

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY JURISDICTION
WRIT PETITION (CRIMINAL) _____ OF 2020
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Rajubala Das

...Petitioner

Versus

Union of India & Anr.

...Respondents

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

Filed on: 31.03.2020

ADVOCATE FOR THE PETITIONER:

M/S. KINGS AND ALLIANCE LLP

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PROFORMA FOR FIRST LISTING

SECTION _____

The case pertains to (Please tick/check the correct box):

- | | | |
|--------------------------|------------------------------------|------|
| <input type="checkbox"/> | Central Act: Constitution of India | |
| <input type="checkbox"/> | Section: Article 14, 19 and 21 | |
| <input type="checkbox"/> | Central rule: | N.A. |
| <input type="checkbox"/> | Rule no(s): | N.A. |
| <input type="checkbox"/> | State Act: | N.A. |
| <input type="checkbox"/> | Section: | N.A. |
| <input type="checkbox"/> | State Rule: | N.A. |
| <input type="checkbox"/> | Impugned Interim Order date: | N.A. |
| <input type="checkbox"/> | Impugned Final Order/Decree Date: | N.A. |
| <input type="checkbox"/> | High court name: | N.A. |
| <input type="checkbox"/> | Name of Judges: | N.A. |
| <input type="checkbox"/> | Tribunal/Authority(Name): | N.A. |

1. Nature of matter: ☐ Civil ☒ Criminal

2. (a) Petitioner/Appellant No.1: Rajubala Das

(b) E-mail ID:

(c) Mobile Phone Number:

3. (a) Respondent No.1: Union of India

(b) E-mail ID: N.A.

(c) Mobile Phone Number: N.A.

4. (a) Main category classification: N.A.

(b) Sub classification: N.A.

5. Not to be listed before: N.A.

6. Similar/Pending matter: N.A.

a. Similar disposed of matter with citation, if any, & case details: No similar matter is disposed of.

b. Similar pending matter with case details: No similar case is pending.

7. Criminal matters:

a. Whether accused/convict has surrendered: Yes ☐ No ☐

b. FIR No.: N.A. Date: N.A.

c. Police Station: N.A.

d. Sentence Awarded: N.A.

e. Sentence Undergone: N.A.

8. Land Acquisition Matters:

a. Date of section 4 notification: N.A.

b. Date of section 6 notification: N.A.

c. Date of section 17 notification: N.A.

9. Tax Matters: State the tax effect: N.A.

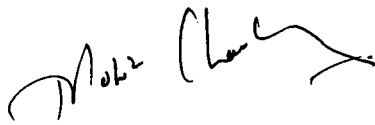
10. Special Category (first petitioner/appellant only):

☐ Senior citizen > 65 years ☐ SC/ST ☐
Woman/Child

☐ Disabled ☐ Legal Aid case ☐ In custody

11. Vehicle No.(In case of Motor Accident Claim matters): N.A.

Date: 31.03.2020.


(M/S. KINGS AND ALLIANCE LLP)

AOR FOR PETITIONER

AOR Code No. 2719

E-mail id: mohitchaudahry2020@gmail.com

Synopsis

1. By this petition, the petitioner seeks to impugn the action of the Respondent authorities of detaining persons who cannot possibly be deported to any foreign country in the foreseeable future. The task of detaining persons declared to be foreigners was undertaken following the issuance of Notification No. PLB.149/2008/88 dated 17-06-2009 by the Political (B) Department of the Government of Assam (Annexure P-2). By this notification, it was ordered that the movement of persons detected as Foreigners by the Foreigners Tribunals shall be restricted and they shall be required to reside in the detention centres immediately after their detection and till they are deported to their place of origin.
2. At present, there are 802 persons living in the detention centres of Assam according to information provided on 11-03-2020 in the Rajya Sabha by the Minister of State in the Ministry of Home Affairs. Most of those persons who have been detained in the detention centres of Assam are persons against whom an order has been passed by the Foreigners Tribunal holding them to be foreigners. Either such cases have been contested by the declared foreigner wherein such person has claimed to be an Indian citizen and adduced evidence in this regard but could not satisfy the Member of the Tribunal that he/she is Indian or the Tribunal has passed such order through ex-parte proceedings. The number of detainees is likely to shoot up significantly considering the fact that there are more than 19 Lakh people who have been left out of the National Register of Citizens for the state of Assam.

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3. The petitioner's husband is a declared foreigner against whom an ex-parte order was passed. His children too were declared foreigners in the same case even though there had not been any reference made against them. The petitioner's husband had initially appeared in the Foreigners Tribunal but thereafter remained unrepresented due to financial inability. Eventually, an ex-parte order was passed on 01-12-2011 holding the petitioner's husband, the petitioner and their children to be foreigners. The petitioner's husband approached the Gauhati High Court for setting aside and quashing of the Foreigners Tribunal's order and hoped for an opportunity to prove his citizenship before the Foreigners Tribunal but his petition was dismissed and thereafter he approached this Hon'ble Court but here too his petition was dismissed. The petitioner's husband was put in the detention centre in 2018 despite the fact that he had migrated from erstwhile East Pakistan to Assam, India with his parents in 1964 and is thereby a citizen of India. The petitioner's husband cannot possibly be deported to any foreign country.
4. There are many others like the petitioner's husband. And even those persons who contested their case but were still held to be foreigners cannot possibly be deported because the Government of India has no proof to show that they are citizens of any other country and thereby no foreign country will be willing to accept these people. At best, such persons may be called 'Stateless'.
5. In the detention centres of Assam, there are many such people who cannot possibly be deported to any country but are lying in the detention centres and possibly face indefinite detention. Detention

of such persons indefinitely where there is no possibility of their deportation amounts to arbitrary detention and is thereby a violation of the personal liberty of the detained persons guaranteed as a fundamental right to all persons in the territory of India by Article 21 of the Constitution of India. Before detaining a person, at least some evidence has to be shown by the state authorities of the possibility of deportation in the foreseeable future.

6. In *Zadvydas v Davis et al* reported in (2001) 533 US 678, the Supreme Court of United States had expressed its disapproval against indefinite detention of foreigners pending removal from the United States. Interpreting the relevant statute in the light of the U.S. Constitution, the Hon'ble Court noted, "*For similar reasons, we read an implicit limitation into the statute before us. In our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention.*" Again, it noted, "*A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to "de-priv[e]" any "person ... of ... liberty ... without due process of law."* Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." It was also held by the Hon'ble Court that, "*Consequently, interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute. See 1 E. Coke, Institutes*

2b ("Cessante ratione legis cessat ipse lex"*) (the rationale of a legal rule no longer being applicable, that rule itself no longer applies)." While concluding, the majority opinion held, "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future."

7. In *Fernandez v Wilkinson* [(1980) 505 F Supp 787], while dealing with a case regarding indefinite detention pending deportation of an admitted Cuban national, the United States District Court, Kansas, declared that "*when an excluded alien is brought upon our lands to be detained in a maximum security prison facility pending effectuation of exclusion, that alien may be detained in such a facility only for a determinate period of time. Furthermore, the maximum limit of such term should be made known to the alien upon the commencement of his detention.*" The court had also observed that indefinite incarceration has a deleterious effect upon a human being. It noted, "*We have received and hold as credible the testimony of petitioner's expert witness that not knowing the length of incarceration has a deleterious effect upon a human which exacerbates the other serious problems of "prisonization." We find that extended, indefinite confinement in a federal prison is deleterious to the personal integrity of petitioner and can only be viewed as arbitrary detention.*"

8. In India, the only remedy available for persons detained for a long period is their release in accordance with the order of this Hon'ble Court dated 10.5.2019 in Writ Petition (Civil) No. 1045/2018 by

which detainees who have completed more than three years may be released subject to the following conditions:

- (a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees One Lakh only) each of Indian citizens;
- (b) He or she specifies verifiable address of stay after release;
- (c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;
- (d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and
- (e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal.

9. Despite this possibility of release, the fact still is that persons who cannot possibly be deported have to remain detained for at least three years. Then too, some may not be able to meet the requirements of the first condition which is execution of bond with two sureties of Rs.1,00,000/- (Rupees One Lakh only) each of Indian citizens. This may be because no Indian citizen may want to stand surety for a person who has been adjudicated to be a foreigner and even if two such sureties are found, they may not be possessed of sufficient means to furnish surety amount of Rs. 1,00,000 (Rupees One Lakh only). In such cases, again the

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detenues face indefinite detention with no possibility of deportation.

LIST OF DATES

Date	Particulars
19.4.1958	The Ministry of Home Affairs, Government of India entrusted its powers to make orders under clause (c), (cc), (d), (e) and (f) of sub-section 2 of Section 3 of the Foreigners Act, 1946, to State Governments including the Government of Assam.
17.6.2009	The Political (B) Department of the Government of Assam issued a notification by which it ordered that the movement of persons who are detected as foreigners by the Foreigners Tribunals shall be restricted and they shall be required to reside in the detention centres set up by the Government immediately after their detection till they are deported to their place of origin. The Police Officers of the Government of Assam entrusted with the process of detection and deportation of foreigners and other police officers too were ordered to keep the foreigners detected by the Foreigners Tribunals in the detention centres immediately on their detection by the Foreigners Tribunals till such persons are deported to their place of origin.
11.5.2019	An order was passed by the Supreme Court of India in Writ Petition (Civil) No. 1045/2018 by

	which detenues who have completed more than three years were allowed to be released subject to the fulfilment of certain conditions including execution of bond with two sureties of Rs.1,00,000/- (Rupees One Lakh only) each of Indian citizens.
06.3.2020	It was informed in the Rajya Sabha by the Minister of State in the Ministry of Home Affairs that there are 802 persons in the detention centres of Assam.
31.03.2020	Hence this writ petition.

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY JURISDICTION
WRIT PETITION (CRIMINAL) _____ OF 2020
(Under Article 32 of the Constitution of India)

In the matter of:

Rajubala Das,

W/o Rajendra Das,

R/o Village Kumarbori, P.S. Jagiroad,

District: Morigaon, Assam. PIN: 782105.

...Petitioner

Versus

1. Union of India

Through the Secretary,

Ministry of Home Affairs,

Government of India,

North Block, New Delhi-110001.

...Respondent No. 1

2. State of Assam,

Through Chief Secretary,

Government of Assam,

Block-C, 3rd Floor,

Assam Sachivalaya, Dispur,

Guwahati, Assam – 781006.

...Respondent No. 2

**WRIT PETITION UNDER ARTICLE 32 CHALLENGING THE
ARBITRARY DETENTION OF THE PETITIONER'S
HUSBAND INDEFINITELY ON EX-PARTE ORDER OF THE**

**FOREIGNERS TRIBUNAL WITHOUT ANY POSSIBILITY OF
DEPORTATION TO ANY OTHER COUNTRY AND SEEKING
RELEASE FROM THE DETENTION CENTRE.**

TO,

THE HON'BLE CHIEF JUSTICE AND HIS

OTHER COMPANION JUSTICES OF THE HON'BLE

SUPREME COURT OF INDIA

THE HUMBLE PEITION OF

THE PETITIONER HEREIN

MOST RESPECTFULLY SHOWETH THAT:

1. This petition is being filed in under Article 32 of the Constitution of India to bring to light the arbitrary manner in which people who cannot possibly be deported are being detained indefinitely in detention centres of Assam.
2. The petitioner's husband has been lodged in a detention centre since 2018 on the basis of an ex-parte order passed by the Foreigners Tribunal at Morigaon. He had approached the Gauhati High Court for setting aside of the ex-parte order but his petition was dismissed and thereafter he had approached this Hon'ble Court but this Hon'ble Court too refused to intervene. The petitioner's husband is a genuine citizen of India and there is no chance that he would be deported to Bangladesh but is still lodged in the detention centre.

3. The petitioner's complete name and complete postal address has been given in the memo of parties. The petitioner does not have a contact number.
4. The cause of action in the matter arose when persons who have no possibility of deportation began to be detained in the detention centres following the issue of Notification dated 17-07-2009 by the Political (B) Department, Government of Assam.
5. That Section 3(2)(e) of the Foreigners Act, 1946 empowers the Central Government to make orders requiring a foreigner to reside in a particular place, impose restrictions on his movements, etc. The said provision of law reads as follows:

“Section 3 - Power to make orders

- (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure there from or their presence or continued presence therein.
- (2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner--

.....

4.

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

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

(ii) imposing any restrictions on his movements;

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

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

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

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

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

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

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

.....”

6. By Notification dated 19-04-1958 issued by the Ministry of Home Affairs, the powers of the Central Government under Section 3(2)(e) of the Foreigners Act, 1946, was delegated to the State Governments including the Government of Assam.
7. The Political (B) Department of the Government of Assam issued a notification dated 17-06-2009 whereby it was ordered that the movement of persons who are detected as foreigners by the Foreigners Tribunals constituted under the provision of the Foreigners Act, 1946 shall be restricted and they shall be required to reside in the Detention Centres set up by the Government, immediately after they are detected as foreigners till they are deported to their place of origin. It was also ordered that police officers of the Government of Assam entrusted with the process of detection and deportation of foreigners as well as the police officers entrusted otherwise in the affairs of the Government of Assam, shall keep the foreigners detected by the Foreigners Tribunal in Detention Centres immediately on their detection by the Foreigners Tribunals till such persons are deported to their place of origin.
8. This Hon'ble Court passes an order dated 11-05-2019 in Writ Petition (Civil) No. 1045/2018 (**Annexure P-1 at page no. 20 to 22**)
9. That the Home & Political Department, Government of Assam, has thereafter from time to time issued notifications notifying different jails situated in the state of Assam as Detention Centres. Currently, the District Jails of Goalpara, Silchar, Kokrajhar and the Central Jails of Jorhat, Dibrugarh and Tezpur are functioning as Detention Centres.

6.

10. In response to a question in the Lok Sabha by Member of Parliament Sri Shashi Tharoor, which was answered on 02.07.2019 (**Annexure P2 at page no. 23 to 24**), it was stated that there were 1133 persons in detention centres as on 25-06-2019 amongst whom there were 335 persons who had been kept in the detention centres for more than three years.

That, in another response to a question in the Lok Sabha by Member of Parliament Shri M. Badruddin Ajmal, which was answered on 03.12.2019 (**Annexure P3 at page no. 25 to 26**) the Minister of Home Affairs informed that as on 28-11-2019, there are 970 persons living in the six detention centres of Assam.

Again, in response to a question by Member of Parliament Ch. Sukhram Singh Yadav in the Rajya Sabha, which was answered on 11.03.2020, it was informed that there are 802 persons in the detention centres of Assam as on 06-03-2020 (**Annexure P4 at page no. 27 to 28**).

11. That most of the persons identified as foreigners by the Foreigners Tribunals had either contested before the said Tribunal that they were Indian citizens or they have been held to be foreigners through ex-parte proceedings. In contested cases where proceedees have been held to be foreigners, the reason for such an opinion being rendered by the Foreigners Tribunal is that the proceedee was unable to discharge the burden of proof upon them to show that they were citizens of India. In ex-parte proceedings, many have not taken a stand as to whether they are Indian or not. And amongst these ex-parte cases, there are cases like that of the petitioner's where the proceedee could not contest his citizenship due to penury. In case of the petitioner's husband, he had even approached the High Court and the Supreme Court for setting

aside of the ex-parte order of the Foreigners Tribunal but his prayer was rejected in both the forums leaving him without any legal remedy. The petitioner's husband's parents alongwith him had migrated to India in 1964 and are thereby citizens of India by virtue of Section 6A of the Citizenship Act, 1955. But the petitioner's husband has been held to be a foreigner and is now languishing in a detention centre. Like him, there are others too.

12. That there is no possibility of deporting such persons mentioned about above as the Union of India does not have any proof to show that these persons are citizens of a foreign nation and even in proceedings before the Foreigners Tribunal, the State Authority usually never adduces any evidence to indicate that a person is a foreigner. Such persons are held to be foreigners only because they were not able to satisfy the Members of the Foreigners Tribunal that they are Indian citizens and not because the State has shown any proof that such person is a foreigner. Such persons, at best, may be rendered 'stateless'.
13. That the Notification of the Government of Assam dated 17-06-2009 only authorises detention of persons till they are deported to their place of origin. But most of the detainees cannot be deported as, at best, such persons are stateless. No foreign country will accept such persons. And thereby, such people now face indefinite detention.
14. The only remedy available to such persons is their release from the detention centres in accordance with the order of this Hon'ble Court dated 11-05-2019 in Writ Petition (Civil) No. 1045/2018 (Annexure P-1) by which detenues who have completed more than three years may be released subject to the following conditions:

- (a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees One Lakh only) each of Indian citizens;
- (b) He or she specifies verifiable address of stay after release;
- (c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;
- (d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and
- (e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal.

15. That it may not be possible for many such detainees to meet the requirements of the first condition which is execution of bond with two sureties of Rs.1,00,000/- (Rupees One Lakh only) each of Indian citizens. This may be because no Indian citizen may want to stand surety for a person who has been adjudicated to be a foreigner and even if two such sureties are found, they may not be possessed of sufficient means to furnish surety amount of Rs. 1,00,000 (Rupees One Lakh only). In such cases, again the detainees face indefinite detention with no possibility of deportation.

16. That it is settled law that executive orders must meet the conditions of reasonableness and non-arbitrariness to survive judicial scrutiny. On failing to meet such conditions, the executive action becomes liable to be quashed and set aside.
17. That detention of a person in the garb of pending deportation but without the possibility of deportation in the foreseeable future will amount to arbitrary detention and thereby be violative of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India to all persons in the territory of India. Moreover, in all cases of detention, the Government must at least prima facie show that there is possibility of deportation but in the present circumstances, the Government is detaining people who are rather being rendered stateless but not citizens of a foreign country and thereby there is no possibility of deportation.
18. That, it was also informed in the Lok Sabha on 02-07-2019 by the Minister of State in the Ministry of Home Affairs that there are 63959 persons who have been declared foreigners through ex-parte proceedings by Foreigners Tribunals from 1985 to 28th February, 2019. This implies that there could be more persons like the petitioner who are not yet detained but face potentially indefinite detention despite being citizens of India.
19. That in *Zadvydas v Davis et al* reported in (2001) 533 US 678, the Supreme Court of United States had expressed its disapproval against indefinite detention of foreigners pending removal from the United States. Interpreting the relevant statute in the light of the U.S. Constitution, the Hon'ble Court noted, "*For similar reasons, we read*

an implicit limitation into the statute before us. In our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." Again, it noted, *"A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any "person ... of ... liberty ... without due process of law." Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.*" It was also held by the Hon'ble Court that, *"Consequently, interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute. See 1 E. Coke, Institutes *2b ("Cessante ratione legis cessat ipse lex") (the rationale of a legal rule no longer being applicable, that rule itself no longer applies).*" While concluding, the majority opinion held, *"an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future."*

20. That in *Fernandez v Wilkinson* [(1980) 505 F Supp 787], while dealing with a case regarding indefinite detention pending deportation of an admitted Cuban national, the United States District Court, Kansas, declared that *"when an excluded alien is brought upon our lands to be detained in a maximum security prison facility pending effectuation of exclusion, that alien may be detained in such a facility only for a determinate period of time. Furthermore, the maximum limit of such term should be made known to the alien upon the commencement of his*

detention.” The court had also observed that indefinite incarceration has a deleterious effect upon a human being. It noted, “We have received and hold as credible the testimony of petitioner's expert witness that not knowing the length of incarceration has a deleterious effect upon a human which exacerbates the other serious problems of "prisonization." We find that extended, indefinite confinement in a federal prison is deleterious to the personal integrity of petitioner and can only be viewed as arbitrary detention.”

21. That International Conventions have also proscribed indefinite detention. Some of such provisions of International law include:

- Article 9 of the Universal Declaration of Human Rights states that no one shall be subjected to arbitrary arrest, detention or exile.
- Article 9 of the International Covenant on Civil and Political Rights, which has been ratified by the Government of India, recognises the right of all persons to liberty and bars arbitrary arrest and detention.
- The European Convention on Human Rights has incorporated in its Article 5(1)(f) the principle of detention only in case of action being taken against such detainee for his deportation.
- Article 26 of the Convention relating to the Status of Stateless Persons states: Each Contracting State shall accord to stateless

persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

GROUND

22. Hence the Petitioner moves before this Hon'ble Court by way of this petition on, inter alia, the following grounds:

- A. Because the petitioner's husband has been lodged in a detention centre since 2018 on the basis of an ex-parte order passed by the Foreigners Tribunal at Morigaon.
- B. Because the petitioner's husband's detention is arbitrary and in violation of Articles 14 and 21 of the Constitution of India.
- C. Because the petitioner's husband has been detained despite the fact that the petitioner's husband's parents alongwith him had migrated to India in 1964 and are thereby citizens of India by virtue of Section 6A of the Citizenship Act, 1955.
- D. Because there is no possibility of deportation of the petitioner's husband as the Respondents do not have any proof to show that the petitioner and other similarly situated persons are citizens of a foreign nation and even in proceedings before the Foreigners Tribunal, the State Authority usually never adduces any evidence to indicate that a person is a foreigner.
- E. Because such persons are held to be foreigners only because they were not able to satisfy the Members of the Foreigners Tribunal that they are Indian citizens and not because the State has shown

any proof that such person is a foreigner. Such persons, at best, may be rendered 'stateless'.

F. Because the detention of a person in the garb of pending deportation but without the possibility of deportation in the foreseeable future will amount to arbitrary detention and thereby be violative of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India to all persons in the territory of India.

23. That the petitioner craves leave of this Hon'ble Court to file additional affidavits at a later stage if so advised.
24. That it is submitted that the petitioner has no other efficacious remedy except before this Hon'ble Court to seek the reliefs as prayed for herein.
25. It is made clear that the Petitioner is not challenging the finding arrived at by the Foreigner's Tribunal in this proceedings, as that was already made unsuccessfully by the husband of the Petitioner in SLP (Civil) No. 27667/2018, disclosure to that effect is made before this court.
26. No proceedings either in form of Writ or otherwise for the prayers sought herein is filed by the Petitioner either here or before any other court.
27. That the present petition is made bonafide and for the ends of justice.

PRAYER

28. Therefore, in the facts and circumstances narrated above, it is humbly prayed before this Hon'ble Court that this Hon'ble Court may graciously be pleased to:

14.

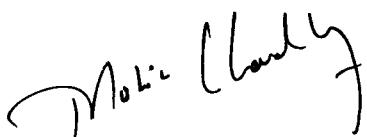
- a. Issue a writ, order or direction to the Government of Assam to not detain any person declared as foreigner by the Foreigners Tribunals until it can show proof of possible deportation in the foreseeable future;
- b. Issue a writ, order or direction to the State of Assam to release all persons declared as foreigners by the Foreigners Tribunals who have been detained in the detention centres of Assam until proof of their possible deportation in the foreseeable future can be shown.
- c. For any other order/ direction that this Hon'ble Court may deem fit.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN
DUTY BOUND SHALL EVER BE GRATEFUL

Drawn on: 31.03.2020

Drawn by: Sauradeep Dey and Siddharth Seem

Filed on: 31-03.2020

 Filed by:
M/S. KINGS AND ALLIANCE LLP
Advocate for the Petitioner

Appendix

Citizenship Act, 1955

6A. 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 for 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) Without prejudice to the provisions of section 8,—

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) If any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3). Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(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, for year is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for year 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.

ITEM NO.50

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No. 1045/2018

SUPREME COURT LEGAL SERVICES COMMITTEE

Petitioner

VERSUS

UNION OF INDIA & ANR.

Respondents

Date : 10-05-2019 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

Mr. Gourab Banerji, Sr. Adv./A.C. (N/P)

Mr. Prashant Bhushan, Adv./A.C.

For Petitioner

For Respondents

Mr. Tushar Mehta, SG
Ms. Aishwarya Bhati, Sr. Adv.
Ms. Binu Tamta, Adv.
Mr. B.V. Balaram Das, AOR

Mr. Tushar Mehta, SG
Mr. Shuvodeep Roy, AOR
Ms. Diksha Rai, Adv. (AOR)
Ms. Palak Mahajan, Adv.
Mr. Rajat Nair, Adv.
Mr. Ankit Roy, Adv.
Mr. Rijuk Sarkar, Adv.
Ms. Manreet Kaur, Adv.

Ms. Uttara Babbar, AOR
Mr. Manan Bansal, Adv.

Mr. Debojit Borkakati, Adv. (AOR)
Mr. Vivek Sonkar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsels for the parties.

Insofar as the larger issue, namely, deportation

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of declared foreigners and setting up of additional Foreigners Tribunals in the State of Assam is concerned, upon hearing Mr. Tushar Mehta, learned Solicitor General, appearing for the State of Assam, we are of the view that the State should be given some further time to indicate the progress made on the diplomatic level etc.. Further, we would require the State to place on record a detailed scheme, in consultation with the Gauhati High Court (on the administrative side), with regard to the constitution of Foreigners Tribunals including appointment of Members, staff etc. The said details shall be placed on record as soon as possible and if required, the State will be at liberty to make a mention of the matter before the Vacation Bench.

Insofar as the release of detenues who have served long period of detention in the detention centres awaiting their deportation is concerned, we are of the view that detenues who have completed more than three years may be released, subject to the following conditions:-

- (a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;
- (b) He or she specifies verifiable address of stay after release;
- (c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;
- (d) He or she shall notify any change of his

or her address to the specified Police Station on the same day, and

(e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal.

Matter be listed in the month of July, 2019 unless otherwise mentioned by the learned counsel for the State.

(Deepak Guglani)
Court Master

(Anand Prakash)
Court Master

GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS

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LOK SABHA UNSTARRED QUESTION NO. 1724

TO BE ANSWERED ON THE 02nd JULY, 2019/ ASHADHA 11,
1941 (SAKA)

DETENTION CENTRES

1724. DR. SHASHI THAROOR:

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) the total number of detention centres set up to hold “doubtful voters” and “foreigners” in the State of Assam;
- (b) the total number of people detained in these detention centres;
- (c) the number of persons who have been kept in these detention centres for more than a year;
- (d) the number of persons who have been kept in these detention centres for more than three years;
- (e) the number of people who have been kept in these detention centres with access to free legal aid from the Government; and
- (f) the number of people who have been declared foreigners through ex-parte proceedings by the Foreigners’ Tribunals in Assam?

24.

ANSWER

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS
(SHRI G. KISHAN REDDY)

(a): There are total 06 (six) numbers of Detention Centres designated to

hold "Declared Foreigners" in the State of Assam.

(b): 1133 (one thousand one hundred thirty three) as on 25.6.2019.

(c): 769 (seven hundred sixty nine) as on 25.6.2019.

(d): 335 (three hundred thirty five) as on 25.6.2019.

(e): Free legal aid is being provided to detenues by District Legal Service Authority who are in need of it.

(f): 63959 (sixty three thousand nine hundred fifty nine) persons have been declared foreigners through ex-parte proceedings by Foreigners' Tribunals in Assam from 1985 to 28th February, 2019.

GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS

LOK SABHA UNSTARRED QUESTION NO. 2340

TO BE ANSWERED ON THE 03rd DECEMBER, 2019/

AGRAHAYANA

12, 1941 (SAKA)

DETENTION CAMPS IN ASSAM

2340. SHRI M. BADRUDDIN AJMAL:

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) the total number of detention camps in Assam;
- (b) the number of persons currently kept in these detention camps in Assam, camp-wise and gender-wise;
- (c) whether there is separate room for women and men detainees;
- (d) whether these detention camps are lacking essential and basic facilities and people with the tag of "D voters" and „declared foreigners“ by FTs are living miserable lives, deprived of human rights;
- (e) whether there has been news of rape of various women detainees;
- (f) if so, the action taken by the Government to prevent such incidents and take action against the culprits;
- (g) whether detainees are not allowed to connect with their family members to prove their citizenship; and

(h) the procedure to visit a member locked in detention camp?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS
(SHRI G. KISHAN REDDY)

(a) to (h): There are 06 (six) Detention Centres in Assam.

The number of persons in different Detention Centres as on 28th November, 2019 is as follows:

Sl No.	Name of Detention Centre	Male	Female	Grand Total
1.	Goalpara	186	15	201
2.	Kokrajhar	09	131	140
3.	Silchar	57	14	71
4.	Dibrugarh	38	02	40
5.	Jorhat	132	64	196
6.	Tezpur	224	98	322
	Total	646	324	970

Women and men detenues are kept in separate rooms, with sufficient essential and basic facilities. They are living with human dignity and they are not deprived of any basic facility. There is no report of any rape incident of women detainees in Detention Centres. The detainees are allowed to meet their family members and legal advisors and there is no restriction as regards this.

GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS

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RAJYA SABHA QUESTION NO 181 ANSWERED ON

11.03.2020

Documents legally valid for proving citizenship

181 Ch. Sukhram Singh Yadav

Will the Minister of HOME AFFAIRS be pleased to state :

- (a) the details of the documents which Government considers to be legally valid for proving one's citizenship;
- (b) the details of States where Government consider to implement NRC in addition to Assam;
- (c) the number of people in Assam who have failed to prove their citizenship; and
- (d) the number of people having been kept in detention centres in Assam?

ANSWER MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI NITYANAND RAI)

(a) to (d): A Statement is laid on the Table of the House.

STATEMENT REFERRED IN REPLY TO RAJYA SABHA
STARRED QUESTION NO. *181 FOR 11.03.2020 REGARDING
"DOCUMENTS LEGALLY VALID FOR PROVING
CITIZENSHIP"

(a) Acquisition of Indian Citizenship is governed by the provisions of The Citizenship Act, 1955 and rules made thereunder. Citizenship of India can be acquired by birth or descent or registration or naturalisation or incorporation of territory.

(b) Till now, Government has not taken any decision to prepare National Register of Indian Citizenship (NRIC) at the National level.

(c) The hard-copies of the supplementary list of inclusion and on-line family-wise list of exclusions was published on 31st August, 2019 as per the directions of the Hon'ble Supreme Court. A total of 3,11,21,004 persons were found eligible for inclusion in the final NRC, leaving out 19,06,657 persons.

(d) As on 06/03/2020, 802 persons have been kept in detention centres in Assam.

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY JURISDICTION

I.A. No. ____ of 2020

IN

WRIT PETITION (CRIMINAL) OF 2020

IN THE MATTER OF:

Rajubala Das

...Petitioner

Versus

Union of India & Anr.

...Respondents

**APPLICATION SEEKING EXEMPTION FROM FILING
AFFIDAVIT OF THE PETITIONER IN SUPPORT OF THE
WRIT PETITION AND APPLICATIONS DUE TO
EXTREME URGENCY IN THE MATTER.**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

The humble application of the Applicant
above named

MOST RESPECTFULLY SHOWETH:

1. That Present matter pertains to detention and deportation of 802 persons locked in the detention centres of Assam. Prayer sought from this court is for issuance of Writ/Direction to the Government of Assam to not detain any person declared as 'foreigner' by the Foreigners Tribunals until Govt. can show

proof of possible deportation in the foreseeable future, other prayer is for Direction on State of Assam to release all persons declared as foreigners by the Foreigners Tribunals who have been detained in the detention centres of Assam until proof of their possible deportation in the foreseeable future can be shown.

2. That the extreme urgency in the matter is that the lives of detenues is at risk in light of global pandemic COVID-19 and due to the densely populated detention camps. Husband of Petitioner and others cannot be deported to any other country as Govt. has no proof that he is citizen of any other country, his present category is "stateless" person, who would have to languish indefinitely unless released.
3. Due to complete lockdown in the state of Assam and there is no arrangement of coming to Delhi and/or to reach to the office of Notary/Oath Commissioner, petitioner is seeking exemption from filing affidavit before this court. Necessary affidavit would be filed immediately upon the removal of the Lock-down period and/or the time when it becomes conducive due to the availability of services.
4. Petitioner has read the contents with the help of local lawyer on computer.
5. That the present application is being made bonafide and in interest of justice.

P R A Y E R

It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to: -

- (a) Allow present application and grant exemption from filing affidavit of the petitioner in support of the writ petition and applications due to extreme urgency in the matter. And/or
- (b) pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the present case.

Filed by



(M/S. KINGS AND ALLIANCE LLP)

AOR FOR PETITIONER

AOR Code No. 2719

E-mail id: mohitchaudahry2020@gmail.com

New Delhi:

Filed on: 31.03.2020

**IN THE SUPREME COURT OF INDIA
EXTRAORDINARY JURISDICTION
WRIT PETITION (CRIMINAL) OF 2020**

IN THE MATTER OF:

Rajubala Das	Versus	...Petitioner
Union of India & Anr.		...Respondents

VAKALATNAMA

I, Rajubala Das, W/o Rajendra Das, R/o Village Kumarbori, P.S. Jagiroad, District: Morigaon, Assam. PIN: 782105, the Petitioner(s) in the above Petition do hereby and appoint and retain

**(M/S. KINGS AND ALLIANCE LLP) (Code 2719)
ADVOCATE ON RECORD OF THE SUPREME COURT**

to act and appear for me / us in the above Suit/Appeal/Petition/Reference and on my / our behalf to conduct and prosecute (or defend) the same and all proceeding that may be taken in respect of any application connected with the same of any decree or order passed therein, including proceeding in taxation and application for Review, to file and obtain return of documents to deposit and receive money on my/our behalf in the Suit Appeal/Reference and in applications of Review, and to represent me/us and to take all necessary steps on my /our behalf in the above matter. I / we agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 31st day of March 2020

Accepted

(M/S. KINGS AND ALLIANCE LLP) (Code 2719)

Advocates for the Petitioner(s)/Appellant(s)/Respondent(s)
13, Ring Road,
Lajpat Nagar -IV
New Delhi 110024.
Tel.No.26441313-1414
Mobile : 9810663997 / 9810622198

Rti of Rajubala Das.


**PETITIONER(s)/APPELLANT(s)
RESPONDENT(s)/INTERVENOR(s) CAVEATOR**

MEMO OF APPEARANCE

To
The Registrar,
Supreme Court of India
New Delhi
Sir,
Please enter my appearance on behalf of the petitioner(s) Appellant(s)
Respondent(s) Intervenor in the matter above mentioned.
Dated this the _____ day of _____ 2020

Advocate for the Petitioner(s)/ Appellant(s)/Respondent(s)

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY JURISDICTION
WRIT PETITION (CRIMINAL) OF 2020

IN THE MATTER OF:

Rajubala Das

...Petitioner

Versus

Union of India & Anr.

...Respondents

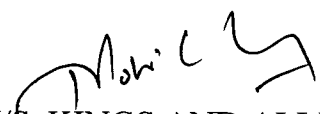
Synopsis of Extreme Urgency

Present matter pertains to detention and deportation of 802 persons locked in the detention centres of Assam. Prayer sought from this court is for issuance of Writ/Direction to the Government of Assam to not detain any person declared as 'foreigner' by the Foreigners Tribunals until Govt. can show proof of possible deportation in the foreseeable future, other prayer is for Direction on State of Assam to release all persons declared as foreigners by the Foreigners Tribunals who have been detained in the detention centres of Assam until proof of their possible deportation in the foreseeable future can be shown. **The extreme urgency** in the matter is that the lives of detainees is at risk in light of global pandemic COVID-19 and due to the densely populated detention camps. Husband of Petitioner and others cannot be deported to any other country as Govt. has no proof that he is citizen of any other country, his present category is "stateless" person, who would have to languish indefinitely unless released.

On video conferencing

Undersigned Advocate on Record, hereby gives a consent the matter may be taken up through the Video-Conferencing mode, as we would connect our own my desktop/mobile.

RTI of Rajubala Das.


Filed By:
(M/S. KINGS AND ALLIANCE LLP)
AOR FOR PETITIONER
AOR Code No. 2719

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