

GAHC010124832026



AS:10783-DB

2026:GAU-

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

Case No. : WP(C)/3385/2026

UTTAM DAS
S/O NETAI CH DAS, PERMANENT R/O- VILLAGE- CHAPRA COLONY, P.S.-
DHUDHNOI, DISTRICT- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN- 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GHY- 781006

3:THE DISTRICT COMMISSIONER
GOALPARA
ASSAM
PIN CODE 783121

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
PIN CODE- 783121
ASSAM

5:THE SUPERINTENDENT OF POST
GOALPARA DIVISION
DHUBRI -78330

Advocate for the Petitioner : MR. T K DEY, MR SAURADEEP DEY,MR. D K AGARWALA

Advocate for the Respondent : DY.S.G.I., SC, F.T,GA, ASSAM

BEFORE

**HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Advocates for the petitioner :Mr. D.K. Agarwala.

Advocate for the respondents :Mr. S.K. Deka, CGC.

:Ms. A. Verma, FT & Border;

:Mr. A.I. Ali, ECI;

:Mr. P. Sarmah, ASGA

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 03.08.2026

Whether the pronouncement is of
the operative part of the judgment : Full judgment.

Whether the full judgment has been
pronounced : Yes

JUDGEMENT AND ORDER (ORAL)

(K.R. Surana, J)

Heard Mr. D.K. Agarwala, learned counsel for the petitioner. Also heard Mr. S.K. Deka, learned CGC; Mr. A.I. Ali, learned standing counsel for the ECI; Ms. A. Verma, learned standing counsel for the FT and Border matters; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate.

2. The petitioner is declared foreign national vide *ex-parte* impugned opinion dated 01.09.2009 passed by the learned Member, Foreigners' Tribunal No.1, Goalpara in FT case No.1039/G/06 arising out of Reference District /ERO's Case

No.397/2003 thereby declaring him to be an illegal migrant entering into Assam after the cut-off date of 25.03.1971.

3. The petitioner had unsuccessfully assailed the said *ex parte* opinion by filing a writ petition under Article 226 of the Constitution of India, which was registered as W.P.(C) 4903/2009 and this Court by an order dated 08.01.2010 had dismissed the said writ petition. Therefore, the said *ex parte* opinion dated 01.09.2009 as well as the order dated 08.01.2010, passed in WP(C) 4903/2009 have attained finality.

4. The petitioner projects that the Court of learned Judicial Magistrate, Goalpara, took cognizance of the offence committed by the petitioner on receipt of a complaint petition, which was registered as CR-PPE 1/16 under section 6 (a) of the Passport (Entry into India) Rules, 1950 read with Section 14 (c) of the Foreigners' Act, 1946. Later on, the proceeding was transferred to the Court of the learned Judicial Magistrate First Class, Goalpara for trial and in the said proceeding, the petitioner was convicted by order dated 25.09.2017, passed by the learned Judicial Magistrate First Class, Goalpara, thereby convicting the petitioner of the offence and sentencing him to undergo rigorous imprisonment for two years for the offence under Section 6 (a) of the Passport (Entry into India) Rules, 1950 and rigorous imprisonment for two years and fine of Rs.2000/-, in default to undergo simple imprisonment for one month for the offence under Section 14 (c) of the Foreigners Act, 1946, directing that both the sentences were to run concurrently and set off from the period already undergone.

5. The learned counsel for the petitioner submits that the petitioner had suffered prolonged detention since he was taken into custody on 02.11.2016. Accordingly, by relying on the order dated 10.05.2019, passed by the Supreme

Court of India in W.P. (Civil) No.1045/ 2018, the petitioner is entitled to bail. It is further submitted that the petitioner is entitled to exemption from being sent back to the specified territory under the provisions of the Immigration and Foreigners (Exemption) Order, 2025. Moreover, it is submitted that the petitioner is entitled to benefit under the Citizenship Amendment Act, and that the said provisions are required to be read together with the Foreigners (Amendment) Order, 2015 and Passport (Entry into India) Amendment Rules, 2015. It is also submitted that the petitioner, being a Hindu belongs to the minority community in Bangladesh, would be entitled to exemption from being expelled from the Country.

6. It is further submitted that despite being incarcerated since 2016, the State has not taken any steps for the deportation of the petitioner to Bangladesh and therefore, he is entitled to bail. Moreover, it is submitted that the petitioner also has a fundamental right to be entitled to a family life and in this regard, it is submitted that the petitioner has a spouse and three sons and that the wife of the petitioner namely, Basana Das has applied for registration under Section 6 (A) of the Citizenship Act of 1955.

7. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ, order or direction to the respondents to allow the petitioner to apply for citizenship under the Citizenship (Amendment) Act, 2019 and to order the release of the petitioner from the Holding Centre at Matia, Goalpara on bail on imposing conditions and to stay the deportation of the petitioner.

8. The learned Standing counsel, FT and Borders matter has opposed the prayer and submission in support of the action of the State Government in apprehending the petitioner and detaining him at the Holding area pending

expulsion. It has been submitted that in Annexure-1 to the writ petition, the learned Member, Foreigners' Tribunal No.1, Goalpara had recorded in the order sheet to the effect that it was reported that the petitioner was pushed back on 09.04.2010 as per report submitted by the Border Branch. It is submitted that from Annexure-3 to the writ petition, which is a copy of the judgment and order dated 25.09.2017 passed by the learned Judicial Magistrate First Class, Goalpara, in CR-PPE 1/16, it can be seen that the said learned court had recorded the evidence of PW-3, wherein it was stated that the petitioner was a declared foreigner and was pushed back. Thus, it is submitted that even after his expulsion from India, the petitioner had illegally re-entered into the territory of India and on 02.11.2016, at about 1 p.m., the petitioner was apprehended from Molaundubi Tiniali. Thereupon, the petitioner was convicted and sentenced for offences committed under Section 6 (a) of the Passport (Entry into India) Rules, 1950 as well as Section 14 (c) of the Foreigners' Act, 1946. It has also been submitted that the Supreme Court of India as well as this Court had passed orders from time to time during the COVID-19 pandemic period so as to decongest the jails and holding areas of the declared foreign nationals and as the Covid-19 pandemic is not continuing presently, the State would have the inherent power to keep the petitioner in the designated holding area pending his expulsion.

9. The materials available in the writ petition including the compilation of statutes, rules, and judicial pronouncements filed by the learned counsel for the petitioner have been perused.

10. There is no material available on the record which would effectively counter the contents of the order dated 26.07.2010, recorded by the learned Member, Foreigners Tribunal No.1, Goalpara, to the effect that the petitioner

was pushed back on 09.04.2010. The petitioner was again apprehended into the Indian territory as recorded in the judgment and order dated 25.09.2017, passed by the learned Judicial Magistrate First Class, Goalpara, in CR-PPE 1/2016. It is also not in dispute that an opinion dated 01.09.2009 was passed by the said learned Foreigners Tribunal No.1, Goalpara, in FT case no. 1039/G/06 against the petitioner has attained finality after dismissal of the challenge made by the petitioner by filing W.P.(C)/4903/2009, which was dismissed by order dated 08.01.2010. Further challenge, if any to the order of this Court dated 08.01.2010, passed in W.P.(C)/4903/2009, if made, is not disclosed in the writ petition. At this stage, it would be appropriate to refer to the historical background of the foreigners issue in the State of Assam.

11. The issue of large scale influx of the illegal migrants from the specified territory, i.e, East Pakistan prior to 24.03.1971 and Bangladesh after 25.03.1971 is altering the demography of the State. This led to a long -drawn students agitation in the State of Assam. This issue of illegal migrants from the specific territory has elaborately been referred to in the case of *Sarbananda Sonowal – vs- Union of India & Ors.* reported in (2005) 5 SCC 665. The relevant paragraphs are quoted below:

“2.It is further averred that in view of the problem of illegal migration of foreigners into Assam and their continued presence therein, a State- wise protest movement of students was organized which continued for a long period. As a result of the students' movement and ensuing negotiations, a memorandum of settlement dated 15-8-1985 was entered into between All Assam Students' Union and the Union of India and the State of Assam, which is commonly known as "Assam Accord". The terms of the Accord specifically

provided that steps would be taken to detect and deport illegal migrants from Assam and it also contained a clause that "the Government will give due consideration to certain difficulties expressed by AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983." The Accord further provided that foreigners who have entered into India after 25-3-1971 will continue to be detected, their names deleted from the electoral rolls and they will be deported from India. In pursuance of this provision, the Citizenship Act, 1955 was amended by Act 65 of 1985 and Section 6-A was inserted with the heading "Special Provisions as to Citizenship of Persons covered by the Assam Accord." It provides that the term "detected to be a foreigner" shall mean so detected under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 framed thereunder. Under the said provision a person of Indian origin as defined u/s 6-A(3) who entered into Assam prior to 1-1-1966 and has been resident in Assam since then is deemed to be a citizen of India. However, if such a person entered into Assam between 1-1-1966 and before 25-3-1971 and has been detected to be a foreigner under the Foreigners Act then he is not entitled to be included in the electoral list for a period of 10 years from the date of detection. This amendment of the Citizenship Act makes it clear that the question of determination or detection of a foreigner is to be governed by the provisions of the existing Central legislation, viz. the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.

** * **

4. ... A true copy of the latest status report filed by the Government in Writ Petition No. 125 of 1998, which has been filed seeking deportation of all Bangladeshi nationals from India, has been filed as Annexure R-1 to the Counter Affidavit and paragraphs 3 to 7 of the said status report are being

reproduced below:

"3. Continuing influx of Bangladeshi nationals into India has been on account of a variety of reasons including religious and economic. There is a combination of factors on both sides which are responsible for continuing influx of illegal immigration from Bangladesh. The important "Push Factors" on the Bangladesh side include: -

- a) steep and continuous increase in population;*
- b) sharp deterioration in land-man ratio;*
- c) low rates of economic growth particularly poor performance in agriculture;*

The "Pull Factors" on the Indian side include: -

- a) ethnic proximity and kinship enabling easy shelter to the immigrants;*
- b) porous and easily negotiable border with Bangladesh;*
- c) better economic opportunities;*
- d) interested religious and political elements encouraging immigration;*

4. It is difficult to make a realistic estimate of the number of illegal immigrants from Bangladesh because they enter surreptitiously and are able to mingle easily with the local population due to ethnic and linguistic similarities. The demographic composition in the districts bordering Bangladesh has altered with the illegal immigration from Bangladesh. The districts of Assam and West Bengal bordering Bangladesh have recorded growth of population higher than the national average. The States of Meghalaya, Mizoram and Tripura have also recorded high rates of population growth. Illegal immigrants from Bangladesh

have also been using West Bengal as a corridor to migrate to other parts of the country.

5. The large-scale influx of illegal Bangladesh immigrants has led to large tracts of sensitive international borders being occupied by foreigners. This has serious implications for internal security.

6. The types of illegal migrants are as follows: -

a) those who came with valid visa/documents and overstayed;

b) those who came with forged visa/documents; and

c) those who entered surreptitiously.

7. During talks between the Prime Ministers of India and Bangladesh in February, 1972, the Prime Minister of Bangladesh had assured the return of all Bangladesh nationals who had taken shelter in India since 25-3-1971. Accordingly, a circular was issued by the Government of India on 30.9.1972, setting out guidelines for action to be taken in respect of persons who had come to India from Bangladesh. According to this circular, those Bangladesh nationals who had come to India before 25-3-1971 were not to be sent back and those who entered India in or after the said date were to be repatriated."

** * **

17. A copy of the report dated 8-11-1998 sent by Governor of Assam, Lt. Gen. S.K. Sinha (Retired), former Deputy Chief of Army Staff, has also been filed along with this application. The report is a long and comprehensive one which was prepared after thorough inspection of border areas and districts, discussion with Indian Ambassador in Bangladesh and talks with political leaders. Some portions of the report are being reproduced below: -

"1. The unabated influx of illegal migrants from Bangladesh into Assam and the consequent perceptible change in the demographic pattern of the State has

been a matter of grave concern. It threatens to reduce the Assamese people to a minority in their own State, as happened in Tripura and Sikkim.

2. Illegal migration into Assam was the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the State. Yet we have not made much tangible progress in dealing with this all important issue.

3. There is a tendency to view illegal migration into Assam as a regional matter affecting only the people of Assam. It's more dangerous dimensions of greatly undermining our national security, is ignored. The long cherished design of Greater East Pakistan/Bangladesh, making in-roads into strategic land link of Assam with the rest of the country, can lead to severing the entire land mass of the North-East, with all its rich resources from the rest of the country. They will have disastrous strategic and economic consequences.

* * *

MIGRATION INTO ASSAM

HISTORICAL BACKGROUND

7. Failure to get Assam included in East Pakistan in 1947 remained a source of abiding resentment in that country. Zulfikar Ali Bhutto in his book "Myths of Independence" wrote - "It would be wrong that Kashmir is the only dispute that divides India and Pakistan, though undoubtedly the most significant. One at least is nearly as important as the Kashmir dispute, that of Assam and some districts of India adjacent to East Pakistan. To these Pakistan has very good claims". Even a pro-India leader like Sheikh Mujibur Rahman in his book "Eastern Pakistan; its population & economics" observed, "Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan

must include Assam to be financially and economically strong.

* * *

CONTRIBUTORY FACTORS

10. Besides the above considerations, there are other contributory factors facilitating infiltration from Bangladesh. Ethnic, linguistic and religious commonality between the illegal migrants and many people on our side of the border enables them to find shelter. It makes their detection difficult. Some political parties have been encouraging and even helping illegal migration with a view to building vote banks. These immigrants are hardworking and are prepared to work as cheap labour and domestic help for lower remuneration than the local people. This makes them acceptable. Moreover, with corruption being all pervasive, corrupt officials are bribed to provide help. Recently, a racket has been busted in Lakhimpur. Four individuals were found to have been providing forged citizenship certificates and other documents to illegal migrants for the last 14 years.

* * *

ILLEGAL MIGRANTS

15. ...Mr. Mulan described this as invasion using military terminology which in present geostrategically context, underscores the strategic aspect of the problem. It is unfortunate that to this day, after half a century of independence, we have chosen to remain virtually oblivious to the grave danger to our national security arising from this unabated influx of illegal migrants. Third, the prophecy that except the Sibsagar district, the Assamese people will not find themselves at home in Assam, is well on its way to becoming true as reflected by the present demographic pattern of Assam.

16. Mr. Inderjit Gupta, the then Home Minister of India stated in the Parliament

on May 6, 1997 that there were 10 million illegal migrants residing in India. Quoting Home Ministry/Intelligence Bureau sources, the 10-8-1998 issue of India Today has given the breakdown of these illegal migrants by States: -

West Bengal -	5.4 million
Assam -	4 million
Tripura -	0.8 million
Bihar -	0.5 million
Maharashtra -	0.5 million
Rajasthan -	0.5 million
Delhi -	0.3 million
Making a total of-	10.83 millions

Community wise growth

	Assam		India	
	Hindus	Muslims	Hindus	Muslim
(1) 1951-1961	33.71	38.35	20.29	25.6
(2) 1961-1971	37.17	30.99	23.72	30.8
(3) 1971-1991	41.89	77.42	48.38	55.04

EXPLANATORY NOTE

... In the case of Muslims, the Assam growth rate was much higher than the All India rate. This suggests continued large scale Muslim illegal migration into Assam.

* * *

(d) Muslim population in Assam has shown a rise of 77.42 per cent in 1991 from what it was in 1971. Hindu population has risen by nearly 41.89 per cent in this period.

(e) Muslim population in Assam has risen from 24.68 per cent in 1951 to 28.42 per cent in 1991. As per 1991 census four districts (Dhubri, Goalpara, Barpeta and Hailakandi) have become Muslim majority districts. Two more districts (Nagaon and Karimganj) should have become so by 1998 and one district Morigaon is fast approaching this position.

* * *

20. The growth of Muslim population has been emphasized in the previous paragraph to indicate the extent of illegal migration from Bangladesh to Assam because as stated earlier, the illegal migrants coming into India after 1971 have been almost exclusively Muslims.

21. Pakistan's ISI has been active in Bangladesh supporting militant movement in Assam. Muslim militant organization have mushroomed in Assam and there are reports of some 50 Assamese Muslim youths having gone for training to Afghanistan and Kashmir.

CONSEQUENCES

22. The dangerous consequences of large scale illegal migration from Bangladesh, both for the people of Assam and more for the Nation as a whole, need to be emphatically stressed. No misconceived and mistaken notions of secularism should be allowed to come in the way of doing so.

23. As a result of population movement from Bangladesh, the specter looms large of the indigenous people of Assam being reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.

24. The silent and invidious demographic invasion of Assam may result in the loss of the geostrategically vital districts of lower Assam. The influx of these

illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth of international Islamic fundamentalism may provide for driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North East, from the rest of India and the rich natural resources of that region will be lost to the Nation.

18. Since extensive reference has been made in the affidavits to the Assam Accord, it is necessary to notice the main provisions thereof. It is a Memorandum of Settlement which was signed on 15-8-1985 by the President and General Secretary of All Assam Students' Union and Convenor of All Assam Gana Parishad on the one hand and Home Secretary, Government of India and the Chief Secretary, Government of Assam on the other, in the presence of Shri Rajiv Gandhi, the then Prime Minister of India. The main clauses of the settlement which have a bearing on the case are being reproduced below:

“Memorandum of Settlement

The Government have all along been most anxious to find a satisfactory solution to the problem of foreigners in Assam. The All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) have also expressed their keenness to find such a solution.

2. The AASU through their Memorandum dated 2-2-1980 presented to the late Prime Minister Smt Indira Gandhi, conveyed their profound sense of apprehensions regarding the continuing influx of foreign nationals into Assam and the fear about adverse effects upon the political, social, cultural and economic life of the State.

3. Being fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister initiated the dialogue with the AASU/AAGSP. Subsequently, talks were held at the Prime Minister's and Home Minister's levels during the period 1980-83. Several rounds of informal talks were held during 1984. Formal discussions were resumed in March 1985.

4. Keeping all aspects of the problem including constitutional and legal provisions, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows: Foreigners Issue

5.1 For purposes of detection and deletion of foreigners, 1-1-1966 shall be the base date and year.

5.2 All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularised.

5.3 Foreigners who came to Assam after 1-1-1966 (inclusive) and up to 24- 3- 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.

5.4 Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Office of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.

5.5 For this purpose, the Government of India will undertake suitable strengthening of the governmental machinery.

5.6 On the expiry of a period of ten years following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored. 5.7 All persons who were expelled earlier, but have since re-

entered illegally into Assam, shall be expelled. (emphasis supplied by us)

5.8 Foreigners who came to Assam on or after 25-3-1971 shall continue to be detected, deleted and expelled in accordance with law. Immediate and practical steps shall be taken to expel such foreigners. (emphasis supplied by us)

5.9 The Government will give due consideration to certain difficulties expressed by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983.”

Subsequent thereto the Citizenship Act, 1955 was amended and Section 6-A was introduced w.e.f. 7-12-1985. The relevant provisions of Section 6-A are being reproduced below:

“6-A. Special provisions as to citizenship of persons covered by the Assam Accord.—(1) For the purposes of this section—

(a) 'Assam' means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(b) 'detected to be a foreigner' means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;

(c) 'specified territory' means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(d) a person shall be deemed to be of Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian

origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

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

(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 (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.

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 sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall, —

- (i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;*

(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.*

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India [including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith], but shall not be entitled to have his name included in any electoral roll for any assembly or parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) (Omitted as not relevant.)

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person

—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of

this section shall have effect notwithstanding anything contained in any other law for the time being in force."

12) In the said context, it would be most appropriate to refer to the decision by the Constitution Bench of the Supreme Court of India in the case of *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta & Ors., (1955) 0 Supreme(SC) 15: AIR 1955 SC 367*. The said case is one under Section 3(1)(b) of the Preventive Detention Act, 1950. In that case, a German national was taken into preventive detention in order to make arrangement of his expulsion from India, which required satisfaction to be recorded by the competent authority under Section 3(1)(b) of the said Act. While deciding the issue, a passing reference was made to the provisions of the Foreigners Act, 1946. It would be appropriate to quote paragraphs 34 to 37, 40 and 41 thereof hereinbelow [extracted from Supreme Today - (1955) 0 Supreme(SC) 15] :-

"34. Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India, among them, the right "to move freely throughout the territory of India" and "to reside and settle in any part of India" subject only to laws that impose reasonable restrictions on the exercise of those rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land. This is conferred by Art. 21 which is in the following terms:-

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

35. Entries 9, 10, 17, 18, and 19 in the Union List confer wide powers on the Centre to make laws about, among other things, admission into and expulsion

from India, about extradition and aliens and about preventive detention connected with foreign affairs. Therefore, the right to make laws about the extradition of aliens and about their expulsion from the land is expressly conferred; also, it is to be observed that extradition and expulsion are contained in separate entries indicating that though they may overlap in certain aspects, they are different and distinct subjects. And that brings us to the Foreigners Act which deals, among other things, with expulsion and the Extradition Act which regulates extradition.

36. The Foreigners Act confers the point to expel foreigners from India. It would the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.

37. The law of extradition is quite different. Because of treaty obligations it confers a right on certain countries (not all) to ask that persons who are alleged to have committed certain specified offences on the territory or who have already been convicted of those offences by their courts, be handed over to them in custody for prosecution or punishment. But despite that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.

* * *

39. The Extradition Act is really a special branch of the law of Criminal Procedure. It deals with criminals and those accused of certain crimes. The Foreigners Act is not directly concerned with criminals or crime though the fact that a foreigner has committed offences, or is suspected of that, may be a good ground for regarding him as undesirable. Therefore, under the Extradition Act warrants or summons must be issued; there must be a magisterial enquiry and

when there is an arrest it is penal in character; and- and this is the most important distinction of all - when the person to be extradited leaves India he does not leave the country a free man. The police in India hand him over to the police of the requisitioning State and he remains in custody throughout.

40. In the case of expulsion, no idea of punishment is involved, at any rate, in theory, and if a man is prepared to leave voluntarily he can ordinarily go as and when he pleases. But the right is not his. Under the Indian law, the matter is left to the unfettered discretion at the Union Government and that Government can prescribe the route and the port or place of departure and can place him on a particular ship or plane. [See Ss. 3(2)(b) and 6, Foreigners Act]. Whether the Captain of a foreign ship or plane can be compelled to take a passenger he does not want or to follow a particular route is a matter that does not arise and we express no opinion on it. But assuming that he is willing to do so, the right of the Government to make the order vis-à-vis the man expelled is absolute.

41. This may not be the law in all countries. Oppenheim, for example, says that in England, until December 1919, the British Government had "no power to expel even the most dangerous alien without the recommendation of a court, or without an Act of Parliament making provision for such expulsion, except during war or on an occasion of imminent national danger or great emergency" (Openheim's International Law, Vol. I, 7 th edition, page 631).

But that is immaterial, for the law in each country is different and we are concerned with the law as it obtains in our land. Here the matter of expulsion has to be viewed from three points of view: (1) does the Constitution permit the making of such a law? (2) does it place any limits on such laws? and (3) is there in fact any law on this topic in India and if so, what does it enact? We have already examined the law making power in this behalf and its scope, and as to

the third question the law on this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel. But there is this distinction. If the order is one of expulsion, as opposed to extradition, then the person expelled leaves India a free man.

It is true he may be apprehended the moment he leaves, by some other power and consequently, in some cases, this would be small consolation to him, but in most cases the distinction is substantial, for the right of a foreign power to arrest except in its own territory and on its own boats is not unlimited. But however that may be, so far as India is concerned, there must be an order of release if he is in preventive custody and though he may be conducted to the frontier under detention he must be permitted to leave a free man and cannot be handed over under arrest.

13. Thus, the said decision of Hans Muller of Nurenburg (supra), confirms and reaffirms the absolute and unfettered power of the Government to order expulsion of a foreigner. In this case the Foreigners Tribunal 4th, Dhubri has declared Doyjan Bibi, the wife of the petitioner to be "illegal migrant", who has illegally entered into India (Assam) after 25.03.1971. Thus, the wife of the petitioner is a "declared foreign national", which requires no other confirmation as per the law in force in the Country.

14. It may be stated that in the rest of the Country, except the State of Assam, it is the Executive, who can order expulsion of a foreigner/ illegal migrant. However, the illegal migrants, who have illegally entered into the territory of India (Assam) without any valid documents from the specified territory (which includes erstwhile East Pakistan before 25.03.1971 and Bangladesh after 25.03.1971) are subjected to proceeding before the jurisdictional Foreigners Tribunal. Only after being declared to be illegal

migrants, such illegal migrants are subjected to expulsion from the Country.

15. As per the observations made in the case of Sarbananda Sonowal (*supra*), Assam is facing external aggression.

16. In the said case of Sarbananda Sonowal (*supra*), the Supreme Court has also made reference to the two following books:-

a. Zulfikar Ali Bhutto in his book Myths of Independence wrote - "... It would be wrong that Kashmir is the only dispute that divides India and Pakistan, though undoubtedly the most significant. One at least is nearly as important as the Kashmir dispute, that of Assam and some districts of India adjacent to East Pakistan. ..."

b. Sheikh Mujibur Rahman, in his book titled Eastern Pakistan; its population & economics, has stated - "Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan must include Assam to be financially and economically strong."

17. Thus, from the decision in the case of *Sarbananda Sonowal (supra)*, it would be evident that in the Memorandum of Settlement between the Government of India and the All Assam Students Union, one of the clauses of the agreement was to the effect that all persons who were expelled earlier, but have since re-entered illegally, shall be expelled. Therefore, the State having detected the petitioner, a declared foreign national, who had re- entered into India, is required to be expelled.

18. The petitioner, in this regard has taken two plea for the purpose of his release on bail, firstly being the prolonged detention of the petitioner since he was apprehended on 02.11.2016, which is referred to in the order passed by the

learned Judicial Magistrate First Class, Goalpara, in CR-PPE 1/2016 and the entitlement of the petitioner to bail as per the direction of the order passed by the Supreme Court of India in W.P. (C) 1045/2018 – *Supreme Court Legal Services Committee –vs- Union of India & Anr.*

19. Therefore, this Court is of the considered opinion that in the event a declared foreign national cannot be expelled from the Country due to any reason whatsoever, which includes the petitioner, perhaps the detaining of such declared foreign national in the holding areas earmarked for the purpose is the only way. Under the erstwhile Foreigner's Act, 1946 the provision for such detention or confinement was provided under Section 4 of the Foreigner's Act, 1946 and similar provision is available in paragraph 12 of the Immigration and Foreigner's Order, 2025, which empowers the State to impose restrictions on movement for illegal migrants pending their expulsion. Therefore, as in this case, the learned standing counsel for the FT and Borders matters has been able to show that the petitioner was expelled from the Country and thereafter he had re-entered into India illegally and was apprehended, notwithstanding his prolonged detention, the Court does not find the petitioner to be entitled to bail.

20. The other issue raised by the learned counsel for the petitioner is regarding his entitlement against expulsion under the Immigration and Foreigner's (Exemption) Order, 2025.

21. At this stage, the learned counsel for the petitioner has referred to the Refugee Registration Certificate issued on 14.10.1952, certifying that Sri Giribala Mali along with his 3 family members of village Beliali, Thana Saturia in the District of Dacca are now in village Howly, Mouza Howly (Assam) are displaced persons from East Bengal in the Register of 'new' / 'old' displaced persons

maintained in the office of the S.D.O. Barpeta. Accordingly, it is claimed that the persons whose names are entered in the Refugee certificate is the grandmother of the petitioner. In this regard, though the document appears to be of some value as such certificates are usually issued under the powers conferred under the proviso to Section 2 of the Immigrants (Expulsion from Assam) Act, 1950, yet, the Court cannot, rely on this document because from a perusal of the order dated 08.01.2010, passed by this Court in W.P.(C) 4903/2009, the said document is not found to be relied upon. Moreover, the reference to the same is also not found in the judgment and order dated 25.09.2017, passed by the learned Judicial Magistrate First Class, Goalpara, in CR-PPE 1/2016.

22. Therefore, the issue raised by the writ petitioner regarding exemption if any, under the Immigration and Foreigner's Order, 2025 cannot be examined by this Court at this stage.

23. The next point raised by the learned counsel for the petitioner is regarding his entitlement to the benefit, if any, under the Citizenship (Amendment) Act, 2019. In this regard, it would be appropriate to refer to the judgment and order dated 17.10.2024 passed by the Supreme Court of India in *In Re:- Section 6 A of the Citizenship Act, 1955, 2024 INSC 789*.

In the said case, at paragraph 218(d), the Supreme Court of India has held that-

"Immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and who have been detected as foreigners but have not registered themselves with the registering authority within the prescribed time limit as per the Citizenship Rules, 2009 shall no longer be eligible for the benefit of citizenship."

24. In this regard, the learned counsel for the petitioner had submitted that

the said observation made in paragraph 218(d) was a minority view and not the decision by the Majority Bench. In this regard, this Court is of the considered opinion that when a point is decided by the Supreme Court of India, notwithstanding that the said part was authored by one Hon'ble Judge, the said view cannot be said to be a minority view when the Hon'ble Single Judge had concurred with the majority decision. The Court is unable to accept that when appreciating the decision of the Supreme Court of India, the majority view, which did not decide the point and / or refer to decided by the learned Single Judge will not be a decision of the Court.

25. Therefore, this Court is of the considered opinion that once the petitioner is declared to be a foreigner by virtue of opinion dated 01.01.2009, referred to above, the same does not call for a judicial order of this Court to grant any leave to the petitioner to register himself under the Provisions of Section 6 A of the Citizenship Act in view of the law laid down by the Supreme Court of India.

26. Another point raised by the learned counsel for the petitioner is that the State has till date not taken any steps for deportation. In this regard, the Court would only refer to the decision of the Supreme Court of India in the case of *Sarbananda Sonowal (supra)*, where the reference has been made to the Memorandum of Settlement, which was signed on 15.08.1985 by the President and the General Secretary of the All Assam Students' Union and the convenor of All Assam Gana Parishad on one hand and the Home Secretary, Govt. of India and the Chief Secretary, Government of Assam on the other side, which was signed in the presence of the then Prime Minister of India. Clause 5.7 of the said agreement specifically referred to the effect that 'All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be

expelled.' In this writ petition filed by the petitioner, the Court does not intend to pass any order adverse to the interest of the petitioner and therefore, no further observation is made in this regard.

27. The last point raised by the learned counsel of the petitioner is regard to his entitlement to a family life. However, in view of the discussions regarding Section 4 of the Foreigner's Act as well as paragraph 12 of the Immigration and Foreigner's Order, 2025, the State would have ample powers to keep the petitioner in a designated place till he could be expelled from the Country. It may be stated that this Court, in the case of *Abdul Rejjak v. The Union of India & 9 Ors.*, decided on 06.01.2026 in WP(Crl.) 60/2025, has referred to the difference in deportation and expulsion. While one who enters into India lawfully but stay beyond the time permitted, such person is deported, but if the entry of a person in the Country is illegal, he has to be expelled.

28. Accordingly, the Court does not find any merit in the writ petition and the same is dismissed at the motion stage without issuing notice on the respondents, leaving the parties to bear their own cost. Before parting with the record, it is clarified that nothing contained in this order shall prejudice the right of the petitioner to agitate his grievance based on the Refugee Registration Certificate dated 14.10.1952 if lawfully found entitled to.

JUDGE

JUDGE

Comparing Assistant