GAHC010184882025

2026:GAU-AS:210-DB

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

Case No. : W.P.(Crl.)/60/2025

ABDUL REJJAK
SON OF SAPUR ALI
RESIDENT OF MADHUSAULMARI PART-II, P.S. GAURIPUR, DIST. DHUBRI, ASSAM, PIN-783331

VERSUS

THE UNION OF INDIA AND 9 ORS
REPRESENTED BY SECRETARY, MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA, SOUTH BLOCK NEW DELHI-110011.

2:THE SECRETARY

GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
(FOREIGNERS DIVISION)
MAJOR DHYAN CHAND NATIONAL STADIUM
INDIA GATE CIRCLE
NEW DELHI-110002.

3:THE COMMISSIONER AND SECRETARY

HOME DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006.

4:THE DIRECTOR GENERAL

BORDER SECURITY FORCE

BLOCK 10

CGO COMPLEX
LODHI ROAD
NEW DELHI-110003.

5:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI-8.

6:THE DISTRICT COMMISSIONER

DHUBRI.

7:THE SUPERINTENDENT OF POLICE
DHUBRI (BORDERS).

8:IN-CHARGE AREA OF RESPONSIBILITY

ADHOC 2503 BATTALION
BORDER SECURITY FORCE
DHUBRI.

9:THE OFFICER -IN-CHARGE GAURIPUR POLICE STATION

DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. M DUTTA, L DEKA,POOJA ROY

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

For the petitioner : Mr. M. Dutta, Advocate.
For respondent Nos.1, 2, 4 & 9 : Ms. A. Gayan, CGC.
For respondent Nos.3, 5, 7, 8 & 10 : Mr. G. Sarma, standing counsel.
For State respondent No.6 : Mr. P. Sarmah, Sr. Govt. Advocate.

Date on which judgment is reserved : 12.12.2025

Date of pronouncement of judgment : 06.01.2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J)

Heard Mr. M. Dutta, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC for respondent nos. 1, 2, 4 and 9; Mr. G. Sarma, learned standing counsel for the FT, Border matters and NRC, for respondent nos. 3, 5, 7, 8 and 10; and Mr. P. Sarmah, learned Addl. Senior Govt. Advocate, for respondent no. 6.

2) The petitioner in this case is Abdul Rejjak. His wife, namely, Doyjan Bibi, daughter of Maynal Haque and Sahebjan Nessa has been declared to be a foreign national vide *ex parte* opinion dated 31.08.2017, passed by the learned Member, Foreigners Tribunal 4th, Dhubri, in F.T.4/71/GPR/2017.

3) The petitioner had approached this Court to assail the said *ex parte* opinion dated 31.08.2017 by filing a writ petition, and this Court by order dated 24.09.2021, passed in W.P.(C) No. 2028/2020, held that there was sufficient ground for the petitioner for not appearing before the learned Tribunal and therefore, the said *ex parte* opinion dated 31.08.2017, was set aside by allowing one opportunity to the petitioner to contest the proceeding by directing the petitioner to appear before the said learned Tribunal within 15 (fifteen) days from the date of the order and to file her written statement and documents. This Court had further directed that if the petitioner does not appear before the

learned Tribunal on or before 27.10.2021, the impugned opinion would be revived and law will take its own course and the bail granted by the said order dated 24.09.2021, would also stand cancelled.

4) In paragraph 11 of this writ petition, the petitioner has admitted to the effect that in terms of the order dated 24.09.2021, passed by this Court in W.P.(C) No. 2028/2020, Doyjan Bibi, the declared foreign national (illegal migrant) did not appear before the said learned Tribunal within the time allowed, i.e. 27.10.2021. Therefore, there is an admission to the effect that the said *ex parte* opinion dated 31.08.2017, passed by the learned Member, Foreigners Tribunal 4th, Dhubri, in F.T.4/71/GPR/2017, stood revived in view of the default of the petitioner in appearing before the learned Tribunal and thus, the said opinion has remained in full force and effect.

5) It is projected that the said declared foreign national (illegal migrant), namely, Doyjan Bibi, the wife of the petitioner was taken into custody sometime in March, 2019. However, it is projected that owing the order dated 10.05.2019, passed by the Supreme Court of India in the case of *Supreme Court Legal Services Committee v. Union of India & Anr., W.P. (Civil) No. 1045/2018*, whereby direction was issued to release the detenues who in detention centres, awaiting their deportation, who have completed more than three months (thereafter reduced to two months), as well as order dated 15.04.2020, passed by this Court in *XXX v. The Union of India & Ors., W.P. (C) (Suo Motu) No. 1/2020*, the said declared foreign national (illegal migrant), namely, Doyjan Bibi, was released on bail on 28.05.2021.

6) The petitioner has projected that while on bail, the said declared foreign national (illegal migrant), was complying with the terms and

conditions for bail. However, she was again taken into custody on 24.05.2025 by the police personnel from Gauripur Police Station.

7) Claiming that her whereabouts are not known, the petitioner had filed a First Information Report before the Superintendent of Police, Dhubri, but as no information was forthcoming, the petitioner had filed a writ petition, which was registered and numbered as W.P. (C) No. 3170/2025. In course of hearing the Court was informed that the said declared foreign national (illegal migrant) was lodged in the Holding Area, under 7th AP Bn., Charaikhula, Dist. Kokrajhar, Assam. Accordingly, by order dated 16.06.2025, this Court had allowed the petitioner and one family member the visitation right to his detained wife and to take her signature in the vakalatnama.

8) However, when the petitioner had visited the Holding Area, he was informed on 25.06.2025, that Doyjan Bibi, the declared foreign national (illegal migrant), had been handed over to the Border Security Force, Sector Headquarter, Panbari. On 18.07.2025, the learned CGC had informed the Court that on 27.05.2025, Doyjan Bibi, the declared foreign national (illegal migrant) has been sent back to Bangladesh from the AoR (Area of Responsibility) of Adhoc 2503 Bn., BSF.

9) While, the said W.P.(C) No. 3170/2025, is pending this *habeas corpus* petitioner has been filed under Article 226 of the Constitution of India, inter alia, praying for issuance of a direction to the respondents to produce the (i) nationality verification report of his wife, and (ii) handing over and taking over report of his wife by the Bangladesh Authorities, showing that due process of law has been followed; alternatively to trace out and hand over his wife to the petitioner, if necessary, the Ministry of External Affairs and Home Ministry to

take up the matter with their Bangladesh counterpart to bring her back; and to direct the authorities to fix accountability and responsibility on the person for the illegal pushback of the petitioner's wife and to initiate appropriate legal proceeding against such person found responsible.

10) Though no notice of motion has been issued in the matter, but pursuant to the order dated 15.10.2025, the respondent no.3, has filed an affidavit-in-opposition in the matter.

11) Heard the learned counsel for the petitioner as well as the learned CGC, Addl. Senior Govt. Advocate and the learned standing counsel for the FT, Border matters and NRC.

12) It is an opportune moment to refer to a historical background of the foreigners' issue plaguing the State of Assam. As per study and media reports, the large scale influx of illegal migrants from 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 issue has led to a long-drawn students' agitation in the State of Assam. This issue has elaborately been referred to in the case of *Sarbananda Sonowal v. Union of India & Ors., (2005) 5 SCC 665*, which was decided by the Full Bench of the Supreme Court of India. Some portions of the said judgment 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. (emphasis by us)

* * *

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*

Communitywise growth

	Assam		*India*	
	Hindus	*Muslims*	*Hindus*	*Muslims*
(1) 1951-1961	*33.71*	*38.35*	*20.29*	*25.61*
(2) 1961-1971	*37.17*	*30.99*	*23.72*	*30.85*

(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 a 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 severe 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."

13) In the case of *Sarbananda Sonowal (supra)*, the Supreme Court of India has also equated the influx of illegal migrants into Assam as an external aggression. The said observations are true, only if one cares to visit the length

and breadth of the State. Due to reasons, which can be only answered by competent authorities, the illegal immigrants are seen to have been allowed to settle in non-cadestally mapped areas, alluvial soil (called *char* area in Assam), Govt. land, forest land, etc. Thus, there are no land records available regarding when the settlements of illegal migrants came into existence. Be that as it may, we may refer to the to the observations made by the Supreme Court of India in paragraph nos. 21 to 26, 32, 34, 46, 56, 59, 63 and 82 of the case of *Sarbananda Sonowal (supra)*, which have not reiterated and/or replicated in this order to maintain brevity.

14) Thus, with the said factual back-ground and law laid down by the Supreme Court of India, the Government has a duty to preserve the unity and integrity of the Country and as unabated influx from the specified territory of Bangladesh has been equated to an act of aggression, it may be stated that it is perhaps a wrong perception in a section media report projecting that a religious persecution is going on in the State of Assam, which appears to be an example of misinformation warfare being carried out against the Country in general and the State of Assam in particular.

15) Coming to the present case in hand, in his written submissions, the learned counsel for the petitioner has referred to the provisions of Article 21, 22 and 39A of the Constitution of India to project that those Constitutional provisions have been violated. It has also been submitted that the wife of the petitioner has been illegally pushed back. 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 Nurenburg 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, he 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, 7th 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.

16) 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.

17) 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.

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

19) 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*."

20) The learned counsel for the petitioner has questioned as to whether due procedure of law has been followed in expelling the wife of the petitioner. In this regard, a question may arise as to how can our Country deport an "illegal migrant", who has been so declared by the Foreigners Tribunal, to have entered into Assam illegally after 25.03.1971, if the specified territory, i.e. the present Republic of Bangladesh refuses to acknowledge and/or admit that such illegal migrant is their subject and deny to take those persons into their Country. In the considered opinion of the Court, the State has unfettered power to cause expulsion of a declared foreign national, who has not entered into India with lawful documents.

21) Therefore, in the event a "declared foreign national" cannot be expelled due to any reason whatsoever, including the policy in force, then the only way open to the State would be to prevent a declared foreign national from getting employment, purchase land, marry Indian national, etc., perhaps by framing appropriate policy and/or by detaining such "declared foreign national" in the holding areas ear-marked for the purpose.

22) In the considered opinion of the Court, the act of the appropriate Government to apprehend a "declared foreign national" and/or "illegal migrant" , who has been so declared by a Foreigners Tribunal, cannot

equated to arrest as is generally understood under Criminal Procedure Code, 1973 and/or the Bharatiya Nagarik Suraksha Sanhita, 2023, which confers certain procedural safeguards for citizens of India, who are arrested in connection with some criminal offence.

23) In view of the submissions made by the learned counsel for the petitioner that the documentary evidence of handing over the wife of petitioner to Bangladesh authorities be produced, it has become necessary to appreciate the difference between deportation and expulsion of a foreigner.

24) In the case of *State of Uttar Pradesh v. Abdul Samad & Anr., AIR 1962 SC 1506: 1962 SCC OnLine SC 40*, the detained person had come into India from Pakistan on the strength of Pakistani Passport and Visa obtained from the Indian High Commission at Pakistan. During his stay in India, the term of his Visa had expired. Thus, the said case is one of a foreign national whose entry into India was lawful, but he was found to be illegally over-staying in India. Therefore, while *Abdul Samad*, the appellant before the Supreme Court of India was facing deportation, in this case, the wife of the petitioner, who has been declared by the Foreigners Tribunal to be an illegal migrant who has entered India (Assam) after 25.03.1971, is facing an expulsion as an illegal migrant.

25) It would be relevant to quote hereinbelow paragraph nos. 74 to 79 of the case of *Sarbananda Sonowal (supra):*

> ***74**. We consider it necessary here to briefly notice the law regarding deportation of aliens as there appears to be some misconception about it and it has been argued with some vehemence that aliens also possess several rights and the procedure for their identification and deportation should be detailed and elaborate in order to ensure fairness to them.*
>
> ***75**. In Introduction to International Law by J.G. Starke (1st Indian re-print 1994)*

in Chapter 12 (page 348), the law on the points has been stated thus: -

> *"Most states claim in legal theory to exclude all aliens at will, affirming that such unqualified right is an essential attribute of sovereign government. The courts of Great Britain and the United States have laid it down that the right to exclude aliens at will is an incident of territorial sovereignty. Unless bound by an international treaty to the contrary, states are not subject to a duty under international law to admit aliens or any duty thereunder not to expel them. Nor does international law impose any duty as to the period of stay of an admitted alien."*

Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law does not prohibit the expulsion encase of aliens. [Ed: In Introduction to International Law by J.G. Starke (1st Indian re-print 1994 (page 351)]. Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law, and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa etc. and not to those who have entered illegally or unlawfully. Similar view has been expressed in Oppenheim's International Law (Ninth Edn. 1992 - in paragraphs 400, 401 and 413). The author has said that the reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy, competent to exclude aliens from the whole or any part of its territory. In paragraph 413 it is said that the right of States to expel aliens is generally recognized. It matters not whether the alien is only on a temporary visit, or has settled down for professional business or any other purposes on its territory, having established his domicile there. A belligerent may consider it convenient to expel all hostile nationals residing or temporarily staying within its territory; although such a measure may be very harsh on individual aliens, it is generally accepted that such expulsion is justifiable. Having regard to Article 13 of the International Covenant on Civil and Political Rights, 1966, an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law.

***76**. In R. v. Bottrill, (1947) 1 K.B. 41: [1946] 2 All E.R. 434, it was said that the King under the Constitution of United Kingdom is under no obligation to admit into the country or to retain there when admitted, any alien. Every alien in the United Kingdom is there only because his presence has been licensed by the King. It follows that at common law the King can at will withdraw his license and cause the*

Executive to expel the alien, whether enemy or friend. For holding so reliance was placed on Attorney-General for Canada v. Cain, [1906] AC 542, where Lord Atkinson said: -

> *"One of the rights possessed by the Supreme power in every state is the right to refuse to permit an alien to enter that state, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the state, at pleasure, even a friendly alien, especially if it considers his presence in the state opposed to its peace, order, and good government, or to its social or material interests."*

In Chae Chan Ping v. United States, 1930 U.S. 581, the United States Supreme Court held:

> *"The power of exclusion of foreigners being an incident of sovereignty belonging to the Government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the Government, the interests of the country require it, cannot be granted away or restrained on behalf of anyone. The powers of Government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract."*

This principle was reiterated in Fong Yue Ting v. United States, 149 U.S. 698, where the court ruled: -

> *"The government of each state has always the right to compel foreigners who are found within its territory to go away, by having them taken to the frontier. This right is based on the fact that, the foreigner not making part of the nation, his individual reception into the territory is matter of pure permission, of simple tolerance, and creates no obligation. The exercise of this right may be subjected, doubtless, to certain forms by the domestic laws of each country; but the right exists none the less, universally recognized and put in force. The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty or property, without due process of law; and the provisions of the Constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures, and cruel*

and unusual punishments, have no application."

***77**. In Nishimura Ekiu v. United States, 142 US 652, it was adjudged that, although Congress might, if it saw fit, authorize the courts to investigate and ascertain the facts upon which the alien's right to land was made by the statutes to depend, yet Congress might entrust the final determination of those facts to an executive officer, and that, if it did so, his order was due process of law and no other tribunal, unless expressly authorized by law to do so, was at liberty to re-examine the evidence on which he acted, or to controvert its sufficiency. Thus according to United States Supreme Court the determination of rights of an alien even by Executive will be in compliance of due process of law.*

***78**. In Louis De Raedt v. Union of India, (1991) 2 SCC 554, the two foreign nationals engaged in missionary work had come to India in 1937 and 1948 respectively with proper documents like passport and visa etc. and were continuously living here but by the order dated 8th July, 1987 their prayer for further extension of the period of stay was rejected and they were asked to leave the country by 31-7-1987. They then challenged the order by filing a writ petition. This Court held that the power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive government has unrestricted right to expel a foreigner. So far as right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case.*

***79**. In State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615, following Louis De Raedt, (1991) 3 SCC 554, it was held that the fundamental right of a foreigner is confined to Article 21 for life and liberty and does not include the right to reside and stay in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of the country. After referring to some well-known and authoritative books on international law it was observed that the persons who reside in the territories of countries of which they are not nationals, possess a special status under international law. States reserve the right to expel them from their territory and to refuse to grant them certain rights which are enjoyed by their own nationals like right to vote, hold public office or to engage in political activities. Aliens may be debarred from joining the civil services or certain profession or from owning some properties and the State may place them under restrictions in the interest of national security or public order. Nevertheless, once lawfully admitted to a territory, they are entitled to certain immediate rights necessary to the enjoyment of ordinary private life. Thus, the Bangladeshi nationals who have illegally crossed the border and have trespassed into Assam or are living in other parts of the country have no legal right of any kind to remain in India and they are liable to be deported*. (emphasis supplied by us)

26) When the issue of unabated influx from the specified territory is leading to demographic changes in the State, which may not be seriously impacting or affecting the rest of the Country, but is leading to widespread civil discontent in the State of Assam, it would not be permissible for constitutional safeguards available for the "citizens" of the Country to be extended to a "declared foreign national" like the projected wife of the petitioner. Therefore, when the respondent no.3 has stated on oath that Doyjan Bibi, a declared foreign national has been sent back to Bangladesh, that position has to be accepted. As stated hereinbefore, if the Bangladesh authorities do not accept a declared foreign national as their own, it is permissible for the State to send back the declared foreign national back in such manner as they may deem fit and appropriate.

27) Just because the wife of the petitioner has been able to stay in this Country for a long time even after reference was answered by opinion dated 31.08.2017, it cannot be accepted that the wife of the petitioner had been taken into custody arbitrarily, which is *ex facie* a misapplied notion.

28) Even the United States of America, one of the developed Countries, is starting to feel the pinch of illegal immigrants and the nature of steps taken by it are in public domain, on which the Court does not comment. The point is that the petitioner has knowledge that his wife is a declared foreign national, yet he has not pleaded in the writ petition that why and for what purpose, he expects the State to extend Constitutional rights and safeguards, reserved for citizens of the Country to a "declared foreign national", awaiting her expulsion from the Country. If any such rights are ordered, it would amount to give special premium to the wife of the petitioner after being a "declared foreign

national" and thus, definitely not an Indian citizen.

29) Therefore, the statement of the petitioner that the declared foreign national, namely, Doyjan Bibi has not flouted any bail condition, would not be a sufficient cause for preventing the Central Government and the State Government to take appropriate action against the said "declared foreign national" and to take steps for her expulsion from the Country.

30) The Court is unable to accept that any legal and fundamental right of the said Doyjan Bibi, a "declared foreign national" purportedly under Article 14, 16, 18, 21, 22 of the Constitution of India has been violated. In terms of the decision in the case of *Sarbananda Sonowal (supra)*, the wife of the petitioner, namely, Doyjan Bibi, a declared foreign national, is not found to have any fundamental right in India to move freely or to reside at any place of her choice or to carry out any vocation, trade or calling of her choice. Nonetheless, the said rights shall override the power and authority of the State to expel an illegal migrant in such manner as it may deem fit and proper.

31) The learned counsel for the petitioner had submitted that petitioner was on bail. It may be stated that the order for granting bail during Covid-19 pandemic period was to tide over the difficult situation of Covid-19 pandemic. The intention of the orders passed by the Supreme Court of India and various High Courts in the Country, as evident in the orders placed before the Court, is to prevent overcrowding of jails and detention centres. The pandemic situation is no longer prevailing in the State of Assam. Moreover, by none of the orders passed for granting bail to declared foreign nationals, there is a prohibition to the State Government and Government of India to resume foreign nationals, so declared by Foreigners Tribunals in exercise of power under the Foreigners (Tribunals) Order, 1964, after references are made by the

competent authority in respect of those persons who are suspected to have illegally entered into India (Assam) from the specified territory after the cut-off date of 25.03.1971.

32) The learned counsel for the petitioner has failed to show any provision under any law in force that a person declared to be a foreign national by Foreigners Tribunals, after being apprehended, must mandatorily be produced before the Magistrate. The learned counsel for the petitioner is perhaps under some misconception of law because the declaration of foreigner under the Foreigners (Tribunal) Orders, 1964 has civil consequences. Such detection and declaration, in the considered opinion of the Court, is not under any criminal law in force in the Country. In this regard, the observations of the Supreme Court of India in paragraph 39 of the case of *Hans Muller of Nurenburg (supra)*, quoted hereinbefore, which has been cited by the learned counsel for the petitioner declares it so. Paragraph 4 of the Foreigners (Tribunals) Order, 1964 is as under:

> *4. Powers of Foreigners Tribunals.- The Foreigners Tribunals shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and the powers of Judicial Magistrate first class under the Code of Criminal Procedure, 1973 (2 of 1974) in respect of the following matters, namely, –*
>
> *(a) summoning and enforcing the attendance of any person and examining him or her on oath;*
>
> *(b) requiring the discovery and production of any document,*
>
> *(c) issuing commissions for the examination of any witness;*
>
> *(d) directing the proceedee to appear before it in person;*
>
> *(e) issuing a warrant of arrest against the proceedee if he or she fails to appear before it*.

33) The learned counsel for the petitioner has not been able to show that the procedure as prescribed under the erstwhile Criminal Procedure Code

and/or under the Bharatiya Nagarik Suraksha Sanhita, 2023 is required to be followed by the Border Branch of Assam Police while dealing with the declared foreign national. The arrest and detention of a declared foreign national cannot be equated with rights of persons arrested as envisaged under Section 50 of the Code of Criminal Procedure. Similarly, the submissions made with regard to rights protected under Article 22 of the Constitution, in the opinion of the Court is totally unacceptable because it cannot be believed that the declared foreign national, so declared by the Foreigners Tribunal is not aware of the reason of being taken into custody. Let us test this submission with an example. If such a submission is accepted and extended to all convictions, then can it mean that when a convict in a serious crime is apprehended after sentence, the convict can be permitted to take a plea that he is not served with grounds of arrest and documents relating to his/her arrest. The answer to the example given above would be in an emphatic "no". Similarly, once a declared foreign national is taken into custody awaiting expulsion from the Country, it is not open to such declared foreign national, whose declaration is made by the Foreigners Tribunal in the State of Assam to maintain a claim that his/her custody is illegal and vitiated by non-service of grounds of arrest, as envisaged under Article 22 of the Constitution of India and/or under Section 50 Cr.P.C., as declaration of an illegal foreigner under the Foreigners (Tribunals) Order, 1964 does not have any criminal consequences.

34) In paragraph 11 of the writ petition, the petitioner has stated that as the wife of the petitioner had received the order dated 24.09.2021, late, the wife of the petitioner could not appear before the Foreigners Tribunal on 27.10.2021. The said date of appearance for Doyjan Bibi, to appear before the Foreigners Tribunal on or before 27.10.2021, was fixed by this Court in the order

dated 24.09.2021, passed in W.P. (C) 2028/2020. The projection that the copy was received late appears to be a false statement on of the petitioner on oath. The statement made in para-11 of the writ petition is verified to be true to record. The photocopy of the certified copy of the order dated 24.09.2021, reveals that the application for certified copy of the order is Application No. 514380 dated 29.09.2021. The certified copy was ready for delivery on the same date, i.e. 29.09.2021. If the certified copy was made ready on 29.09.2021, and the wife of the petitioner had received it late, she alone is responsible. Even assuming that the certified copy was received late, nothing prevented the petitioner's wife to seek extension of time by filing an appropriate application. However, the conscious, willful and deliberate decision of the wife of the petitioner was not to appear before the concerned Foreigners Tribunal and to present her defence and documents as to discharge her burden of proof. Thus, this leads to presumption under Section 114, Illustration (g) of the Evidence Act, 1872 corresponding to the provision of Section 119, Illustration (g) of the Bharatiya Sakshya Adhiniyam, 2023 that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Thus, the wife of the petitioner got an opportunity to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove that she is not a foreigner but an Indian citizen, but she did not avail that opportunity.

35) Thus, as the authorities are bound to take consequential steps pursuant to the *ex parte* opinion dated 31.08.2017, passed by the learned Member, Foreigners Tribunal 4th, Dhubri, in F.T.4/71/ GPR/2017, no case is made out to suspect any officer of the Central Government or of the State Government of taking any irresponsible, illegal or reckless act in sending back the wife of the petitioner to Bangladesh, so as to order enquiry to be made

against them in respect of the present case in hand.

36) Therefore, on all counts, this writ petition fails and is thus, dismissed.

37) Under the circumstances, there shall be no order as to cost.

38) The Registry shall place a copy of this order in the record of W.P. (C) 3170/2025, for record and future reference.

JUDGE **JUDGE**

Comparing Assistant

PRATIK GUPTA

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