

ASSAM LEGISLATIVE ASSEMBLY
UNSTARRED QUESTION NO. - 152
TO BE REPLIED ON : 12/02/2018

Sub. : **Foreigners Tribunal.**

Shri AMINUL ISLAM, MLA :

Will the Minister of Political be pleased to state :

- (a) In what basis an elector has been marked as "D" against his name in the electoral roll ? What are the steps followed by the authority before identification of an elector as "D" Voter?
- (b) How many "D" voters are there in the State of Assam at Present ? Is the Government confirm that all the legal steps were followed before putting "D" mark against the name of those electors ?
- (c) Is the Government aware that charges of biasness has been made against few members of Foreigners Tribunal while declaring the "D" voters as Foreigners inspite of producing all the required documents in support of their citizenship ?
- (d) What is the Provision of punishment of an F.T. member if he declares "D" voters as Foreigners despite producing required documents by the later?
- (e) Will the Government frame Law to punish members of F.T. if charges of biasness against them are proved?

ANSWER

Hon'ble Minister of Transport etc. Department Sri Chandra Mohan Patowary will reply on behalf of Hon'ble Minister of Political Department Sri Sarbananda Sonowal.

- (a) The Procedure and norms to declare a person as Doubtful or 'D' Voter is outlined in the Election Commission of India's instructions and order of the Gauhati High Court given below :-
 - (i) No.23/As/96/Vol.III dated 12th November, 1997.
 - (ii) No.23/As/2005/ dated 25th July, 2005.
 - (iii) Order of Hon'ble Gauhati High Court in W.P.(C) No. 1334/2009 dated 23/03/2011.(Copies of the instructions/ orders enclosed) (Annexure 'A', 'B', 'C')
- (b) At present there are 1,25,333 numbers of 'D' Voters in the state of Assam. (the list of 'D' Voters are enclosed as Annexure-D). The 'D' mark is inserted by the Electoral Registration officers following the laid down procedure.
- (c) The opinion given by the Foreigners Tribunal is through a quasi-judicial process. The matter of Foreigners Tribunals are directly monitored by the Hon'ble Gauhati High Court and no such cases of bias on the part of the Foreigners Tribunal Members have been reported till date.
- (d) There is no provision of punishment of Foreigners Tribunal Members. However, their performances are monitored by the Hon'ble Gauhati High Court. The Foreigners Tribunal declared cases can be contested in the High Court as well as Supreme Court of India if the proceedees are not satisfied with decision of the Foreigners Tribunal Member.
- (e) No such decision has been taken as on date.

Amrur A

(S)

SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA

Nirva,
Ashoka Road,
New Delhi-110001

No. 23/AS/96/Vol.III / 27/97

Dated: 12th November, 1997

To

✓ The Chief Electoral Officer,
Assam,
Dispur

Subject: Intensive revision of electoral rolls with reference to 1.1.1997 as the
qualifying date in all assembly constituency in Assam - guidelines.

Sir,

I am directed to invite your attention to the Commission's letter of
even No. dated 4th August, 1997 wherein the Electoral Registration Officers
were directed not to finally dispose of the cases of claims and objections or
cases of suo-motu review which fall under sub-para (v) of para 3.3 of the
guidelines issued by the Commission, until such time the matter is reviewed by
the Commission and final instructions issued in this regard.

2. The Chief Electoral Officer, Assam has further reported that the
number of cases set aside on this account is only 73,101 as against 1,44,60,372
number of electors in the draft rolls. Thus, the issue involves 0.50% persons of
the total electorate.

3. The matter has since been reviewed by the Commission and necessary legal opinion has also been obtained in the matter. After such review, the Commission is of the considered view that the guidelines issued by the Commission are consistent with Section 3 (1)(a) of the Citizenship Act, 1955, as it presently stands, and do not contravene either para 5.8 of the Assam Accord or Section 6(A) of the Citizenship Act, 1955.

4. In view of the above, the Commission hereby directs that these cases numbering around 73,101, as were set apart as per the Commission's instructions contained in its letter dated 4th August, 1997 referred to above, shall be disposed of by the Electoral Registration Officers immediately in accordance with the guidelines already issued by the Commission.

5. The Commission further directs that in cases which have been referred to the Tribunals through the Competent Authorities and where the decisions of the Tribunals have not been received by the Electoral Registration Officers, the names of such persons shall continue to be included 'provisionally' in the finally published rolls, but the letter "D" (meaning doubtful/Disputed) shall be indicated against each such name and a footnote "D means Doubtful/Disputed" added at the bottom of each relevant page of the electoral roll. As and when the decisions of the Tribunals are received in these cases, their names will either be retained or deleted accordingly.

The receipt of this letter may kindly be acknowledged.

Yours faithfully



(K.J. RAO)
SECRETARY

Copy forwarded to :-

1. The Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
2. The Chief Secretary, Government of Assam, Dispur.



(K.J. RAO)
SECRETARY

Annexure - 'B'

C

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

No 23/AS/2005

Dated 25th July, 2005

To

The Chief Electoral Officer,
Assam, Dispur

Subject: Intensive revision of electoral rolls - judgment of the Hon'ble Supreme Court of India dated 17.7.2005 setting aside the IMDT, Act 1983 - revised instructions on persons marked "D" in the draft electoral rolls - reg

Madam,

I am directed to invite your attention to Commission's instructions on persons marked "D" in the draft electoral rolls on the basis of enumeration taken w.r.t. 1.1.2005 as qualifying date, as contained in its letter of even number dated 11th July, 2005. Subsequent to the issue of the said letter the Hon'ble Supreme Court in its judgment dated 12th July, 2005 in Writ Petition (Civ) No.131 of 2000 (Sarbananda Sonowal versus Union of India & Anr) quashed the Illegal Migrants (Determination by Tribunals) Act, 1983 as ultra vires the Constitution of India. In view of the above judgment of the Supreme Court, in partial modification of the instructions contained in letter dated 11th July, 2005, the following instructions are issued in respect of the persons marked "D" in the draft electoral rolls:-

- (1) The cases of all persons marked "D" in the final published electoral rolls of 1997 (as subsequently summarily revised from year to year till and including the year 2004) and referred to the competent authorities under the Illegal Migrants (Determination by Tribunals) Act, 1983 and are pending before such Tribunals shall stand transferred to the Tribunals setup under the Foreigners (Tribunals) Order, 1964 by virtue of Para 53(3) of the Supreme Court's judgment. The names of all such persons shall continue to be marked "D" in the electoral rolls till their cases are decided one way or the other by the said Foreigners Tribunals.
- (2) The cases of all new persons marked "D" in the draft rolls (published on the basis of enumeration done w.r.t. 1.1.2005 as qualifying date) and whose names are to be included in the final rolls as such, shall, before final publication of the rolls, be referred to the competent authorities under the Foreigners (Tribunals) Order, 1964 for the determination of their citizenship status, in view of the orders of the Supreme Court in para 53(4) & (5) of its judgment mentioned above.

2. You are accordingly requested to take appropriate action accordingly in the matter.

Yours faithfully,

(K. AJAYA KUMARI)
SECRETARY

Judgement Date : 15/02/2011

Case No : WP(C) 1334/2009

BEFORE

HON'BLE MR. JUSTICE B.K. SHARMA

in terms of the order passed on 12.11.2010, two affidavits, one on behalf of the Union of India and another on behalf of the Government of Assam, have been filed.

In paragraph- 4 of the affidavit filed by the Union of India, it has been stated thus :-

"4. It is respectfully submitted that as per report received from the State Government, between the year 1986 to 2010 (upto 31st October), a total 3,36,560 number of cases were referred to the Foreigners Tribunals (FTs) for opinion which includes 76,465 number of cases of erstwhile IMD Tribunals and 1,67,228 cases pertaining to doubtful voters. Out of these, Foreigners Tribunal (FTs) have disposed off 54125 number of cases declaring 31841 persons pertaining to 1966-71 stream during the said period. Foreigners Tribunals have also declare 5965 persons as foreigners/ illegal migrants pertaining to post 1971 stream during the period 2006-2010 (till October, 2010). Names of declared illegal migrants/foreigners have been deleted from electoral rolls. State Government has also informed that a suitable mechanism has been put in place ensuring deletion of names of declared foreigners/ illegal migrants from electoral rolls immediately after declaration of such persons as foreigners by Foreigners Tribunals. It has also been informed that after due examination, Tribunals have found genuine Indian citizens in many cases.."

On the other hand, in the affidavit filed by the Government of Assam on 15.2.2011, in paragraph-3, it has been stated thus :-

"3. That, the deponent begs to state that considering the peculiar situation with regard to the immigrant problem faced by the State of Assam, Government of India had issued the Foreigners Tribunal (Order) 1964. Till 2005, when Hon'ble Supreme Court had quashed the IM(D)T Act, the Foreigners Tribunals and the IM(D) Tribunals co-existed and were functioning side by side. The cases relating to immigrants of the post 24th March, 1971 stream were referred to IM(D) T and the cases relating to the stream of immigrants from 01-01-1966 to 24-03-1971 were referred to the Foreigners Tribunals. However, in the judgment & order passed in W.P.(C) No.131/2000 in the Sarbananda Sonowal -Vs.- Union of India and Ors., the Hon'ble Apex Court declared the IM(D)T Act as ultravires and directed that all cases be referred only to the Foreigners Tribunal. Accordingly, all cases pertaining to foreigners are now referred to the Foreigners Tribunals in pursuance of the Hon'ble Supreme Courts order. This establishes the fact that Foreigners Tribunal and their legal status were acknowledged and accepted by the Apex Court. After abolition of IM(D) Tribunals, 88,770 cases were transferred from IM(D)T to Foreigners Tribunals besides 95,745 number of other cases, which together added upto 1,84,515 cases. So far 55,583 cases were disposed of by the Foreigners Tribunal, in which 38,198 were opined by Tribunal as Foreigners. It is therefore submitted before the Hon'ble High Court that the Foreigners Tribunals have served the purpose of ascertaining the citizenship of suspected illegal migrants. However, there is scope to improve the performance of the Foreigners Tribunals by further strengthening them. As per extant eligibility criteria for appointment of Member, Foreigners Tribunals, the person to be appointed should be of the rank of serving/retired District & Sessions Judge/ Additional District & Sessions Judge. It has been State Government's effort to fill the vacant post of Members in all the Foreigner's Tribunals, but for the dearth of adequate numbers of eligible judicial officers it has not been possible. Hon'ble Gauhati High Court had also intimated about their inability to spare serving judicial officers. A discussion was held in regard to revamping of the Foreigner's Tribunal in the Ministry of Home Affairs under the chairmanship of the Joint Secretary, N.E. Division on 26/8/2010. In the meeting several steps for improvement of performance of the Foreigners Tribunals have been mooted. In pursuance of these discussions, Government of India has finalized the terms and conditions for appointment of Member, Foreigner's Tribunals vide their letter dated 24/1/2011. The upper age limit for superannuation has been raised to 67 years from the present 65 years. It is now expected that more eligible retired judicial officers would be available for appointment as Member."

On perusal of both the affidavits, what is seen is that there is wide variation in respect of the number of pending cases and number of disposed of cases. Nothing has been stated in both the affidavits as to what has happened to the declared foreigners and as to whether they have been deported from Assam or are roaming around freely. No indication has also been made as to how many names of foreigners have been deleted from the electoral rolls. It has also not been specified as to whether the declared foreigners have been kept in detention camps.

Apart from above, both the affidavits are not specific as to the clarification sought for as to whether the suspected foreigners to whom notices are issued by the Foreigners Tribunal should be kept in detention camps till finalization of the proceedings in the Tribunal inasmuch as to the experience of this Court and reflected in the earlier orders of this Court, such foreigners upon being declared to be so have indulged in the act of vanishing, as in the instant case, and the only plea advanced by those in the helm of affairs is that such declared foreigner(s) is/are not traceable.

In view of the above, both the Union Government and the Government of Assam in the Home Department shall file further affidavits clarifying the disparity in the numbers indicated above and also how many of the declared foreigners have been deported to Bangladesh. The affidavit shall also indicate the number of foreigners whose names have been deleted from the electoral rolls.

Let the affidavits be filed on or before 8th March, 2011.

Let a copy of this order be furnished, both to Mr. M. Bhagawati, learned Central Government Counsel and Ms. R. Chakraborty, learned Additional Senior Government Advocate, Assam.

Petitioner Name :: **MAMEZA KHATUN**
D/O LT. HARAN KAZI, R/O SHAKHARI PARA, P.O. JAMADGHT, P.S. SOUTH SALMARAH,
DIST. DHUBRI, ASSAM.

Respondent Name :: **THE UNION OF INDIA & ORS**
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI.

Judgement Date : 23/03/2011

Case No : WP(C) 1334/2009

BEFORE
THE HON'BLE MR JUSTICE B. K. SHARMA

This matter was last taken up on 11.3.2011 to consider the stand of the respondents i.e. the State Government, Union Government and the Election Commission of India, in respect of the question as to whether the persons whose cases are pending in the various Foreigner's Tribunals and the persons who are shown as 'D' voters in the electoral rolls, should be allowed to cast their votes.

In response to the said query made in the earlier order passed on 8.3.2011, the Election Commission of India filed an affidavit through the Deputy Chief Electoral Officer, Assam, in which the order of the Election Commission of India dated 5.1.1998 was referred to. As recorded in the order dated 11.3.2011, in the affidavit, upon a reference to the said order dated 5.1.98, it has been stated thus :-

"That I say that the Election Commission of India had clearly stipulated in its Order No. 23/AS/96-Vol.III dated 05.01.98 that all those persons against whose names the letter 'D' has been marked in the electoral rolls to denote that the citizenship status of such person is doubtful/disputed shall not be allowed to cast their votes and shall also be ineligible to contest any election as long as the citizenship status of such persons is not determined in their favour by the Appropriate Tribunal to whom their cases have been referred.

I further say that in view of the order of the Election Commission of India mentioned hereinabove, persons marked 'D' in the Electoral Rolls of the relevant year are not allowed to cast their votes or contest elections and in that regard all officials involved in poll conduct up to the polling station level are under strict instructions to ensure that no persons marked 'D' in the Electoral Rolls are allowed to cast their votes. I further say that the Order of the Election Commission of India dated 05.01.1998 shall stand good and on the basis of the said order ; persons marked 'D' against their names in the electoral rolls shall neither be allowed to vote in the ensuing Assam Legislative Assembly Polls, 20011 nor would be allowed to contest in the said polls."

In the aforesaid order dated 5.1.98 of the Election Commission of India, the doubts expressed by the Electoral Registration Officer in respect of 3,13,043 persons about their Indian citizenship was recorded. Their cases were referred to the Tribunals for determination of the question of their citizenship. Considering the question as to whether such persons should be allowed to cast their votes in the then general election to the House of the People and upon a reference to Article 326 of the Constitution, the Election Commission of India under its plenary power of superintendence, direction and control of preparation of electoral rolls for, and conduct of elections to, Parliament and Legislature of every State, issued direction that such persons, whose names have been provisionally entered into the electoral rolls in the State of Assam and against whose names, the letter 'D' has been indicated to denote that his citizenship status is doubtful / disputed, should not be allowed to cast their votes. It was further provided that they should not be allowed to cast their votes in any latter election either to the House of People or to the Legislative Assembly in the State of Assam.

Submission of Mr. D. Baruah, learned counsel appearing for the Election Commission, was as follows :-

"Mr. D. Baruah, learned counsel appearing for the Election Commission, submits that as per his instruction, the persons whose cases are under reference in various Tribunals through out the State, are indicated as 'D' voters in the electoral rolls and the said persons are not entitled to cast their votes."

Appreciating the stand of the Election Commission of India, it was observed thus :-

"While appreciating the stand of the Election Commission of India, it will also have to be ascertained as to whether the aforesaid order dated 5.1.98 issued by the Election Commission has been translated into action by the respective Governments i.e. the Union Government and the State Govt., more particularly, the State Govt.. It will also have to be ascertained as to whether the persons whose cases are pending in various Foreigners' Tribunals and who claimed to be Indian citizens on the basis of inclusion of their names in various voter list have been shown as 'D' voter in the electoral rolls. If such persons are allowed to cast their votes, that will be an infraction of mandate of Article 326 of the Constitution of India, about which mention has been made in the aforesaid order of the Election Commission of India.

This is a serious issue, more particularly, when the number of such persons indicated in the affidavit filed by the state Government is quite high. As recorded in the order dated 8.3.2011, the number of such persons and for that matter, the total number of cases referred to Foreigners' Tribunals is 3,36,560 (92,867 FT Cases + 76,465 transferred IMDT cases + 1,67,228 cases of 'D' voters). The total number of such persons as of 31.12.2010 as indicated in the said affidavit is as high as 3,36,560. Under these circumstances, such persons can be allowed to cast votes, about which the Election Commission of India

Although, the Chief Secretary of the State was to file an affidavit in terms of the earlier order passed on 8.3.2011, the stand of the State in respect of the query made but no such affidavit having been filed, a direction was issued to the affidavit within 16.3.2011.

The stand of the Union Government made through Shri R. Sarma, learned ASGI that the Union Government has got nothing to do in the matter and that the matter is within the domain of the state Government and that the State Govt. is to act as per the directives of the Election Commission of India, was also recorded.

Referring to the case of the petitioner, who was already declared to be a foreigner (illegal Bangladeshi migrant) and who has done the act of vanishing, it was directed thus :-

"In the instant case, the petitioner Mameza Khatun, who has been declared to be a foreigner (illegal Bangladeshi migrant) has done the act of vanishing and as per the reports furnished by the State Home Department from time to time, her whereabouts are not known and that she is not traceable. As a test case, Mr. D. Baruah, learned Standing Counsel, Election Commission, shall take up this case to show as to whether her name is included as a 'D' voter or not. On the next date fixed, he will produce the voter list containing her name to find out as to whether her name is included as 'D' voter or not. In the writ petition, the petitioner has enclosed the copy of the voter list of 2005 clearly showing her name without any indication that she is a 'D' voter, although her case was referred to then IMDT in 2004."

The Election Commission of India was also directed as follows :-

"In the mean time, the Election Commission of India shall find out as to the number of cases pending in various Foreigners' Tribunals in the State of Assam and shall also collect the identity of the persons whether they are shown as 'D' voter or not and which will ensure that such doubtful citizens do not cast their votes. The Commission shall also ensure indication of such suspected foreigners as 'D' voters in the electoral rolls, debaring them from voting."

In response to the aforesaid order passed on 11.3.2011, the Chief Secretary of the State has filed an affidavit, in which it has been stated that whether persons whose cases are pending before the Foreigner's Tribunals (other than doubtful voters) are eligible to cast their votes or not, is a matter to be decided by the Election Commission of India. Significantly, in paragraph 3 of the said affidavit, it has been stated thus :-

"3. That, the State Government is of the view that since the category of 'D' voters has been in existence for several years, those 'D' voters who are found to be eligible may be allowed to cast their votes, subject to Election Commission's approval."

In the aforesaid affidavit filed by the Chief Secretary, the queries raised by this Court, referred to above, have not been dealt with, rather a stand has been taken that since the category of 'D' voters has been in existence for several years, they should be allowed to cast their votes, if found eligible.

On perusal of the affidavit, the Court has reason to believe that the State Government is not adverse to allowing the 'D' voters and also the voters whose citizenship are in question and adjudged before the various Foreigner's Tribunals. In this connection, the case in Review Petition No. 115/2009 / WP(C) No. 464/2009 (Md. Samsul Haque & Ors Vs. Member, Foreigner's Tribunal & Ors) may be referred to. In that case, although the petitioners involved therein had been declared to be foreigners (illegal Bangladeshi migrants) within the stream of 1966-1971, requiring registration of their names with the Registering Authority and deletion of their names from the Electoral Rolls but for long 7(seven) years, nothing was done by the Jurisdictional Electoral Registration Officer. Their names were deleted only on insistence of this Court in the year 2009 and in between they merrily kept on casting their votes, on the basis of incorporation of their names in the Electoral Rolls. On being asked as to how that could happen, the answer was that there was some communication gap.

In another case reported in 2008(3)GLT 402 (Adbul Hasim (Md) Vs. State of Assam and others), the petitioner could obtain a passport taking recourse to forgery and at a time when the proceeding against him was pending in the Foreigner's Tribunal.

In most of the cases, the Foreign nationals after invoking the writ jurisdiction against the orders passed by the Foreigner's Tribunals have done the act of vanishing, after their writ petitions have been dismissed. In this connection, mention may be made of the cases in WP(C) 643/2009 (Ms. Anowara Khatun Vs. Union of India), WP(C) 1258/2009 (Mrs. Aisa Bibi Vs. Union of India & Ors), WP(C) 1311/2009 (Nidhan Biswas Vs. Union of India & Ors), WP(C)1307/2009 (Md. Khused Ali Vs. Union of India & Ors), WP(C) 190/2009 (Md. Abdul Kuddus Vs. State of Assam & Ors), WP(C) 698/2009 (Munindra Ch. Roy Vs. Union of India & Ors), WP(C)747/09 (Himangshu Sarkar Vs. State of Assam & Ors), WP(C) 152/09 (Rajia Khatun Vs. Union of India & Ors), WP(C)464/09 (Md. Samsul Haque & Ors. Vs. State of Assam & Ors), WP(C) 1044/09 (Salema Bibi(Khatun) Vs. Union of India & Ors), WP(C) 80/09 (Smt. Malati Das Vs. Union of India & Ors), WP(C) 1334/09 (Mameza Khatun Vs. Union of India & Ors), WP(C)191/09 (Upendra Roy Vs. Union of India), WP(C) 1708/08 (Samsul Hoque Vs. State of Assam & Ors), WP(C) 5497/08 (Nathu Ram Biswas Vs. Union of India & Ors), WP(C) 5545/08 (Gopal Ch. Das Vs. Union of India & Ors), WP(C) 1166/09 (Tarabhani Vs. Union of India & Ors), WP(C) 1045/09 (Mustt. Sahera Khatun Vs. Union of India & Ors), WP(C) 5542/2008 (Mustt. Hazera Khatun Vs. Union of India & Ors) and WP(C)5560/2008 (Md. Jalal Uddin Vs. Union of India & Ors).

Both Mr. D. Baruah, learned counsel representing the Election Commission of India and Mr. K.N. Choudhury, learned Addl. Advocate General, upon a reference to the provisions of the Representation of the People Act, 1950 and 1951, have submitted that it may be difficult to debar persons whose cases are sub-judice in the Foreigner's Tribunals from casting their votes on the basis of inclusion of their names in the Electoral Rolls. In this connection, they have referred to the decisions of the Apex Court reported in 1985 (1) SCC 21 (Inderjit Barua and others Vs. Election Commission of India) and the one reported in 2000(8) SCC 46 (Shymadeo Pd. Singh Vs. Nawal Kishore Yadav). Both the cases dealt with the power of the Election Commission to revise the electoral rolls. In the instant case, we are not concerned with any revision of electoral rolls. What we are concerned with is as to whether along with the 'D' voters, the persons whose cases are under reference in the Foreigner's Tribunals, should be allowed to cast their votes till determination of their citizenship, in accordance with law. The answer can be found in the aforementioned Election Commission's order dated 5.1.98, in which it has been ordered

areas, the conjoint reading of the above referred Article 326 of the Constitution, Section 16 of the R.P. Act, 1950 and Section 62 of the R.P. Act, 1951, leaves no one in any manner of doubt that only a citizen of India alone, and no one else, is eligible to vote at elections to the House of People and the State Legislative Assemblies; and Whereas, in the light of the above unambiguous mandate of the Constitution of India and R.P. Acts, 1950 and 1951 that only the Indian citizens alone, and no one else, shall vote at the aforesaid elections, logically follows that a person, whose citizenship status is in question and under consideration before a Foreigners Tribunal or an Illegal Migrants Determinations Tribunals shall not be eligible to vote, unless such Tribunal decides in his favour that he is a citizen of India". (Emphasis added).

In the last order passed on 11.3.2011, the above quoted direction was issued requiring the Election Commission of India to find out the number of cases pending in various Foreigners Tribunals in the State of Assam and also to collect the identity of the persons whether they are shown as 'D' voters or not. Such a direction was issued to ensure that such doubtful voters do not cast their votes. Direction was also issued to ensure indication of such suspected foreigners as 'D' voters in the electoral rolls debarring them from voting. However, today, a submission has been made on behalf of the Election Commission of India as well as the State Government that in view of Section 23(3) of the Representation of the People Act, 1950, it is now not possible to make any amendment, transposition or deletion of any entry under Section 22 of the Act. A duty having been enjoined both on the State Government and the Union Government as well as the Election Commission of India and there being dereliction of the said duty, resulting in failure to discharge constitutional obligation, it does not lie on the mouth of the Election Commission of India and the State Government to express helplessness in the matter, falling back on the provisions of Section 23 of the Act.

What is required is to treat the persons whose cases are pending before the Foreigners Tribunals as 'D' voters, as has been done in case of 'D' category voters. If the said category can be kept as 'D' voters in the electoral rolls debarring them from casting their votes, I see no reason as to why the other category i.e. whose cases are pending in the Foreigners Tribunals cannot be treated as 'D' voters, which would ensure that they do not cast their votes.

Considering the fact that there is huge number of such voters about which mention has been made in the earlier order dated 11.3.2011, the Election Commission of India must take stern and prompt action in the matter. As indicated in the said order, the total number of cases referred to Foreigners' Tribunals is 3,36,560 (92,867 FT Cases + 76,465 transferred IMDT cases + 1,67,228 cases of 'D' voters).

From the entire approach of the authorities to such a burning issue about which detailed discussions have been made in Sarbananda Sonowal - I & II cases reported in AIR 2005 SC 2920 and 2007 (1) SCC 174, what has transpired is that there is absolutely no endeavour to solve the problem once for all rather the same has been kept alive for the obvious reason. The stand of the State Government in such an important matter has been noted above. It has shifted the burden to the Election Commission of India but at the same time, has taken the stand that the 'D' voters whose names are in existence in the Electoral Rolls for several years, should be allowed to cast their votes. A better response was expected from the State Government in such a serious issue. If 'D' voters of both the categories are allowed to cast their votes, same will have far reaching effect in the election results, about which, it appears that those at the helm of affairs, are not at all bothered rather insist to allow them to cast their votes.

It is not for nothing, the Apex Court in Sarbananda Sonowal-II (supra) observed that there is a lack of will in the matter of ensuring that illegal migrants are sent out of the country. Not to speak of deporting the foreign nationals, they are allowed to roam around merrily conferring them all the rights of an Indian citizen including the right to cast votes. It is on that basis, Peoples' representatives are elected and they decide the destiny of the nation.

It is the experience of this Court that once a reference is made to the Foreigners Tribunals and the same is answered against the foreigners, those at the helm of affairs, do not take any follow up action including the action for deleting his/her name from the electoral rolls. It is because of the persistence and monitoring of this Court only, in the given cases follow up action is taken and not otherwise. There is also no collaboration amongst the authorities towards achieving the ultimate goal, which is to make the State free of foreigners or at-least not to allow such foreigners to cast their vote. Their presence in the State in huge numbers with the potential of rendering the indigenous people to a minority community is no longer in any doubt.

For all the aforesaid reasons, I am inclined to issue the following directions :-

1. The Election Commission of India shall ensure that the 'D' voters are not allowed to cast their votes. 'D' voter will also include the persons whose names are included in the electoral rolls but their citizenship are in doubt/disputed and whose cases are pending in various Foreigners Tribunals.
2. To facilitate the above exercise, the Superintendent of Police (B) of all the Districts shall collect names of such persons whose cases are pending in the Foreigners Tribunals and furnish the same to the Jurisdictional Electoral Registration Officer/ Returning Officer towards ensuring that they are not allowed to cast their votes.
3. All the concerned authorities will act in the matter promptly and no excuse will be entertained. They will bear in mind that their allegiance is to the Constitution of India and not to the political bosses.
4. The aforesaid direction should be carried out in war-footing towards ensuring that such doubtful/disputed voters are not allowed to cast their votes in the ensuing election to the State.
5. Any dereliction of duty towards implementation of the directions contained in this order would be viewed seriously. The Officers concerned will bear in mind that such dereliction may result in initiation of departmental proceedings including invocation of the provisions of Article 311 of the Constitution of India.

List again on 19.04.2011.

Let copies of this order be furnished to Ms. R. Chakraborty, learned State Counsel as well as Mr. D. Baruah, learned Standing Counsel, Election Commission of India, during the course of the day, for their necessary follow up action. Copies of this order may also be sent to Union Government in the Ministry of Home Affairs and the State Home Department respectively, for their necessary follow up action.

Registry shall forward copies of this order to all the Deputy Commissioner and Superintendent of Police(B) of all the Districts.

Jter Analysis		S03 - Assam 2017			
me		Male	Female	Third	Total
	KATABARI	21	16	0	37
	PATHARKANDI	84	204	0	288
	KARIMGANJ NORTH	21	41	0	62
	KARIMGANJ SOUTH	383	1,041	0	1,424
05	BADARPUR	124	300	0	424
006	HAILAKANDI	9	1	0	10
007	KATLICHERRA	22	-4	0	18
008	ALGAPUR	18	1	0	19
009	SILCHAR	404	331	0	735
010	SONAI	110	149	0	259
011	DHOLAI	416	567	0	983
012	UDHARBOND	394	491	0	885
013	LAKHIPUR	234	110	0	344
014	BARKHOLA	270	436	0	706
015	KATIGORA	608	829	0	1,437
016	HAFLONG	2	1	0	3
017	BOKAJAN	19	10	0	29
018	HOWRAGHAT	157	303	0	460
019	DIPHU	272	248	0	520
020	BAITHALANGSO	11	2	0	13
021	MANKACHAR	126	491	0	617
022	SALMARA SOUTH	129	560	0	689
023	DHUBRI	680	1,696	0	2,376
024	GAURIPUR	815	1,898	0	2,713
025	GOLAKGANJ	691	2,211	0	2,902
026	BILASIPARA WEST	265	656	0	921
027	BILASIPARA EAST	389	593	0	982
028	GOSSAIGAON	161	186	0	347
029	KOKRAJHAR WEST	103	146	0	249
030	KOKRAJHAR EAST	117	150	0	267
031	SIDLI	83	155	0	238
032	BONGAIGAON	167	204	0	371
033	BIJNI	147	70	0	217
034	ABHAYAPURI NORTH	160	128	0	288
035	ABHAYAPURI SOUTH	175	197	0	372
036	DUDHNAI	863	1,294	0	2,157
037	GOALPARA EAST	808	1,381	0	2,189
038	GOALPARA WEST	564	1,591	0	2,155
039	JALESWAR	457	1,806	0	2,263
040	SORBHOG	2,468	4,638	0	7,106
041	BHABANIPUR	305	586	0	891
042	PATACHARKUCHI	7	8	0	15
043	BARPETA	499	583	0	1,082
044	JANIA	1,974	3,782	0	5,756
045	BAGHBAR	655	1,990	0	2,645
046	SARUKHETRI	451	1,097	0	1,548
047	CHENGA	464	1,095	0	1,559
048	BOKO	102	127	0	229
049	CHAYGAON	233	879	0	1,112
050	PALASBARI	11	11	0	22
051	JALUKBARI	31	41	0	72
052	DISPUR	1,067	1,249	0	2,316
053	GAUHATI EAST	135	140	0	275
054	GAUHATI WEST	878	856	0	1,734
055	HAJO	91	153	0	244
056	KAMALPUR	23	18	0	41
057	RANGIA	61	36	0	97
058	TAMULPUR	975	1,683	0	2,658
059	NALBARI	147	84	0	231
060	BARKHETRI	143	98	0	241
061	DHARMAPUR	31	41	0	72
062	BARAMA	36	15	0	51
063	CHAPAGURI	13	7	0	20
064	PANERY	1,806	1,885	0	3,691

Annexure - D

(13)

	KALAIGAON	313	482	0	795
	SIPAJHAR	269	321	0	590
	MANGALDOI	343	621	0	964
58	DALGAON	743	1,715	0	2,458
069	UDALGURI	852	1,029	0	1,881
070	MAJBAT	1,516	2,085	0	3,601
071	DHEKIAJULI	2,000	2,987	0	4,987
072	BARCHALLA	1,658	2,798	0	4,456
073	TEZPUR	1,476	2,396	0	3,872
074	RANGAPARA	854	1,439	0	2,293
075	SOOTEA	867	1,051	0	1,918
076	BISWANATH	361	536	0	897
077	BEHALI	573	680	0	1,253
078	GOHPUR	800	909	0	1,709
079	JAGIROAD	1,552	1,993	0	3,545
080	MARIGAON	366	392	0	758
081	LAHARIGHAT	204	268	0	472
082	RAHA	630	1,089	0	1,719
083	DHING	1,023	1,991	0	3,014
084	BATADROBA	477	1,021	0	1,498
085	RUPOHIHAT	352	1,335	0	1,687
086	NOWGONG	247	360	0	607
087	BARHAMPUR	144	146	0	290
088	SAMAGURI	519	996	0	1,515
089	KALIABOR	515	731	0	1,246
090	JAMUNAMUKH	198	188	0	386
091	HOJAI	781	1,195	0	1,976
092	LUMDING	231	182	0	413
093	BOKAKHAT	124	103	0	227
094	SARUPATHAR	467	624	0	1,091
095	GOLAGHAT	248	259	0	507
096	KHUMTAI	113	126	0	239
097	DERGAON	2	0	0	2
098	JORHAT	0	0	0	0
099	MAJULI	7	4	0	11
100	TITABAR	0	0	0	0
101	MARIANI	6	2	0	8
102	TEOK	0	0	0	0
103	AMGURI	0	0	0	0
104	NAZIRA	0	0	0	0
105	MAHMARA	1	0	0	1
106	SONARI	0	0	0	0
107	THOWRA	0	0	0	0
108	SIBSAGAR	0	0	0	0
109	BIHPURIA	99	90	0	189
110	NAOBOICHA	269	381	0	650
111	LAKHIMPUR	43	72	0	115
112	DHAKUAKHANA	388	576	0	964
113	DHEMAJI	290	312	0	602
114	JONAI	1,189	1,448	0	2,637
115	MORAN	59	61	0	120
116	DIBRUGARH	159	134	0	293
117	LAHOWAL	9	1	0	10
118	DULIAJAN	124	90	0	214
119	TINGKHONG	3	10	0	13
120	NAHARKATIA	71	54	0	125
121	CHABUA	19	15	0	34
122	TINSUKIA	202	220	0	422
123	DIGBOI	172	167	0	339
124	MARGHERITA	300	296	0	596
125	DOOM DOOMA	190	218	0	408
126	SADIYA	31	8	0	39
		47,534	77,799	0	125,333