

GAHC010110772018



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

**Case No. : WP(C) 3432/2018**

1:AZIZUL HAQUE  
S/O- LT. MOZER ALI, VILL- SUNDARPARA, P.O. JAMADARHAT, P.S.  
FAKIRGANJ, DIST- DHUBRI, PIN-783330

VERSUS

1:THE UNION OF INDIA AND 5 ORS.  
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH  
BLOCK, NEW DELHI-110001

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
HOME DEPTT.  
DISPUR  
GHY-6

3:THE STATE ELECTION COMMISSIONER OF ASSAM  
DISPUR  
GHY-6

4:THE STATE CO-ORDINATOR  
NATIONAL REGISTER OF CITIZEN (NRC)  
ASSAM  
BHANGAGARH  
GHY-5

5:THE DY. COMMISSIONER CUM RETURNING OFFICER  
DIST- DHUBRI  
ASSAM

6:THE SUPERINTENDENT OF POLICE (BORDER)  
DHUBRI  
ASSA

**Advocate for the Petitioner** : MR M PRACHA

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE UJJAL BHUYAN**  
**HONOURABLE MRS. JUSTICE RUMI KUMARI PHUKAN**

**ORDER**

**Date : 22-06-2018**

***(Ujjal Bhuyan, J.)***

This case was heard yesterday and today is fixed for delivery of order.

(2) We have heard Mr M Pracha, learned counsel for the petitioner and Mr N Dutta, learned senior counsel assisted by Ms A Verma, learned counsel representing the State Coordinator, National Register of Citizens (NRC)(Assam).

(3) By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of notification dated 2.5.2018 issued by the Principal Secretary to the Government of Assam, Home and Political Department and State Coordinator, NRC and addressed to the Deputy Commissioners & District Registrars of Citizen Registration(DRCR) stating that names of brothers, sisters and other family members of the declared-foreigners should not be included in the NRC until finalization of references and also to the Local Registrars of Citizen Registrations(LRCR) to put on hold their decisions regarding inclusion of such

category of persons in the NRC.

(4) According to the petitioner, he had applied for including his name in NRC as a resident of Sundarpur village under Fakiraganj police station in Dhubri district of Assam. His brother, Aynal Hoque, was declared as a foreigner by the Foreigners Tribunal IV, Goalpara by order dated 30.5.2017 passed in FT(G-4)435/2016 and this order is under challenge before this court in WP(C) No.5927/2017. He has expressed the apprehension that in terms of the notification dated 2.5.2018 his name would not be included in the NRC. Contending that the said notification is contrary to paragraph 3(2) of the schedule to the *Citizenship(Registration of Citizens and Issue of National Identity Cards) Rules, 2003*, he submits under the said provision only the names of persons who have been declared illegal foreigners by the competent authority shall not be included in the consolidated list and under paragraph 2(3) of the schedule, the NRC should contain the names of persons whose names appear in any of the electoral rolls up-to the mid-night of 24<sup>th</sup> March 1971 or in the 1951 NRC and their descendants. Therefore, it is contended that the impugned notification dated 2.5.2018 is in violation of the statutory provisions and should be set aside.

(5) This court on 30.5.2018 had issued notice but rejected the prayer for stay with the observation that the question as to whether the High Court should examine this issue at all when the Supreme Court is monitoring the NRC updation exercise will also remain open.

(6) Sri Prateek Hajela, Principal Secretary to the Government of Assam, Home and Political Department as well as the State Coordinator, NRC, has filed a detailed affidavit opposing the prayer made by the petitioner and seeking dismissal of the writ petition, contending that issuance of the notification dated 2.5.2018 is perfectly in order and is in tune with the various orders passed by the Supreme Court as well as by the High Court from time to time and also as per approval granted by the Registrar General of India.

(7) Submissions made in the course of the hearing by Mr Pracha and Mr Dutta, learned counsel for the parties, have been taken note of.

(8) At the outset it would be apposite to mention that the NRC updation exercise in the State of Assam is being carried out under the *Citizenship(Registration of Citizens and Issue of National Identity Cards) Rules, 2003*, framed under Section 18(1)(3) of the Citizenship Act, 1955. Rule 3 provides for a national register of Indian citizens, while Rule 4 lays down the procedure for preparation of national register for Indian citizens. However, in so far State of Assam is concerned a separate procedure is laid down in Rule 4(a). A schedule appended to the Rules lays down the special provisions as to the manner of preparation of NRC of Indian citizens in the State of Assam. As per paragraph 2 (3) of the schedule, the NRC should contain the names of persons whose names appear in any of the electoral rolls upto the midnight of March 24, 1971 or in the 1951 NRC and their descendants whereas under

paragraph 3(2) of the schedule, names of persons who have been declared illegal migrants or foreigners by the competent authority shall not be included in the consolidated list. While paragraph 2 (3) mandates a positive requirement, paragraph 3 (2) mandates a negative requirement.

(9) It may be mentioned that under the Illegal Migrants(Determination by Tribunals) Act, 1983 (IMDT Act), Tribunals were constituted in the State of Assam for identification and declaration of illegal migrants as defined under the said Act, i.e., foreigners who had unauthorisedly entered into India after 25.3.1971.

(10) In ***Sarbananda Sonowal Vs. Union of India, (2005) 5 SCC 665***, IMDT Act was declared unconstitutional by the Supreme Court with the further direction that the references which were pending before the Tribunals constituted under the IMDT Act should be transferred to the Tribunals constituted under the Foreigners Act, 1946 read with the Foreigners(Tribunals) Order, 1964.

(11) We may also mention that Section 6 A was inserted in the Citizenship Act, 1955 with effect from 7.12.1985 following the signing of the Assam Accord. Section 6 A deals with special provisions as to citizenship of persons covered by the Assam Accord.

(12) Section 6 A (1)(b) defines the phrase 'detected to be a foreigner' to mean detected to be a foreigner in accordance with the provisions of the Foreigners Act,

1946 and the Foreigners(Tribunals) Order, 1964 by a Tribunal constituted under the said Order.

(13) As per Section 6 A (1)(e), a person shall be deemed to have been detected to be a foreigner on the date when a Tribunal constituted under the Foreigners(Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(14) Therefore, there is no dispute or ambiguity that persons who are declared illegal migrants by the Tribunals constituted under the IMDT Act or by the Foreigners Tribunals constituted under the Foreigners' Act, 1946 read with the Foreigners' (Tribunals) Order, 1964 shall not be included in the NRC. This would cover the requirement of paragraph 3 (2).

(15) That leaves us with the requirement of paragraph 2 (3). In the year 1997, Election Commission of India had undertaken an intensive revision of electoral rolls in the State of Assam as apprehensions were expressed from all quarters that the electoral rolls were infested with names of foreigners. In the course of this exercise names of as many as 3,13,046 persons whose names were in the voters list were found to be doubtful and accordingly they were marked 'doubtful' (D) voters in the electoral rolls. Though this exercise was challenged before this Court, the same was rejected by the Court in ***HRA Choudhury -Vs- Election Commission of India; 2002 (1) GLT 1.***

(16) Be that as it may, in WP(C) No.1334/2009, a Single Bench of this court issued direction on 23.3.2011 to the effect that Election Commission of India should ensure that D voters were not allowed to cast their votes and clarified that D voters would include persons whose names were included in the electoral rolls but their citizenship was doubted or disputed and also those whose cases were pending before the Foreigners Tribunals.

(17) This direction of the learned Single Judge was questioned by the State of Assam in Writ Appeal No.114/2011(State vs. Mameja Khatun). However, by the judgment and order dated 13.10.2015 the challenge was rejected by the Division Bench and the appeal was dismissed, further directing the Election Commission of India and other respondents in WP(C) No.1334/2009 to implement the directions of the learned Single Judge in letter and spirit.

(18) It is submitted at the Bar that the judgment and order of the Division Bench dated 13.10.2015 has remained unchallenged and has attained finality.

(19) Therefore as per the Division Bench, D voters would include those voters whose citizenship are doubted by the electoral authorities and would also include those against whom references are pending before Foreigners Tribunals. It may be mentioned that after marking such voters as doubtful (D) voters, their cases are

referred to the Tribunals, earlier under the IMDT Act and thereafter under the Foreigners' Act, 1946 read with the Foreigners' (Tribunals) Order, 1964.

(20) As indicated in our order dated 30.5.2018, the NRC updation exercise in the State of Assam is being monitored by the Supreme Court of India in the writ petition filed by Assam Public Works, being WP(C) No.274/2009. In the hearing that took place on 25.10.2013, a grievance was expressed by learned counsel appearing on behalf of Assam Minorities Students Union in respect of D voters. In the order dated 25.10.2013, Supreme Court clarified that as far as persons in the D list are concerned, undoubtedly they were doubtful voters and therefore their names could not be included unless the NRC is updated and unless the Foreigners Tribunals declare them to be Indian citizens.

(21) From the above it is clear that Supreme Court clarified that names of D voters are not to be included in the NRC unless they are declared to be Indian citizens by the Foreigners Tribunals.

(22) In WP(C) Nos.360 and 1610/2017, decided on 2.5.2017, a Division Bench of this court held that once a proceedee declared to be a foreigner it would only be a logical corollary to such declaration that his brothers, sisters and other family members would also be foreigners. Therefore, it becomes the duty of the jurisdictional Superintendent of Police(Border), the referral authority, to cause an inquiry into the brothers, sisters and other family members of the declared-



foreigners and thereafter to make reference(s) to the competent Foreigners Tribunal against them. It was observed that as a matter of fact the State may issue general direction to all the Superintendents of Police(Border) to initiate follow-up steps as above. The said order was directed to be brought to the notice of the Commissioner and Secretary to the Government of Assam, Home and Political(B) Department for doing the needful.

(23) It may also be mentioned that the office of the Registrar General of India informed the State Coordinator, NRC(Assam) on 12.10.2017 in connection with an order dated 21.9.2017 of the Judges' Committee on eligibility of descendants of doubtful (D) voters and declared-foreigners for inclusion in NRC. The State Coordinator was informed that the persons other than D voters referred to the Foreigners Tribunals by the State Government will need to be in the pending list till the opinion of Foreigners Tribunal was obtained. The decision for inclusion of names in NRC or otherwise of such cases should be based on the opinion of the Foreigners Tribunals. Therefore, such persons whose cases have already been referred to Foreigners Tribunals have to await the opinion from Foreigners' Tribunal and their names included or excluded in NRC based on the outcome.

(24) The State Coordinator in his letter dated 16.10.2017 instructed all the DRCRs to the effect that LRCRs should ensure that persons who are declared foreigners, D voters and those persons against whom cases are pending in Foreigners Tribunals should not be included in the draft NRC. D voters and the persons whose cases are

pending before the Foreigners Tribunals would be kept in the pending list till receipt of opinion from the Foreigners Tribunals.

(25) In the meanwhile, the observations of this court dated 2.5.2017 was communicated by the office of the Addl. Director General of Police(Border) to all the Superintendents of Police(Border). Even recently the Home and Political(B) Department issued instruction on 29.5.2018 to strictly comply with the order of this court dated 2.5.2017.

(26) The State Coordinator also apprised the Registrar General of India of the above High Court decision dated 2.5.2017 on 15.03.2018 and requested him to issue instructions to the DRCRs. It was suggested that brothers, sisters and other family members of declared-foreigners should not be included in the NRC like that of D voters. This was followed by another letter dated 24.3.2018 stating that names of such persons would not be rejected for inclusion in NRC but instead would be kept pending till receipt of opinion from the respective Foreigners Tribunal.

(27) The above proposals of the State Coordinator were approved by the Registrar General of India on 2.4.2018 and 4.4.2018. The State Coordinator was requested to take action accordingly

(28) In the light of the above, Principal Secretary to the Government of Assam, Home and Political Department and the State Coordinator, NRC issued the instructions dated 2.5.2018, as per which names of brothers, sisters and other

family members of declared-foreigners are not to be included in the NRC but are to be kept on hold till decision of the Foreigners Tribunals. The said instructions were clarified by subsequent instructions dated 25.5.2018 whereby the Principal Secretary and the State Coordinator clarified that recording of decision as “Hold” by LRCRs in case of brothers, sisters and other family members of declared-foreigners will be taken only after receipt of information from the Superintendent of Police(Border) concerned that reference has been made of such persons to the Foreigners Tribunals.

(29) In the light of the sequence of events detailed above, including the various orders passed by the Supreme Court and by this Court from time to time, we do not find any error or infirmity in the notification dated 2.5.2018 of the State Coordinator, NRC(Assam), which has been further clarified by the subsequent communication dated 25.5.2018. The provisions contained in paragraphs 2 (3) and 3 (2) are to be read conjointly and in a harmonious manner. Moreover, as recorded in our order dated 30.5.2018, the date scheduled for publication of the draft NRC is 30.6.2018 and the entire process is being monitored by the Supreme Court. In such circumstances, any interference by us, which otherwise is not called for, would not be justified.

(30) Thus, we do not find any merit in the writ petition, which is accordingly dismissed.

**JUDGE**

**JUDGE**

**Comparing Assistant**