
(2011) 07 GAU CK 0037
In the Gauhati High Court
Case No : Writ Petition (Civil) No.2358 of 2021

Ajijur Rahman

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2012) 4 GLR 136

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : Mr. A. Choudhury for the petitioner.??Ms. R. Chakraborty , Mr. J.M.A. Choudhury for the respondents., Advocates appearing for Parties

Judgement

1. The petitioner claiming him self to be an Indian Citizen, by birth, has filed this writ petition challenging the declaration made by the Foreigners Tribunal holding him to be an illegal Bangladeshi migrant. The impugned declaration is vide order dated 2/5.4.2011 in FT(C) Case No. 646/2006 corresponding to IM(D)T Case No. 469/2001 (State of Assam v. Hazarat Ali and 2 others).

Background fact

2. By memo No. III/2.b(a)/209/2001 dated 27.7.2001, the Superintendent of Police (B), Morigaon, Assam, initiated a proceeding against the petitioner along with his father and mother in the ground that they are suspected illegal migrants, who entered into India on or after the cut off date, i.e., 25.3.1971. According to the petitioner, since both his parents died during the pendency of the proceeding, the same continued against him only.

3. Initially, upon a reference to the then IM(D)T, the proceeding was registered as IM(D)T Case NO. 469/2001. On scrapping of the IM(D)T Act, the proceeding was registered as FT(C) Case No. 646/2006 in the Foreigners Tribunal (1st) Morigaon. The reference which was as to whether the petitioner and his parents are illegal Bangladeshi migrants or not, having been answered in favour of the

State holding the present petitioner to be an illegal Bangladeshi migrant, vide the impugned order dated 2/5.4.2011, the petitioner is now before this court challenging the said order invoking the writ jurisdiction of this court under article 226 of the Constitution of India.

Case in the writ petition

4. The petitioner claims to be an Indian citizen, by birth. In paragraph 7 of the writ petition, he has stated that during his childhood, his parents came to Telahi and settled at Naramari Reserve on Government land. According to him, on receipt of the notice from the Foreigners Tribunal, he had submitted written statement on 20.4.2007, disputing the reference. In the written statement he had pleaded that his predecessors were all Indian citizens. Naming his father and mother as Hazarat Ali and Aitun Nessa, it has been stated that their names were included in the voter list of 1965 for Lahorighat Constituency in the Nagaon District. The petitioner has also placed reliance on the certificate issued by the Gaonbhura of the particular village, certifying the petitioner as permanent resident of the said village.

5. The petitioner got himself examined as OPW1 in the proceeding before the Tribunal, in which he had stated that his parents expired about 10 to 15 years back and in support of such statement, he placed reliance on the certificates issued by the local Gaonbhas.

6. The petitioner, in his deposition, he also stated about his school education at Solmari High School where he allegedly read up to classVII, in support of which he produced the School Certificate marked as Ext.Ka. He also produced the voter list of 1965 and 1970 (Ext. Kha and Ga) containing the names of his father and mother respectively. The petitioner also produced Ext. Gha voter list of 1997 of 79, Jagiroad Constituency allegedly containing his name.

7. According to the petitioner, the learned Tribunal did not appreciate the aforesaid materials and passed the impugned order declaring the petitioner to be a foreign national. The petitioner has also contended that the learned Tribunal ought to have considered the fact that the name of the petitioner had erroneously entered in the voter list as Ajibur Rahman instead of Ajijur Rahman. Similarly, the name of his father Hazarat Ali entered as Harzat Ali. It has been stated that such discrepancies in the documents might be committed by the officials and such the discrepancies ought not have been made the foundation towards passing the impugned order.

Findings of the Tribunal

8. The learned Tribunal in its impugned judgement and order has discussed the entire evidence on record as was adduced by both the parties. As is evident from the said judgement, the prosecution examined two witnesses. PW2, SI(B) testified that while he was working as SI(B) Dharamtul PS, the Superintendent of Police (B), Morigaon directed him on 27.7.2001 to enquire about the nationality

of the petitioner and his parents vide Ext.1. During the enquiry accompanied by his staff and the village Gaonbhura, when documents, such as National Registration Certificate, Passport, Ration Card, Refugee Registration Certificate, Voter List, Land documents. Insurance Paper, etc., were demanded in support of Indian nationality of the proceedees, they could not produce any document, although sufficient time was given to them. On completion of the enquiry, he submitted the reports (Ext. 2 and 3). Based on the materials, this witness deposed that the petitioner and his parents are illegal migrants and entered into Assam from Village and PS Lakhai in the District of Shyllet, Bangladesh, after 25.3.1971 and they settled down on Government land at Naramari Reserve.

9. On receipt of the aforesaid reports, the Superintendent of Police (B), Morigaon referred the case to then IM(D)T Nagaon for trial vide Ext. 4. All these statements of PW2 could not be contradicted in the crossexamination. The evidence adduced by PW2 was also fully supported by PW1, the local Gaonbhura. He in his deposition, stated that during the enquiry conducted by the PW2, he was present and in spite of granting opportunities, the proceedees could not produce any document in support of their Indian citizenship. This witness was not. crosFexamined by the petitioner, although opportunity was given.

10. The surviving proceedee, i.e., the petitioner, namely, Md. Ajvjur Rahman got himself examined as OPW1. He in his deposition stated about expiry of his parents about 10 and 15 years back respectively. He also stated about his purported schooling at Solmari High School, in support of which he produced the Ext.Ka certificate. As stated above, he also produced the voter lists of 1965 (Ext. Kha) and 1970 (Ext.Ga). Further, he also produced the voter list of 1997 (Ext.Gha).

11. The learned Tribunal on perusal of the aforesaid evidence found that in the School certificate, the student is named as Md. Ajijur Rahman S/o. Md. Hazarat Ali but on the other hand Ext. Kha and Ga, indicate the name of one Harjat Ali, whose name was included in the voter list of 1965 and 1970. Further, the name of the father of said Harjat Ali was also shown differently than the one claimed by the petitioner. In Ext Kha, Harjat Ali was shown as son of Asamuddin but in Ext. Ga, he was shown as son of Hasan. There is also difference in respect of age of Harjat Ali in Ext. Kha and Ga. The learned Tribunal also found that Aitun Nessa, purported mother of the petitioner was shown as wife of Zabed Ali and her age was shown as 40 years in Ext.Ga voter list of 1970.

12. The learned Tribunal has also noticed that Ext.Gha voter list of 1997, contains the name of one Ajibur Rahman S/o. Hazarat Ali, aged 26 years but as per record and the written statement submitted by the proceedee, i.e., the petitioner, he is Ajijur Rahman and not Ajibur Rahman. Further, the Tribunal also noticed that as per the evidence of the petitioner, name of his father was Hazarat Ali and not Harjat.

13. Noticing all the above discrepancies, the Tribunal in its impugned order has

concluded that the petitioner is not an Indian national and too by birth. Referring to the earlier decision of this court in Abdul Kuddus [WP(C) 190/2009], the learned Tribunal has observed that filing of some documents and taking up any name from such documents so as to establish relationship with the said person, as father or mother or even grand father or grand mother, does not establish Indian citizenship of a foreigner.

Arguments

14. Mr. A. Choudhury, learned counsel appearing for the petitioner in his long and elaborate argument submitted that the Tribunal erred both in fact and law in declaring the petitioner to be foreign national and thereby answering the reference in favour of the State. According to him, the documents and the evidence adduced during the proceeding before the Tribunal clearly established that the petitioner is not an illegal Bangladeshi migrant as was contended by the State.

15. Countering the above argument by Ms. R. Chakraborty, learned Addl. Sr. Government Advocate and Mr. J.M.A. Choudhury, learned CGC, submitted that the findings of fact arrived at by the Tribunal cannot be interfered with unless it is shown to be based on no evidence or a perverse finding.

Analysis and conclusions

16. I have considered the submissions advanced by the learned counsel for the parties and the entire materials on record including the records received from the Tribunal.

17. The analysis of evidence by the learned Tribunal has been noted above. One interesting feature of the case is that the petitioner, although has claimed to have read up to ClassVIII in the particular School but while accepting the notice from the Tribunal, he put his LTI, meaning thereby he is illiterate. But on the other hand in the written statement filed by him, he put his signature in Assamese. In consultation of his signatures appearing in the documents pertaining to the proceeding, such as, appearance slip, vakalatnama, written statement, etc., prima facie, it appears that the signatures are all different. Be that as it may, this aspect of the matter need not detain us.

18. In the written statement filed by the petitioner, the aforesaid fact of his father Hazarat Ali being an Indian citizen on the strength of 1965 voter list was stated. It was also stated that both his parents, namely, Hazarat Ali and Aitun Nessa, expired during the pendency of the proceeding. It was also stated that the name of the petitioner appeared in the voter list of 1997. The written statement was filed on 20.4.2007 and thus the same came to be filed after long 6(six) years of initiation of the proceeding.

19. In support of the said stand in the written statement, the petitioner exhibited the purported School Certificate "Ext. Ka", which is undated. There is also no indication as to who had issued the Certificate and on which date. On the face of

it, the said certificate is unbelievable. The particular portion of the Certificate wherein Ext.Ka is marked is removed and pasted with white paper on the back. Coupled with this the petitioner also did not choose to examine the author of the said Certificate to prove the same.

20. The 1965 voter list of No. 84 Lahorighat Constituency (Certified copy) (Ext.Kha) contains the name of one Harjat Ali S/o. Asamuddin and, thus, no way relates to the father of the petitioner, whose name is Hazarat Ali. Likewise, the 1970 certified copy of the voter list (Ext.Ga) of the same constituency contains the name of one Harjat Ali S/o. Hasan. Interestingly, in this voter list, Aitun Nessa, whom the petitioner claims to be his mother is indicated as wife of Zabed Ali and thus, no way relates to Hazarat Ali or even Harjat Ali.

21. Ext.Gha, 1997 voter list contains the name of one Ajibur Rahman and, thus, no way relates to Ajijur Rahman, i.e., the petitioner. In any case solely on the basis of 1997 voter list, the petitioner cannot claim to be an Indian citizen, by birth.

22. As regards the residential certificate on which, the petitioner has placed reliance, the said certificates even if considered on its face value, cannot establish that the petitioner is an Indian citizen, by birth. The said certificates only certify that the petitioner is an inhabitant of the particular locality. They do not certify that the petitioner is an Indian citizen, by birth.

23. There is another aspect of the matter. As pointed out by the Apex Court in L/ C of India v. Ram Pal Singh Bisen, (2010) 4 SCC 491 that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. In the instant case, the petitioner merely exhibited the aforementioned documents without proving the contents and/or establishing the link with the persons named in the said exhibits.

24. The petitioner has claimed that the name of his father is Hazrat Ali and mother is Aitun Nessa. The name of the petitioner is Ajijur Rahman. According to the petitioner, the name of his grand father is Asamuddin @ Hasan but interestingly, the same very petitioner accepted his grand father as Jan Ali Sheikh in the proceeding before the Tribunal. The notice from the Tribunal was issued to Hazarat Ali as S/o Jan Ali Sheikh and notice was accepted by the petitioner himself. It was never contended before the Tribunal that the name of his grand father is not Jan Ali Sheikh but Asamuddin or Hasan.

25. The petitioner claims the name of his mother as Aitun Nessa¹ and thus, naturally, said Aitun Nessa should be the wife of his father Hazarat Ali but in the voter list (Ext.Ga) on which the petitioner placed reliance, she is shown to be the wife of Zabed Ali and not Hazarat Ali. In the voter list of 1997 on which the petitioner placed reliance (Ext.Gha), the name of the person concerned is Ajibur Rahman and not Ajijur Rahman.

26. In spite of the aforesaid revelation as per the own showing of the petitioner, he claims to be an Indian citizen, by birth. As has been recorded in the findings of the Tribunal, the PW2 in his deposition fully established the case of the prosecution including exhibition of documents pertaining to the enquiry and the report thereof. Although, he was crossexamined, nothing contradictory could be extracted. As against the evidence adduced in support of the reference furnishing complete materials, the only question put to him on behalf of the petitioner was as to whether he had taken the statement of the persons concerned to which his reply was in the affirmative. No other question was put to him except the suggestion that he did not visit the proceedees and ask for the documents. He also denied the suggestion that the proceedees are not illegal Bangladeshi migrant.

27. PW1 in his deposition stated that he had accompanied the PW2 when he visited the place of the proceedees and that they could not produce any document in support of their claim of Indian citizenship. This witness was not crossexamined by the petitioner, although he was given opportunity to do so.

28. As against the aforesaid evidence adduced on behalf of the prosecution, the petitioner in his deposition narrated the story in the written statement. In his crossexamination, he identified his grand father as Asamuddin. He also stated that no evidence was adduced to prove death of his parents. Later on, he said that he had furnished certificate of death as given by the Panchayat.

29. Irrespective of the aforesaid materials, I have considered the matter from the view point of all the above aspects of the matter. Even if it is held that the names of the parents of the petitioner appeared in the voter list of 1965 and 1970 respectively, but considering their age in 1965 and 1970, which is 35, 38 and 40 respectively, their names ought to have appeared in earlier and later voter lists but there is no explanation as to why their names did not appear in any over list other than the 1965 and 1970. While the name of the purported father of the petitioner appeared in the voter list of 1965 and 1970 with the recording of age as 35 and 38 years respectively, the name of the purported mother of the petitioner appeared only in the voter list of 1970, recording her age as 40 years. But as noted above, the said purported mother, namely, Aitun Nessa, was indicted as wife of Zabed Ali and not Hazarat Ali.

30. If the voter list of 1997 purportedly containing the name of the petitioner is also accepted, which apart from the fact that the person named therein is Ajibur Rahman and not the petitioner, i.e., Ajijur Rahman, but there is no explanation as to why his name did not appear in any of the voter list prior to 1997 or thereafter, in view of the fact that said Ajibur Rahman was shown as 26 years of age in the voter list of 1997.

31. From the above and from whatever angle the matter is looked into, there cannot be a second opinion that the petitioner and his parents are foreign nationals, i.e., illegal Bangladeshi migrants who entered into Assam after the cut

off date, i.e., 25.3.1971. In that view of the matter, the impugned judgement and order dated 25/4/2011 passed by the Foreigners Tribunal (1st) Morigaon in FT Case FT(C) No 646/2006, is hereby upheld and the writ petition is dismissed.

Few observations

Vanishing, an easy act

32. In terms of the interim order passed on 4.5.2011, the petitioner was to surrender before the Superintendent of Police (B), Morigaon and upon such surrender he was to be detained in detention camp. The Deputy Commissioner was also to ensure deletion of his name from the voter list. As the experience of this court goes, in most of the cases the declared foreign nationals after invoking the writ jurisdiction of this court defy the interim direction to surrender before the jurisdictional Superintendent of Police and do the act of vanishing. After dismissal of the writ petitions upholding the orders of the Tribunal, when the reports are called for from the authorities, the reports furnished are to the effect that the declared foreign nationals are absconding and their whereabouts are not known and that efforts are being made to trace them out.

Instances of vanishing act

33. The aforesaid position is amply demonstrated, when we refer to the case of illegal Bangladeshi migrants involved in Ms. Anowara Khatun v. Union of India, WP(C) No. 643/2009", Mrs. Aisa Bibi v. Union of India and Ors., WP(C) No. 1258/2009", Nidhan Biswas v. Union of India and Ors., WP(C) No. 1311/2009", Md. Khused Ali v. Union of India and Ors., WP(C) No. 130712009", Md. Abdul Kuddus v. State of Assam and Ors., WP(C) No. 190/2009", Munindra Ch. Roy v. Union of India and Ors., WP(C) No. 698/2009", Himangshu Sarkar v. State of Assam and Ors., WP(C) No. 747/2009; Rajia Khatun v. Union of India and Ors., WP(C) No. 152/2009", Md. Samsul Hague and Ors. v. State of Assam and Ors., WP(C) No. 464/2009", Salema Bibi (Khatun) v. Union of India and Ors., WP(C) No. 1044/2009", Smt. Malati Das v. Union of India and Ors., WP(C) No. 80/2009; Mameza Khatun v. Union of India and Ors., WP(C)No. 1334/2009", UpendraRoy v. Union of India, WP(C) No. 191/2009", Samsul Hoque v. State of Assam and Ors., WP(C) No. 1708/2008; Nathu Ram Biswas v. Union of India and Ors., WP(C) No. 5497/2008; Gopal Ch. Das v. Union of India and Ors., WP(C) No. 55451 2008; Tarabhanu v. Union of India and Ors., WP(C) No. 1166/2009; Mustt. Sahera Khatun v. Union of India Ors., WP(C) No. 1045/2009; Mustt. Hazera Khatun v. Union of India and Ors., WP(C) No. 55421 2008 and Md. Jalal Uddin v. Union of India and Ors., WP(C) No. 5560/2008 where reports furnished are that the said foreign nationals are not traceable.

34. In addition to the above, this court had also occasion to deal with the cases in WHO) No. 2147/2009, WP(C) No.1044/2009, WP(C) No.45/2009, WP(C) No.2919/2009, WP(C) No.752/2009, WP(C) No. 1258/2009, WP(C) No.642/2009, WP(C) No.5545/2008, WP(C) No.5703/2009, WP(C) No.3228/2008, WP(C) No.2287/2008, WP(C) No.2288/2008, in which also except

the petitioner in WP(C) No.5703/2009, WP(C) No.5545/2008 and WP(C) No.2287/2008, the petitioners involved in the other writ petitions have done the act of vanishing. Taking up the said cases for monitoring, in terms of the follow up actions directed to be taken by the authorities in the State Government, when it was found that most of the petitioners have done the act of vanishing, it was observed, thus :

"21.4.2011

1.WP(C) 2147/2009

Mozidur Rahman Akand v. Union of India and Ors.

In terms of the earlier orders passed by this court, Shri Jishnu Baruah, describing himself as Commissioner and Secretary to the Government of Assam and Shri Shankar Baruah, Director General of Police, Assam have filed their individual affidavits.

In the affidavit filed by Shri Jishnu Baruah, he has not identified the department which he represents. However, Ms. R. Chakraborty, learned State counsel submits that he represents the Home Department, Government of Assam.

In both the affidavits, it has been stated that steps have been taken to apprehend the petitioner, who has been declared to be an illegal Bangladeshi migrant. However, all out efforts to apprehend him have proved abortive. In the affidavit filed by the Commissioner and Secretary to the Government of Assam in the Home Department, it has been stated that the report from the Superintendent of Police, Dhubri is still awaited.

2. WP(C) No. 1044/2009

Salema Bibi (Khaturi) v. Union of India and Ors.

In this case also, the petitioner has done the act of vanishing after she was declared to be an illegal Bangladeshi migrant. As per the affidavit filed by the Addl. Deputy Commissioner, Goalpara, the name of the petitioner has been deleted from the Voter List.

3. WP(C)No.45/2009

Md. Attaur Rahman v. Union of India and Ors.

In this case, although it is the stand of the respondents that the petitioner was pushed back to Bangladesh, but he came back again to Assam and thereafter, filed the writ petition. Presently, he is in detention camp and the respondents have expressed their helplessness. It is submitted by Ms. R. Chakraborty, learned State counsel that the State respondents are awaiting signal from the B.S.F. Such stand of the respondents is a common stand in all such cases. Here is a case, in which although the petitioner was pushed back to Bangladesh but he again came back. Now, the respondents are totally helpless to deport him to Bangladesh. Their only plea all along is that they are awaiting appropriate signal

from B.S.F.

4. WP(C)No.2919/2009

Amena Khatun v. Union of India and Ors.

As in the other cases, in this case also, after the judgment of this court, the petitioner has done the act of vanishing and her whereabouts are not known. As per the written instructions furnished to the learned State counsel by the Government of Assam in the Political (B) Department, action had been taken to publish, her photograph in newspaper and electronic media seeking information from public regarding her whereabouts. However, no detail particulars have been furnished in this regard.

5. WP(C) No. 752/2009

Alek Uddin v. Union of India and Ors.

In this case also, like all other cases, the petitioner has done the act of vanishing. As per the written instructions dated 18.4.2011, a plot of land measuring 1 katha in village Khutamari under Balajan Revenue Circle belonging to the petitioner has been attached by the Circle Officer, Balajan Revenue Circle. According to the written instructions, action is being taken to publish his photograph in newspaper and electronic media showing him as absconder. However, no materials have been placed about the action plan in this regard.

6. WP(C) No. 1258/2009

Mrs. Aisa Bibi alias Ay sha Khatun v. Union of India and Ors.

The petitioner has done the act of vanishing and the respondents have expressed their helplessness in the matter.

7. WP(C) No. 642/2009

Bahara Khatun v. Union of India and Ors.

In this case also, the petitioner has done the act of vanishing after the judgment of this court.

8. WP(C)No.5703/2009

Hameda Khatun v. Union of India and Ors.

As per the written instructions dated 18.4.2011, the petitioner who is an illegal Bangladeshi migrant, has been pushed back vide Manchachar PPCP vide Exit No.43/2010 on 25.11.2010. Her name has been deleted from the Electoral Roll of 79 Jagiroad (SC) Legislative Assembly Constituency.

In view of the above, this writ petition stands finally closed.

9. WP(C)No. 5545/2008

Sri Gopal Ch. Das v. Union of India and Ors.

After the petitioner was declared to be an illegal Bangladeshi migrant, he was apprehended and pushed back to Bangladesh on 27.10.2010 vide Mancachar PPG Ext No.41/2010 dated 27.10.2010. However, there is no report as to whether her name has been deleted from the Electoral Roll. The Deputy Commissioner, Goalpara shall ensure deletion of the name from the Electoral Roll. Failure to do so will entail appropriate proceeding. Writ petition is finally closed.

10. WP(C) No.3228/2008

Smt. Ajopa Khatun v. Union of India and Ors.

The written instructions dated 18.4.2011 in respect of this case reads as follows :

"The name of Ajopa Khatun had been deleted from Electoral Rolls. The photograph and finger prints of Ajopa Khatun could not be obtained by the police as she absconded when police had gone to serve Quit India Notice on her. She has been absconding since then. No other family member was found in her given address. No landed or other property worth mentioning has been found in her given address. Efforts are on to nab her."

From the above, what is seen is that after the petitioner was declared to be illegal Bangladeshi migrant, she had been again served with Quit India Notice and she did the act of vanishing. It is not understood as to why a further Quit India Notice was served after the person is declared to be a foreign national by the Tribunal.

11. WP(C)No.2287/2008

Smt. Parul Das v. State of Assam and Ors.

In this case, the petitioner is stated to have been deported to Bangladesh. However, it is not known as to whether her name has been deleted from the Voter List. If her name has not been deleted from the Voter List, the Deputy Commissioner, Udalguri, BTAD shall ensure the same, failing which appropriate proceeding will follow.

Writ petition is finally closed.

12. WP(C) No.2288/2008

Gouranga Das v. State of Assam and Ors.

As in the earlier cases, in this case also, the petitioner has been absconding and avoiding arrest. As per the written instructions dated 18.4.2011, vigorous attempts were made to nab him, however, without success. His photograph and fingerprint could not be taken as he had absconded along with his three children.

From the above, what is seen is that in most of the cases, the declared foreigners have done the act of vanishing and the State administration is without

any clue of their whereabouts. In various reports, it has been stated by the State administration that vigorous attempts have been made to nab them, but they could not be traced out. Thus, there is total failure of the State administration to nab the foreign nationals, who after invoking the writ jurisdiction of this court, do the act of vanishing.

The instant batch of writ petitions is only one instance. It has been the experience of this court that once the writ petitions are dismissed upholding the orders of the Foreigners Tribunals, the petitioners do the act of vanishing and the State takes the plea of helplessness stating that efforts are being made to apprehend them. However, not a single foreigner, who has done the act of vanishing could be traced out.

The above position relating to foreign nationals has come to knowledge, because of the monitoring of the cases by this court, but for which everything would have gone unnoticed. The State administration of their own does nothing to apprehend the declared but absconding foreign nationals. In view of the above, the State administration will have to take steps for keeping the suspected foreigners, whose cases are sent to the Foreigners Tribunals in confinement till the respective references are answered by the Tribunals. It will be in the fitness of things to detain such suspected foreigners in detention camp so that with the closure of the proceedings and depending upon the outcome thereof, they can be deported to Bangladesh.

Another aspect of the matter is that once such persons are declared to be foreigners, their names should immediately be deleted from the Electoral Rolls. As the experience of this court goes, unless cases are monitored and directions are issued, the officers in the Electoral Offices of their own do not take any action to delete their names. Thus, a proper monitoring of all concerned is required so that with the references to the Tribunals, the persons involved are shown as "D" Voters and depending upon the answer to the references, their names are deleted from the electoral rolls.

If the suspected foreigners whose cases are under reference in the Tribunals are not arrested and detained in detention camp, the respective jurisdictional Superintendents of Police will have to ensure that such foreigners remain available for deportation, once their cases are disposed of. It is made clear that the persistent plea of such foreigners being not traceable and that they have done the act of vanishing will not be entertained."

35. In another case, namely, WP(C) 1959/2011 (Sahabul Hussain v. Union of India and Others), the petitioner defying the interim order dated 4.4.2011, passed by this court requiring him to surrender before the Superintendent of Police(B), Goalpara, did not do so. During the course of hearing of the said case, it was submitted that he had surrendered before the Superintendent, of Police (B), Goalpara and relying upon the said submission made by the learned counsel for the petitioner, the writ petition was taken up for hearing. The writ petition

was dismissed upholding, the order of the Tribunal by which the petitioner was declared to be an illegal Bangladeshi migrant. However, later on it was brought to the notice of the court that the said petitioner also did the act of vanishing. By order dated 6.6.2011, it was observed and directed as follows :

"6.6.2011

In terms of the order passed on 4.4.2011 towards entertaining the writ petition, the writ petitioner was to surrender before the Superintendent of Police (B), Goalpara and in turn he was to be detained in the detention camp.

When the matter was finally taken up on 4.5.2011, learned counsel for the petitioner submitted that in terms of the said order, the petitioner had surrendered before the Superintendent of Police (B), Goalpara and that thereafter he had been detained in the detention camp.

As against the above, Ms. R. Chakraborty, learned State Counsel has produced the letter dated 2.6.2011 addressed to her by the Superintendent of Police (B), Goalpara, in which it has been stated that the petitioner has been concealing himself somewhere for avoiding police apprehension. This will go to show that the petitioner did not comply with the order dated 4.4.2011 by way of surrender before the Superintendent of Police (B) Goalpara and yet a submission was made on 4.5.2011 that the petitioner, in terms of the said order had surrendered before the Superintendent of Police (B), Goalpara and thereafter he was detained in detention camp. Taking note of the said submission, the writ petition was heard and disposed of on merit. If the fact of noncompliance of the order dated 4.4.2011 was known to the court, the writ petition perhaps would not have been heard on merit inasmuch as the" petitioner having disobeyed the order of this court was not entitled to get hearings on merit of his writ petition.

It has been experience of this court that in the matters of the foreign National Cases, the foreigners after invoking writ jurisdiction of this court and obtaining stay order do the act of vanishing once their writ petitions are dismissed. The State administration all along expressed its helplessness towards apprehending the absconder. This aspect of the matter finds mention in the orders passed in number of writ petitions including the one passed in a batch of writ petition, 1st one being WP(C) No. 2147/2009 (Mozidur Rahman Akand @ Mozidur).

In view of the above, both the State Government and the Central Government shall file their individual affidavit towards appraisal of this court as to whether they are really interested in detection and deportation of foreigners and establishment of the Foreigners Tribunals are only a show. In this connection they may refer to the observations and directions contained in Sarbananda Sonowal (I)" (MR 2005 SC2920) and Sarbananda Sonowal (II) (2007) 1 SCC174."

36. Again, in WP(C) No. 643/2009 (Anowara Khatun v. Union of India and Ors\\ the petitioner after declaring her to be a foreign national (illegal Bangladeshi

migrant) has done the act of vanishing and the mighty State Administration in Home Department is clueless about her whereabouts.

Instances only not exhaustive list

37. Above are only some of the instances and not exhaustive. List is long. The only excuse time to time furnished by the mighty Police Department and Home Department of the State, has been noted above. They are not even capable of apprehending a declared foreigner, not to speak of adopting devices for immediate detection and deportation of such foreign nationals whose presence in the State of Assam in lakhs endangering the very survival of the indigenous people of Assam is an established fact so vividly stated by none other than the Apex Court in *Sarbananda Sonowal v. Union of India*, AIR 2005 SC 2920.

Inordinate delay in proceeding

38. Apart from the above, another aspect of the matter which must concern each and everyone concerned with early detection of foreign nationals, is the time consumed in the proceedings relating to foreign nationals. In the instant case, it took long 10(ten) years to declare the petitioner to be a foreign national. The case was initially registered under IM(D)T way back in 2001. For long 4 (four) years, nothing could be done and eventually on scrapping of IM(D)T Act and transferring the matter to the Foreigners Tribunal (1st) Morigaon, it took nearly 5 (five) years to answer the reference. In between 26(twentsix) dates were fixed to proceed with the matter. On many occasions, there was no appearance on behalf of the petitioner and yet adjournments were granted merrily. Eventually, the petitioner filed his written statement on 20.4.2007, i.e., after long 7(seven) years of initiation of the proceeding.

Fallout of delay in finalization of proceedings

39. The fallout of such delay in finalization of proceedings are many fold, namely (1) a foreign national could enjoy all the facilities like that of an Indian citizen including the right to vote. He could also indulge in antisocial activities. For instance, I may refer to the case of WP(C) 242/2011 in which out of the four foreign nationals, 2 (two) have done the act of vanishing, 1 (one) is detained in detention camp and the 4th one has been arrested in connection with Criminal Case No. 100/2011 (Hojai PS) registered under section 147/148/149/458/326/302, IPC read with section 25(1B)/27 Arms Act, meaning thereby that the said foreign national indulged himself in criminal activities at a time, when the proceeding against him was pending, the serious consequence of which can well be imagined; (2) During the pendency of the proceedings with exorbitant delay, the suspected foreign nationals can merrily procure children(s) and the said children(s), by virtue of their birth in Indian soil, may get the protection of being Indian citizens, by birth.

40. The Apex Court in the case of *Sarbananda Sonowal I (supra)* followed *Sarbananda Sonowal II*, (2007) 1 SCC 174, had emphasized

the need for establishing adequate number of Foreigners Tribunal for early detection and deportation of illegal Bangladeshi migrants but it has come to the notice of this court that although the entire fund is provided by the Central Government towards proper functioning of the said Tribunals but they are not provided with required infrastructural facilities. It gives the impression that such Tribunals have been established only to comply with the direction of the Apex Court on paper and that the authorities are not at all interested in outcome of the proceedings before the Tribunals.

Time factor, Deportation, a far cry

41. As per the provisions of the law holding the field, the illegal Bangladeshi migrants entering Assam after 25.3.1971 are to be detected and deported. Since then, more than 40 years have gone by. The pace, manner and the eagerness, in which the issue is being dealt with by the power that be, have virtually rendered detection and deportation of foreign nationals meaningless. As it is, not a single instance has been brought to the notice of this court that after detection of an illegal Bangladeshi migrant, he or she could be deported to Bangladesh. Only measure adopted, that too in the nearest of the rare cases is to "Push Back" such foreign nationals to Bangladesh facilitating his or her coming back to Assam once again, even to the extent of invoking writ jurisdiction of this court.

42. Thus, the entire system of detection and deportation of declared illegal Bangladeshi migrants has become a mockery and both the Union and the State Governments, except making tall promises, have played the role of silent spectators to this never ending and persistent threat to the security, integrity and sovereignty of the nation, coupled with the threat of making the indigenous people of Assam a minority community in their own State, about which the Apex Court has already stated in *Sarbananda Sonowal I* (supra).

43. If it is not possible to do something positive, effective and meaningful, they may declare the same instead of spending crores of rupees in the process, making a mockery of the entire system. They should clearly spell out as to what they are going to do with the pendency of lakhs of cases in the Foreigners Tribunals. They should also spell out the methodology towards deportation of foreign nationals, inasmuch as, a mere declaration that a person is a foreign national is not the end but a means to an end.

Government apathy to the proceedings

44. In most of the cases pertaining to foreign nationals pending in this court or which have been disposed of, neither the State Government nor the Union Government show any interest. No counter affidavits are filed unless there is clear cut direction of this court, although, as per requirement, once a notice is issued, counter affidavits are required to be filed. It gives an impression that both the Governments are not interested in such cases and rather would be happy if the references are answered against the State Government, so that the foreign nationals can get the status of Indian citizenship, which needless to say is

for obvious reasons.

Foreign nationals settled in Government land

45. In the writ petitions filed by the foreign nationals, often they describe their place of residence on Government land. In the instant case also, the petitioner has stated in paragraph 7 of the writ petition that his parents came to Telahi and settled down at Naramari reserve on Government land. It is not understood as to how they can occupy Government land and live there. Thus, such foreign nationals get around protections. It is only when everything fail, they do the act of vanishing to emerge again with the efflux of time.

Directions

46. The Superintendent of Police (B), Morigaon is directed to apprehend the petitioner, if not already apprehended and to keep him in detention camp till such time he is deported/pushed back to Bangladesh. The Deputy Commissioner, Morigaon, shall ensure deletion of his name including that of his alleged parents from the voter list. If for any reason, his name was included in the voter list after 2001 when the reference was made to the then IM(D)T, he will also furnish report as to how his name could be included in the voter list during the pendency of the proceeding.

47. Let the compliance reports be furnished by the said authorities on or before 12.8.2011 on which date the matter shall be listed again.

48. Let copies of this judgement and order be sent to the Superintendent of Police (B) and Deputy Commissioner, Morigaon. Another copy be sent to the Union of India in the Home Department. Copies of the judgement and order may also be furnished to both the counsel appearing for the respondents, for their necessary follow up action.

49. Registry shall send down the LCR immediately to the court below.