name of Jahur Ali (Ext. B).

(iii) The certified copy of Jamabandi of 1969-70 containing the name of Sadar Ali, S/O-Jahur Ali (Ext. C).

(iv) The certified copy of Voter List of 2005 containing the name of Sadar Ali (Ext. D).

(v) The certified copy of Voter List of 2010 containing petitioner's name along with his projected father and members of the family (Ext. E).

(vi) The certified copy of Voter List of 2010 containing the name of Sadar Ali (Ext. F).

(vii) The certified copy of Voter List of 2015 containing the name of Sadar Ali and Fulbanu (Ext. G).

(viii) The Certified copy of the Voter List of 2017 containing the name of Sadar Ali (Ext. H).

(ix) A copy of PAN card in the name of petitioner (Ext. I).

(x) The certified copy of Voter List of 1965 containing the name of Ali Husen (Ext. J).

(xi) The certified copy of Voter List of 1970 containing the name of Ali Husen (Ext. K).

(xii) The certified copy of the Jamabandi of 1969-70 containing the name of Hazrat Ali (Ext. L).

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(xiii) The certified copy of the Jamabandi containing the name of Hazrat Ali (Ext. M).

(xiv) The certified copy of Voter List of 1985 containing the name of Hazrat Ali (Ext. N).

(xv) The certified copy of the Voter List of 1993 Hazrat Ali Hazrat Ali and Hazrat Ali and Siddika Khatun @ Siddika Banu (Ext. O).

(xvi) The School certificate in the name of petitioner's wife (Ext. P).

(xvii) The certified copy of the Voter List of 2017 in the name of petitioner's wife (Ext. Q).

(xviii) The certificate issued by the Secretary of the Gaon Panchayat (Ext. R).

(xix) The birth & Child Care card in the name of Sajid Ahmed and Sufnam Khatun, whose parents are Safiqul Islam and Shahnaj Begum (Ext. S & T).

7. In support of his defence, the petitioner had also examined Sri Bhim Robi Das, Gaonburah of Kacharigaon under Laharighat Police Station. In his examination-in-chief, the DW-2 had stated that he resides at present in Tengaguri, Kacharigaon, P.S. Laharighat, District Morigaon, where he was the Govt. Gaonburah. He had stated on oath that he knows the proceedee, Sofiqul Islam, who is of his lat. His father's name is Sadar Ali, name of his grandfather is late Johur Ali. He had stated that he met Sadar Ali, who is alive and was born at Tengaguri, Kacharigaon. He had seen the father of Sadar Ali; he also met him; the father of Sadar Ali had 12 children; Sadar Ali is not a foreigner, as I have met him since his birth. He had issued Ext.U, his certificate, and Ext.U(i) is his signature. To the Court query, he had stated that the age of Sadar Ali is above 50 years, his own age is 55 years; he had issued certificate to Sofiqul Islam regarding his residence; he had issued the certificate in the year 2018. A case is pending against Sofiqul Islam since 2010; he had issued the certificate (Ext.U) to help Sofiqul Islam, the proceedee in the case; he did not bring any document to prove himself; he has no document to show that he was authorised by the government to issue Ext.U.

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8. The learned Tribunal discarded the Gaonburah certificate (Ext.U) as he had admitted that he could not produce any document to prove himself as Gaonburah, and that he had issued the certificate knowing that a case is pending against the petitioner since the year 2010, and he had issued the certificate to help the petitioner in the case. Accordingly, Ext.U was held to be not a reliable and trustworthy document. The learned Tribunal also observed that in response to the Tribunal's questions, DW-2 had admitted that he has not been authorised by the government to issue the document (Ext.U). It was held that the Gaonburah certificate is not an official document for establishing linkage and that the appointment of Gaonburah is made under Part VIII of Executive Instructions and under the Assam Land and Revenue Regulation, 1886, which does not authorise a Gaonburah to issue linkage certificate. Hence, Ext.U was found to be without any statutory sanctity, which makes the certificate inadmissible in evidence for proving citizenship.

9. It would be relevant to refer to the entries contained in the 7 (seven) exhibited voter's lists of 1966 (Ext.A), 1970 (Ext.B), 2005 (Ext.C), 2010 (Ext.E), 2010 (Ext.F), 2015 (Ext.G), and 2017 (Ext.H) in form of a chart for ready reference: -

Name of voter and voter list year	Relation	Village	Ext. No.	Age
VL- 1966 Jahur Ali Abbas Ali	Relation: Tarif Sheikh -do-	Tengaguri Kacharigaon	Ext.A	55 40
VL- 1970 Jahur Ali Amsar Samsar Abbas Jahuran Nessa Raijan Bibi	Relation: Tarif -do- -do- -do- Jahur Amsar	Tengaguri Kacharigaon	Ext.B	 59 64 49 44 45 54
VL- 2005	Relation:	Tengaguri	Ext.D	

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Md. Sadar Ali	Jahur Ali	Kacharigaon		42
VL- 2010 Md. Sadar Ali Fulbanu Safiqul Islam Shahnaj Begum	Relation: Late Jahur Ali Sadar Ali -do- Safiqul Islam	Tengaguri Kacharigaon	Ext.E	 47 39 23
VL- 2010 Md. Sadar Ali	Relation: Late Jahur Ali	Tengaguri Kacharigaon	Ext.F	 47
VL- 2015 Md. Sadar Ali Fulbanu Shahnaj Begum	Relation: Late Jahur Ali Sadar Ali Safiqul Islam	Tengaguri Kacharigaon	Ext.G	 52 44 25
VL- 2017 Md. Sadar Ali	Relation: Late Jahur Ali	Tengaguri Kacharigaon	Ext.H	 54

10. Referring to the contents of Ext.A (voter's list of 1966) and Ext.B (voter's list of 1970), both the documents were discarded as the petitioner could not prove that he is the son of Sadar Ali, and it has also not been proved that Jahur Ali is the father of Sadar Ali and grandfather of the petitioner.

11. Moreover, referring to Ext.B, it was observed that the petitioner has not been able to prove his relationship with persons named Amsor, whose name appears at Serial No. 57 of House No. 11; Samsor, Serial No. 58, House No. 11; Abbas, Serial No. 59, House No. 11; Jahuran Nessa, Serial No. 60, House No. 11; and Raijan Bibi, Serial No. 61, House No. 11, whose names are recorded with Jahur Ali at the same house. It was also observed that the relationship with the said persons is not stated in the written statement and evidence. Accordingly, it was observed that the same creates a doubt as to whether the petitioner is related to Jahur Ali, whose name is recorded in the voter's list of 1970 as grandfather of the petitioner.

12. The jamabandi (Ext.C) of the year 1969–70 was also discarded

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because on scrutiny of the document, it was found that in the year 1986, the name of Sadar was recorded along with Kutubuddin, Kudush, Idris, Siddik, Subed, Sadek, Miraj, and Dulal, sons of Jahur Ali. However, their names were not stated in the written statement or evidence of the petitioner as brothers of his father. Accordingly, it was doubted as to whether Sadar, son of Jahur Ali, whose name appears in the jamabandi, is at all the father of the petitioner.

13. Referring to the entries of the certified copy of voter's list of 2005 (Ext.D), it was stated that it contains the name of Md. Sadar Ali, age 42 years, who is projected to be the father of the petitioner, but in the said voter's list the name of his mother has not been recorded. The learned Tribunal observed that Sadar Ali, whose age is 42 years in 2005, ought to have had his name recorded in the voter's list prior to 2005, which was not done, which raises a doubt. It was also observed that the voter's list of 2005 is a post-1971 document, and link prior to 1971 has not been established.

14. Referring to the contents of Ext.E and Ext.F, the voter's list of 2010, as the names appearing in Ext.E and Ext.F were not common, the authenticity and genuineness of Ext.E and Ext.F was doubted, and accordingly, those were rejected being not trustworthy documents.

15. Referring to the contents of Ext.G and Ext.H, the voter's lists of 2015 and 2017, on examination, it was observed that in the voter's list of 2015 (Ext.G), the names of Fulbanu and Sahanaj Begum have been recorded along with Sadar Ali, but the said voter's list did not contain the name of the petitioner along with Sadar Ali, and the entry of Serial No. 88 was found missing. The learned Tribunal observed that the names of Fulbanu and Sahanaj Begum did not appear in the voter's list of 2017 (Ext.H). Accordingly, both the documents were not found acceptable or reliable or trustworthy document in support of the

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petitioner's claim of Indian citizenship.

16. The PAN card (Ext.I) was rejected as the petitioner did not produce any assessment order to show that he is an assessee of the Income Tax Department, and the learned Tribunal observed that the PAN cards are issued on self-declaration form without any investigation by the Income Tax Department regarding entry of relationship in the PAN card. Accordingly, it was held that the PAN card (Ext.I) does not establish relationship of the petitioner with Sadar Ali, whose name is recorded in the PAN card as relation of the petitioner.

17. Discussion on Exhibits J, K, L, M, N, O, P, Q, and R, being documents relating to Sahanaj Begum, wife of the petitioner, and discussion on Ext.S, birth certificate of Md. Shajid Ahmed, son of the petitioner, and immunisation book (Ext.T) of Sufnam, daughter of the petitioner, is not necessary for the purpose of this order.

18. Accordingly, the petitioner was held to be a foreigner who has illegally entered into India (Assam) from specified territory, i.e., Bangladesh, on or after 25.03.1971, and is a foreigner of post-1971 stream.

19. The learned counsel for the petitioner has submitted that due to minor omissions of not disclosing the names of persons whose names appeared in the voter's list of 1970 (Ext.B) or in the jamabandi (Ext.C), the entire evidence of the petitioner was discarded. Similarly, in the voter's list of 2010 (Ext.F) and 2015 (Ext.G), the entire evidence was discarded. It was submitted that the petitioner has all the documents to link him to his projected father and grandfather, but the same were discarded and the petitioner was declared to be a foreigner of post-25.03.1971 stream. It was submitted that the evidence of

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DW-2 was discarded citing certain statements made in his examination by the learned Tribunal, but the fact that DW-2 had seen the petitioner since birth and knew his father and grandfather, and that he had been residing continuously at Tengaguri, Kacharigaon, were all negated without any cogent and good reasons. It was submitted that the certificate of the Gaonburah (Ext.U) was a link to establish his relationship with his projected father and grandfather, and that all the voter's lists where the name of the petitioner is reflected, the name of his father also appears, which also establishes the link of the petitioner with his father. Accordingly, it was submitted that the impugned opinion requires interference of this Court.

20. Per contra, the learned Standing Counsel for the Border & FT matters has submitted that the name of the petitioner appears for the first time in the voter's list of the year 2005 with age as 42 years. Therefore, the petitioner was born in the year 1963 and he was eligible to cast his vote on attaining the age of 21 years in 1984 and thereafter. It is submitted that there is lack of linkage between the petitioner and his father, and also there is lack of linkage between the father and the projected grandfather of the petitioner. It is submitted that the jamabandi (Ext.C) does not help the petitioner in any way as he did not establish his linkage with other persons whose names appear in the jamabandi. Moreover, it is submitted that the jamabandi is not a document of title, but it is only a revenue record, which does not prove the lineage for the purpose of establishing citizenship.

21. It is submitted that as the petitioner has not pleaded about the grandfather and his siblings, the father of the petitioner and the siblings of the grandfather or the siblings of the father of the petitioner, and his own siblings, it is very difficult to have an idea about the number of family members of the

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petitioner and therefore, a certified copy of jamabandi, which is available in public domain and a certified copy can be obtained without the consent of the land owner, mere existence of a name in the jamabandi, which matches with the projected father of the petitioner, is not sufficient to prove his relationship with the person whose name appears in the jamabandi as his father. Accordingly, it is submitted that there is absence of relevant pleadings in the written statement, which is required to be proved by adducing cogent and admissible evidence.

22. Moreover, relying on the case of *Aziz Mia v. Union of India, (2020) 3 GLT 246*, it is submitted that mere appearance of a name in the voter's list is not a proof of relationship.

23. Examined the materials available on record and also perused the Tribunal's records, which were called for. Considered the submissions made on behalf of both sides.

24. The petitioner had filed his written statement. On a perusal of the said written statement, it is noticed that the petitioner has disclosed his name, his father's name as Sadar Ali, son of Jahur Ali, and the name of his grandfather Jahur Ali, son of Tarif Sheikh. But the petitioner has not pleaded the name of any other member of his family or regarding siblings of his grandfather and siblings of his father.

25. Moreover, it appears that in the voter's list of 1966, there are two voter's, and the petitioner has not disclosed his link with Abbas Ali, whose name also appeared in the same voter's list of the same house. Similarly, names of six persons appeared in the voter's list of 1970, but the petitioner has not disclosed his relationship with five out of six persons whose names appear in the voter's

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list of 1970 (Ext.B).

26. The names of nine persons appear as sons of Jahur in the jamabandi (Ext.C), but the relationship of the petitioner with those eight out of nine persons is not disclosed by the petitioner. The other person being Sadar Ali, whose name appears at Serial No. 18, is projected to be the father of the petitioner.

27. As per the examination-in-chief of DW-2, Sadar Ali has 12 children. It is noted that none of the siblings of the petitioner or his projected father, Sadar Ali, who is said to be alive by the DW-2, have come forward to depose in favour of the petitioner. According to the entry of remarks in the jamabandi (Ext.C), vide order dated 21.02.1986, the names of persons named at Serial Nos. 12 to 20 are mutated as legal heirs of Jahuruddin Sheikh, son of Tarip, but the petitioner has not disclosed his relationship with those persons.

28. As per the evidence-on-affidavit of DW-1, his age as on 10.04.2018 is 31 years. If the said evidence-on-affidavit is to be believed, the petitioner was born in the year 1987, and therefore, his right to vote on attaining 18 years of age accrued in the year 1999. However, as per the voter's list of 2010, the age of the petitioner is shown as 23 years.

29. Moreover, most of the voter's lists contain only one or two names, as indicated in the chart given before, and therefore, the entire family of the petitioner is not seen living together, and the exhibited documents show names with whom the petitioner has not linked himself. Accordingly, through the exhibited documents, the petitioner has not been able to prove his relationship with his projected father, Sadar Ali, and there is also no linkage between Sadar Ali with Jahur Ali. There is no statement as to what happened to Jahur Ali after

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1970.

30. It is also noted that the petitioner, apart from not disclosing his relationship with those persons whose names appeared in the jamabandi and in the voter's list, has also not pleaded the name of his grandmother and the name of his mother. It is reiterated at the cost of repetition that the family of the petitioner is not pleaded, and therefore, evidence tendered beyond pleading is liable to be discarded.

31. It would be appropriate to mention that the evidence of DW-1 is not in proper form. The evidence-on-affidavit is prepared as if a petition is being filed, which contains verification and a separate affidavit in support of the written evidence. Therefore, none of the statements made in any of the paragraphs are verified to be true or verified to be matters of record. It is only because the citizenship of the petitioner is questioned, the Court has examined the evidence-on-affidavit of DW-1 instead of rejecting the same at the threshold.

32. The learned counsel for the petitioner had relied on the case of *Anowara Begum v. Union of India & 4 Ors., WP(C) 1066/2018, decided on 28.04.2023*, and it was submitted that as the DW-1 and DW-2 were not cross-examined by the State authorities, in the absence of cross-examination, based on the evidence that had already been tendered, the petitioner should be deemed to have established his citizenship.

33. The said decision would not apply to the facts and circumstances of this case. The proceedings of Foreigners Tribunals is civil in nature. Therefore, in civil suits and proceedings, even if the other side does not cross-examine the witnesses examined by the plaintiff/State, on account of lack of

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cogent and admissible evidence, a civil proceeding can still be dismissed.

34. In this regard, we may refer to the provision of Section 9 of the Foreigners Act, which places burden on the proceedee to prove that he is a citizen of India and not a foreigner. If any authority is required on the said proposition, paragraph 26 of the case of *Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665*, may be referred to.

35. Moreover, it appears that when the case of *Anowara Begum (supra)* was decided, the notice of this Court was not brought to the various precedents in this regard. In the case of *Rashminara Begum v. Union of India & Ors. (2017) 4 GLT 346*, and in the case of *Sarif Sheikh v. Union of India and Others, (2017) 4 GLR 295*, this Court had held that material facts would have to be proved by adducing cogent and admissible evidence; and in the case of *Ayesha Khatun v. Union of India and Others, (2017) 3 GLR 820*, this Court had held that failure to disclose material facts would lead to adverse presumption.

36. In the case of *Life Insurance Corporation of India and Another v. Ram Pal Singh Bisen, (2010) 4 SCC 491*, the Supreme Court of India held that mere filing or exhibiting a document in court does not amount to proof of its contents. It was further held that admission of a document in court may amount to admission of its contents, but not its truth, and it was further held that on failure to prove defence, it does not reverse or discharge plaintiff's burden of proof. Therefore, by mere oral evidence, citizenship of a suspected foreigner cannot be proved. In the case of *Basiron Nessa v. Union of India and Others, (2018) 4 GLT 692*, this Court had held that documentary evidence must be proved from record and not solely by oral testimony. In the case of *Bijoy Das v. Union of India and Others, (2018) 4 GLR 599: (2018) 3 GLT 118*, this Court had held that it is trite that mere filing of written statement and oral testimony in a

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proceeding under Foreigners Act, 1946 would not be enough; the facts that are in issue would have to be proved by the proceedee by adducing documentary evidence which are admissible and relevant.

37. In the case of *Rukia Begum v. Union of India and Others, (2018) 5 GLR 438 : (2018) 4 GLT 763*, it has been held that even if no objection is raised by the State to a document marked as an exhibit by the proceedee, it will not make the document admissible in evidence if it is otherwise inadmissible.

38. These precedents have consistently been followed. Therefore, this Court is bound by the earlier precedents referred above, and therefore, it is held that the decision in the case of *Anowara Begum (supra)* does not come to the aid of the petitioner.

39. Therefore, the Court is inclined to hold that the petitioner has not been able to make out a case for interference with the impugned opinion. Accordingly, the writ petition fails and the same is dismissed.

40. There shall be no order as to cost.

41. Consequences of the said impugned opinion dated 27.08.2018, passed by the learned Member, Foreigners' Tribunal 2nd, Morigaon, in Case No. F.T. 30/2017 [arising out of Police Ref. F.T. Case No. 65/2017, dated 12.09.2017] shall follow.

42. The Registry shall return the learned Tribunal's record together with a copy of this order, to be made a part of the record by the said learned Tribunal for future reference.

43. Accordingly, the learned Standing Counsel for Home Department and FT matters shall transmit a downloaded copy of this order to the concerned

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respondent authorities for information and for doing the needful.

JUDGE **JUDGE**

Comparing Assistant **Private Secretary**