

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. 1045 OF 2018

IN THE MATTER OF:

SUPREME COURT LEGAL SERVICES COMMITTEE

...PETITIONER

VERSUS

UNION OF INDIA & ANR

...RESPONDENT

Note by Amicus Curiae, Mr. Prashant Bhushan

14th February 2020

1. On the 10th of May 2019, this Hon'ble Court ordered conditional release of declared foreigners who have completed three years or more in detention. The conditions for their release included two sureties of Rs 1,00,000 each, a verifiable address, collection of their bio-metric information and that the person must report to a designated police station every week.
(A copy of the order dated 10th May 2019 is annexed as **Annexure 1** at Page _____ to _____)
2. In July 2019 by unstarred question no. 1724 in the Lok Sabha, Dr. Shahi Tharoor posed some very important questions to the Minister of State in the Ministry of Home Affairs regarding the detention centres in Assam. In response the Minister of State, Home Affairs states that there are 1133 persons held in 6 detention centres across the State of Assam. While 769 persons have been in detention for more than one year, 335 persons have been held in detention for more than three years. Besides this, 63959 persons have been declared foreigners through ex-parte

proceedings by Foreigners Tribunals in Assam from 1985-February 2019.

(A copy of unstarred question no. 1724 in the Lok Sabha dated 2nd July 2019 is annexed as **Annexure 2** at Page _____ to _____).

3. According to media reports, those detained for more than three years, in the six detention centres across Assam, are being gradually released. This however has began many months after the order of this Hon'ble Court in May 2019, that points to the very onerous conditions that have been imposed for the release of these detainees. Many of those who are detained are very poor and hence have been struggling to furnish the two sureties of one lakh each. Reducing the surety from two to one and reducing the amount from one lakh to twenty five thousand will enable these poor detainees to better meet the requirements for their release. Further, the condition of reporting to a police station once a week is a very onerous one, for many of these people live in far off riverine islands and away from local police stations. The geography of these char islands, combined with the nature of the work that these families undertake, which is largely daily wage labour, makes it cumbersome and often impossible to report to the police station weekly. Those who manage to do so have to spend often more than a whole day with a loss of their daily income besides a substantial amount that is spent in travel. There are reports of the police officials demanding bribes from them when they present themselves for reporting. In view of this, it is recommended that the requirement of reporting to the police station could be reduced to once a month from one week as presently ordered.
4. The State of Assam in its affidavit in compliance with order dated 28.01.2019, has stated on page 6 that so far total of 166 persons (162 convicted and 4 declared foreigners) have been repatriated to their country of origin. The fact that only 4 declared foreigners have been deported despite the total number of declared foreigners till August 2018 being 58627 (State of Assam affidavit, page 4), points to the difficulty and

near impossibility of deporting this category of persons since most of them claim to be Indian citizens who have been declared foreigners by the Tribunal either by ex parte orders or often on hyper technical grounds like variations in names and age and also because of typographical errors in citizenship documents like voter lists, etc.

5. Various international standards and instruments on immigration detention, contain negative obligations, not to subject any person to arbitrary arrest and detention. The instruments are in consonance with our Constitutional rights that guarantee that deprivation of liberty of an individual is only permissible to the extent that it is in accordance with a just, fair and reasonable procedure established by law. These instruments and judgements of international courts point out that indefinite detention is arbitrary and unconstitutional. In order to justify the detention of immigrants, the government must be able to show removal of such immigrants in the foreseeable future. Decisions of international courts have held unequivocally that once a reasonable prospect of expelling the individual concerned no longer exists, the detention should be terminated. The indefinite detention of aliens has been held unconstitutional by the decision of the United States Supreme Court in **Zadvydas v. Davis** 150 L. Ed. 2D 653. The court held that illegal aliens cannot be detained for an unreasonable period and the normally more beyond 90 days. However in exceptional cases they could be detained upto six months but not beyond that, which would be in clear violation of their right to liberty. (judgement in Rejoinder affidavit of petitioner, page 11-47, filed on 29.11.2018)
6. Currently there are several hundred people still in detention centres in Assam, who have been there for more than a year. The fact is that they are likely to be detained indefinitely since there is no prospect of their being deported in the absence of any agreement for repatriation between India and other foreign country including Bangladesh. Hence it is recommended that if the detainees have completed one year in detention they should be released forthwith. Infact almost all of them claim to be Indian citizens and

have not been declared or proven to be citizens of any other country. The Foreigners Tribunals have just declared them to be non Indian citizens and therefore rendered them stateless. In fact about 2/3rd of orders of foreigners tribunals declaring people to be foreigners are by ex parte orders. 63959 persons have been declared foreigners by the Foreigners Tribunals in Assam from 1985 to February 2019 as pointed out in the answer in the Lok Sabha. The total number of persons declared foreigners by Tribunals in Assam as on 31.08.2018 is 1,03,764. (State of Assam affidavit, page 3).

7. The working of these tribunals have also raised very serious questions about their lack of judicial character. Recently a People's Tribunal, held on the 7th and 8th of September 2019, which had two former judges of this Hon'ble Court (Hon'ble Justice Kurien Joseph and Hon'ble Justice Madan Lokur) and former Chief Justice of the Delhi High Court (Hon'ble Justice A.P. Shah) and other eminent persons on its jury, had examined the manner in which the NRC process in Assam was undertaken, its human costs including the manner and function of the Foreigners Tribunals in Assam. Regarding the Foreigners Tribunals, the interim jury report of the tribunal stated as follows:

“Foreigners Tribunals were created by an executive order of the Ministry of Home Affairs. Cases then referred to the Foreigners Tribunals – by the Assam Border Police Force as well as the Election Commission – have been processed in an arbitrary manner without prior investigation or grounds for making such reference. The verification forms were often empty with just names and addresses. No grounds were furnished.

Tribunals do not function independently and are not free from executive influence. Tenure and salaries are decided by the government, keeping the members under the supervision and control of the appointing authority. Also, two third of cases decided by Tribunals are by ex parte orders and, most often, the main grounds are not mentioned in the notice sent by the Foreigners Tribunals to the suspected persons”

(A copy of the report titled Contested Citizenship in Assam: People’s Tribunal on Constitutional Processes and Human Cost dated 7-8th September 2019, is annexed as **Annexure 3** at Page _____ to _____).

8. Deaths in detention centres:

According to the Indian Express story dated January 4, 2020, 29 detainees died in detention centres in Assam in the last three years. These declared foreigners who died in detention, barring two who had Bangalesh addresses, had an address in Assam. In August 2019, scroll.in reported in a series, many other deaths in detention centres, including the death of a new born whose mother was later found not to be a foreigner. The causes of death have officially been reported as “due to illness”, however family members of those who have died, as reported, have talked about the anxiety and mental trauma and lack of adequate and timely health care facilities, as the cause of death of these detainees.

(A copy of the Indian express report dated January 4, 2020 is annexed as **Annexure 4** _____ at Page _____ to _____)

(A copy of the scroll.in report dated August 28, 2019 is annexed as **Annexure 5** _____ at Page _____ to _____)

There is no further report of any neutral observer about the conditions in detention centres currently, after the report of Mr. Harsh Mander who, as the NHRC special monitor was appointed to study the conditions in detention centres in the State of Assam and submitted his report in January 2018. It is thus important for the court to ask a neutral examiner to examine the conditions of detainees in detention centres and submit a report to the court.

Prashant Bhushan

Dated: 14-02-2020