

ITEM NO.301

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. 274/2009

ASSAM PUBLIC WORKS

Petitioner

VERSUS

UNION OF INDIA & ORS.

Respondents

(IA No. 98512/2019 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 98446/2019 - CLARIFICATION/DIRECTION)

Date : 23-07-2019 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner

Ms. Shefali Sethi, Adv.  
Mr. Kailash Prashad Pandey, AOR

For Respondents/  
Applicants

Mr. K.K. Venugopal, AG  
Mr. Tushar Mehta, SG  
Ms. Binu Tamta, Adv.  
Ms. Rekha Pandey, Adv.  
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Mr. Shuvodeep Roy, AOR  
Mr. Rajat Nair, Adv.  
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Mr. Abdul Qadir, Adv.  
Mr. Ibad Mushtaq, Adv.  
Ms. Aditi Gupta, Adv.  
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Mr. Krishen Kumar Pandey, Adv.

Mr. Hitesh Kumar Sharma, Adv.

Mr. Mirtunjay Mishra, Adv.

Mr. Mohan Pandey, AOR

Ms. Malvika Trivedi, Adv.

Mr. Ankit Yadav, Adv.

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Mrs. Sujatha Bagadhi, Adv.

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Mr. Guntur Prabhakar, AOR

Mr. Mohit D. Ram, AOR

Mr. Abhijit Sengupta, AOR

Mr. Avijit Roy, AOR

Ms. Rashmi Nandakumar, AOR

M/s. Corporate Law Group, AOR  
Mr. Sanand Ramakrishnan, AOR

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

We have heard the learned Attorney General for the Union of India, the learned Solicitor General appearing for the State of Assam and Mr. Prateek Hajela, learned State Coordinator. Though offered, none of the contesting parties and stakeholders, despite being represented, has chosen to make any statement or argument.

At the outset, we take the view that having regard to the grounds on which the learned Coordinator in his report dated 10.7.2019 has sought for extension of time upto 31.8.2019 for publishing the final N.R.C., extension prayed for should be allowed. We accordingly grant the aforesaid extension of time, namely, upto 31.8.2019.

The learned Coordinator in his report dated 10.7.2019 has further submitted that he may be permitted to combine the provisions of clauses 4(3), 4(5), 5 and 6 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. Having regard to the grounds on which the said prayer/proposal has been made, we deem it proper to allow the same.

Paragraphs 7 and 8 of the said report dated 10.7.2019 are in the following terms:-

"7. Another matter which the undersigned wishes to bring to the kind attention is about such cases of descendants of D Voter (DV)/ Declared Foreigner (DF)/Cases Pending at Foreigners Tribunals/Other Courts (PFT), whose one parent is DV/DF/PFT but the parent from whom the legacy is drawn for inclusion in NRC is not

DV/DF/PFT and is also found eligible for inclusion in NRC. The Hon'ble Supreme Court in their order of 2 July 2018 have ordered that those persons who are Dvs or PFTs as well as their descendants are not to be included in updated NRC. As descendance can be drawn from either of the parents, clarification appears to be required in cases where one of the parents is clear from all angles (not DV/DF/PFT and eligible for NRC inclusion) while the other parent is a DV or DF or PFT. It also appears that while deciding eligibility of descendants, provisions of Section 3(1)(b) & (c) of the Citizenship Act, 1955 may be important to be taken into account, though citizenship purely by birth and not by descendance (Section 3(1)(a) is not eligible for inclusion in NRC. It is humbly felt that the sustance of Section 3(1)(b) & (c) is that while determining citizenship of any descendant born up to 3 December, 2004, citizenship eligibility of any one of the parents suffices, while for those descendants born on or after 3 December 2004, citizenship eligibility of both the parents needs to be taken into account. From a conjoint reading of Hon'ble Supreme Court's order dated 2 July 2018 and the provisions contained in Section 3(1)(b) & (c) of the Citizenship Act, 1955, the following appears to be the best course of action:

a. For any NRC Applications/Claimants, if parent/legacy person through whom eligibility is sought to be established is a DV or DF or PFT, then such persons will not be included in NRC irrespective of the status of the other parent.

b. For those persons born before 3 December 2004, if the parent through whom legacy is drawn is not DV or DF or PFT and is found eligible for inclusion in NRC, but the other parent from whom legacy is not drawn is a DV or DF or PFT, then, such descendants may be included in NRC.

c. For those persons who are born on or after 3 December 2004, they will not be included in NRC if any of the parent is DV or DF or PFT even if the parent from whom legacy is drawn is clear from all angles.

In this regard, it is submitted that the aforementioned matter was submitted by the deponent before the Judges Committee for opinion but the Committee advised to seek the order of the Hon'ble Court on the matter. As such the

above is submitted for kind approval.

8. That the deponent also would like to seek clarification on the matter of validity of orders passed under the Illegal Migrants (Determination by Tribunal) (IMDT) Act. Some of the applicants have submitted orders passed under IMDT declaring them as Indian. This matter was also referred by the deponent to the Judges Committee, however, the Committee advised the deponent to seek order from the Hon'ble Court on the matter. As such, directions are sought about acceptability of orders of IMDT, whether declaring the person to be Indian or Illegal Migrant."

As grant of the aforesaid prayers/proposals made by the learned State Coordinator may affect legal rights, we permit all parties before the Court to have their say in the matter limited to the aforesaid two prayers. We also direct the learned Coordinator to issue a public notice in this regard to enable other stakeholders, in a representative capacity, to appear before the Court, if so desired. The aforesaid prayers will be heard on 7.8.2019 at 3.00 p.m., when this Bench will assemble again. We make it clear that in view of the exercise being time bound, it may not be possible for the Court to accept any prayer for adjournment of the matter.

We have also taken note of the prayers made on behalf of the Union of India and the State of Assam for a sample re-verification of a limited percentage of the exercise done so far to take care of wrongful inclusions and exclusions. In this regard, we have taken note of our previous order dated 28.8.2018, whereby we had kept the issue alive. We have also read and considered the response of Mr. Hazela, the learned Coordinator on this aspect of the matter and specifically, the stand taken by him in his report dated 18.7.2019, which is to the effect that in the course of consideration/adjudication of the claims, re-

verification to the extent of 27% has already been done. In fact, in the said report, the learned Coordinator has mentioned district wise figures of such re-verification which has become an integral part of the process of consideration of the claims and objections on account of the procedure adopted. In that view of the matter, we do not consider it necessary to accede to the prayers for a further sample verification as prayed for on behalf of the Union of India and the State of Assam. No further orders in the matter would be called for at this stage.

I.A. Nos. 98512/2019 and 98446/2019 accordingly stand disposed of.

(Deepak Guglani)  
Court Master

(Anand Prakash)  
Court Master