

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

WP(C) No. 3236/2009

Md. Rustom Ali,
S/o. Mohammad Ali @ Mohammed
@ Md. Mohammed Ali,
Village - No.2 Kholabhuyan,
P.O. Kuranibori, P.S. Mayong,
District - Marigaon (Assam).

.....*Petitioner.*

-Versus -

1. The State of Assam, represented by the Commissioner and Secretary to the Government of Assam, Department of Home, Dispur, Guwahati-6.
2. The Superintendent of Police (B), Marigaon, P.O. & District - Morigaon, (Assam).
3. The Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, Shastri Bhawan, Tilak Marg, New Delhi.

.....*Respondents.*

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

For the petitioner : Mr. M.A. Shekih, Adv.
Mr. A.K. Purkayastha, Adv.

For the respondents: Mr. K.N. Choudhury, AAG,
Ms. R. Chakroborty, Sr. GA
Mr. R. Sarma, ASGI,
Mr. M. Bhagabati, CGC.

Date of hearing : 09.05.2011.
Date of judgement : 26.05.2011.

JUDGEMENT AND ORDER (CAV)

B.K. Sharma, J

The petitioner claiming himself to be an Indian citizen, by birth, has filed this writ petition challenging the judgement dated 09.09.2008, passed by the learned Member, Foreigners Tribunal, Morigaon in **FT(D) C/No. 172/2006**, by which he has been declared to be a foreigner (Bangladeshi), who illegally entered into Assam after the cut off date i.e. 25.3.1971. Although, the impugned order was passed on 9.9.2008 but the petitioner filed the instant writ petition nearly one year thereafter. In the intervening period, the respondents did not take any action for his detention and deportation to Bangladesh.

2. According to the petitioner, he is the son of one **Mohammad Ali @ Mohammad @ Mohammed Ali** and a resident of Village No.2 Kholabhuyan, Post Office - **Kuranibori**, PS- Mayang in the district of Morigaon, Assam. It is his claim that he was born in the Village - Kuranibori about the year 1961. His parents have total 10 issues, 5 (five) sons and 5(five) daughters and the petitioner is the eldest son. It is his further claim that he had had his primary education at Kuranibari Primary School and read upto to **Class-IV**. Although,

in paragraph 2 of the writ petition, leave has been prayed for to produce the School Certificate but no such certificate was produced during the course of hearing.

3. According to the pleaded case of the petitioner, the name of his parents had appeared in **Annexure-1** Electoral Roll of **1966** (extract only), wherein names of **Mohammad Ali and Safura Khatun** wife of **Mohammed** appear. Be it stated here that Annexure-1 dated 6.11.2006 is a typed copy of the purported electoral roll of 1966.

4. The petitioner has also placed reliance on the **Annexure-2** typed copy of electoral roll of **1970** (extract only) containing the same names and same particulars. Interestingly, the parents of the petitioner were shown as **37** and **28** years old in both the electoral rolls of 1966 and 1970 and thus there was no increase in their respective age from **1966** to **1970**.

5. The petitioner has also placed reliance on the electoral roll of **1993** (Annexure-3, a typed copy and extract only), showing the names of **Rustom Ali S/o. Mahammad Ali and Halima Khatun W/o. Rustom Ali** aged **35** and **27** years respectively. Name of the petitioner is **Md. Rustom Ali**.

6. Above are the three documents on the basis of which the petitioner claims to be an Indian citizen, by birth. Nothing has been stated in the writ petition as to why the names of his alleged parents did not appear in any one of the electoral rolls after **1970** and before that. Nothing has also been stated as to why the names of the petitioner and his wife also did not appear in any one of the voter list after **1993**.

7. In the counter affidavit filed by the Superintendent of Police (B), Morigaon (respondent N.2), it has been stated that a report dated 2.11.1997 was received at his Office from the Electoral Registration Office of No. **79 Jagiroad LAC** along with the verification report of the Verification Officer, Morigaon to the effect that the petitioner is a suspected Bangladeshi national as per the verification report. On the basis of the said report, the SP(B), Morigaon, registered case No. **663/1997 dated 22.11.1997** and after observing due formalities, forwarded the reference to the then IM(D)T, Morigaon for trial, on the basis of which IM(D)T Case No. 2117/2003 was registered. Thus, it took long six years for the Tribunal to register a case against the petitioner on the basis of the reference from SP(B), Morigaon.

8. After scrapping of the IM(D)T Act by the Apex Court, the reference was transferred to the

Foreigners Tribunal No.1, Morigaon and re-numbered as FT(D) C/No. 172/2006.

9. In the affidavit-in-opposition, the respondent No.2 has justified the impugned judgement. It will be pertinent to mention here that the impugned judgement is an exparte one as the petitioner after his initial appearance and filing of Written Statement (WS), did not appear to prove the stand in the WS and the photocopies of the documents submitted to the Tribunal.

10. In the writ petition, dealing with the proceeding before the Tribunal, the petitioner has stated that he had received notice in respect of FT(D) C/ No. 172/2006 on 18.9.2006, directing him to appear in the Tribunal on 12.10.2006 and that he had appeared and filed Written Statement on 8.1.2007. As regards his non-appearance thereafter before the Tribunal to respond to the proceeding / reference initiated against him, the stand of the petitioner in paragraph 11 of the writ petition is as follows :-

“11. That the petitioner virtually is an illiterate person who reads upto Class-IV only. He is not aware of legal intricacies of a litigation. It was playing in his mind that he is a citizen of India by birth and he submitted said electoral roll 1966 and 1970 along with his written statements, those documents would be sufficient to drop the case against him and to declare him as a citizen of India by birth by the learned Tribunal. With this assessment he ceased to appear in the tribunal in subsequent dates. “

11. In paragraph 14 of the writ petition, the petitioner has stated about **Annexure-7 Quit India Notice dated 28.11.2008** issued by the SP(B), Morigaon directing him to remove himself from India within 7(seven) days. However, not to speak of removing himself from India and taking any action by the SP(B), Morigaon pursuant to the impugned judgement and the Quit India Notice, the petitioner could merrily roam around like any other Indian citizen and eventually could also invoke the writ jurisdiction of this Court. **This is how the foreigners in Assam are being dealt with by the mighty Police and State administration.**

12. By an **interim order** passed in this proceeding on **10.11.2009**, the petitioner was directed to surrender before the SP(B), Morigaon on or before **24.11.2009**. Direction was also issued to the said S.P. to decide as to whether the petitioner should be detained in detention camp or in jail custody till a decision was arrived at in the instant proceeding or he should be enlarged on bail upon furnishing adequate security. **It was also made clear that in the event of enlarging the petitioner on bail, the common plea raised in such nature of proceedings that the foreigner is not traceable and his / her whereabouts are not known, would not be entertained.**

13. During the course of hearing of this proceeding and as recorded in the order dated **2.8.2010**, it was submitted by the learned counsel for the petitioner that he had surrendered before the SP(B), Morigaon, who in turn allowed him to go on bail.

14. I have heard both Mr. M.A. Sheikh and Mr. A.K. Purkayastha, learned counsel for the petitioner as well as Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate, representing the State respondents. I have also heard Mr. M. Bhagabati, learned CGC. As regards the queries made in respect of the provisions of *the Foreigners Act, 1946 ; The Foreigners Order 1948 ; The Foreigners (Tribunals) Order 1964 ; The Passport (Entry Into India) Act, 1920 ; The Passport Act, 1967 ; The Immigrants (Expulsion from Assam) Act, 1950*, both Mr. K. N. Choudhury, learned Addl. Advocate General, Assam and Mr. R. Sarma, learned ASGI, made their elaborate submissions.

Case of the Petitioner :

15. I have considered the submissions made by the learned counsel for the parties and the entire materials on record including the record received from the Foreigners Tribunal (1st), Morigaon. The FT **Case No. 172/2006** was registered on **18.9.2006** and notice was issued fixing the matter on **12.10.2006**. Thereafter, the matter was fixed as many as on 12(twelve) dates, which are **12.10.2006**,

27.11.2006, 9.1.2007, 22.2.2007, 10.4.2007, 7.6.2007, 6.8.2007, 6.11.2007, 19.2.2008, 23.5.2008 and 9.9.2008.

16. The petitioner first appeared on **27.11.2006** and filed written statement and photocopies of two documents, which are **1970** and **1966** extract of voter list containing the names of **Mohammad Ali and Safura Khatun**, which have also been annexed to the writ petition as **Annexure- 1 & 2**, about which discussions have been made above.

17. After the initial appearance and filing of the **Written Statement (WS)** and the documents, the petitioner remained absent in the proceeding all throughout, without any steps. Situated thus, the Tribunal had no other option than to proceed *ex parte*. The Tribunal took the evidence of the **Verification Officer (PW-1)**, who in his deposition stated as to how the Electoral Officer on the basis of the suspicion had directed him to make necessary verification in respect of inclusion of name of the petitioner in the **1997** voter list. According to this witness, the works relating to revision of voter list were undertaken during which the doubt arose about the nationality of the petitioner. Regarding the inspection and verification carried out by this witness, it was stated that he had visited the petitioner's place and carried out necessary verification in consultation with the village

Gaonbhura and other people of the village including the petitioner. During verification / enquiry, he had asked the petitioner to produce documents pertaining to his citizenship, such as, ration card, land documents, voter list, refugee certificate, etc. but he failed to produce any one of the same, although he was given time to do so. He also stated in his deposition that although the petitioner had stated that he was born in 1961 but he could not say anything as to the place of his birth. Although the petitioner had stated that his mother tongue is Assamese but he could not speak Assamese properly.

18. **PW-1** i.e. the **Verification Officer** during his deposition proved the Verification Report (**Ext.1**) in which **Ext.1(1)** is his signature. The verification report and the deposition of this witness went unrefuted as the petitioner did not choose to contest the reference.

19. It is in the aforesaid circumstances, the Tribunal passed the impugned judgement declaring the petitioner to be a foreign national. In the judgement, the Tribunal has dealt with the above aspects of the matter including the stand of the petitioner in his written statement that his name was enrolled as a doubtful voter in the voter list of **2006**. The Tribunal also noticed that the only documents the petitioner had produced along with the Written Statement were the photocopies of 1966 and 1970

voter list. It has rightly been observed by the Tribunal that as per the provisions of **Section 9 of the Foreigners Act, 1946**, it was incumbent on the part of the petitioner to prove his citizenship as per the prescribed procedure but instead he remained absent in the proceeding.

20. Above being the position, there cannot be even an iota of doubt that the petitioner is not an Indian citizen but is a foreigner (Bangladeshi national). If he is an Indian citizen, by birth, he could have easily proved the same. Even in this proceeding, he did not produce any valid document to prove his Indian citizenship including the School Certificate for production of which, he craved leave of the Court.

21. One cannot establish his Indian citizenship merely by producing typed copies of voter lists and that too extract only without proving the original. In the instant case, although the claim of the petitioner is that his parents had been voter in **1966** and **1971** but there is no proof that the two persons named in the **1966** and **1970** voter lists, are his parents and even if they are, there is no explanation as to why their names did not appear in any one of the voter list after **1970**. If the **1993** typed copy of the voter list purportedly containing the names of the petitioner and his wife is also believed, then also there is no explanation as to why his names did not

appear in any one of the earlier voter lists and later voter lists.

22. Inclusion of name of the petitioner in the 2006 voter list as 'D' voter depicts the callous approach of the authorities. If the name of the petitioner was included in the voter list of 2006, may be as a 'D' voter, it is not understood as to how his name could be included at a time when the proceeding against the petitioner was pending in the Tribunal and when except the 1993 voter list, his name was also not included in any other over list.

23. In the affidavit-in reply filed by the petitioner, he has placed reliance on a purported document of 1943 which is an "Annual Khiraj Pata" (illegible copy) containing the name of one Mir Mohammad, whom the petitioner claims to be his grand father. Thus, it is a matter of convenience for the petitioner to through any document towards claiming Indian citizenship, that too by birth. Even if the illegible photocopy of the Patta is believed to be in existence, there is no explanation as to why the name of the said Pattadar did not appear in any other documents including the voter list.

24. In the said affidavit-in-reply as well as in the writ petition, the petitioner has disclosed his age as 46 years but in the electoral roll of 1993, typed copy of which has been annexed to the writ petition,

his age is recorded as 35 years. If that be so, he will be aged about 51 years as of 2009 when the affidavit-in-reply was filed, declaring his age as 46 years.

25. In view of the above, the impugned judgement dated 9.9.2008, passed by the Foreigners Tribunal (1st) Morigaon in FT Case No. 172/2006 cannot be faulted with. There is absolutely no doubt that the petitioner is a Bangladeshi national illegally staying in Assam and thus liable to be detained in detention camp for deportation to Bangladesh.

The issue in general

26. As noted above, by an interim order dated 10.11.2009, the petitioner was directed to appear before the SP(B), Morigaon for his decision as to whether he should be kept in detention camp or be enlarged on bail on condition of his availability in case of answering the writ petition upholding the impugned judgement of the Tribunal. Such a course of action was adopted in view of the fact that in large number of cases, about which mention has been made in the said order dated 10.11.2009, the foreign nationals after invoking the writ jurisdiction of this Court towards assailing the orders of the Tribunal, have done the act of vanishing and their whereabouts are not known as reported by the Police.

27. It is the experience of this Court that once the writ petitions are dismissed upholding the orders of the Tribunal, in most of the cases the foreign nationals do the act of vanishing and the explanation furnished by the Police and Home Department of the Govt. of Assam is that efforts are being made to trace them out.

28. Having regard to the larger issue involved and the arguments advanced by the learned counsel for the parties in reference to the provisions of the Act and Orders referred to above, this Court by order dated 25.1.2010 directed the Central and the State Govt. to file affidavits regarding implementation of the provisions of the said Acts and orders. By another order dated 23.9.2010, the Central Govt. was directed to file an affidavit in respect of the following issues :-

- “(1) The Union of India in the Ministry of Home Affairs shall apprise the Court as to under what provision the Foreigners (Tribunals) Order, 1964 has been promulgated.***
- (2) Whether the aforesaid order is applicable throughout India or has been made applicable only in the State of Assam.***
- (3) If the 1964 Order is not in operation in rest of the country, how the foreigners, are being identified without the assistance of any Foreigners’ Tribunal. For example, if a Bangladeshi national is apprehended in Delhi, how he will be***

dealt with towards his detention and deportation to Bangladesh.

- (4) Having regard to the admitted fact that large number of illegal migrants are staying in Assam and the influx of such illegal migrants is unabated and continuous which eventually might change the demographic pattern of the State of Assam, what measures Central Government would suggest for expeditious disposal of the proceedings before the Tribunal.*
- (5) Whether keeping in mind the above aspects of the matter the Foreigners (Tribunals) Order, 1964 is required to be amended making provisions for quick disposal of the references within a time limit. As the experience of this Court goes the proceedings before the Tribunal are considerably delayed even to the extent of years together. Examples are at galore where the proceedings under the then IMDT Act, 1983 and Foreigners' Act, 1946 consumed 10/15/20 years.*
- (6) The Central Government shall also clarify as to whether the procedure to be adopted by the Foreigners' Tribunals towards rendering its opinion as to whether a person is illegal migrant or not is summary in nature on the basis of prima facie materials or detailed procedure like civil proceedings is to be followed which naturally will delay the proceedings indefinitely.*
- (7) Another area often complained of is that the Foreigners Tribunals' are without the required infrastructure and amenities. Some of the Tribunals are*

functionless in absence of Presiding Officers.

- (8) *The Central Government shall also clarify as to whether having regard to large number of illegal migrants present in the State of Assam (a fact recognized by the Apex Court in Sarbananda Sonowal's I & II cases reported in (2005) 5 SCC 665 and (2007) 1 SCC 174) and unabated influx of such migrants, any special provision and / or special procedure is to be adopted towards identification and deportation of illegal migrants from the State within definite time frame. Otherwise, it is virtually impossible to identify the large scale illegal migrants through the process of identification by the Foreigners' Tribunals. Further, the orders of the Tribunals are challenged in Writ Petitions and thereafter in writ appeals with the final scope of preferring appeals before the Apex Court. By the time, finality is arrived at irretrievable damage is done. With such endless proceedings, the illegal migrants remain in Assam enjoying all rights of Indian citizens with the scope of recognizing their children as Indian citizens adding insult to the injury.***

29. Pursuant to the aforesaid queries made, the Union of India in the Ministry of Home Affairs has filed 4 (four) affidavits dated 3.5.2010, 19.6.2010, 25.11.2010 and 5.1.2011. The State of Assam in the Department of Home and Political has also filed an affidavit on 23.8.2010. They are dealt with below :-

i) **Affidavit dated 3.5.2010 filed by UOI**

30. As per the Apex Court judgement in *Sarbananda Sonowal Vs. Union of India* reported in **(2005) 5 SCC 665** by which the IMDT Act has been declared ultra-virus to the Constitution of India, the Apex Court had held that the provisions of **Passport (Entry into India) Act, 1920; the Foreigners Act, 1946 ; the Immigrants (Expulsion from Assam) Act, 1950 and Passport Act 1967** shall apply to the State of Assam. The Foreigners Tribunals shall be constituted under the **Foreigners (Tribunals) Order, 1964**, which in turn shall decide the references as per the provisions of the Foreigners Act and the Rules framed thereunder and as per the procedure prescribed under the **Foreigners (Tribunals) Order, 1964**.

(ii) **Affidavit dated 19.6.2010 of UOI.**

31. The **Immigrants (Expulsion from Assam) Act, 1950** was enacted to deal with the immigrants from the then East Pakistan and stay of such persons or class of persons in Assam is detrimental to the interest of the general public of India or of any section thereof or of any Schedule Tribe in Assam.

32. Bangladeshi nationals unauthorisedly overstaying after the expiry of their VISA are to be deported to Bangladesh and such deportation has to be carried out as per the provisions of **Foreigners Act, 1946** and Rules framed thereunder. It has also

been stated that their stay and existence in India are regulated under the statutes viz. **Passport (Entry into India) Act, 1920** ; the **Foreigners Act, 1946** and **Registration of Foreigners Act, 1939**. As per the provisions of **Passport (Entry into India) Act, 1920**, the power of arrest of a foreigner is vested with any **Officer of Police** not below the rank of **Sub-Inspector** and by virtue of the powers conferred by the act, foreigners who have entered into India without a passport, can be arrested without warrant.

(iii) **Affidavit dt. 25.11.2010 of UOI.**

33. Under the provisions of **Foreigners Act, 1946** read with **Foreigners Order 1948**, Central Govt. has the powers to issue orders requiring the foreigners to reside in a particular place and imposing restrictions on their movements. **Although, the Foreigners (Tribunals) Order, 1964** is applicable throughout India but no **Foreigners Tribunal** has been set up in any other State than the State of Assam. A separate procedure for deportation of illegal Bangladeshi migrants was set out and circulated to the State Governments including Assam / UT administration on 16.9.1997 and 9.9.1998. These instructions have since been reviewed by the Govt. and revised instructions have been issued to the State Governments including Assam /UT Administration on 23.11.2009. These instructions lay down in detail the procedure to be

followed for deportation of illegal Bangladeshi migrants.

34. For ensuring speedier disposal of the cases by the Foreigners Tribunals, the State Govt. has been requested to examine and suggest guidelines for Tribunals for disposal of cases in a time bound manner from the date of its receipt and also conducting spot enquiry by the Tribunals and disposal of cases on summary trial etc. The expenditure incurred by the State Govt. on administration of Foreigners Tribunals and providing infrastructure and amenities in Tribunals are 100% reimbursable by the Central Govt.

(iv) Affidavit dtd. 5.1.2011 of UOI.

35. This affidavit has been filed in reference to the queries made in the order dated 8.12.2010. As regards the **query No.1**, it has been stated that the matter pertaining to entering of foreigners into India, their presence in India and their departure from India, are governed by the **Foreigners Act, 1946**, which is applicable throughout the country. The **Foreigners (Tribunal) Order, 1964** was promulgated by the Govt. of India in exercise of powers conferred by Section 3 of the **Foreigners Act, 1946**. As per the Assam Accord, the foreigners / illegal migrants have been divided into following categories :-

- (1) Those who came to Assam before 1.1.1966.
- (2) Those who came to Assam between 1.1.1966 and 24.3.1971.
- (3) Those who came to Assam on or after 25.3.1971.

36. The affidavit further states about the action taken by the Central Govt. pursuant to the directions issued by the Apex Court in *Sarbananda Sonowal (supra) case*.

Query No. 2 & 3

37. The procedure that is being followed towards detection and deportation of foreign nationals by other State Governments / UTs, is as per the instructions issued by the Ministry of Home Affairs vide letter No. 14011/55/09-F.VI dated 23.11.2009. The procedure includes the following :-

“(i) In case of those illegal migrants from Bangladesh who are apprehended in the country and against whom action is taken under section 14A(b) of the Foreigners Act, 1946 and whose cases are referred to the Bangladesh High Commission for nationality verification through the Ministry of External Affairs, are repatriated / deported

after the confirmation of their nationality. Till the nationality of such Bangladeshi national is confirmed, they are kept in detention centres set up in the States / UTs concerned.

- (ii) In respect of Bangladeshi nationals found to be staying unauthorisedly in any particular State / UT, proper enquiry is conducted by the State Government /UT concerned. If the suspected Bangladeshi national claims Indian citizenship and residence in a place in any other Indian State/UT, the concerned State Government /UT would send to the Home Secretary of the State/UT and District Collector / District Magistrate of the District from where the suspected person claims to hail, the details including name, parentage, residential address, details of near relatives etc. The State Government /UT /Collector / District Magistrate concerned in turn will ensure that appropriate report is sent to the deporting State Government/UT after proper verification within a period of 30 days. During the period of 30 days,*

the competent authority will ensure, by obtaining permission of the Court wherever necessary, the detention of such persons to ensure physical availability at the time of detention. If no report is received within the period of 30 days, the competent authority may take necessary action to deport the suspected Bangladeshi national.

- (iii) After completion of the inquiry, the illegal immigrants from Bangladesh detected in States/UTs, other than the Border States with Bangladesh, are taken by the concerned State/UT Police under proper escort and handed over to BSF in West Bengal at designated places for deportation.*
- (iv) Those State Governments having borders contiguous with Bangladeshi shall hand over the illegal Bangladeshi immigrant to the BSF at the designated place in the State after completion of inquiry.*
- (v) Bangladeshi nationals who are intercepted at the border while crossing into India unauthorisedly are immediately sent back by the Border Security Forces (BSF) then and there.*

(vi) In case of inadvertent crossers, BSF is to take them into custody and interrogate them. After interrogation, if found innocent, they will be handed over to Bangladeshi Rifles (BDR) after holding flag meeting.”

38. Reply to query No. 4, 5 6 & 8

The issue relating to early disposal of cases by the Foreigners Tribunals by way of conducting spot enquiry and disposal of cases on summary trial and also relevant amendments in Foreigners Tribunals, are active consideration of the Central Government, for which in the affidavit, 16 (sixteen) weeks time have been prayed for.

39. Reply to query No. 7

In order to make Foreigners Tribunals functional, the State Government has given dual charge to the Presiding Officer of the neighbouring district. The request of the Govt. of Assam for raising the upper age limit of the Presiding Officers from 65 to 67 is under active consideration and would be decided expeditiously.

40. Affidavit dated 23.8.2010 filed by the Govt. of Assam.

This affidavit speaks of applicability of the provisions of the aforementioned Acts and Orders in

the State of Assam. As regard the applicability of the **Immigrants (Expulsion from Assam) Act, 1950** ; the **Foreigners Act, 1946** and **Foreigners (Tribunal) Order, 1964** in the State of Assam, it has been stated that all the Acts co-exist and are relevant in the present scenario, inasmuch as, the powers under the **Acts of 1950** also having been delegated by the Central Govt. to the State Govt., the provisions thereof would also be made applicable for expulsion of immigrants from Assam in accordance with the statutory prescription laid down therein.

Conclusions and directions :

41. From the above stand of the Government, more particularly, the Central Govt., what is seen is that there is no denial of the fact that the provisions of the aforementioned **Acts, Rules and Orders** are applicable as they co-exist. If that be so, apart from detection and deportation of the Foreigners as per the provisions of **the Foreigners act, 1946**, they can also be deported as per the provisions of **the Immigrants (Expulsion from Assam) Act, 1950**. A suspected foreigner can also be arrested under the provisions of **Passport (Entry into India) Act, 1920** and **the Foreigners Act, 1946**.

42. In the affidavit filed by the Union of India on 25.11.2010, although the circulars dated **16.9.1997**, **9.9.1998** and **23.11.2009**, laying down the procedure for deportation of illegal Bangladeshi

migrants have been referred to, but it has chosen not to enclose the copies of the said circulars and thus it is not discernible as to which is the methodology laid down in the said circulars. In paragraph 6 of the affidavit filed on 25.11.2010, the Central Govt. has stated that the State Govt. has been requested to examine and suggest guidelines for Tribunals for speedy disposal of the cases in a time bound manner. However, in absence of any response from the State Government, it is also not discernible as to what suggestions have been made.

43. Although, in the Union of India affidavit, it has been stated that the expenditures incurred in respect of the Foreigners Tribunals are 100% reimbursed by the Central Govt. but often it is seen that because of lack of infrastructure, the Tribunals are in a difficult situation to deal with the cases. It is also the allegation that many of the references pending in the Foreigners Tribunals are not yet been registered and they are still pending for years together.

44. In the affidavit filed on 5.1.2011, the Central Govt. has prayed for 16(sixteen) weeks time towards revising the procedure for early disposal of cases by the Foreigners Tribunals by way of conducting spot enquiry, etc. The time prayed for has already been expired and the outcome of the proposed inter-ministerial consultation and filling

of affidavit in this regard is not known to this Court.

45. Having regard to the larger issue involved which is early detection and deportation of foreign nationals from Assam and deletion of their names from the electoral rolls during the pendency of the proceeding before the Tribunal and the related issue of speedy disposal of such cases and preventing the act of vanishing by such foreign nationals, the following directions are issued :-

- (1) Once a reference is made by the jurisdictional SP(B) to the Foreigners Tribunal, his / her name should be deleted from the electoral rolls forthwith.

- (2) It will be the entire responsibility of the SP(B) of the districts to ensure presence of the foreign nationals under reference to the Tribunal so that later on after finalization of the proceeding declaring him/ her to be a foreign national, there is no excuse that he / she is not available for detention and deportation. In other words, it will be the responsibility of the SP(B) either to detain him / her in detention camp or to allow him / her to remain on bail subject to the condition that he/she would be available for detention and deportation, in the event of

the reference being answered against him / her and no excuse will be entertained that he/she is untraceable and his/her whereabouts are not known.

- (3) Since the stand of the respondents is that the provisions of the **Immigrants (Expulsion from Assam) Act 1950** are applicable and can be applied towards detection and deportation of foreign nationals, the jurisdictional SP(B) may invoke the provisions of the said Act towards that end, which will be in addition to detection and deportation of foreign nationals under the **Foreigners Act, 1946**.
- (4) The jurisdictional SP(B) shall also take into account the fact that the provisions of **Passport (Entry into India) Act, 1920** being applicable to the State of Assam, the provisions therein towards arresting the foreign nationals who are illegally staying in Assam, are also applicable and can be invoked, wherever found necessary.
- (5) In case of any reference being made to the **Foreigners Tribunal** against a particular person, it may also be found out as to whether his spouse and other relations including the parents are also

suspected foreigners requiring reference of their cases to the Foreigners Tribunals.

- (6) In terms of the affidavit filed on 25.11.2010 by the Central Govt., both the Union and the State Government shall evolve formula / procedure for early disposal of cases relating to foreign nationals. In this connection, they may refer to the stand of the Central Govt. in Paragraph 14 of their affidavit filed on 5.1.2011, by which 16 (sixteen) weeks time was prayed for towards evolving methodology for early disposal of cases by the Foreigners Tribunals. In this connection, they will bear in mind that the procedure to be followed is summary in nature and the burden of proof is always with the suspected foreigner. Any amount of delay in deciding the cases always leads to serious consequences with felling effects on integrity, sovereignty and security of the State.

46. While the writ petition is dismissed upholding the impugned judgement dated **9.9.2008** passed by the Foreigners Tribunal (1st), Morigaon in **FT Case No. 172/2006**, the State and the Union Governments are directed to implement the aforesaid directions. On the next date fixed, both the Governments shall apprise the Court as to the action taken in respect of

the 16 weeks time prayed for towards evolving the methodology for early disposal of cases in the Foreigners Tribunals. **On the next date fixed, the State Government shall also apprise the Court as to how many references are pending in different Foreigners Tribunals to be registered and the year(s) of such pendency.**

47. As regards the petitioner, the SP(B), Morigaon, shall immediately take him for detention and eventual deportation to Bangladesh. Simultaneously, the Deputy Commissioner, Morigaon shall also ensure deletion of his name from the voter list. The SP(B) may also find out as to whether the wife of the petitioner and any of his relations are also suspected foreigners and if so, there cases may also be referred to the Foreigners Tribunals. Alternative actions may also be taken as per the provisions of the **1950 Act and the Passport (Entry into India) Act, 1920** referred to above.

48. Let the writ petition be listed again on **30.6.2011** for furnishing reports by the SP(B) and Deputy Commissioner, Morigaon, by which date, both the Union and the State Government in the appropriate Department shall also file affidavits dealing with the issues referred to above.

49. Registry is directed to send down the LCR. Direction is also issued for furnishing copies of this

Judgement and Order to the SP(B) and Deputy Commissioner, Morigaon and other Districts for their necessary follow up action. Another copy be sent to the Union of India in the Home Department. Copies may also be furnished to Mr. R, Sarma, learned Asstt. Solicitor General of India and Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate, Assam.

JUDGE

Sukhamay