

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) No. 863 OF 2019

IN THE MATTER OF:

**ALL ASSAM MINORITIES
STUDENTS UNION (AAMSU)**

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

(PAPER-BOOK)

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ADVOCATE FOR THE PETITIONER:FUZAIL AHMAD AYYUBI

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SYNOPSIS LIST OF DATES

The petitioner herein, All Assam Minorities Students Union, has preferred the instant petition under Article 32 of the Constitution of India challenging the vires of certain provisions of the Foreigners (Tribunals) Amendment Order, 2019 [hereinafter referred to as “Amendment Order, 2019”] published in the gazette by the Respondent No. 1 on 30.05.2019 as being in stark violation of the fundamental liberties of a large number of persons guaranteed under Articles 19 and 21 who have either not been included in the draft National Register of Citizens being updated for the State of Assam and those who will be preferring an appeal after their non-inclusion in the final NRC and after rejection of their claims.

The petitioner herein is prominent representative body and an important stakeholder in the NRC process and has time and again made representations regarding issues pertaining to the updation of NRC and Foreigners Tribunals from the lowest level till the Apex Court. The present petitioner has approached this Hon’ble Court in order to highlight the provisions of the Amendment Order, 2019 that has been passed by the Central Government without any form of consultation having taken place with the concerned stakeholders, particularly with regard to Clauses (6) and (10)

of Paragraph 3A and Paragraph 3B which are challenged by way of the present petition.

The petitioner herein is also challenging Clause (1) of Paragraph 3A of the Amendment Order, 2019 inasmuch as there exists ambiguity between the Paragraph 8 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 [Hereinafter referred to as “Rules, 2003”] vis-à-vis Amendment Order, 2019.

Amendment Order, 2019 while providing for a procedure of appeal makes the same so unreasonable that it may virtual lead to denial of justice. The newly inserted Paragraph 3A of the Amendment Order, 2019 lays out the procedure for Appeals preferred under Paragraph 8 of the Schedule to the Rules, 2003. The appeal under the aforesaid Paragraph 8 of the 2003 Rules has been provided for such persons who have not been included in the NRC and whose claims against such non-inclusion has been rejected by the relevant authority.

Ambiguity with regard to Clause (1) of Paragraph 3A:

The petitioner herein submits that the procedure as has been set out under the aforesaid clauses of the Paragraph 3A of the Amendment Order, 2019 is biased and will lead to grave injustice. Paragraph 3A provides, under Clause (1), that a person may file an appeal only upon production of a certified copy of the rejection order received from the NRC Authorities

along with the grounds of appeal whereas Paragraph 8 of the Schedule to the 2003 Rules provides a period of 60 days from the date of order of rejection of claims/objection, as the time during which a person shall prefer an appeal, the impugned provisions of the Amendment Order, 2019 provide that such a person may prefer an appeal only upon production of the certified copy of the rejection order, thereby leaving an ambiguity between Paragraph 8 of the Schedule to the 2003 rules and the procedure prescribed under the impugned provisions of the Amendment Order, 2019. Further, there is no provision for condonation of delay; neither any safeguard is provided that the NRC authorities are obligated to issue certified copy of the order in a time bound manner.

Bypassing the already existing procedure under Paragraph 3 by addition of Clause (6) to Paragraph 3A and Paragraph 3B:

Another arbitrary aspect of the Amendment Order, 2019 is that while a person may prefer an appeal for inclusion in the NRC as provided under Paragraph 8 of the Schedule to the 2003 Rules, Clause (6) of Paragraph 3A in the Amendment Order, 2019 provides that at the same time the District Magistrate may also refer to the Tribunal for its opinion the question as to whether the appellant is a foreigner or not within the meaning of Foreigners' Act, 1946. It also stipulates

that such reference shall be deemed to be a reference in terms of sub-para (1) of Paragraph 2 of the Foreigners (Tribunal) Order, 1964. While under Paragraph 3 of the 1964 Order an entire procedure has been laid down for disposal of questions referred to in terms of sub-para (1) of Paragraph 2, Clause (6) of Paragraph 3A of the Amendment Order, 2019 provides that if such a reference is made by the District Magistrate, the same shall be dealt with by the Tribunal along with the appeal under Paragraph 3A of the Amendment Order, 2019 thus resulting in complete jumbling up of the two distinct judicial process.

Similar anomaly is also evident in the newly inserted Paragraph 3B of Amendment Order, 2019 which provides that in cases where a person has not preferred an appeal within sixty days under Paragraph 8 of the Schedule to the 2003 Rules, the Authority referred to under Sub-Para (1) of Paragraph 2, may refer to the Tribunal the question as to such a person is a foreigner or not and it is further provided that this reference shall also be dealt with by the Tribunal as per the scheme provided under Paragraph 3A of the Amendment Order, 2019 and not under Paragraph 3, which had so far been relied upon as the procedure for disposal of such questions.

Possible Denial of Opportunity of Hearing under Clause (10) of Paragraph 3A:

Further, Clause (10) of the aforesaid Paragraph 3A of the Amendment Order, 2019 is being challenged inasmuch as it stipulates that it is only if the Tribunal, upon production of records by the District Magistrate concerned, finds merit in the appeal that the Tribunal may issue a notice for hearing the appeal meaning thereby that the appeal may also be rejected at the threshold by the Tribunal without even granting an opportunity for hearing to the Appellant as the Tribunal is under an obligation of granting an opportunity for hearing only at the stage of hearing and not if the Tribunal otherwise decides to not to issue the notice at all upon production of records as provided under Clause (10) of Paragraph 3A contained in the Amendment Order, 2019.

It is submitted that while the Tribunals have been entrusted with a very crucial task of being the final adjudicatory authority with respect to appeals arising out of rejection of claims by the NRC authorities, the purpose of setting up such Tribunals for identification of foreigners and determination of Indian citizenship will stand frustrated if unfairness, unreasonableness and arbitrariness is allowed to creep into the procedure and to thwart the entire gigantic exercise.

Hence the present petition.

CHRONOLOGICAL LIST OF EVENTS:

1946 Foreigners Act 1946 is enacted by the Government with an object to confer upon the Central Government certain powers in respect of Foreigners. The Act defines a “foreigner” as being a person who is not a citizen of India under Section 2 (a) of the 1946 Act. Section 3 further empowers the Central Government to make orders either generally or with regard to a certain category or class of foreigners for prohibiting, regulating or restricting the entry of such persons into the territory of India or their departure therefrom. Section 9 of the 1946 legislation further provided that notwithstanding the provisions of the Indian Evidence Act, 1872, the burden of proving that a person is not a foreigner but a citizen of India is upon such a person himself.

1955 The Citizenship Act, 1955 was enacted by the Government of India on 30th December, 1955 to provide for the acquisition and determination of Indian Citizenship. The 1955 Act, when enacted, had provided 5 broad ways for the

acquisition of citizenship in India:

- i. Citizenship by birth, under Section 3 of Act;
- ii. Citizenship by descent, under Section 4 of the Act;
- iii. Citizenship by Registration, under Section 5 of the Act;
- iv. Citizenship by naturalization, under Section 6 of the Act; and
- v. Citizenship by incorporation of territory;

1964

Exercising powers under Section 3 of the Foreigners Act, 1946, the Central Government issued the Foreigners (Tribunals) Order, 1964 [hereinafter referred to as “1964 Order”] on 23rd of September, 1964. The said 1964 Order provided that the Central Govt. may by order, refer the question as to whether a person is a foreigner or not to a Tribunal constituted for this purpose. The 1964 Order contained 4 paragraphs relating to constitution of Tribunals, procedure for disposal of references and powers of such tribunals. While the 1964 order provided that the Tribunal concerned shall issue a notice upon the person and thereafter grant a hearing before giving its opinion upon the reference made with regard to such person, the same is silent as to how and

in what manner the members of the Foreigners Tribunals shall be appointed or up to what extent Government intervention will be there with regard to the functioning of the said Tribunals.

1971-1985 In 1971, the erstwhile East Pakistan was liberated and became a nation on its own by the name of Bangladesh. Since 1971 there were allegations that there is an influx of foreigners in the State of Assam and the same led to the Assam Agitation that turned violent and resulted in severe loss of lives. To put an end to the violence, the Govt. of Assam, the Govt. of India and the leaders of Assam Agitation, in presence of the then Prime Minister Shri Rajiv Gandhi signed a memorandum of settlement, popularly known as the Assam Accord. It was undertaken that the authorities will detect and deport foreigners who have illegally entered in India. After Assam Accord, the Citizenship Act, 1955 was amended to include Section 6A with effect from 07.12.1985 which introduced “special provisions as to the Citizenship of persons covered by the Assam Accord”.

1983 Illegal Migrants (Determination by Tribunals)

Act, 1983 was enacted by the Central Government for establishment of Tribunals for determination of the question whether a person is an illegal migrant or an Indian citizen.

2009 A Writ Petition (Civil) No. 274 of 2009 came to be filed before this Hon'ble Court seeking directions for updation of the National Register of Citizens for the State of Assam.

23.08.13 The present petitioner was impleaded as necessary party respondent in the aforesaid W.P. (C) No. 274 of 2009 vide order dated 23.08.2013. Since its impleadment in the aforesaid petition, the petitioner herein has been assisting this Hon'ble Court as and when required by the Court in W.P. (C) No 274 of 2009.

31.12.2017 Accordingly under the supervision of this Hon'ble Court on the midnight of 31st December 2017, Part Draft NRC was released.

30.07.18 Subsequently on 30th July 2018, the Complete Draft of NRC was released. After the publication of the complete draft the process of Claims and Objection begun wherein this Hon'ble Court sought suggestions from all the stakeholders

including the present petitioner regarding the Standard Operating Procedure for disposal of claims and objections. The SOP for disposal of claims and objections were thereafter finalized and by 31st December 2018 all claims and objections were received and considered. Pursuant thereto this Hon'ble Court directed that the final NRC be published before 31st of July, 2019.

17.05.19 In the interregnum, this Hon'ble Court vide Order dated 17.05.2019 passed in Civil Appeal No. 5012 of 2019 Abdul Kuddus Vs. Union of India held that the Foreigners' Tribunals established under the 1964 Order were the final adjudicatory authority with regard to references issued under the 1946 Act and that there was no requirement for an appellate process to be available against the opinions rendered by the Foreigners' Tribunals. This Hon'ble Court further held that the Foreigners' Tribunals will be the appellate forum to deal with appeals arising out of rejection of Claims and objections by the NRC authorities as provided under Paragraph 8 of the Schedule to the 2003 Rules.

30.05.2019 When this entire exercise of NRC was

undergoing, the Central Government out of the blue on 30.05.2019 in exercise of its powers under Section 3 of the Foreigners Act, 1946 amended the Foreigners (Tribunals) Order 1964 so as to include, inter alia, a procedure for disposal of appeals referred to under Paragraph 8 of the Schedule appended to the 2003 Rules. The present petitioner is challenging the aforesaid amendment order as being ultra vires the Constitution and being in violation of Articles 15, 19 and 21 of the Constitution.

02.07.2019 Hence this petition.