

GAHC010120672017



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

**Case No. : Review.Pet. 5/2017**

1:STATE OF ASSAM and ANR  
REPRESENTED BY THE COMMISSIONER and SECY. TO THE GOVT. OF  
ASSAM, HOME and POLITICAL B DEPTT., DISPUR, GUWAHATI-6

2: THE CHIEF SECY. TO THE GOVT. OF ASSAM

DISPUR  
GUWAHATI-

VERSUS

1:JAMAIT -E-ULEMA -E- HIND and ANR  
ASSAM STATE COMMITTEE, REPRESENTED BY ITS GENERAL SECY.,  
MAULANA ABDUR RASHID QUASIMI, MADANI HALL, P.O. HAIBARGAON,  
DIST. NAGAON, ASSAM.

2:UNION OF INDIA  
TO BE REPRESENTED BY THE SEC. TO THE GOVT. OF ASSAM  
MINISTRY OF HOME  
NEW DELHI-

**Advocate for the Petitioner : MR.S R BORUAH**

**Advocate for the Respondent : MR.K MIRA-1**

**BEFORE**  
**HONOURABLE MR. JUSTICE UJJAL BHUYAN**  
**HONOURABLE MR. JUSTICE NELSON SAILO**

**ORDER**

**Date : 13-07-2018**

*(Ujjal Bhuyan, J.)*

Heard Mr. R.C. Barpatra Gohain, learned Advocate General, Assam assisted by Mr. R.D. Choudhury, learned Senior Govt. Advocate, Assam for the review petitioners and Mr. N.H. Mazarbhuyan, learned counsel assisted by Ms. L. Wazeeda, learned counsel for respondent No.1. We have also heard Mr. S.C. Keyal, learned Assistant Solicitor General of India and Mr. U.K. Nair, learned Senior Special Counsel, Foreigners Tribunal (FT).

**2.** State of Assam represented by the Commissioner and Secretary to the Government of Assam, Home and Political (B) Department and the Chief Secretary to the Government of Assam are the review petitioners. They seek review of order dated 25.04.2016 whereby the Public Interest Litigation (PIL) No.103/2015 filed by respondent No.1 Jamiat-E-Ulema-E-Hind, Assam Committee was allowed by directing the State authorities to constitute Thana Level Committee in several districts of Assam in terms of the Government of Assam notification dated 27.05.2005.

**3.** Respondent No.1 had filed the said PIL stating that the question of presence of illegal migrants in the State of Assam is a volatile issue. In spite of signing of the Assam Accord in 1985 and insertion of Section 6A in Citizenship Act, 1955, people belonging to the minority communities face harassment. Many of them have been marked as D voters, i.e., doubtful voters whose cases are required to be determined by the Foreigners Tribunals. The process of detection of foreign nationals has put a heavy cost on the State exchequer besides causing harassment to genuine Indian citizens. In this connection, Government of Assam had issued a notification dated 27.05.2005 constituting committees at the Police Station level to ensure that no genuine Indian citizen is harassed in any manner in the name of suspected foreigners. Though such committees were constituted in some places, it has not been constituted in most parts of the State. In this connection, respondent No.1 had submitted a

representation dated 08.09.2015 to the Hon'ble Chief Minister of Assam but in spite of such submission of representation, Government notification dated 27.05.2005 was not fully implemented. Hence, the PIL.

**4.** This Court by order dated 25.04.2016 disposed of the PIL by directing the authorities to constitute Thana Level Committee in those districts of Assam wherever those have not been constituted and the Thana Level Committees should thereafter take steps for detection of foreigners for their eventual deportation.

**5.** For review of the aforesaid order dated 25.04.2016, the present review petition has been filed.

**6.** Detailed submissions have been made by learned counsel for the parties at the Bar to which we have given our due and thoughtful consideration.

**7.** Illegal migration of foreigners particularly from East Pakistan and thereafter Bangladesh into Assam is an extremely serious issue and the factum of presence of illegal migrants in the State of Assam in large numbers is judicially acknowledged.

**8.** Immediately after the independence, Parliament enacted the *Immigrants (Expulsion from Assam) Act, 1950* with the avowed objective of expelling illegal migrants from Assam. Preamble of this Act reads as under:-

*“An Act to provide for the expulsion of certain immigrants from Assam.”*

**8.1.** The Statement of Objects and Reasons of the said Act reads as under:-

*“During the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the Province, besides giving rise to a serious law and order problem. The Bill seeks to confer necessary powers on the Central Government to deal with the situation.”*

**9.** In 1983, *Illegal Migrants (Determination by Tribunals) Act, 1983* (IMDT Act) was enacted to provide for establishment of Tribunals for determination in a fair manner the question as to whether a person is an illegal migrant to enable the Central Government to expel illegal migrants from India and for matters connected therewith or incidental thereto.

Objects and reasons of the IMDT Act was extracted in **H.R.A. Choudhury Vs. Election Commission of India, 2002 (1) GLT 1**, which is quoted hereunder:-

*“The influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North-Eastern Regions of the country and remained in the country poses a threat to the integrity and security of the said regions.*

*A substantial number of such foreigners who migrated into India after the 25th day of March, 1971, have, by taking advantage of the circumstances of such migration and their ethnic similarities and other connections with the people of India, illegally remained in India without having in their possession lawful authority so to do. The continuance of these persons in India has given rise to serious problems. The clandestine manner in which these persons have been trying to pass off as citizens of India has rendered their detection difficult. After taking into account the need for their speedy detection the need for protection of genuine citizens of India and the interests of the general public, the President promulgated, on the 15th October, 1983, the Illegal Migrants (Determination by Tribunals) Ordinance, 1983, to provide for the establishment of Tribunals.”*

**10.** The preamble of the IMDT Act reads as under:-

*“WHEREAS a good number of the foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on and after the 25<sup>th</sup> day of March, 1971, have, by taking advantage of the circumstances of such migration and their ethnic similarities and other connections with the people of India and without having in their possession any lawful authority so to do, illegally remained in India;*

*AND WHEREAS the continuance of such foreigners in India is detrimental to the interests of the public of India;*

*AND WHEREAS on account of the number of such foreigners and the manner in which such foreigners have clandestinely been trying to pass off as citizens of India and all other relevant circumstances, it is necessary for the protection of the citizens of India to make special provisions for the detection of such foreigners in Assam and also in any other part of India in which such foreigners may be found to have remained illegally.”*

**11.** Shri Indrajit Gupta, the then Home Minister of India stated in Parliament on 06.05.1997 that there were 10 million illegal migrants residing in India. A report dated 08.11.1998 was sent by the then Governor of Assam Lieutenant General S.K. Sinha (retired) to the President of India detailing the extent of illegal migration of foreigners particularly from East Pakistan and subsequently Bangladesh into Assam.

**12.** In ***All India Lawyers Forum for Civil Liberties Vs. Union of India, (1999) 5 SCC 714***, Supreme Court observed that infiltration from Bangladesh and the presence of the infiltrators in certain regions of the country was a matter of serious concern. It was hoped that Union of India and the States bordering Bangladesh would take effective steps to check infiltration and to deport illegal infiltrators.

**13.** Election Commission of India had issued instruction to the Chief Electoral Officer, Assam vide communications dated 07.10.1996, 04.02.1997 and 17.07.1997 for intensive revision of electoral rolls in Assam with reference to 01.01.1997 as the qualifying date. As per the said instruction, if the Electoral Registration Officer doubted citizenship of any elector, he would get the matter verified through Local Verification Officer. If he had any reasonable doubt about the citizenship status of such person, such person should be marked as doubtful (D) voter and their cases would be forwarded to the Illegal Migrants (Determination) Tribunals constituted under the IMDT Act or the Foreigners Tribunals constituted under the Foreigners Act, 1946. The letter D indicated that citizenship status of such person was doubtful/disputed and they were not allowed to cast their vote till determination of their citizenship status by the concerned Tribunal. This came to be challenged in ***H.R.A. Choudhury*** (supra).

**14.** A Division Bench of this Court observed that communications of the Election Commission of India as alluded to hereinabove provided for reasonable opportunity to the affected persons and was in consonance with the rule of law and the constitutional scheme. Such communications could not be held as arbitrary or vitiated by *mala fide* or partiality. Therefore, the writ petitions were dismissed and the challenge rejected.

**15.** We may now advert to the IMDT Act.

**16.** In exercise of powers conferred by Section 28 of the IMDT Act, the *Illegal Migrants*

*(Determination by Tribunals) Rules, 1984* were framed. Constitutionality of both IMDT Act and the IMDT Rules were put to challenge before the Supreme Court in ***Sarbananda Sonowal Vs. Union of India, (2005) 5 SCC 665***. Supreme Court elaborately examined the provisions of the IMDT Act and the IMDT Rules. Reference was to be made to the Tribunal under Section 8(1) of the IMDT Act but such reference was subject to recommendation by the Screening Committee provided under Rule 8 of the IMDT Rules. These Screening Committees were constituted at every sub-divisional level and were required to screen the reports submitted by the Enquiry Officer suspecting a person to be an illegal migrant. Making of reference by Superintendent of Police was subject to recommendations by the Screening Committee. If the Screening Committee withheld the recommendation, no reference could be made. That apart, discretion was vested on the referral authority, i.e., Superintendent of Police whether to make a reference to the Tribunal or not. There were other provisions in the IMDT Act and in the IMDT Rules which put the onus entirely on the complainant while placing several restrictive limitations on the complainant at the same time.

**17.** After elaborately surveying the entire provisions of the IMDT Act and the IMDT Rules, Supreme Court observed that though the ostensible purpose and object of the IMDT Act was to determine illegal migrants and to expel them from India, the provisions were enacted in such a manner that detection and deportation of illegal migrants was next to impossible. Supreme Court held that a deep analysis of the IMDT Act and the Rules would reveal that those were purposely enacted so as to give shelter or protection to illegal migrants who came to Assam from Bangladesh on or after 25.03.1971 rather than to identify and to deport them.

**18.** Considering the overall situation arising out of illegal migration of Bangladeshi nationals into Assam, Supreme Court held that there can be no manner of doubt that the State of Assam is facing '*external aggression*' and '*internal disturbance*' on account of large-scale illegal migration of Bangladeshi nationals. Invoking Article 355 of the Constitution and other constitutional provisions, IMDT Act and the IMDT Rules were declared unconstitutional and were struck down as such.

**19.** In the course of the deliberations, Supreme Court observed that the procedure under the *Foreigners Act, 1946* and also under the *Foreigners (Tribunals) Order, 1964* were far more effective in identification and deportation of foreigners. Supreme Court further held that

procedure under the *Foreigners Act, 1946* and the *Foreigners (Tribunals) Order, 1964* are just, fair and reasonable and does not offend any constitutional provision.

**20.** Interestingly, respondent No.1 had filed a petition before the Supreme Court in ***Sarbananda Sonowal*** (supra) contending that IMDT Act should be made applicable to the whole of India. Such a plea was rejected by the Supreme Court and it was in that context Supreme Court held that it was not open to anyone to contend that the procedure under the *Foreigners Act, 1946* and the *Foreigners (Tribunals) Order, 1964* were not just, fair and reasonable.

**21.** Having said so, Supreme Court held thus:-

“83. To sum up our conclusions, the provisions of the *Illegal Migrants (Determination by Tribunals) Act, 1983* are ultra vires the Constitution of India and are accordingly struck down. The *Illegal Migrants (Determination by Tribunals) Rules, 1984* are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the *Illegal Migrants (Determination by Tribunals) Act, 1983* shall cease to function. The *Passport (Entry into India) Act, 1920*, the *Foreigners Act, 1946*, the *Immigrants (Expulsion from Assam) Act, 1950* and the *Passport Act, 1967* shall apply to the State of Assam. All cases pending before the Tribunals under the *Illegal Migrants (Determination by Tribunals) Act, 1983* shall stand transferred to the Tribunals constituted under the *Foreigners (Tribunals) Order, 1964* and shall be decided in the manner provided in the *Foreigners Act*, the Rules made thereunder and the procedure prescribed under the *Foreigners (Tribunals) Order, 1964*. In view of the finding that the competent authority and the Screening Committee had no authority or jurisdiction to reject any proceedings initiated against any alleged illegal migrant, the orders of rejection passed by such authorities are declared to be void and non est in the eye of law. It will be open to the authorities of the Central Government or State Government to initiate fresh proceedings under the *Foreigners Act* against all such persons whose cases were not referred to the Tribunals constituted under the *Illegal Migrants (Determination by Tribunals) Act, 1983* by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever. The appeals pending before the Appellate Tribunals shall be deemed to have abated.”

**22.** Thereafter, Supreme Court issued the following directions:-

*“84. In view of the discussion made above, the writ petition succeeds and is allowed with the following directions :*

*(1) The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 are declared to be ultra vires the Constitution of India and are struck down;*

*(2) The Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function;*

*(3) All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals ) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.*

*(4) It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.*

*(5) All appeals pending before the Appellate Tribunal shall be deemed to have abated.*

*(6) The respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam.”*

**23.** Having said that, we may now briefly analyse the provisions of the *Foreigners Act, 1946* (Foreigners Act). The *Foreigners Act, 1946* is an act to confer upon the Central Government certain powers in respect of foreigners. This act provides for the exercise of certain powers by the Central Government in respect of the entry of foreigners into India; their presence in India and their departure therefrom. Section 2 (a) defines a “foreigner” to mean a person who is not a citizen of India. Section 3 confers the power to make orders. As per Sub-section (1), the Central Government may by order make provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein. As per Sub-section (2), orders made under Sub-section (1) may provide for the contingencies made therein including entry into India, departure from India, stay in India etc. Section 3 is extracted hereunder:-



“3. Power to make orders.—

*(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.*

*(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—*

*(a) shall not enter India, or shall enter [India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;*

*(b) shall not depart from [India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;*

*(c) shall not remain in [India], or in any prescribed area therein;*

*[(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;]*

*(d) shall remove himself to, and remain in, such area in [India] as may be prescribed;*

*(e) shall comply with such conditions as may be prescribed or specified—*

*(i) requiring him to reside in a particular place;*

*(ii) imposing any restrictions on his movements;*

*(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;*

*(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;*

*(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;*

*(vi) prohibiting him from association with persons of a prescribed or specified description;*

*(vii) prohibiting him from engaging in activities of a prescribed or specified description;*

*(viii) prohibiting him from using or possessing prescribed or specified articles;*

*(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;*

*(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;*

*(g) shall be arrested and detained or confined; and may make provision [for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.*

*(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) or clause (f) of sub-section (2).”*

**24.** Therefore, from what has been extracted above, it is evident that under Section 3 of the Foreigners Act, the power to deal with foreigners including the decision to remove a foreigner from India vests in the Central Government. As a matter of fact, citizenship, naturalization and aliens; admission into, immigration and expulsion from India; passports and visas are subjects being entries in List-I, i.e., Union List under the 7<sup>th</sup> Schedule to the Constitution of India. Therefore, for all intent and purpose, it is the Central Government which is the authority to deal with illegal migrants and issues relating to them, such as, detection and deportation.

**25.** Under Section 9 of the Foreigners Act, if any question arises as to whether any person is or is not a foreigner, the onus of proving that such a person is not a foreigner shall lie upon such person notwithstanding anything contained in the Indian Evidence Act, 1872.

**26.** Section 11 deals with power to give effect to orders, directions, etc and includes within its ambit any Police Officer who may take such steps as may in his opinion be reasonably necessary for securing compliance to any order or direction given under the Foreigners Act or to prevent or to rectify any breach thereof.

**27.** Section 12 deals with delegation of authority to authorize any subordinate authority to exercise such power on behalf of the delegatee authority.

**28.** In exercise of the powers conferred by Section 3 of the *Foreigners Act, 1946*, the Central Government made the *Foreigners Order, 1948*. According to Clause 3 thereof, no foreigner can enter into India otherwise than at such port or such other place of entry on the

border of India as a Registration Officer having jurisdiction may permit or without the leave of the civil authority having jurisdiction at such port or place.

**29.** Article 258 of the Constitution deals with power of the Union to confer powers etc on States in certain cases. Clause (1) of Article 258 starts with a *non-obstante* clause. It says that notwithstanding anything in the Constitution, President may with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends. Clause (3) provides for making of payment by the Government of India to the State concerned such sum as may be agreed upon or in default of agreement through arbitration in respect of any extra-cost of administration incurred by the State in connection with the exercise of powers and duties of the Govt. of India conferred or imposed upon a State Government.

**30.** Ministry of Home Affairs, Government of India had issued a notification dated 19.04.1958 which was extracted in the case of ***Anwar Vs. State of J&K, (1971) 3 SCC 104***. The said notification was issued by the Central Government in exercise of the powers conferred by Clause (1) of Article 258 of the Constitution whereby the President with the consent of the State Government concerned entrusted to the Governments of each of the States mentioned therein, including the State of Assam, the functions of the Central Government in making orders of the nature specified in Section 3 (2) (c), (cc), (d), (e) and (f) of the *Foreigners Act, 1946* and under the *Foreigners Orders, 1948*. After extracting and discussing this notification, Supreme Court held that this notification was a complete answer to the objection raised that it was the Central Government alone which could make a lawful deportation order under Section 3 (2)(c) of the *Foreigners Act, 1946*.

**31.** Government of India, Ministry of Home Affairs in exercise of the powers conferred by Article 258(1) of the Constitution issued a notification dated 17.02.1976 entrusting Superintendents of Police and Deputy Commissioners (in-charge of Police) under the Government of Assam, functions of the Central Government in making orders of the nature

specified in clauses (a), (b), (c) and (cc), (e) and (f) of Sub-section (2) of Section 3 of the Foreigners Act within their respective jurisdiction subject to the conditions mentioned therein which included the condition that exercise of such functions would be in respect of nationals of Bangladesh and that while exercising such functions, Superintendents of Police and Deputy Commissioners (in-charge of Police) should comply with such general or special directions as the Government of Assam or Central Government may issue from time to time.

**32.** In the year 1964, the Central Government in exercise of the powers conferred by Section 3 of the *Foreigners Act, 1946* had made the *Foreigners (Tribunals) Order, 1964*. Paragraph 2 thereof deals with constitution of Tribunals. Paragraph 2 (1) says that the Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of the *Foreigners Act, 1946* to a Tribunal to be constituted for the purpose, for its opinion. We will advert to other provisions of the *Foreigners (Tribunals) Orders, 1964* (1964 orders) at a subsequent stage. At this stage, suffice it to say, under paragraph 2(1), the Central Government may by order refer a question to a Foreigners Tribunal as to whether a person is or is not a foreigner within the meaning of the *Foreigners Act, 1946*.

**33.** Following signing of the Assam Accord in 1985, Section 6 A was inserted in the *Citizenship Act, 1955 w.e.f. 07.12.1985*. Section 6 A deals with special provisions as to citizenship of persons covered by the Assam Accord. As per Section 6 A (1) (b), the expression "*detected to be a foreigner*" means 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. As per Section 6 A 1(e), a person shall be deemed to have been detected to be a foreigner on the date on which 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 which would be applicable even in case of a person of Indian origin who has been declared to be a foreigner belonging to the 01.01.1966 to 25.03.1971 stream. Explanation to Sub-section (3) of Section 6 A clearly indicates that for such a person to be registered as a foreigner belonging to the said stream, opinion of the Foreigners Tribunal constituted under the *Foreigners (Tribunals) Order, 1964* holding such

person to be a foreigner, shall be deemed to be sufficient proof of such a person being a foreigner.

**34.** Thus, we have two Central Government notifications, one dated 19.04.1958 and the other dated 17.02.1976, entrusting the Government of Assam, Superintendents of Police and Deputy Commissioners (In-charge of Police) to make orders of the nature specified in Sections 3(2)(a), (b), (c) and (cc), (e) and (f) of the Foreigners Act after obtaining opinion from the Foreigners Tribunals by making reference under paragraph 2(1) of the *Foreigners (Tribunals) Orders 1964*.

**35.** Paragraph 3 of the Foreigners (Tribunals) Order lays down the procedure for disposal of questions referred to the Foreigners Tribunals by the referral authority i.e., by the Superintendents of Police, since redesignated as Superintendents of Police (Border), authorized by the Central Government. Paragraph 3(1) reads as under:-

*“3. Procedure for disposal of questions – (1) The Tribunal shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced and after hearing such persons as may desire to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.”*

**36.** Paragraph 3(5) deals with service of notice.

**37.** Paragraph 3(6) confers power on the Foreigners Tribunals for releasing a proceedee on bail while answering a reference.

**38.** From paragraphs 3(7) to 3(14), summary nature of the proceedings before a Foreigners Tribunal is discernible. For filing written statement ten days time is to be granted and further ten days time to adduce evidence. The concerned Superintendent of Police shall also be entitled to adduce evidence. Adjournments are to be avoided. Where the proceedee fails to produce any proof in support of his or her claim that he or she is not a foreigner and also cannot arrange for bail, he shall be detained and kept in internment or detention center.

A Foreigners Tribunal is to answer a reference within 60 days on receipt of the reference.

**39.** Paragraphs 3(15) and 3(16) are relevant. As per paragraph 3(15), after hearing is concluded, the concerned Foreigners Tribunal is required to submit its opinion as soon as it is practicable to the authorities specified in the order of reference. As per paragraph 3(16), a final order of a Foreigners Tribunal shall contain its opinion on the question referred to it which shall be a concise statement of facts and the conclusion.

**40.** A careful and conjoint reading of paragraphs 3(1), 3(14), 3(15) and 3(16) would go to show that after following a summary procedure where reasonable opportunity is granted to the proceedee to file written statement and to adduce evidence, a Foreigners Tribunal is required to submit its opinion to the referral authority within a period of 60 days from the date of reference; the final order of the Tribunal shall contain its opinion on the question referred to it which shall be a concise statement of facts and conclusion.

**41.** Having discussed the above, we may now advert to the notification dated 27.05.2005 issued by the Government of Assam in the Political (B) Department. As discussed above, the notification was issued to avoid harassment to genuine Indian citizens in the name of detection of foreigners for which Government of Assam decided to constitute a Thana Level Committee with the following Members:-

*“1.Circle Officer (Revenue) of the area - Chairman*

*2. Officer in Charge of the Thana -Member Secretary*

*3. Inspector/Sub-Inspector of Border Branch- Member*

*4. Representative of recognized Political parties (one each) – Member*

*5. Elected member of Zila Parishad within the Thana Area – Member*

*6. Four leading citizens to be nominated by the Government*

*(i) One Lady - Member*

*(ii) One majority community - Member*

*(iii) One religious minority community -Member*

*(iv) One linguistic minority community -Member.”*

**42.** The duties and responsibilities of the Thana Level Committees were detailed as under:-

“1. The Thana Committee shall be advisory in nature. It will keep strict vigil against rumour mongers and ensure that no genuine citizen is harassed in any way in the name of suspected foreigners.

2. Any person within the Thana area may submit petition application to the O.C of the Thana regarding presence of illegal migrants in the area as per law.

3. No photograph needs to be affixed on the application.

4. On receipt of such application the O.C of the Thana will first examine and verify the matter.

5. The O/C of the Police Station will apprise the Thana Committee of the action taken as per law on such application.

6. Thana Committee will sit once in a month. The O.C of the Thana shall keep the proceeding of each meeting recorded in a register to be maintained for this purpose.

7. Thana Committee shall take all steps to see that there is no tension or misunderstanding amongst the different communities living within the Thana area relating to the issue of illegal migrants.

8. Thana Committee will ensure that no person takes law into his hands in the matter of detecting suspected illegal migrants and ensure that the law of the land is followed strictly in the Thana area.”

**43.** This notification was issued on 27.05.2005 when the IMDT Act and the IMDT Rules were in force. We have already noticed that IMDT Act and the IMDT Rules were declared unconstitutional in **Sarbananda Sonowal** (supra), judgment of which was delivered on 12.07.2005. We have also seen that after striking down of the IMDT Act and the IMDT Rules, Supreme Court has clarified that *Passport (Entry into India) Act, 1920; Foreigners Act, 1946; Immigrants (Expulsion from Assam) Act, 1950;* and the *Passport Act, 1967* shall apply to the State of Assam.

**44.** While directing transfer of references pending before the Tribunals constituted under the IMDT Act to the Tribunals constituted under the *Foreigners (Tribunals) Order, 1964* to be decided in the manner provided in the *Foreigners Act, 1946* and the *Foreigners (Tribunals) Order, 1964*, Supreme Court issued further direction to constitute sufficient number of Tribunals under the *Foreigners (Tribunals) Order, 1964* to effectively deal with cases of foreigners who have illegally come from Bangladesh or are illegally residing in Assam.

**45.** We have also seen the scheme of the *Foreigners Act, 1946*, particularly, Section 3 thereof and the *Foreigners (Tribunals) Order, 1964*, particularly, paragraph 3 thereof and we do not find any scope or room for Thana Level Committee contemplated vide Government notification dated 27.05.2005. After the IMDT Act and the IMDT Rules were declared unconstitutional, there is no room for any such Thana Level Committee. The Thana Level Committee has got no legal force and no legal authority to accept petitions relating to illegal migrants and thereafter to examine and verify the same. They are not mandated in any manner and under any law to take action for detection of foreigners or for their eventual deportation. As a matter of fact, the notification dated 27.05.2005 was based on a fallacious premise by providing for members, belonging to majority community, religious minority community and linguistic minority community. It is not a question of majority community or minority community but it is a question of citizenship; who is a citizen of India and who is not. This question has to be determined strictly in accordance with law where Thana Level Committees can have no role or *locus-standi*. Therefore, the notification dated 27.05.2005 has no legal acceptability. Resultantly, the direction of the writ Court dated 25.04.2016 would be legally unsustainable.

**46.** Consequently, we allow the review petition and recall the order dated 25.04.2016 as we do not find any good ground to entertain the PIL. Since we have declared the notification dated 27.05.2005 to be devoid of any legal applicability, it is up to the State to take formal consequential steps. Thus, the prayer made in the PIL in the light of the above discussions cannot be entertained. Accordingly, the PIL is dismissed.

**47.** No cost.

**JUDGE**

**JUDGE**

**Comparing Assistant**