

Rofiqul Hoque
v.
The Union of India & Ors.

(Criminal Appeal No. 2686 of 2025)

19 May 2025

[Sanjay Karol and Manoj Misra, * JJ.]

Issue for Consideration

Once the name of the appellant stands included in the draft NRC, whether the order of the Tribunal, declaring him a foreigner, and of the High Court, affirming the order of the Tribunal, be sustained.

Headnotes[†]

Foreigners Act, 1946 – s.9 – Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 – r.4A(4) – Appellant was declared foreigner by the Foreigners Tribunal – The High Court upheld the findings of the Tribunal – Whether the findings returned by the Tribunal and the High Court suffer from any legal infirmity as to warrant an interference in exercise of this Court’s power u/Art.136 of the Constitution of India:

Held: Section 9 of the 1946 Act places the burden of proof on the proceedee to prove that he is not a foreigner – Consequently, the burden was on the appellant to establish by cogent documents or other evidence that either he himself had entered the territory of Assam prior to 25.03.1971 or his ancestors had entered the territory prior to the said date – The Courts below considered these documents – The probative value of voter list entries were discarded – The school leaving certificate was obtained 10 years after passing from the institution and there appeared no reason for obtaining it after 10 years – Moreover, the headmaster of the school was not called for to prove the authenticity of the certificate of which duplicate was produced – After considering the documents on record along with the evidence produced, the Tribunal and the High Court held that the appellant could not discharge his burden

* Author

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of proving that he is not a foreigner, the view taken by them cannot be held perverse, or manifestly erroneous, or unreasonable, as to warrant interference under Article 136 of the Constitution of India – That apart, it is not the case of the appellant that any material/ admissible evidence was ignored or there was misreading of any of the documents produced by the appellant – Therefore, the view that the findings returned by the Tribunal and the High Court do not suffer from any legal infirmity. [Paras 13, 15, 16 and 17]

Foreigners Act, 1946 – s.9 – Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 – r.4A(4) – Whether on inclusion of the name of the appellant in the draft NRC published by the competent authority in the year 2018, the declaration made by the Tribunal, as affirmed by the High Court, would be rendered invalid:

Held: In view of the decision of this Court in *Abdul Kuddus*, consequent to the declaration by the Tribunal that appellant is a foreigner, the name of the appellant could not have been included in the draft NRC and, secondly, even if it has been included, it would not annul the declaration made by the Tribunal – The inclusion of the name of the appellant in the draft NRC would have no bearing on the order passed by the Tribunal, affirmed by the High Court, declaring the appellant a foreigner. [Paras 27 and 28]

Case Law Cited

Abdul Kuddus v. Union of India and Others [2019] 8 SCR 669 : (2019) 6 SCC 604 – relied on.

Sarbananda Sonowal v. Union of India and Another [2006] Supp. 10 SCR 167 : (2005) 5 SCC 665 – referred to.

List of Acts

Foreigners Act, 1946; Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

List of Keywords

Foreigner; Illegal entry in India; Illegal resident; Draft NRC; Traced ancestry; National Register of Indian citizen in the State of Assam; Illegal migrants.

Rofiquel Hoque v. The Union of India & Ors.**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2686 of 2025

From the Judgment and Order dated 20.11.2017 of the Gauhati High Court in WPC No. 2207 of 2017

Appearances for Parties

Advs. for the Appellant:

Pijush Kanti Roy, Sr. Adv., Mrs. Kakali Roy, Rajesh Kumar Chaurasia, Sujeet Kumar, Devender Singh, Gautam Kumar.

Advs. for the Respondents:

Tushar Mehta, Solicitor General, Ms. Aishwarya Bhati, A.S.G., Kanu Agrawal, Shuvodeep Roy, Ms. Prerna Dhal, Ms. Astha Singh, Ms. Sampa Sengupta Ray, Arvind Kumar Sharma, Shuvodeep Roy, Saurabh Tripathi, Deepayan Dutta.

Judgment / Order of the Supreme Court**Judgment**

Manoj Misra, J.

1. Leave granted.
2. This appeal arises from proceedings¹ under the Foreigners Act, 1946², whereunder, *vide* order dated 04.03.2017, the appellant was declared foreigner, who entered India illegally after 25.03.1971, by the Foreigners Tribunal³, Jorhat, Assam. The aforesaid order of the Tribunal was challenged before the Guwahati High Court⁴ under Article 226 of the Constitution of India⁵ through W.P.(C) No.2207/2017, which was dismissed *vide* impugned order dated 20.11.2017.
3. Aggrieved by the declaration that appellant is a foreigner and dismissal of the writ petition challenging such declaration, this appeal has been filed.

¹ Case No.FT/SVR/62/14

² 1946 Act

³ Tribunal

⁴ High Court

⁵ The Constitution

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Facts

4. Before advertng to the issues that fall for our consideration in this appeal it would be apposite to briefly refer to the relevant facts. They are as follows:
- (i) Based on a preliminary enquiry, the Superintendent of Police (Border), Sivasagar made a reference to the Tribunal, *inter alia*, alleging that the appellant is a foreigner illegally residing in Assam, India.
 - (ii) On the aforesaid reference, notice was issued by the Tribunal calling upon the appellant to show cause as to why he be not declared a foreigner.
 - (iii) The appellant contested the notice by filing a written statement on 15.06.2016, *inter alia*, stating (a) that he is son of Md. Majut Ali, a resident of Daobhangi village under Gauripur police station in the district of Dhubri; (b) Joynal Abdin Seikh was his grandfather and Moriyom Bibi was his grandmother; (c) his own mother's name is Sopia Bibi (Begum); (d) his grandfather's name was enlisted in the voters list of 1966 whereas his grandmother's name was enlisted in the voters list of 1970; (e) he was born in the year 1996 and as such he is a citizen of India.
 - (iv) To support his case, the appellant submitted school certificate (Ext-1); extract of voters list of 1966 in respect of Gauripur Assembly Constituency (Ext-2); extract of voters list of 1970 in respect of Gauripur Assembly Constituency (Ext-3); extract of voters list of 1993 in respect of Gauripur Assembly Constituency (Ext-4); extract of voters list of 2010 in respect of Gauripur Assembly Constituency (Ext-5); and extract of voters list of 2016 in respect of Gauripur Assembly Constituency (Ext-6).
 - (v) Ext-1 was a duplicate school leaving certificate dated 03.05.2014 issued by headmaster of number 1236 Khagrabari LP School certifying that (a) Rofiqul Hoque is son of Majut Ali (father) and Sopia Bibi (mother) of Daobhangi village under Gauripur Police Station; (b) his date of birth is 20.07.1996; and (c) he left the school on 31.12.2004.
 - (vi) The Tribunal held appellant to be a foreigner. While holding so the Tribunal, *inter alia*, observed that place of residence of Joynal

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Abdin as reflected in the voter lists was at variance with what was claimed by the appellant. For example, in the voter list of 1993 Joynal Abdin was shown as a resident of Kekurchar⁶ village whereas the appellant was resident of village Daobhanggi. The Tribunal noted that appellant nowhere stated that his grandfather shifted from one village to the other. The Tribunal thus opined that it is difficult to hold that Joynal Abdin Sheikh son of Rahim Munshi of Daobhanggi village and Joynal Abdin Sheikh son of Rahim Sheikh of Kekurchar village were one and the same person.

High Court's Analysis of the Evidence

5. In the writ petition preferred against the Tribunal's order, the High Court considered the entire evidence produced by the appellant. It highlighted defects in the evidence led by the appellant, which are enumerated below:
 - (i) The school leaving certificate (Ext-1) was an unreliable document, *inter alia*, for the following reasons: a) it was duplicate, therefore not acceptable without proof of loss of original; b) there was no logical reason for its issuance on 03.05.2014, after 10 years of appellant having left the school; and c) the headmaster of the school was not examined to prove its contents.
 - (ii) The voter list of 1966 (Ext-2) discloses only the name of Joynal Abdin Sheikh son of Rahim Munshi which, in isolation, cannot be of much help to the appellant.
 - (iii) The voter list of 1970 (Ext-3), though includes names of Joynal Abdin Sheikh son of Rahim Munshi and Moriyom Bibi wife of Joynal, discloses age of Moriyom Bibi as 27 years, which is surprising because if she had been of that age her name would have been found in the voter list of 1966.
 - (iv) In the voter list of 1993 (Ext-4), though names of Maziber Ali and Majut Ali are shown as sons of Joynal Abdin, age of Majut Ali is shown 30 years, which is surprising for it to have appeared for the first time at that age.
 - (v) In the voter list of 1966 Joynal Abdin was shown aged 38 years. If he had been the same person in the voter list of 1993, his

6 Referred to as 'Bhekarchar' in the voter list of 1993.

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age ought to have been 65 years whereas in the 1993 voter list, his age was shown as 70 years. The High Court therefore expressed doubt as to whether Joynal Abdin Seikh as mentioned in 1966 voter list is one and the same person as mentioned in 1993 voter list.

- (vi) Additionally, the High Court noticed that as per the affidavit of the appellant, Joynal Abdin Seikh was a resident of Daobhangi village whereas in the voter list of 1993, Joynal Abdin was shown as a resident of Kekurchar village, which is altogether different from the village of which the appellant claims to be a resident. Further, the High Court noticed that in the 1993 voters list, the name of the mother of the appellant, namely, Sophia Bibi, is conspicuous by its absence.
 - (vii) As regards the voters list of 2010, the High Court observed that here Majut Ali's age is shown as 45 years whereas in 1993 list it was 30 years therefore, in the 2010 voters list, it ought to have been 47 years. Besides above, there was a noticeable change in respect of the place of residence because in 1993 list, the village of domicile is shown as Kekurchar whereas in 2010 voter list it is Daobhangi.
 - (viii) In respect of the voter list of 2016, though names of Majut Ali and Sophia Bibi appeared, there appeared overwriting in the age of Sophia Bibi where 45 was written over 30. The High Court, therefore, expressed doubt on the genuineness of the document itself.
 - (ix) Based on the above analysis of the evidence, the High Court observed that *"net result of the above discussion is that petitioner had failed to discharge his burden under section 9 of the Foreigners Act, 1946 to prove that he was not a foreigner but a citizen of India"*. The High Court further observed: *"the narrative presented by the petitioner suffered from multiple material contradictions and omissions rendering the same not only suspicious but highly improbable."* Consequently, the High Court declined to interfere with the order passed by the Tribunal dated 04.03.2017.
6. Pursuant to the order of the High Court, the appellant was detained. After nearly 2 years of the High Court's order, the appellant filed SLP

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(Crl.) No.5598/2019 along with an application seeking permission to file additional documents.

7. The pleas taken before this Court are (a) that after the order of the High Court, the appellant had a permanent account number in his favour, which was issued by the Income Tax Department on 26.12.2017; and (b) that his name appeared at serial no.7 in the draft NRC published by the competent authority on 30.07.2018, consequently, he could no longer be considered a foreigner.
8. On 03.07.2019, this Court condoned the delay and issued notices to the respondents. Thereafter, on 26.07.2019, in view of appellant's name figuring in the draft NRC published on 30.07.2018 (wrongly transcribed as 31.07.2018 in the order), this Court directed release of the appellant from the Detention Centre, subject to certain conditions.

Submissions on behalf of Appellant

9. The contention of the learned counsel for the appellant is that once the name of the appellant stands included in the draft NRC, the order of the Tribunal, declaring him a foreigner, and of the High Court, affirming the order of the Tribunal, cannot be sustained. Moreover, the Tribunal and the High Court adopted a pedantic approach in holding that the appellant had failed to discharge the burden. Otherwise also, minor discrepancies in the voter list are to be ignored as these entries are not within the control of the voter. As regards change of place of residence, it was argued, a citizen of the country is free to travel from one place to the other and therefore, on mere change of domicile from one village to the other the nationality cannot be doubted.

Submissions on behalf of respondents

10. Per contra, on behalf of the respondents, it was submitted that a declaration made by the Tribunal that a person is a foreigner does not get effaced or annulled by mere inclusion of that person's name in the draft NRC because the proceedings of the Tribunal are quasi-judicial in nature and once a declaration is made by it, the same can be set aside only by a superior court and not by the Registering Authority. It was also argued on behalf of the respondents that the discrepancies in the documents furnished by the appellant by way of proof of his citizenship were not only in respect of residence of the persons through whom the appellant claimed to be a citizen but

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also in respect of the school certificate, which was found doubtful and bogus. Therefore, as by Section 9 of the 1946 Act burden is on the proceedee, the finding of the Tribunal cannot be faulted.

11. We have considered the rival submissions and have perused the materials on record.

Issues

12. Two issues arise for our consideration in this appeal, namely, (a) whether the findings returned by the Tribunal and the High Court suffer from any legal infirmity as to warrant an interference in exercise of this Court's power under Article 136 of the Constitution of India? (b) whether on inclusion of the name of the appellant in the draft NRC published by the competent authority in the year 2018, the declaration made by the Tribunal, as affirmed by the High Court, would be rendered invalid?

Discussion/ Analysis

13. **Issue (a)** - As regards the claim of the appellant that the Tribunal and the High Court adopted a pedantic approach in discarding the documents for minor discrepancies and, therefore, their finding stands vitiated, it be noticed that Section 9 of the 1946 Act places the burden of proof on the proceedee to prove that he is not a foreigner⁷. Consequently, the burden was on the appellant to establish by cogent documents or other evidence that either he himself had entered the territory of Assam prior to 25.03.1971 or his ancestors had entered the territory prior to the said date.
14. In that regard, the appellant traced his ancestry from Joynal Abdin Seikh by claiming him to be his grandfather. Voter lists were produced to show that Joynal's name was there prior to the cut-off date and the subsequent voter lists reflected that appellant was part of that family.
15. The Tribunal as well as the High Court have considered these documents and have found that those earlier voter lists relate to a person located in some other village than the one of which the appellant claimed to be a resident. In such circumstances, the appellant ought to have stated in his affidavit, or demonstrated by

7 Sarbananda Sonowal v. Union of India and another, (2005) 5 SCC 665

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some documentary evidence, that his ancestors had migrated from that village to the other village where the appellant was reported to be residing, but, according to the Tribunal, there was no such claim by the appellant in his affidavit. Therefore, the Tribunal discarded the probative value of those voter list entries. Interestingly, the school leaving certificate on which heavy reliance was placed by the appellant was also doubted as there appeared no reason for it to have been obtained 10 years after passing from the institution. Moreover, the headmaster of the school was not called for to prove the authenticity of the certificate of which duplicate was produced.

16. For the foregoing reasons, if the Tribunal and the High Court held that the appellant could not discharge his burden of proving that he is not a foreigner, the view taken by them cannot be held perverse, or manifestly erroneous, or unreasonable, as to warrant interference under Article 136 of the Constitution of India.
17. That apart, it is not the case of the appellant that any material/ admissible evidence was ignored or there was misreading of any of the documents produced by the appellant. We are, therefore, of the view that the findings returned by the Tribunal and the High Court do not suffer from any legal infirmity.
18. Issue (a) is decided in the above terms.
19. **Issue (b)** - As regards the effect of inclusion of the name of the appellant in the draft NRC, which was published by the competent authority in 2018, it would be apposite to notice Rule 4 A of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003⁸ as inserted by GSR No.803 (E), dated 09.11.2009, with effect from 09.11.2009. Rule 4 A reads thus:

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

(2) The Central Government shall, for the purpose, of the National Register of Indian Citizens in the State of

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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 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.

(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.”

(Emphasis supplied)

20. Sub-rule (4) of Rule 4 A provides that 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.
21. The Schedule attached to the 2003 Rules is titled “Special Provision As To Manner Of Preparation Of National Register Of Indian Citizen In State Of Assam”.
22. Paragraph 3 of the aforesaid Schedule provides 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.

(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:

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

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declared as illegal migrants or foreigners by the competent authority shall be eligible to be included in the consolidated list.

(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;

(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;

(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 up to the midnight of the 24th day of March, 1971; or

(b) has shifted from one district to another within the State of Assam up to 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.”

(Emphasis supplied)

23. Sub-para (2) to paragraph 3 makes it clear that 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.
24. Admittedly, the draft NRC was published in 2018 and by that time, the appellants had already been declared foreigners by the Tribunal.
25. Interpreting the consequence of such declaration, a three-Judge Bench of this Court in **Abdul Kuddus vs. Union of India and others**⁹, held:

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“11. It is obvious to us that the persons covered by the sub-para (2) to para 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-para (4). Such persons cannot, in terms of the specific language used in sub-para (2) to para 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 the claim to the citizenship of India on the basis that he/she has been residing in the state of Assam”.

26. In **Abdul Kuddus** (supra), this Court also expounded the expression “competent authority”, as used in sub-para (2) of para 3 of the Schedule to the 2003 Rules, in the following terms:

“22. ... 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 para 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. ...

Thus, the competent authority referred to in sub-para (2) to para 3 of the Schedule would be, without a doubt, the Tribunal constituted under the Foreigners Act i.e. 1964 Order”.

(Emphasis supplied)

27. In view of the decision of this Court in **Abdul Kuddus** (supra), firstly, consequent to the declaration by the Tribunal that appellant is a foreigner, the name of the appellant could not have been included in the draft NRC and, secondly, even if it has been included, it would not annul the declaration made by the Tribunal.

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28. For the reasons detailed above, the inclusion of the name of the appellant in the draft NRC would have no bearing on the order passed by the Tribunal, affirmed by the High Court, declaring the appellant a foreigner.
29. Issue (b) is decided in the above terms.
30. In light of the discussion above, and our conclusions on the issues referred to above, we are of the view that there is no merit in this appeal. The same is, accordingly, dismissed. The release order which was passed at an interim stage stands discharged. Consequently, the appellant shall be treated and dealt with as a foreigner. Pending applications, if any, stand disposed of.

Result of the case: Appeal dismissed.

[†]Headnotes prepared by: Ankit Gyan