

ABDUL KUDDUS

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v.

UNION OF INDIA AND OTHERS

(Civil Appeal No. 5012 of 2019)

MAY 17, 2019

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**[RANJAN GOGOI, CJI, DEEPAK GUPTA AND
SANJIV KHANNA, JJ.]**

Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003: Schedule, Paragraph 3(2) and Paragraph 8 – Conflict between – Citizenship status of persons in the State of Assam – Adjudication of – Held: Paragraph 3(2) deals with separate class of persons who have been declared as illegal migrant or foreigners by the Competent Authority – Such persons cannot be included in the National Register of Citizens – Such persons cannot claim citizenship of India on the basis that he/she has been residing in the State of Assam – Whereas Paragraph 8 provides for a right of appeal to the person who had filed objections and is not satisfied with the outcome of the decision under the final list published under paragraph 7 – Such persons may prefer an appeal before the designated Tribunal constituted under the 1964 Order within a period of sixty days and on disposal of appeal by the Tribunal, such persons can accordingly be included or deleted from the NRC in the State of Assam – Thus, the provisions of paragraph 8 would apply when there has not been an earlier adjudication and decision by the Foreigners Tribunal – Furthermore, paragraph 8 does not envisage and provide for a second round of litigation before the same authority-Foreigners Tribunal on and after preparation of the final list – Opinion/order of the Tribunal, or the order passed by the Registering Authority based upon the opinion of the Foreigners Tribunal, can be challenged by way of writ proceedings – Opinion of the Foreigners Tribunal and/or the consequential order passed by the Registering Authority would operate as res judicata – Citizenship Act, 1955 – Foreigners Act, 1946 – Foreigners (Tribunal) Order, 1964.

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- A *Constitution of India: Art. 142 – Exercise of power under – Creation of an appellate forum for deciding disputes regarding the citizenship status of persons residing in the State of Assam – Held: No such direction can be given for creation of an appellate forum and entrench upon the field of legislation reserved for legislature.*
- B *Sarbananda Sonowal v. Union of India & Anr. (2005) 5 SCC 665 : [2005] 1 Suppl. SCR 472 ; Sarbananda Sonowal (11) v. Union of India & Anr. (2007) 1 SCC 174 : [2006] 10 Suppl. SCR 167 ; Indian National Congress (I) v. Institute of Social Welfare & Ors. (2002) 5 SCC 685 : [2002] 3 SCR 1040 ; Shrimati Ujjambai v. State of Uttar Pradesh & Anr. AIR 1962 SC 1621 ; Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi (2002) 6 SCC 635 : [2002] 1 Suppl. SCR 469 ; Rajesh Kumar & Ors. v. DY. CIT & Ors. (2007) 2 SCC 181 : [2006] 8 Suppl. SCR 284 ; P. Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578 ; Pravasi Bhalai Sangathan v. Union of India (2014) 11 SCC 477 : [2014] 4 SCR 446 – referred to.*
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Case Law Reference

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|---|--------------------------|-------------|---------|
| E | [2005] 1 Suppl. SCR 472 | referred to | Para 13 |
| | [2006] 10 Suppl. SCR 167 | referred to | Para 14 |
| | [2002] 3 SCR 1040 | referred to | Para 19 |
| | AIR 1962 SC 1621 | referred to | Para 20 |
| F | [2002] 1 Suppl. SCR 469 | referred to | Para 20 |
| | [2006] 8 Suppl. SCR 284 | referred to | Para 20 |
| | (2002) 4 SCC 578 | referred to | Para 25 |
| | [2014] 4 SCR 446 | referred to | Para 25 |

- G **CIVIL/CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 5012 of 2019.**

From the Judgment and Order dated 07.05.2018 of the Gauhati High Court at Guwahati in Writ Petition (C) No. 1073 of 2016.

- H With C. A. Nos. 5025, 5026, 5013, 5014, 5015, 5024, 5016, 5017, 5021, 5023, 5018, 5022, 5019 and 5020 of 2019

CrI A. No. 910 of 2019

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Kapil Sibal, Salman Khurshid, Sanjay R. Hegde, Sr. Advs., Fuzail Ahmad Ayyubi, Nizam Pasha, Ibad Mushtaq, Ms. Aditi Gupta, Ms. Tehsheena Z. Hussain, Ms. Lubna Naz, Ms. Kunika, Ms. Lalrotluangi, Abhishek Sarkar, Ms. Heena Khana, Avijit Roy, Anas Tanwir, Ms. Pranjal Kishore, Ms. Kamakshi S. Mehlwal, Mrigank Prabhakar, A. S. Tapadar, Ms. Sakshi Banga, Pijush K. Roy, Mrs. Kakali Roy, Rajan K. Chourasia, Kaushik Choudhury, Advs. for the Appellants.

B

Tushar Mehta, SG, Ms. Madhavi Divan, A. N. S. Nadkarni, ASG, Shuvodeep Roy, Rajat Nair, Rijuk Sarkar, Ms. Aishwarya Bhati, Rajat Nair, S. Deshmukh, B. V. Balaram Das, Avijit Roy, Advs. for the Respondents.

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The following Order of the Court was passed

ORDER

SANJIV KHANNA, J.

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1. Delay condoned. Leave granted.

2. This order decides perceived conflict between sub-paragraph (2) to paragraph 3 and paragraph 8 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (“the 2003 Rules” for short). We shall also examine the alternative argument and suggestion of the appellants that this court should by way of a judicial pronouncement and in exercise of power under Article 142 of the Constitution of India provide and create an appellate forum for deciding disputes regarding the citizenship status of persons residing in the State of Assam.

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3. Articles 5 to 9 of the Constitution delineate and determine persons who are citizens of India on commencement of the Constitution. Article 10 provides for their continuance as citizens subject to the provisions of any law that may be made by the Parliament. Article 11 of the Constitution, expressly confers power on the Parliament to make laws with respect to acquisition and termination of citizenship and all matters relating to citizenship. To achieve and with this objective, the Parliament has enacted the Citizenship Act, 1955 (“the Citizenship Act” for short) which provides for acquisition of citizenship after the commencement of the Constitution by birth, registration, naturalisation and incorporation of territory.

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A 4. Section 14A of the Citizenship Act states that the Central Government may compulsorily register every citizen of India and issue national identity card to him/her. The Central Government may maintain a National Register of Indian Citizens and can establish a National Registration Authority for this purpose. Procedure to be followed for compulsory registration of citizens shall be such as may be prescribed.

B 5. Section 6A of the Citizenship Act incorporates special provisions as to the citizenship of persons covered by the Assam Accord. For the purpose of the present order, we would like to reproduce sub-section (3) to Section 6A of the Citizenship Act which reads as under:

C **“6A. Special provisions as to citizenship of persons covered by the Assam Accord. —**

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

D (a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

E (c) has been detected to be a foreigner,
shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

G Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this subsection and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,—

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- (i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding; A
- (ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.” B

Sub-Section (3) to Section 6A states that subject to the provisions of sub-section (6) and (7), all persons who have come to Assam on or after the 1st day of January, 1966 but before 25th March, 1971 from specified territory and from the date of entry have been ordinary resident of Assam and have been detected to be foreigners shall register themselves with the Registering Authority in accordance with Rules made by the Central Government. If name of any such person has been included in the electoral rolls of any Assembly or Parliamentary constituency, the same shall be deleted therefrom. Explanation to Section 6A (3) states that the opinion of the Tribunal under the Foreigners (Tribunal) Order, 1964 (“the 1964 Order” for short) that the person was a foreigner shall be deemed sufficient for the requirement of sub-section (3). The opinion of the Tribunal is also binding with respect to any other requirement of sub-Section (3) to Section 6A of the Citizenship Act. The Registering Authority is required to refer the matter to the Tribunal constituted under the said Order if the earlier opinion of the Tribunal on other requirements is silent. Thereupon, the question is decided by the Registering Authority in conformity with the opinion received from the Tribunal. C D E

6. Before we advert to the 1964 Order, we would like to refer to Rule 4A and the Schedule to the 2003 Rules which was inserted by G.S.R 803 (E) dated 9th November, 2009, as a special provision relating to National Register of Indian Citizens in the State of Assam. Rule 4A of the 2003 Rules reads as under: F

“4A. Special provisions as to National Register of Indian Citizens in the State of Assam— (1) Nothing in rule 4 shall, on and after the commencement of the Citizenship (Registration of Citizenship and Issue of National Identity Cards) Amendment Rules, 2009, apply to the State of Assam. G

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A (2) The Central Government shall, for the purpose, of the National Register of Indian Citizens in the State. of Assam, cause to carry out throughout the State of Assam for preparation of the National Register of Indian Citizens in the State of Assam by inviting applications from all the residents, for collection of specified particulars relating to each family and individual, residing in a local area in the State including the citizenship status based on the

B National Register of Citizens 1951, and the electoral rolls upto the midnight of the 24th day of March, 1971.

(3) The Registrar General of Citizens Registration shall notify the period and duration of the enumeration in the Official Gazette.

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(4) The manner of preparation of the National Register of Indian Citizens in the State of Assam shall be such as specified in the Schedule appended to these rules.”

Sub-rule (2) of Rule 4A states that the Central Government for the purpose of preparation of the National Register of Indian Citizens in the State of Assam shall invite applications from all residents for collection of specified particulars relating to each family and individual residing in the local area in the State including the citizens’ status based upon the National Register of Citizens, 1951 and the electoral rolls upto the midnight of 24th March, 1971. The manner of preparation of the National Register of Indian Citizens in the State of Assam shall be such as specified in the Schedule to the 2003 Rules.

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7. We are not reproducing the entire Schedule but would like to refer to paragraph 2 of the Schedule which prescribes the mandate to prepare and specifies the manner of preparation of the draft National Register of Indian Citizens in the State of Assam on the basis of the National Register of Citizens, 1951 and electoral rolls upto the midnight of 24th March, 1971. The list so prepared has to be published and made available to the Local Registrar of Indian Citizens for wide circulation and public inspection in every village and ward. The Local Registrar of Indian Citizens are mandated to receive application forms and issue receipt to the applicants.

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8. Sub-para (3) to paragraph 2 of the Schedule to the 2003 Rules reads as under:

“The Local Registrar of Citizen Registration, after the receipt of the application under sub-paragraph (2) shall scrutinize the

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applications and after its verification, prepare a consolidated list thereof which shall contain the names of the following persons, namely:

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persons whose names appear in any of the electoral rolls upto the midnight of the 24th day of March, 1971 or in the National Register of Citizens, 1951;

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descendants of the persons mentioned in clause (a) above.”

This sub-para states that the Local Registrar, after receipt of the application from citizens in terms of sub-para (2), has to scrutinize them and after verification prepare a consolidated list including the names of the persons whose names had appeared in any of the electoral rolls upto the midnight of 24th March, 1971 or in the National Register of Citizens, 1951 and the descendants of such persons.

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9. Paragraph 3 of the Schedule to the 2003 Rules reads as under:

“3. Scrutiny of applications— (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.

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(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:

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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;

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(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;

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- A (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;
- B (5) the Local Registrar of Citizens Registration may, in respect of a person who—
- (a) was residing in a place other than the State of Assam upto the midnight of the 24th day of March, 1971; or
- C (b) has shifted from one district to another within the State of Assam upto the midnight of the 24th day of March, 1971.
- verify information relating to such person through inter-State correspondence, or, as the case may be, through inter-district correspondence.”
- D Paragraph 3 deals with the preparation of consolidated list of original inhabitants of Assam, their children and descendants if their citizenship is ascertained beyond reasonable doubt and to the satisfaction of the Registering Authority. As per Sub-para (4) in case of any doubt during scrutiny in respect of parental linkage or any particular mentioned
- E in the application received under sub-para (2) of paragraph 2, the Local Registrar of citizens is required to refer the matter to the District Magistrate for investigation and decision by him. The Local Registrar is required to inform about any such directions to the individual or his family. Sub-para (5) to paragraph 3 deals with investigation to be made by the
- F Local Registrar in respect of persons who are residing in a place other than the State of Assam upto the midnight of the 24th day of March, 1971 or has shifted from one district to another within the State of Assam upto the midnight of the 24th day of March, 1971. Sub-para (2) to paragraph 3 of the Schedule deals with a separate class or cases of persons who have been declared as illegal migrants or foreigners by the
- G Competent Authority. Sub-para (2) mandates that the illegal migrants or foreigners so declared by the Competent Authority shall not be included in the consolidated list. Proviso applies to persons who had come to the State of Assam after 1966 but before 25th March, 1971 and had registered themselves with the Foreigner Registration Regional Office and had not
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been declared as illegal migrants or foreigners by the Competent Authority. A
They are eligible to be included in the consolidated list.

10. It is obvious to us that the persons covered by sub-para (2) to paragraph 3 of the Schedule i.e. persons who have been declared to be illegal migrants or foreigners by the Competent Authority fall in a separate and distinct class and in such cases, no enquiry or investigation is required to be conducted in terms of sub-paragraph 4. Such persons cannot, in terms of the specific language used in sub-para (2) to paragraph 3 of the Schedule, be included in the National Register of Citizens. The reason as is evident is that their citizenship status has already been determined by the Competent Authority. A person once declared an illegal migrant or a foreigner cannot claim or put forth a claim to the citizenship of India on the basis that he/she has been residing in the State of Assam. B
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11. We are not referring to paragraphs 4 to 7 of the Schedule which deal with the publication of the consolidated list, additional list, claims and objections by a person whose name does not appear in the draft list published under paragraph 2 or additional list or objections by a third person for inclusion of a name in the draft list or the additional list. We would, however, reiterate that the said list(s) would not include name of the persons who have been declared illegal migrants or foreigners by the Competent Authority in terms of sub-para (2) to paragraph 3 of the Schedule. In other cases, i.e. cases not covered by sub-para (2) to paragraph 3, the Local Registrar after considering the objections and claims has to prepare a supplementary list to be published under paragraph 7 of the Schedule for inclusion and deletion of names, as the case may be, and thereafter, a final list of National Citizens in the State of Assam. D
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12. This brings us to paragraph 8 of the Schedule to the 2003 Rules which reads as under: F

“8. Appeal- Any person, not satisfied with the outcome of the decisions of the claims and objections under paragraph 7, may prefer appeal, before the designated Tribunal constituted under the Foreigners (Tribunals) Order, 1964 within a period of sixty days from the date of such order; and on the disposal of appeal by the Tribunals the names shall be included or deleted, as the case may be, in the National Register of Indian Citizens in the State of Assam.” G

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A Paragraph 8 provides for a right of appeal to the person who had filed objections and is not satisfied with the outcome of the decision under the final list published under paragraph 7. Such persons may prefer an appeal before the designated Tribunal constituted under the 1964 Order within a period of sixty days and on disposal of appeal by the Tribunal, such persons can accordingly be included or deleted from the
B National Register of Indian Citizens in the State of Assam. Paragraph 8, therefore, makes the Foreigners Tribunal under the 1964 Order as the appellate forum to decide claims and objections under paragraph 7 of the Schedule.

C 13. The 1964 Order has been issued in exercise of power under Section 3 of the Foreigners Act, 1946 (“the Foreigners Act” for short). The Tribunals under the 1964 Order have the power to decide whether the person is a foreigner or not within the meaning of the Foreigners Act. The 1964 Order before its amendment in 2012 was examined by this Court in *Sarbananda Sonowal vs. Union of India & Anr.*¹
D (“*Sarbananda Sonowal (I)*” for short), wherein it was held that the procedure prescribed for the Tribunals constituted under the 1964 Order was just, fair and reasonable. This reasoning formed the basis to strike down provisions of the Illegal Migrants (Determination of Tribunals) Act, 1983 (“the IMDT Act” for short) as ultra vires the Constitution of India,
E primarily on the ground that the offending Act did not contain any provision similar to Section 9 of the Foreigners Act which stipulates that the burden of proof as to whether any person is or is not a foreigner lies upon the said person notwithstanding anything contained in the Indian Evidence Act, 1872. Referring to the factual data reflecting discernible illegal migration threatening the demographic structure of the area, resultant
F outbreak of insurgency in Assam and other concomitant dimensions that had greatly undermined the national security, duty of the Union Government under Article 355 of the Constitution to protect the State against external aggression and internal disturbance, it was held that the word “aggression” is a word of very wide import and would include
G influx of foreigners who had illegally migrated. Reference was also made to the Memorandum of Settlement between the Government of India and All India Students Union and the State of Assam. In paragraph 33 in *Sarbananda Sonowal (I)* acknowledging the role of the Tribunals constituted under the 1964 Order, it was observed:

H ¹ (2005) 5 SCC 665

“33. Clause (b) of sub-Section 6-A(1) of the Citizenship Act, 1955 defines “detected to be a foreigner” and it 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. Similarly, the explanation appended to Section 6-A (2) also refers to the “opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner”. These provisions mandate the establishment and functioning of a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 in the State of Assam. The learned Additional Solicitor General and Shri K.K. Venugopal, learned senior counsel for the State of Assam have made a statement that such Tribunals are actually functioning in the State of Assam.”

Thus, the IMDT Act was struck down as it did not have a provision similar to Section 9 of the Foreigners Act regarding the burden of proof observing that it would be difficult for the State to give an exact date of entry of a foreign national who had surreptitiously crossed the Indian national border and that the court cannot remain a quiet spectator to the continuing influx of illegal migrants. A Bench of 3 Judges did not hesitate to observe that the IMDT Act which had been constituted for the detection and deportation of illegal migrants having entered into India on or after 25th March, 1971 had designedly failed in its purpose.

14. Subsequently, this Court in *Sarbananda Sonowal (II) vs. Union of India*² (“*Sarbananda Sonowal (II)*” for short) had struck down the Foreigners (Tribunals) Amendment Order 2006 *inter alia* for several reasons including those mentioned and which had found favour in *Sarbananda Sonowal (I)*. The amendment Order in distinction to the 1964 Order had required the Tribunal to first consider whether there were sufficient grounds for proceeding and only on the Tribunal being satisfied that the basic facts are *prima facie* established that the notice could be issued to a person suspected of being an illegal migrant. The Division Bench in *Sarbananda Sonowal (II)* was pleased to observe in paragraphs 64 and 65 as under:

“64. In the face of the clear directions issued in Sonowal I, it was for the authority concerned to strengthen the Tribunals under the

² (2007) 1 SCC 174

A 1964 Order and to make them work. Instead of doing so, the 2006 Order has been promulgated. It is not as if the respondents have found the 1964 Order unworkable in the State of Assam; they have simply refused to enforce that Order in spite of directions in that behalf by this Court. It is not for us to speculate on the reasons for this attitude. The earlier decision in *Sonowal*, has referred to the relevant materials showing that such uncontrolled immigration into the North- Eastern States posed a threat to the integrity of the nation. What was therefore called for was a strict implementation of the directions of this Court earlier issued in *Sonowal I*, so as to ensure that illegal immigrants are sent out of the country, while in spite of lapse of time, the Tribunals under the 1964 Order had not been strengthened as directed in *Sonowal I*. Why it was not so done, has not been made clear by the Central Government. We have to once again lament with *Sonowal I* that there is a lack of will in the matter of ensuring that illegal immigrants are sent out of the country.

D 65. It appears that the 2006 Order has been issued just as a cover up for non-implementation of the directions of this Court issued in *Sonowal I*. The Order of 2006, in our view, is clearly unnecessary in the light of the 1946 Act and the Orders made thereunder and the directions issued in *Sonowal I*. It does not serve the purpose sought to be achieved by the 1946 Act or the Citizenship Act and the obligations cast on the Central Government to protect the nation in terms of Article 355 of the Constitution of India highlighted in *Sonowal*. We have also earlier struck down the repeal of the 1964 Order as regards Assam. The 2006 Order is therefore found to be unreasonable and issued in an arbitrary exercise of power. It requires to be quashed or declared invalid.”

E 15. We have referred to the two decisions in *Sarbananda Sonowal (I) and (II)* to indicate and show that the issues and arguments raised before us and noticed below have already been substantially examined and dealt with and rejected earlier.

G 16. The aforesaid judgments had referred to the 1964 Order prior to its amendment vide Foreigners (Tribunal) Amendment Order, 2012. In order to appreciate the contentions raised by the appellants, we would like to first reproduce Paragraph 3 of the amended 1964 Order, which reads as under:

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“3. Procedure for disposal of question:

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(1) The Tribunal shall serve on the person to whom the question relates a show cause notice with a copy of the main grounds on which he or she is alleged to be a foreigner. This notice should be served as expeditiously as possible and in any case, not later than ten days of the receipt of the reference of such question by the Central Government of any competent authority.

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(2) The Tribunal shall give him or her a reasonable opportunity to show cause by filing a representation. Ordinarily, not more than ten days’ time from the date of service of the notice as aforesaid should be given to file such a representation.

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(3) The Tribunal shall give him or her a reasonable opportunity to produce evidence in support of his or her case. Ordinarily, not more than ten days’ time should be given to produce such evidence.

(4) A prayer for examination of witnesses in Court or a Commission for production of documents shall be refused if, in the opinion of the Tribunal, such prayer is made for the purpose of vexation or delay or similar purpose.

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(5) The Tribunal shall take such evidence as may be produced by the Superintendent of Police concerned.

(6) The Tribunal shall hear such persons as, in its opinion, are required to be heard.

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(7) A party to the proceeding may be allowed to appear before the Tribunal either in person or through a legal practitioner or such person or relation authorized by him in writing as the Tribunal may admit as a fit person to represent the party.

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(8) The power of granting adjournment or any plea should be very sparingly exercised.

(9) After the case has been heard, the Tribunal shall submit its opinion as soon thereafter as may be practicable, to the officer or the authority specified in this behalf in the order of reference. Every case should be disposed of within a period of 60 days after the receipt of the reference from the competent authority.

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A (10) The Tribunal's final order containing its opinion on the question referred to need not be a detailed order as it is not a judgment; a concise statement of facts and the conclusion will suffice.

(11) Subject to the provisions of this order, the Tribunal shall have the power to regulate its own procedure for disposal of the cases expeditiously in a time bound manner."

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17. Referring to the above amended provisions, it is urged on behalf of the appellants that an order of the Foreigners Tribunal is an executive order which renders an opinion and therefore, it cannot be equated with a judgment. Summary opinion of the Foreigners Tribunal, it is submitted, is not a detailed order and hence, is not a decision or judgment. Based on the said submission, it is argued that the opinion formed by the Foreigners Tribunal is not an order of the Competent Authority for the purposes of sub-para (2) to paragraph 3 of the Schedule to the 2003 Rules. Further, the opinion formed by the Foreigners Tribunal being an executive order would not operate as *res judicata*. It is highlighted that in some cases, persons who have been declared to be a foreigner under the Foreigners Act have been included in the draft National Register of Citizens for the State of Assam, while in others siblings and close blood relations of such persons have been named in the draft National Register of Citizens. It is averred that in these cases of contradictions, an aggrieved person should be entitled to take recourse to paragraph 8 of the Schedule to the 2003 Rules.

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18. We have examined the contentions and have no hesitation in holding that they have no force. The Foreigners Act and the Citizenship Act including the Rules framed under the two Acts have to be read harmoniously as both the Acts are inter-related and sister enactments. Pertinently, the Rules framed under the Citizenship Act are subordinate legislation. The expression Competent Authority used in sub-para (2) to paragraph 3 of the Schedule to the 2003 Rules would obviously and without a doubt has reference to the duly constituted authority under the Foreigners Act. Indeed, the learned counsel for the appellants did not make any attempt to point out and highlight that there could be any other authority covered by the expression 'Competent Authority' or which would qualify and can be treated as a Competent Authority referred to in sub-para (2) to Paragraph 3 of the Schedule to the 2003 Rules. Paragraph 3 of the amended 1964 Order uses the expression 'Competent Authority' as is also used in sub-para (2) to paragraph 3 of the Schedule,

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albeit in a different context as a competent authority that makes reference to the Tribunal in terms of Paragraph 3. On receipt of such reference, the Tribunal has to submit its opinion/decision, which opinion/decision in terms of Explanation to Section 6A of the Citizenship Act is final and binding. Decisions of the Tribunal have been given primacy. Thus, the Competent Authority referred to in sub-para (2) to paragraph 3 of the Schedule would be, without a doubt, the Tribunal constituted under the Foreigners Act i.e. the 1964 Order.

19. The procedure prescribed by the post 2012 amendment under the 1964 Order mandates compliance with the principles of natural justice. All the allegations and grounds are required to be served by the Tribunal in the form of a show cause notice to the person who is alleged to be a foreigner [see paragraph 60 in *Sarbananda Sonowal (II)* (supra)]. Thereupon, the person has to be given a reasonable opportunity to file representation and also produce evidence. The Tribunal has been authorised to consider and allow prayer for production and examination of the witnesses which can be refused if found to be vexatious, or made with the intent to cause delay, etc. The evidence produced by the Superintendent of Police can also be recorded. The person concerned has to be heard before the Tribunal gives its opinion. The person concerned may appear in person or can be represented by a legal practitioner or an authorised representative. Opinion is to be given within a period of sixty days after the reference from the competent authority. No doubt, the Rules do not prescribe and require an opinion of the Tribunal to be a detailed judgment, nevertheless, it is obvious that the opinion rendered must state the facts and reasons for drawing the conclusions. It is a decision and an order. Fixing time limits and recording of an order rather than detailed judgment is to ensure that these cases are disposed of expeditiously and in a time bound manner. The opinion by the Foreigners Tribunal is a quasi-judicial order and not an administrative order. The expression ‘quasi-judicial order’ means a verdict in writing which determines and decides contesting issues and question by a forum other than a court. The determination has civil consequences. Explaining the meaning of quasi-judicial body in *Indian National Congress (I) vs. Institute of Social Welfare & Ors.*³, it was held that when any body of persons has a legal authority to determine questions affecting the rights of subjects and a duty to act judicially, such body of persons constitute a

³ (2002) 5 SCC 685

- A quasi-judicial body and decision given by them is a quasi-judicial decision. It would also be a quasi-judicial order if the statute empowers an authority to decide the *lis* not between the two contesting parties but also when the decision prejudicially affects the subject as against the authority, provided that the authority is required by the statute to act judicially. Further, what differentiates an administrative act from the quasi-judicial act is that a quasi-judicial body is required to make an enquiry before arriving at a conclusion. In addition, an administrative authority is the one which is dictated by policy and expediency whereas a quasi-judicial authority is required to act according to the rules.

- C 20. The opinion/order of the Tribunal, or the order passed by the Registering Authority based upon the opinion of the Foreigners Tribunal, as the case may be, can be challenged by way of writ proceedings. Thus, it would be incorrect to hold that the opinion of the Foreigners Tribunal and/or the consequential order passed by the Registering Authority would not operate as *res judicata*. Both the opinion of the Tribunal and the Order of the Registering Authority result in determination of rights/status under the statute and by an authority after a contest on the merits which would necessarily operate as a bar to subsequent proceedings before the same authority for re-determination of the same issue/question. This court in *Shrimati Ujjambai vs. State of Uttar Pradesh & Anr.*⁴ has held that the principles of *res judicata* equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial Tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or a writ unless the erroneous determination relates to the jurisdictional matter of that body. In *Dr. J.J. Merchant & Ors. vs. Shrinath Chaturvedi*⁵, when the learned counsel had pleaded that the National Consumer Disputes Redressal Commission cannot examine complicated questions of facts which require examination and cross-examination of experts including doctors and that the procedure followed for determination of consumer disputes being summary in nature is not suitable for determination of complicated questions, this court rejected these contentions and held that under the Consumer Protection Act,

⁴ AIR 1962 SC 1621

H ⁵ (2002) 6 SCC 635

1986, for a summary trial, an exhaustive procedure conforming to the principles of natural justice is provided. Merely because the trial is summary in nature cannot be a ground to reject it as unjust or unfair. Further, it was held in *Rajesh Kumar & Ors. vs. DY. CIT & Ors.*⁶ that when civil or evil consequences ensue by reason of an act done by the statutory authority, principles of natural justice must be followed. The Act and power of judicial review vested with the constitutional courts provide sufficient safeguards, in the present context.

21. When we apply general principles of *res-judicata*, the contention of the appellants that the person concerned should be permitted to double-dip and be entitled to a second round of litigation before the Foreigners Tribunal notwithstanding the earlier opinion expressed by the Foreigners Tribunal is far-fetched, and completely unacceptable. The plea is fallacious and has no merit. This contention therefore must be rejected and fails.

22. As stated above, a person aggrieved by the opinion/order of the Tribunal can challenge the findings/opinion expressed by way of a writ petition wherein the High Court would be entitled to examine the issue with reference to the evidence and material in the exercise of its power of judicial review premised on the principle of “error in the decision-making process”, etc. This serves as a necessary check to correct and rectify an ‘error’ in the orders passed by the Tribunal.

23. It was highlighted that there could be contradicting decisions/opinions of Foreigners Tribunal even in cases of near family members, *albeit* contradictions can be avoided when ‘family tree hearing’ are held as is now being undertaken. In the absence of joint decisions, conflict is possible as the principle of *res judicata* would not apply to separate proceedings even if against two closely related but different persons, as each case has to be strictly decided on the facts and evidence on record. Secondly, there is a possibility that some/one of the near family members may have migrated to India prior to midnight of March 24, 1977 and, therefore, fall in a different category. Any such conflict, however, would not compel us to take a different view, in terms of the clear statutory provisions. In a given case, the person aggrieved would have liberty to invoke writ jurisdiction, or if necessary, review jurisdiction before the High Court or this Court to ensure that no injustice is done. Any order

⁶ (2007) 2 SCC 181

- A passed in case of close family members, subsequent to adjudication order determining the citizenship status of a person, would necessarily be a material evidence which can be duly taken note of and considered while deciding a writ petition or a review application.

24. In view of the aforesaid findings, it has to be held that paragraph 8 of the Schedule to the 2003 Rules which gives a right to appeal before the Tribunal under the 1964 Order would apply only if and, in those cases, where the Tribunal constituted under the 1964 Order has not already adjudicated upon and decided the issue as to whether the person is an Indian National or a foreigner. In other words, where the issue and question of nationality has already been determined under the 1964 Order, an appeal would not be maintainable under paragraph 8 of the Schedule to the 2003 Rules. The determination would be final and binding on the Registering Authority under the Schedule and the Local Registrar. Paragraph 8 does not envisage and provide for a second round of litigation before the same authority i.e. the Foreigners Tribunal constituted under the 1964 Order on and after preparation of the final list. Provisions of paragraph 8 of the Schedule to the 2003 Rules will apply when there has not been an earlier adjudication and decision by the Foreigners Tribunal.

25. Alternative submission that this court should create an appellate forum has not been pressed in the written submissions and arguments. We would not give any such direction and entrench upon the field of legislation reserved for legislature. This is not a case of an unoccupied legislation nor would facts justify the Court to exercise powers as in the cases of vacuum and when there is a complete absence of active law to provide for effective enforcement of basic human rights [*See P. Ramachandra Rao vs. State of Karnataka*⁷ and *Pravasi Bhalai Sangathan vs. Union of India*⁸].

26. With the aforesaid observations, we dispose of the appeals and reject the contention of the appellants on the perceived conflict pertaining to the adjudication on the citizenship status of persons. We also reject the contention that this Court should direct the creation of an appellate forum.

Nidhi Jain

Appeals disposed of.

⁷ (2002) 4 SCC 578

⁸ (2014) 11 SCC 477