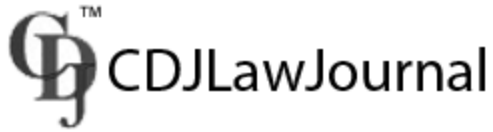


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Citation : CDJ 2026 SC 1140

Court : Supreme Court of India

Case No : Civil Appeal No(s). 2820 of 2024 with Civil Appeal No(s). /2026 @ SLP(C) No. 9745 of 2017, etc.

Judges : THE HONOURABLE MR. JUSTICE VIKRAM NATH & THE HONOURABLE MR. JUSTICE SANDEEP MEHTA

Parties : Sabitri Dey @ Swasthi Dey & Others Versus Union of India & Others

Appearing Advocates : For the Petitioners: ----- For the Respondents: -----

Date of Judgment : 13-07-2026

Head Note :

Comparative Citation:
2026 INSC 694,

Judgment :

Vikram Nath, J.

Delay condoned in those matters in which delay, if any, is there. Leave granted in SLP(C) No. 9745 of 2017, SLP(C) Nos. 33488-33489 of 2017, Diary No. 27282 of 2017, SLP(Crl.) No. 10767 of 2018, Diary No. 37766 of 2017, SLP(C) No. 23494 of 2017, Diary No. 15744 of 2023 and SLP(C) No. 24686 of 2016.

2. The present batch of appeals arises out of proceedings before the Foreigners Tribunals in the State of Assam and, in some matters, before the erstwhile Illegal Migrants (Determination) Tribunals. In all these matters, the appellants have been declared to be foreigners and the said opinions have been affirmed by the High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh at Guwahati[hereinafter referred to as "the High Court"].

3. The common grievance of the appellants is that the opinions against them were rendered in proceedings which were either ex parte or had become effectively ex parte, and that the statutory determination of their status was made without a full and meaningful opportunity to contest the reference. Since the question involved is common, these matters have been heard together and are being decided by this common judgment.

4. We shall now briefly detail the factual and procedural background of each of these appeals, to the extent necessary for appreciating the common issue which arises for consideration:

4.1. In C.A. No. 2820 of 2024, **Sabitri Dey @ Swasthi Dey and Others v. Union of India and Others**, the appellants assail the judgment dated 16.10.2020 passed by the High Court in WP(C) No. 8018 of 2019, whereby the ex parte opinion dated 09.05.1997 passed by the Illegal Migrants (D) Tribunal, Diphu, Karbi Anglong, in I.M.(D).T. Case No. 51 of 1995 was affirmed. The High Court noticed that the reference was made against Sabitri Dey @ Swasthi Dey, her husband late Shambhu Dey, and their two children, Mithu Dey and Baby Dey. The High Court further noticed that the notice had been received by late Shambhu Dey, but none of the proceedees appeared before the Tribunal, filed a written statement, or engaged counsel, and dismissed the writ petition also on the ground of delay and laches.

4.2. In the Civil Appeal arising out of SLP(C) No. 9745 of 2017, **Ajbahar Ali v. Union of India and Others**, the appellant challenges the order dated 06.09.2016 passed by the High Court in WP(C) No. 4782 of 2016, arising from the ex parte order dated 11.02.2016 passed by the Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri. The Tribunal recorded that notices had been served upon the appellant and that the notice serving police personnel were examined to confirm service, but the appellant did not appear and the reference was decided ex parte.

4.3. In the Civil Appeal arising out of SLP(C) Nos. 33488-33489 of 2017, **Md. Akbar Ali v. Union of India and Others**, the appellant challenges the order dated 22.11.2016 passed by the High Court in WP(C) No. 6912 of 2016 and the order dated 07.04.2017 passed in Review Petition No. 186 of 2016. The High Court recorded that notice issued by the Tribunal had been served, that the appellant's brother had appeared and sought time on the ground of the appellant's illness, and that the appellant thereafter remained absent, whereupon the Tribunal passed the ex parte order dated 14.03.2002.

4.4. In the Civil Appeal arising out of Diary No. 27282 of 2017, **Abdul Subhan v. Union of India and Another**, the appellant challenges the judgment dated 26.05.2017 passed by the High Court in WA No. 166 of 2015. The record indicates that the appellant had filed his written statement before the Tribunal on 09.03.2009, after which the matter was fixed for production of further documents, but the proceeding ultimately culminated in an ex parte opinion against him.

4.5. In C.A. No. 2840 of 2024, **Sonaullah Sheikh v. Union of India and Others**, the appellant challenges the judgment dated 03.11.2016 passed by the High Court in WA No. 276 of 2013. The High Court noticed that the appellant had appeared before the Tribunal, filed his written statement on 26.07.2012, and was granted opportunities to adduce evidence, but the Tribunal eventually passed the ex parte order dated 04.04.2013 after the appellant and his counsel failed to appear on subsequent dates.

4.6. In C.A. No. 3521 of 2024, **Abdul Zabbar v. Union of India and Others**, the appellant challenges the judgment dated 30.10.2014 passed by the High Court in WA No. 189 of 2014, arising from the common order dated 26.03.2014 passed in WP(C) Nos. 6466 and 6465 of 2013. The proceeding before the Tribunal resulted in an ex parte opinion, and the later order of the Tribunal records that the case was not one of non-receipt of notice, since the appellant had received notice and had responded by seeking time to file a written statement.

4.7. In C.A. No. 3520 of 2024, **Nurjahan Begum @ Nurjahan v. Union of India and Others**, the appellant challenges the judgment passed in WA No. 326 of 2014, arising from the order dated 26.03.2014 passed in WP(C) No. 6465 of 2013, whereby the ex parte opinion dated 28.02.2013

passed by the Foreigners Tribunal (Second), Sonitpur, in F.T. Case No. 385 of 2011 was affirmed. The High Court noticed that notice of the proceeding had been served on the appellant and that she had appeared on the first two dates before the Tribunal, but thereafter remained absent on all subsequent dates and failed to adduce any evidence. The appeal was dismissed on the ground that the appellant had failed to discharge the statutory burden cast upon her.

4.8. In the Civil Appeal arising out of Diary No. 15744 of 2023, **Samiran Nessa v. Union of India and Others**, the appellant challenges the judgment dated 20.11.2019 passed by the High Court in WP(C) No. 4351 of 2019, whereby the ex parte opinion dated 05.03.2018 passed by the Foreigners Tribunal (Second), Darrang, Mangaldai, in F.T.(2) Case No. 1883 of 2014, and the order dated 28.08.2018 rejecting the application for setting aside the ex parte opinion were affirmed. The High Court noticed that the appellant had appeared before the Tribunal on 28.07.2014, later again appeared on 25.10.2017 and sought time to file her written statement, but thereafter remained absent on consecutive dates, leading to the ex parte opinion.

4.9. In C.A. No. 3751 of 2025, **Ali Hussain v. Union of India and Others**, the appellant challenges the judgment dated 16.07.2018 passed by the High Court in WP(C) No. 3944 of 2018, arising out of the order dated 24.01.2011 passed by the Foreigners Tribunal, Nagaon, in F.T. Case No. 306 of 2007. The High Court recorded that notice had been duly served upon the appellant, that he had appeared before the Tribunal and prayed for time to file his written statement, but thereafter did not appear, whereupon the Tribunal proceeded to pass the impugned order.

4.10. In C.A. No. 6870 of 2025, **Abeda Khatun v. Union of India and Others**, the appellant challenges the judgment dated 19.07.2016 passed by the High Court in WP(C) No. 3103 of 2014, arising from the order dated 04.06.2013 passed by the Foreigners Tribunal, Goalpara, in F.T. Case No. 282/C/2010. The High Court noticed that after receipt of notice, the appellant had appeared before the Tribunal and filed her written statement on 05.12.2012, but thereafter failed to adduce evidence despite opportunities being granted.

4.11. In Crl.A. No. 1334 of 2024, **Kokila Begum v. Union of India and Others**, the appellant challenges the judgment dated 16.09.2016 passed by the High Court in WP(C) No. 5495 of 2016, whereby the order dated 25.11.2013 passed by the Foreigners Tribunal No. 1, Karimganj, in F.T. Case No. 370 of 2010 was affirmed. The High Court recorded that the appellant had appeared before the Tribunal on 19.03.2012 along with her advocate, but despite several adjournments, neither filed her written statement nor adduced evidence, whereafter the reference proceeded ex parte from 19.04.2013.

4.12. In C.A. No. 5789 of 2025, **Md. Usman Ali v. Union of India and Others**, the appellant challenges the judgment dated 14.06.2016 passed by the High Court in WA No. 331 of 2015, arising from the dismissal of WP(C) No. 4055 of 2015 against the order dated 07.02.2013 passed by the Foreigners Tribunal (Second), Morigaon, in F.T.(D) Case No. 41 of 2010. The High Court noticed that the appellant had appeared before the Tribunal upon receipt of notice and filed his written statement on 01.07.2011, but thereafter defaulted in appearance, whereupon the Tribunal proceeded ex parte and answered the reference against him.

4.13. In C.A. No. 4858 of 2024, **Azizul Hoque v. Union of India and Others**, the appellant challenges the judgment dated 10.12.2018 passed by the High Court in WP(C) No. 7956 of 2018, arising from the order dated 09.07.2018 passed by the Foreigners Tribunal No. 4, Nagaon at Juria, in Misc. Case No. 14 of 2011. The High Court noticed that the original ex parte opinion dated 16.06.2011 in F.T. Case No. 209 of 2007 had been passed after the appellant had been served, had appeared before the Tribunal,

and had filed his written representation on 13.04.2010, but thereafter did not appear before the Tribunal.

4.14. In C.A. No. 2821 of 2024, **Anowar Hussain v. Union of India and Others**, the appellant challenges the judgment dated 03.09.2018 passed by the High Court in WP(C) No. 5902 of 2018, arising from the ex parte opinion dated 26.02.2015 passed by the Foreigners Tribunal 1st, Nagaon, in F.T. Case No. 315 of 2011. The High Court noticed that after receipt of notice, the appellant appeared before the Tribunal on 29.09.2014, but did not take any further step before the Tribunal, and that his later application for setting aside the ex parte order was dismissed on 27.08.2018.

4.15. In the Criminal Appeal arising out of Diary No. 37766 of 2017, **Jaan Mohammad v. Union of India and Others**, the appellant challenges the judgment dated 25.02.2016 passed by the High Court in WA No. 344 of 2015, arising from the dismissal of WP(C) No. 539 of 2015 against the Tribunal's order dated 10.11.2009 in F.T. Case No. 219 of 2008. The High Court recorded that despite service of notice, the appellant did not appear before the Tribunal, whereafter the proceeding was taken up ex parte and the reference was answered against him.

4.16. In Crl.A. No. 628 of 2025, **Tasaddar Ali v. Union of India and Others**, the appellant challenges the judgment dated 08.01.2018 passed by the High Court in WP(C) No. 822 of 2017, whereby the order dated 06.03.1992 passed by the Illegal Migrants (Determination) Tribunal, Dibrugarh, in Case No. 76 of 1989 was affirmed. The High Court noticed that the Tribunal had proceeded ex parte after notice was issued under the Illegal Migrants (Determination by Tribunals) Act, 1983 and the appellant did not respond to the proceeding.

4.17. In C.A. No. 5805 of 2025, **Kashem Ali v. Union of India and Others**, the appellant challenges the judgment dated 07.06.2017 passed by the High Court in WP(C) No. 3346 of 2017, arising from the ex parte opinion dated 13.02.2017 passed by the Foreigners Tribunal No. 3, Nagaon, in F.T. Case No. 368 of 2016 and the order dated 18.05.2017 rejecting the application for setting aside the ex parte opinion. The High Court noticed that the appellant had received notice but did not appear before the Tribunal, and further proceeded to examine the documents placed before it before declining interference.

4.18. In the Civil Appeal arising out of SLP(C) No. 24686 of 2016, **Makbul Hussain v. Union of India and Others**, the appellant challenges the judgment dated 19.01.2016 passed by the High Court in WP(C) No. 755 of 2015, arising from the order dated 14.07.2008 passed by the Foreigners Tribunal, Nagaon, in F.T.(D) Case No. 317 of 2006. The High Court noticed that the appellant had received notice, appeared before the Tribunal on 13.03.2007, sought time to file his written statement, and thereafter remained absent on several dates, whereupon the Tribunal proceeded ex parte.

4.19. In C.A. No. 1573 of 2025, **Joshnara Begum v. Union of India and Others**, the appellant challenges the judgment dated 07.08.2017 passed by the High Court in WP(C) No. 4672 of 2017, arising from the order dated 10.06.2016 passed by the Foreigners Tribunal No. 7, Nagaon, in F.T. Case No. 40 of 2016. The High Court noticed that the Tribunal proceeded ex parte after recording that the appellant had refused to accept notice and that the notice had thereafter been served by hanging in the presence of the village headman.

4.20. In SLP(C) No. 23494 of 2017, **Md. Rafiqul Islam v. Union of India and Others**, the appellant challenges the judgment dated 05.01.2017 passed by the High Court in WP(C) No. 7457 of 2016, arising from the ex parte order dated 12.08.2010 passed by the Foreigners Tribunal 1st, Sonitpur, in F.T.(D) Case No. 168 of 2008. The High Court noticed that after service of notice, the

appellant appeared before the Tribunal on 24.07.2008 and sought time to file his written statement, but no written statement was filed and he thereafter remained absent.

4.21. In C.A. No. 2836 of 2024, **Anowara Bibi v. Union of India and Others**, the appellant challenges the judgment dated 12.09.2018 passed by the High Court in WP(C) No. 4179 of 2018, arising from the order dated 04.07.2012 passed by the Foreigners Tribunal No. 1, Goalpara, in F.T. Case No. 1157/G/2006. The High Court noticed that the appellant appeared before the Tribunal on 10.12.2010, sought time to file her written statement, later filed the written statement on 30.05.2011, but thereafter remained absent on several dates, whereupon the Tribunal answered the reference against her.

4.22. In C.A. Nos. 1577-1578 of 2025, **Gauranga Dev Nath @ Gauranga Debnath v. State of Assam and Others**, the appellant challenges the judgment dated 15.09.2016 passed in WA No. 299 of 2010 and the order dated 07.04.2017 passed in Review Petition No. 176 of 2016. The High Court noticed that notice had been served upon the appellant, that he entered appearance along with counsel, but thereafter neither appeared nor filed his written statement, whereupon the Foreigners Tribunal 1st, Morigaon, passed the ex parte order dated 19.01.2009 in F.T.(D) Case No. 769 of 2006.

4.23. In C.A. Nos. 3403-3404 of 2025, **Md. Nafiz Kureshi v. Union of India and Others**, the appellant challenges the judgment dated 08.12.2015 passed by the High Court in WP(C) No. 6591 of 2015 and the order dated 16.06.2016 passed in Review Petition No. 42 of 2016, arising from the ex parte order dated 12.10.2013 passed by the Foreigners Tribunal 2nd, Sonitpur, Tezpur, in F.T.(D.C.) Case No. 451 of 2009. The High Court noticed that although the appellant alleged non-service of notice, the Tribunal record indicated that he had appeared on 26.10.2012 and sought time, but thereafter remained absent on subsequent dates, resulting in the ex parte opinion.

4.24. In C.A. No. 5806 of 2025, **Aijuddin v. Union of India and Others**, the appellant challenges the judgment dated 04.10.2016 passed by the High Court in WP(C) No. 4343 of 2016, arising from the ex parte judgment dated 25.08.2010 passed by the Foreigners Tribunal 1st, Sonitpur, Tezpur, in F.T. Case No. 132 of 2008. The record indicates that the appellant had appeared before the Tribunal through counsel on 15.11.2008 and sought time to file written statement, but the written statement was not filed and the matter was thereafter decided ex parte.

4.25. In C.A. Nos. 1574-1575 of 2025, **Murtaza Begum and Others v. Union of India and Others**, the appellants challenge the judgment dated 31.05.2016 passed by the High Court in WP(C) No. 3031 of 2016 and the order dated 07.04.2017 passed in Review Petition No. 164 of 2016, arising from the opinion dated 30.09.2014 passed by the Foreigners Tribunal, Hojai, in F.T. Case No. H/29 of 2008. The High Court noticed that appellant no. 1 had appeared through counsel and filed a written statement, but the appellants thereafter failed to adduce evidence before the Tribunal, whereupon the reference was answered against them.

4.26. In C.A. No. 1579 of 2025, **Paritosh Chanda v. Union of India and Others**, the appellant challenges the judgment dated 17.11.2016 passed by the High Court in WP(C) No. 6486 of 2014, arising from the ex parte order dated 10.07.2008 passed by the Foreigners Tribunal, Mangaldai, in F.T. Case No. 650 of 2007. The High Court noticed that notice had been served personally upon the appellant on 15.05.2007, but he remained absent on 12.06.2007 and on the subsequent dates, whereafter the Tribunal proceeded ex parte and declared him to be a foreigner.

4.27. In the Criminal Appeal arising out of SLP(Crl.) No. 10767 of 2018, **Farida Begum @ Farida Khatun v. Union of India and Others**, the appellant challenges the judgment dated 05.05.2016

passed by the High Court in WA No. 433 of 2015, arising from the order dated 25.08.2015 passed in WP(C) No. 5243 of 2011 and the ex parte order dated 30.07.2009 passed by the Foreigners Tribunal, Sonitpur, Tezpur, in F.T.(D) Case No. 214 of 2007. The High Court noticed that notices had been served on three occasions through members of her family, upheld the view that non-receipt of notice was not established, and further examined the documents produced in the writ proceedings before declining interference.

4.28. In C.A. Nos. 4305-4306 of 2025, **Anowara Khatoon @ Anowara Khatun v. Union of India and Others**, the appellant challenges the judgment dated 07.03.2024 passed by the High Court in WP(C) No. 7467 of 2023, arising from the ex parte opinion dated 23.12.2019 passed by the Foreigners Tribunal, Baksa at Tamulpur, in F.T. Case No. 42/BAKSA/2019. The High Court noticed that the appellant appeared before the Tribunal through counsel on 29.06.2019, sought time to file written statement, and thereafter remained absent on several dates despite further adjournments, whereupon the Tribunal proceeded to answer the reference against her.

5. From the above narration, it is clear that the cases are not identical on facts. However, for the purpose of deciding the common question arising in this batch, they can be broadly grouped into three categories:

5.1. The first category consists of cases where the appellants did not appear before the Tribunal despite the Tribunal or the High Court recording service of notice. These matters are (i) C.A. No. 2820 of 2024, (ii) Civil Appeal arising out of SLP(C) No. 9745 of 2017, (iii) C.A. No. 1579 of 2025, (iv) Crl.A. No. 628 of 2025, (v) C.A. No. 1573 of 2025 and (vi) Criminal Appeal arising out of Diary No. 37766 of 2017.

5.2. The second category consists of cases where the High Court, while considering the challenge to the ex parte opinion of the Tribunal, proceeded to examine or appreciate the documents and material placed before it. These matters are (i) C.A. No. 5805 of 2025 and (ii) Criminal Appeal arising out of SLP(Crl.) No. 10767 of 2018.

5.3. The third category consists of cases where the appellants had appeared before the Tribunal at some stage, or had taken some step in the proceeding, but thereafter the proceeding continued in their absence and resulted in an ex parte opinion. These matters are (i) Civil Appeals arising out of SLP(C) Nos. 33488-33489 of 2017, (ii) Civil Appeal arising out of Diary No. 27282 of 2017, (iii) C.A. No. 2840 of 2024, (iv) C.A. No. 3521 of 2024, (v) C.A. No. 3520 of 2024, (vi) Civil Appeal arising out of Diary No. 15744 of 2023, (vii) C.A. No. 3751 of 2025, (viii) C.A. No. 6870 of 2025, (ix) Crl.A. No. 1334 of 2024, (x) C.A. No. 5789 of 2025, (xi) C.A. No. 4858 of 2024, (xii) C.A. No. 2821 of 2024, (xiii) Civil Appeal arising out of SLP(C) No. 24686 of 2016, (xiv) Civil Appeal arising out of SLP(C) No. 23494 of 2017, (xv) C.A. No. 2836 of 2024, (xvi) C.A. Nos. 15771578 of 2025, (xvii) C.A. Nos. 3403-3404 of 2025, (xviii) C.A. No. 5806 of 2025, (xix) C.A. Nos. 1574-1575 of 2025 and (xx) C.A. Nos. 4305-4306 of 2025.

6. The above classification is only for convenience. The underlying concern in all the matters is whether the declaration of a person as a foreigner, with the serious consequences which follow such declaration, can be sustained when the adjudication before the statutory forum was ex parte or had become effectively ex parte.

7. In view of the above factual backdrop, the common issue which arises for consideration is whether, in proceedings under the Foreigners Act, 1946 (hereinafter referred to as "the 1946 Act") and the Foreigners (Tribunals) Order, 1964 (hereinafter referred to as "the 1964 Order"), an opinion declaring a

person to be a foreigner can be sustained where the proceeding before the Tribunal was ex parte or had become effectively ex parte, without a meaningful examination of service of notice, opportunity of hearing, the material forming the basis of the reference, and the evidence adduced by the State. The issue is not whether a Tribunal is powerless to proceed ex parte in every case. The narrower and more important question is whether an ex parte or effectively ex parte proceeding can result in a mechanical declaration of foreigner status without the Tribunal satisfying itself that the minimum requirements of lawful and fair adjudication have been met.

PREVAILING LEGAL POSTION

8. Before examining the issue, it would be necessary to peruse the statutory framework within which the Tribunals exercise jurisdiction. The proceedings in question arise under the 1946 Act, and the 1964 Order.

9. Section 9 of the 1946 Act reads as follows:

"9. Burden of proof. If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person."

10. Moreover, Paragraph 3 of the 1964 Order deals with the procedure for disposal of questions referred to the Tribunal. For the purposes of the present adjudication, the relevant portions of Paragraph 3 read as follows:

"3. Procedure for disposal of questions.

(1) The Tribunal shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced and after hearing such persons as may desire to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.

(7) In case where notice is duly served, the proceedee shall appear before the Foreigners Tribunal in person or by a counsel engaged by him or her, as the case may be, on every hearing before the Foreigners Tribunal.

(8) The Foreigners Tribunal shall give the proceedee ten days time to give reply to the show-cause notice and further ten days time to produce evidence in support of his or her case. ...

(10) The Foreigners Tribunal shall take such evidence as may be produced by the concerned Superintendent of Police.

(11) The Foreigners Tribunal shall hear such persons as, in its opinion, are required to be heard.

(12) The Foreigners Tribunal may grant adjournment of the case on any plea sparingly and for reasons to be recorded in writing. ...

(15) After the case has been heard, the Foreigners Tribunal shall submit its opinion as soon thereafter as may be practicable, to the officer or the authority specified in this behalf in the order of reference.

(16) The final order of the Foreigners Tribunal shall contain its opinion on the question referred to which shall be a concise statement of facts and the conclusion."

11. A bare perusal of Section 9 of the 1946 Act shows that it undoubtedly places the burden upon the proceedee to prove that he or she is not a foreigner. The provision is couched in clear terms and operates notwithstanding anything contained in the Indian Evidence Act, 1872. The reason for such a statutory burden is also understandable. Facts relating to birth, parentage, residence, family lineage, migration, if any, and documents supporting nationality are ordinarily matters within the special knowledge and custody of the person proceeded against.

12. However, the existence of a statutory burden under Section 9 of the 1946 Act cannot be read to mean that the Tribunal is relieved of its own obligation to conduct a lawful adjudication. Section 9 does not authorise a mechanical declaration. It does not permit the reference to be accepted as conclusive merely because it has been made. It also does not permit the Tribunal to treat absence of the proceedee as a substitute for examination of the material placed before it. The burden on the proceedee operates within a legal process. It does not replace the legal process itself.

13. The burden under Section 9 of the 1946 Act must therefore be understood in the context of the 1964 Order. Paragraph 3 of the 1964 Order requires that the proceedee must be served with the main grounds on which he or she is alleged to be a foreigner. The expression "main grounds" is of significance. It cannot be reduced to a bare assertion that the person is suspected to be a foreigner. The proceedee must know, at least in substance, the basis on which the allegation is founded. Only then can the proceedee meaningfully answer the reference and discharge the burden cast upon him or her.

14. The procedure prescribed under Paragraph 3 of the 1964 Order also shows that the proceeding before the Tribunal is not an administrative formality. The proceedee has to be given an opportunity to file a reply, produce evidence and be heard. The concerned Superintendent of Police may also produce evidence. The Tribunal may hear such persons as it considers necessary. After the case is heard, the Tribunal is required to submit its opinion. The final order must contain a concise statement of facts and the conclusion. These requirements are inconsistent with any notion that the Tribunal may simply affirm the reference upon non-appearance of the proceedee.

15. Even in a case where the proceedee fails to appear despite service, the Tribunal continues to act as a quasi judicial forum. It must satisfy itself that notice was duly served in accordance with law. It must examine whether the main grounds were made available to the proceedee. It must consider the evidence produced by the State. It must assess whether the material placed before it is capable of supporting the conclusion that the proceedee is a foreigner. It must record reasons, even if briefly. An ex parte proceeding may dispense with the participation of the absent party, but it does not dispense with objective consideration and meaningful adjudication by the Tribunal.

16. The statutory scheme, therefore, has two complementary features. The first is that the proceedee carries the burden of proving that he or she is not a foreigner. The second is that the Tribunal must ensure a fair procedure, meaningful notice, consideration of material, and a reasoned opinion. These features are not in conflict. They operate together. The burden under Section 9 of the 1946 Act arises and

is discharged within the procedural safeguards of Paragraph 3 of the 1964 Order.

17. The above understanding is fortified by the judgment of this Court in **Md. Rahim Ali @ Abdur Rahim v. State of Assam and Others, 2024 INSC 511**. In that case, this Court examined the operation of Section 9 of the 1946 Act and Paragraph 3 of the 1964 Order in the context of a declaration made by a Foreigners Tribunal. The Court explained that the burden under Section 9 is not to be understood as permitting the authorities to proceed on a bare allegation or an unsupported suspicion. The authority must possess some material basis for initiating the proceeding, and the proceedee must be informed of the substance of the case which he or she is required to meet. The decision in **Md. Rahim Ali** (Supra) is important for another reason. This Court drew a clear distinction between the mere allegation that a person is a foreigner and the "main grounds" contemplated under Paragraph 3(1) of the 1964 Order. The expression "main grounds" requires something more than a formal accusation. It requires disclosure of the essential basis on which the allegation is founded, so that the proceedee is not left to answer an undefined suspicion. Without such disclosure, the opportunity to file a representation and produce evidence would be more illusory than real.

18. This Court in **Md. Rahim Ali** (Supra) also clarified that Section 9 does not exclude the principles of natural justice. The statutory burden placed upon the proceedee operates only after the proceeding is lawfully initiated and after the proceedee is placed in a position to understand the case against him or her. The burden cannot be shifted in a vacuum. A person cannot be expected to prove the negative without being told, with reasonable clarity, the material basis on which he or she is alleged to be a foreigner. The consequence of a declaration by a Foreigners Tribunal was also discussed by this Court as it was held that such a declaration is not a routine civil consequence. It may lead to detention, deportation, separation from family and community, and in a given case, even the possibility of statelessness. This Court therefore emphasised that the process by which such a declaration is made must satisfy the minimum requirements of fairness and must rest upon material capable of supporting the conclusion.

19. These requirements also have a constitutional foundation. Articles 14 and 21 of the Constitution of India (hereinafter referred to as "the Constitution") read as follows:

"14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

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

20. It is necessary to lay emphasis on the language of both these Articles. Article 14 of the Constitution uses the expression "any person". Article 21 of the Constitution uses the expression "no person". Neither provision is confined to citizens. The protection of equality before law, equal protection of laws, life and personal liberty is, therefore, available to every person within the territory of India. A person proceeded against before a Foreigners Tribunal may ultimately fail to establish Indian citizenship, but the process by which such determination is made must still satisfy the constitutional requirements of fairness, reasonableness and non-arbitrariness.

21. This Court has consistently recognised that even a foreigner is entitled to the protection of life and personal liberty under Article 21 of the Constitution. In **Louis De Raedt v. Union of India, (1991) 3 SCC 554**, this Court held that the fundamental right of a foreigner is available under Article 21 of the Constitution for "life and liberty", although the right to reside and settle in India under Article 19(1)(e) of

the Constitution is confined to citizens. This distinction is important in the present case. The State may regulate the entry, stay and removal of foreigners in accordance with law, but the person concerned is not placed outside the protection of fair procedure.

22. The same principle was reiterated in **National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742**, where this Court rejected the contention that persons whose citizenship was disputed could be denied constitutional protection. The Court observed that foreigners are entitled to the protection of Article 21 of the Constitution. The constitutional guarantee of life and personal liberty, therefore, operates even at the stage where the status of the person is itself under inquiry.

23. The content of Article 21 of the Constitution was thoroughly explained by this Court in **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**. The Court held that the mere prescription of some procedure does not satisfy Article 21 of the Constitution. The procedure must be "fair, just and reasonable" and cannot be "fanciful, oppressive or arbitrary". This principle is directly attracted where a statute creates a mechanism for determining whether a person is a foreigner. The fact that the statute prescribes a special burden of proof does not mean that the process can be unfair or arbitrary.

24. Article 14 of the Constitution also upholds the content of fair procedure. A State action which is arbitrary cannot claim the protection of law merely because it is clothed in statutory form. A proceeding which may result in a person being declared a foreigner cannot be sustained if the procedure adopted is mechanical, one-sided, or devoid of application of mind. Equal protection of laws requires that the statutory procedure be applied in a real and meaningful manner. It is not enough that a notice is formally issued or that an order is formally passed. The Tribunal must examine whether the proceedee had a fair opportunity, whether the main grounds were disclosed, whether the evidence before it was capable of supporting the reference, and whether the conclusion follows from the material on record.

25. The principle of audi alteram partem, which literally means that the other side must be heard, is one of the two great limbs of natural justice. It is often expressed in the maxim that no person shall be condemned unheard. Its moral foundation was famously explained in **Cooper v. Wandsworth Board of Works, (1863) 14 CB (NS) 180**, where the Court emphasised that even where a statute is silent, a person whose rights or interests are likely to be affected must ordinarily be afforded an opportunity of being heard. The principle is, therefore, not a mere rule of technical procedure. It is a rule of fair play in action.

26. This Court has repeatedly emphasised that the rules of natural justice are meant to secure justice and to prevent miscarriage of justice. In **A.K. Kraipak v. Union of India, (1969) 2 SCC 262**, this Court explained that these rules do not supplant the law, but supplement it, and that their application depends upon the framework of the statute and the nature of the power being exercised. The said principle squarely applies to proceedings before the Foreigners Tribunal, which exercises quasijudicial functions and returns an opinion carrying serious civil consequences.

27. In **Canara Bank v. Debasis Das, (2003) 4 SCC 557**, this Court explained that adherence to natural justice is of supreme importance where a quasi-judicial body determines disputes or where administrative action involving civil consequences is undertaken. The Court further emphasised that notice is the first limb of the rule of audi alteram partem. A notice must be precise and must reasonably apprise the person of the case which he or she has to meet.

28. In proceedings before the Foreigners Tribunal, this principle assumes particular importance. The person proceeded against is often required to establish facts relating to ancestry, residence, identity and family linkage through old public documents. Such a person cannot be expected to discharge the

statutory burden under Section 9 of the 1946 Act unless the main grounds of the allegation are disclosed and a meaningful opportunity is afforded to file a response and produce evidence. The opportunity contemplated by Paragraph 3 of the 1964 Order must therefore be an effective opportunity, and not a merely formal one.

APPLICATION OF LAW TO THE PRESENT APPEALS CATEGORY I - THOSE WHO NEVER APPEARED BEFORE THE TRIBUNAL

29. The above principles must now be applied to the three categories identified earlier. We first take up the cases falling in the first category, where the appellants did not appear before the Tribunal despite the Tribunal or the High Court recording service of notice.

30. In this category, the Tribunal was not bound to keep the proceeding pending indefinitely. Paragraph 3(7) of the 1964 Order expressly contemplates that where notice is duly served, the proceedee shall appear before the Foreigners Tribunal in person or through counsel on every date of hearing. Therefore, where the record shows due service and the proceedee fails to appear, the Tribunal may proceed further in accordance with law.

31. However, Paragraph 3(7) cannot be read in isolation. It must be read with Paragraph 3(1), which requires that the proceedee be served with the main grounds on which he or she is alleged to be a foreigner and be given a reasonable opportunity of making a representation and producing evidence. It must also be read with Paragraph 3(10), which requires the Tribunal to take such evidence as may be produced by the concerned Superintendent of Police, and Paragraph 3(16), which requires the final order to contain the opinion of the Tribunal together with a concise statement of facts and the conclusion.

32. Thus, even where the proceeding is ex parte, the Tribunal is still required to perform an adjudicatory function. The non-appearance of the proceedee may deprive him or her of the opportunity to lead evidence, but it does not relieve the Tribunal of the obligation to examine whether the reference is supported by the material produced by the State. Section 9 of the 1946 Act places the burden upon the proceedee, but that burden does not convert the absence of the proceedee into proof of the allegation. The Tribunal must still apply its mind to the main grounds, the proof of service, the evidence placed before it and the question referred.

33. The matters falling in this category show that the appellants have been declared foreigners without any contest on their behalf before the Tribunal. Having regard to the grave consequences of such declaration, and having regard to the statutory requirement that even the final order of the Tribunal must contain a concise statement of facts and conclusion, we are of the view that these matters deserve to be remitted to the concerned Tribunals for fresh consideration. This opportunity shall be granted only once and shall remain subject to strict conditions so that the remand is not used to delay the proceedings.

CATEGORY II - EVIDENCE APPRECIATION BY HIGH COURT

34. We now turn to the second category, where the High Court, while examining the challenge to the ex parte opinion of the Tribunal, proceeded to examine or appreciate the documents and material placed before it.

35. The principle applicable to the first category applies with equal force to this category, though in a different manner. If even an ex parte opinion of the Tribunal must reflect an independent examination of the reference, the main grounds, the State evidence and the conclusion required under Paragraph 3(16) of

the 1964 Order, then the statutory adjudication contemplated by the 1964 Order cannot ordinarily be substituted by a first-time factual appreciation in writ proceedings.

36. Paragraph 3 of the 1964 Order clearly identifies the Tribunal as the forum before which the factual inquiry has to be undertaken. Paragraph 3(1) gives the proceedee an opportunity to make a representation and produce evidence. Paragraph 3(10) requires the Tribunal to take such evidence as may be produced by the concerned Superintendent of Police. Paragraph 3(11) empowers the Tribunal to hear such persons as it considers necessary. Paragraphs 3(15) and 3(16) require the Tribunal to return its opinion with a concise statement of facts and conclusion. These provisions show that the Tribunal is not merely a forwarding authority. It is the primary adjudicatory forum for deciding the question referred.

37. In matters concerning nationality, the evidence often relates to ancestry, family linkage, residence, identity, electoral records and other public documents. Such material may require proof, explanation, comparison, and where necessary, rebuttal. The burden under Section 9 of the 1946 Act is also to be discharged before the Tribunal. The State evidence is likewise to be placed before and considered by the Tribunal. Therefore, where the proceeding before the Tribunal was *ex parte* and the documents relied upon by the proceedee were not tested before the statutory forum, the High Court should not ordinarily become the first forum for appreciation of such material.

38. In the matters falling in this category, the High Court examined the documents and material placed before it while declining interference with the *ex parte* opinion of the Tribunal. Such an exercise, in the facts of the present batch, cannot cure the absence of a proper adjudication before the Tribunal under Paragraph 3 of the 1964 Order. The appropriate course is to remit these matters to the concerned Tribunals, so that the appellants may produce their material, the State may adduce its evidence, and the Tribunal may return a fresh opinion in accordance with law.

CATEGORY III - APPELLANT LEFT MIDWAY OF THE TRIBUNAL PROCEEDINGS

39. We now turn to the third category, where the appellants had appeared before the Tribunal at some stage, or had taken some step in the proceeding, but thereafter the proceeding continued in their absence and culminated in an *ex parte* opinion.

40. This category stands on a slightly different footing from the first category. Here, the appellants were aware of the proceedings and had, in many cases, either appeared before the Tribunal, sought time, filed a written statement, or participated through counsel. Paragraph 3(7) of the 1964 Order places an obligation upon a proceedee, once notice is duly served, to appear before the Tribunal on every date of hearing either in person or through counsel. Paragraph 3(8) provides the time within which the proceedee is to reply to the show cause notice and produce evidence. Paragraph 3(12) further makes it clear that adjournments are to be granted sparingly and for reasons to be recorded.

41. Therefore, where a proceedee appears before the Tribunal but thereafter defaults, the Tribunal cannot be faulted merely for declining to grant repeated adjournments or for proceeding further in accordance with law. The statutory scheme expects diligence from the proceedee, particularly because the burden under Section 9 of the 1946 Act lies upon him or her. A person who has entered appearance cannot treat the proceeding casually or frustrate the adjudication by remaining absent at the stage of evidence.

42. However, the default of the proceedee does not alter the character of the adjudication which the Tribunal is required to undertake. Paragraphs 3(15) and 3(16) of the 1964 Order continue to apply with full force. The Tribunal must still submit its opinion after the case has been heard, and the final order

must contain a concise statement of facts and the conclusion. The opinion must reflect application of mind to the question referred, the material placed by the State, and such material as may already be on record on behalf of the proceedee.

43. In the matters falling in this category, the proceedings had become effectively *ex parte* at the stage when the appellants were required to continue their defence or adduce evidence. The consequence is that the declarations against them were made without a complete adjudication on the material which they seek to place before the statutory forum. In view of the serious consequences which follow such declarations, and in order to ensure that the determination of status is made after a complete and reasoned adjudication, we consider it appropriate to remit these matters also to the concerned Tribunals.

44. This remand is not to be understood as approval of the conduct of the appellants in defaulting before the Tribunal. It is granted only as one final opportunity, keeping in view the nature of the determination and the consequences which may follow. The appellants in this category shall therefore be required to appear before the concerned Tribunals, file their written statements and documents within the time granted, and cooperate with the proceedings without seeking unnecessary adjournments. If they fail to do so, the Tribunal shall be at liberty to proceed in accordance with law.

CONCLUSION

45. Before issuing the operative directions, we consider it necessary to clarify the limited scope of the present judgment. We have not examined the merits of the claim of citizenship set up by any of the appellants. We have not expressed any opinion on the genuineness, admissibility, relevance or sufficiency of any document relied upon by them. Those questions must be decided by the concerned Tribunals independently, on the basis of the evidence which may be produced before them and in accordance with law.

46. Citizenship and foreigner status occupy a field of high constitutional and legal significance. Article 11 of the Constitution preserves the power of Parliament to make provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Separately, the 1946 Act and the 1964 Order provide the statutory mechanism through which questions as to whether a person is or is not a foreigner are referred to and determined by the Tribunal. The State has a legitimate and compelling interest in ensuring that persons who are not legally entitled to claim Indian citizenship do not secure such status by misuse of process, by false claims, or by taking advantage of procedural delays

47. At the same time, the determination of such status must be made through a process which is fair, lawful and reasoned. The statutory burden under Section 9 of the 1946 Act remains fully applicable. The remand being directed by this Court is not intended to dilute that burden, nor is it intended to confer any equity in favour of a person who is unable to establish his or her claim in accordance with law. It is only to ensure that the serious consequence of being declared a foreigner follows from an adjudication which satisfies the requirements of the 1946 Act, the 1964 Order, and the constitutional mandate of fairness.

48. Accordingly, the impugned judgments and orders passed by the High Court in all these matters are set aside. The corresponding opinions and orders passed by the concerned Foreigners Tribunals or the erstwhile Illegal Migrants (Determination) Tribunals are also set aside.

49. The matters are remitted to the concerned Foreigners Tribunals for fresh adjudication in accordance with law. The concerned Tribunals shall decide the references afresh, uninfluenced by any observation

made either by the High Court in the impugned judgments or by the Tribunals in the earlier opinions.

50. The appellants shall appear before the concerned Tribunals within four weeks from the date of this judgment. Upon their appearance, the concerned Tribunals shall permit them to file their written statements, documents and affidavits of evidence within such time as may be fixed by the Tribunal. The time so granted shall be reasonable, but shall not be extended except for sufficient cause to be recorded in writing.

51. The State and the concerned reference authority shall also be at liberty to produce such material and adduce such evidence as may be permissible in law. The Tribunals shall thereafter consider the material produced by both sides and return fresh opinions in terms of the 1946 Act and the 1964 Order.

52. The appellants shall cooperate with the proceedings and shall not seek unnecessary adjournments. If any appellant fails to appear before the concerned Tribunal within the time granted by this Court, or having appeared, fails to cooperate with the proceedings, it shall be open to the concerned Tribunal to proceed further in accordance with law.

53. Until fresh opinions are rendered by the concerned Tribunals, no coercive steps shall be taken against the appellants on the basis of the opinions which have been set aside by this judgment, subject to the appellants appearing before the concerned Tribunals and cooperating with the proceedings.

54. The concerned Tribunals shall make an endeavour to decide the references as expeditiously as possible, preferably within six months from the date on which the appellants first appear before them pursuant to this judgment.

55. The appeals are allowed in the above terms.

56. Pending applications, if any, shall stand disposed of.

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