

KAMALAKHYA DEY PURKAYASTHA AND ORS.

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 1020 of 2017)

DECEMBER 05, 2017

[**RANJAN GOGOI AND R. F. NARIMAN, JJ.**]

Citizenship (Registration of Citizens and Issues of National Identity Cards) Rules, 2003 – Schedule (Special Provisions as to manner of Preparation of National Register of Indian Citizen in State of Assam) – Clause 3(3) – National Register of Indian Citizen – Claims for inclusion of persons who are originally inhabitants of the State of Assam – Expression “originally inhabitants of the State of Assam” – Clarification of – Held: Identification of persons who are originally inhabitants of the State of Assam as against those who are not does not determine any entitlement for inclusion in the NRC which is on the basis of proof of citizenship alone and nothing else – Neither does such identification confer any special entitlement or benefit – Apprehension that by the process of verification of the claims for inclusion in the National Register of Indian Citizen (NRC) based on the claim to be originally inhabitants of the State of Assam a superior class of citizens is being created are wholly unfounded – Exercise of upgradation of NRC is not intended to be one of identification and determination of who are originally inhabitants of the State of Assam – Sole test for inclusion in the NRC is citizenship under the Constitution of India and under the Citizenship Act including s.6A thereof – Citizens who are originally inhabitants of the State of Assam and those who are not are at par for inclusion in the NRC.

Disposing of the writ petitions and Interlocutory Applications, the Court

HELD: 1.1 Clause 3(3) of the Schedule (Special Provisions as to manner of Preparation of National Register of Indian Citizen in State of Assam) to the Citizenship (Registration of Citizens and Issues of National Identity Cards) Rules, 2003 provides for identification of persons entitled to be included in the National

A Register of Citizens (NRC) by a process different from what is enumerated in Clause 3(2) and, therefore, the said Clause i.e. 3(3) constitutes an exception thereto. Clause 3(3) contemplates a less strict and vigorous process for deciding claims for inclusion in the NRC insofar as persons who are originally inhabitants of the State of Assam are concerned. Identification of persons who are originally inhabitants of the State of Assam as against those who are not does not determine any entitlement for inclusion in the NRC which is on the basis of proof of citizenship alone and nothing else. Neither does such identification confer any special entitlement or benefit. This has, infact, been clarified in several of the reports submitted by the learned Coordinator before this Court. [Para 4] [83-B-D]

D The prayer made in the writ petitions and the I.As, is founded on an apprehension that by the process of verification of the claims for inclusion in the NRC based on the claim to be originally inhabitants of the State of Assam a superior class of citizens is being created. The question who is originally inhabitant of the State of Assam, according to the applicants and the writ petitioners, may also have impact on the entitlement of such persons in the matter of opportunities for education, employment etc. vis-a-vis the second category of citizens i.e. who are not originally inhabitants of Assam. All such apprehensions are wholly unfounded. The exercise of upgradation of NRC is not intended to be one of identification and determination of who are originally inhabitants of the State of Assam. The sole test for inclusion in the NRC is citizenship under the Constitution of India and under the Citizenship Act including Section 6A thereof. Citizens who are originally inhabitants/residents of the State of Assam and those who are not are at par for inclusion in the NRC. In view thereof, there is no reason to issue any direction or clarification as to the meaning of the term “originally inhabitants of the State of Assam” as sought for in the present Writ Petitions and the Interlocutory Application(s). [Paras 5-7] [83-E-H; 84-A-B]

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 1020 of 2017.

Under Article 32 of the Constitution of India. A

WITH

W. P. (C) Nos. 1095, 1101, 1096, 1104 and 1147 of 2017 and I. A. No. 101687/2017 in SLP (C) No. 13259 of 2017.

K. K. Venugopal, AG, Tushar Mehta, ASG, Ms. Indira Jaising, Kamal Nayan Chaudhary, Salman Khurshid, B.H. Marlapalle, Sr. Advs, Ms. Ajita Sharma, Rohit Ghosh, Fuzail Ahmad Ayyubi, Arvind Kumar Sharma, Manish Goswami, Rameshwar Prasad Goyal, Santi Ranjan Das, Anindo Mukherjee, Ms. Sarla Chandra, Somiran Sharma, Amit Kumar, Syed Burhanur Rahman, Gaurav Agarwal, A.S. Tapader, Ajit Wagh, Aditya Gaggar, Apoorv Shukla, O.P. Gaggar, Ms. Binu Tamta, Ms. Rashmi Malhotra, Ms. Rekha Pandey, R.M. Bajaj, Rajat Nair, B.V. Balramdas, Ms. Diksha Rai, Ms. Kanika Saran, Advs for the appearing parties. B C

The Judgment of the Court was delivered by D

RANJAN GOGOI, J. 1. Heard the learned counsels for the parties.

2. The writ petitions and the Interlocutory Application(s) under consideration have been filed seeking directions from the Court as to the manner in which the expression “originally inhabitants of the State of Assam” appearing in Clause 3(3) of the Schedule (Special Provisions as to manner of Preparation of National Register of Indian Citizen in State of Assam) to the Citizenship (Registration of Citizens and Issues of National Identity Cards) Rules, 2003, is to be understood and furthermore for directions laying down the procedure by which such persons are required to be identified. E F

3. Relevant clauses of the Schedule including Clause 3(3) reads as follows:

“2. Manner of preparation of draft National Register of Indian Citizen in State of Assam— G

(1)(a)

(b)

(c)

A (2) The Local Registrar of Citizen Registration shall receive the filled up application forms, at the same place where the applications are issued, and issue the receipt thereof to the applicant.

B (3) The Local Registrar of Citizen Registration, after the receipt of the application under sub-paragraph (2) shall scrutinize the applications and after its verification, prepare a consolidated list thereof which shall contain the names of the following persons, namely—

C (a) person whose name appear in any of the electoral rolls upto the midnight of the 24th day of March, 1971 or in National Register of Citizens, 1951;

(b) descendants of the persons mentioned in clause (a) above;

3. Scrutiny of applications—

D (1) The scrutiny of applications received under sub-paragraph (3) of paragraph 2 shall be made by comparing the information stated in the application form with the official records and the persons, of whom the information is found in order, shall be eligible for inclusion of their names in the consolidated list.

E (2) The names of persons who have been declared as illegal migrants or foreigners by the competent authority shall not be included in the consolidated list:

F **Provided** that the names of persons who came in the State of Assam after 1966 and before the 25th March, 1971 and registered themselves with the Foreigner Registration Regional Officer and who have not been declared as illegal migrants or foreigners by the competent authority shall be eligible to be included in the consolidated list.

G (3) **The names of persons who are originally inhabitants of the State of Assam** and their children and descendants, who are Citizens of India, shall be included in the consolidated list if the citizenship of such persons is ascertained beyond reasonable doubt and to the satisfaction of the registering authority; (underlining is ours)

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(4) The Local Registrar of Citizens Registration may, in case of any doubt in respect of parental linkage or any particular mentioned in the application received under sub-paragraph (3) of paragraph 2, refer the matter to the District Magistrate for investigation and his decision and Local Registrar of Citizens Registration shall also inform the same to the individual or the family.”

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4. Clause 3(3) provides for identification of persons entitled to be included in the National Register of Citizens (NRC) by a process different from what is enumerated in Clause 3(2) and, therefore, the said Clause i.e. 3(3) constitutes an exception thereto. Clause 3(3) contemplates a less strict and vigorous process for deciding claims for inclusion in the NRC insofar as persons who are originally inhabitants of the State of Assam are concerned. Identification of persons who are originally inhabitants of the State of Assam as against those who are not does not determine any entitlement for inclusion in the NRC which is on the basis of proof of citizenship alone and nothing else. Neither does such identification confer any special entitlement or benefit. This has, in fact, been clarified in several of the reports submitted by the learned Coordinator before this Court.

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5. The prayer made in the writ petitions and the I.As, as admitted in the course of the hearing by the learned counsels for the writ petitioners/applicants, is founded on an apprehension that by the process of verification of the claims for inclusion in the NRC based on the claim to be originally inhabitants of the State of Assam a superior class of citizens is being created. The question who is originally inhabitant of the State of Assam, according to the applicants and the writ petitioners, may also have impact on the entitlement of such persons in the matter of opportunities for education, employment etc. vis-a-vis the second category of citizens i.e. who are not originally inhabitants of Assam.

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6. All such apprehensions are wholly unfounded. The exercise of upgradation of NRC is not intended to be one of identification and determination of who are originally inhabitants of the State of Assam. The sole test for inclusion in the NRC is citizenship under the Constitution of India and under the Citizenship Act including Section 6A thereof. Citizens who are originally inhabitants/residents of the State of Assam and those who are not are at par for inclusion in the NRC.

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A 7. In view of the above, we do not find any reason to issue any direction or clarification as to the meaning of the term “originally inhabitants of the State of Assam” as sought for in the present Writ Petitions and the Interlocutory Application(s) which are accordingly disposed of in terms of our directions and observations as above.

B

Nidhi Jain

Writ Petitions and IAs disposed of.