HC-KAR
CNR: KAHC010416612026

NC: 2026:KHC:62981
WP No. 19120 of 2026

R

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13TH DAY OF NOVEMBER, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE C.M. POONACHA**

**WRIT PETITION NO. 19120 OF 2026 (GM-RES)**

**BETWEEN:**

1. SHRI. ADBUL RAHIM
S/O MOHD. SHAL JAMAL,
AGED ABOUT 47 YEARS,
HOUSED AT UTILE FOUNDATION,
KOTHANUR, BENGALURU - 560 077.
(HIM BEING IN THE DETENTION CENTRE IS
REPRESENTED BY HIS NEPHEW,
PETITIONER NO. 2)

2. SHRI. JAHIDUL ISLAM
S/O MUSTAFA,
AGED ABOUT 38 YEARS,
PERMANENT RESIDENT OF
NO. 1023, JHUGGI E,
43A D BLOCK,
70 FUTA ROAD,
NEW SEEMAPURI, JHILMIL,
EAST DELHI - 110095.
PRESENTLY IN BENGALURU AND
RESIDING AT NO. 60, SADHGURU
SAINATH SCHOOL ROAD
KUDLU, BOMMANAHALLLI,
BENGALURU 560068.

...PETITIONERS

(BY SRI. CLIFTON D ROZARIO, ADVOCATE FOR
MS. MAITREYI KRISHNAN.,ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA
   DEPARTMENT OF HOME,
   REPRESENTED BY ITS SECRETARY,
   VIDHANA SOUDHA,
   BENGALURU - 560 001.

2. DIRECTOR GENERAL OF POLICE
   AND INSPECTOR GENERAL OF POLICE,
   KARNATAKA NRUPATUNGA ROAD,
   BENGALURU - 560 001.

3. COMMISSIONER OF POLICE,
   INFANTRY ROAD,
   BENGALURU - 560 001.

4. POLICE INSPECTOR,
   PARAPPANA AGRAHARA
   POLICE STATION, 8, HOSUR ROAD,
   BENGALURU - 560030

5. FOREIGNERS REGIONAL
   REGISTRATION OFFICER (FRRO)
   FOREIGNERS REGIONAL REGISTRATION OFFICE
   5TH FLOOR, 'A, BLOCK,
   TTMC BMTC BUS STAND BUILDING,
   KENGAL HANUMANTHAIAH RD,
   NGO COLONY, SHANTI NAGAR,
   BENGALURU - 560 027.

…RESPONDENTS

(BY SRI. K ARAVIND KAMATH, ASG A/W
SRI. SHIVA REDDY V, AGA FOR R1 TO R4
MS. SWAMINI GANESH MOHANAMBAL, CGC FOR R5)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER BEARING NO. FRRO/BOI/BLR/MRO/2026- 100 DATED 05.03.2026 PASSED BY THE 5TH RESPONDENT, FOREIGNERS

REGIONAL REGISTRATION OFFICE, BENGALURU, IMPOSING RESTRICTIONS ON THE MOVEMENT OF THE 1ST PETITIONER UNDER SECTION 7(2)(F) OF THE FOREIGNERS ACT, 2025 READ WITH PARAGRAPH 8 OF THE IMMIGRATION AND FOREIGNERS ORDER, 2025 (PLACED AS ANNEXURE - A).

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA

**CAV ORDER**

In the present writ petition, the petitioners assail the Movement Restriction Order dated 05.03.2026[1] (Annexure-A to the writ petition) passed under sub-section (2) of Section 7 of the Immigration and Foreigners Act, 2025[2] and para 8 of the Immigration and Foreigners Order, 2025[3] whereunder the first petitioner[4] has been ordered to be referred to the Utile Foundation, Kothanur, Bengaluru[5] under the Kothanur Police Station limits with immediate effect. This Court vide interim order dated 06.07.2026, restrained the respondents from deporting the petitioner.

[1] Hereinafter referred to as 'impugned order'
[2] Hereinafter referred to as 'Foreigners Act, 2025'
[3] Hereinafter referred to as 'Foreigners Order, 2025'
[4] Hereinafter referred to as 'petitioner'
[5] Hereinafter referred to as 'Foundation'

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**Background Facts:**

2. It is the case of the petitioner that the second petitioner is the nephew of the first petitioner and that both the petitioners are Indian citizens. The petitioner is stated to have been born on 14.04.1979 at New Seemapuri, Delhi. That the petitioner moved to Bengaluru in the year 2014 and is carrying on 'Waste Management and Scrap Trading' activities through his proprietorship concern 'AR Enterprises' bearing Udyam registration No.UDYAM-KR-03-031027 and having its registered office at No.170/4, Kudlu village, Madiwala, Bengaluru Urban-560068. That the petitioner is married and is residing with his wife Nazima and his infant child Abdul Rayyan who is aged 6 months. That the petitioner has the requisite identity documents like Birth Certificate, Passport, Election Identity Card, Aadhar Card, Permanent Account Number Card[6], Driving Licence, and BBMP Identity Card.

3. That on 05.03.2026, the petitioner was picked up by the Parappana Agrahara Police Station Officials pursuant to instructions of the Deputy Commissioner of Police, Electronic

[6] Hereinafter referred to as 'PAN Card'

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City Division as part of a drive undertaken to identify illegal Bangladeshi immigrants. That the petitioner was taken into custody and informed that he was suspected to be a foreign national and was handed over to the Foreigners Regional Registration Office, Bangalore[7]. That the petitioner repeatedly asserted that he was an Indian citizen by birth and offered to produce all documents in support of his citizenship and identity. However, on the same day, i.e., on 05.03.2026 the respondent No.5-FRRO, passed the impugned order dated 05.03.2026. That in the said proceedings the petitioner was identified as, "Md.Rahim Howladar, s/o Md.Motaleb Howladar." That consequent to the impugned order dated 05.03.2026, the petitioner is at the Foundation. That the impugned order proceeds on the assumption that the petitioner is a foreign national, despite the petitioner contending to the contrary.

4. That the petitioner was prosecuted for the offences under Section 14-A(b) of the Foreigners Act, 1946 in ST No.1577/2010 before the Court of the Additional District and Sessions Judge, Ghaziabad, Uttar Pradesh[8]. That vide judgment

[7] Hereinafter referred to as 'FRRO'
[8] Hereinafter referred to as 'Sessions Court'

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dated 08.06.2012, the petitioner was convicted by the Sessions Court on the allegation that he was a Bangladeshi National by name "Abdul Rahim s/o Shah Jamal, resident of Bagerhat, Bangladesh." That being aggrieved by the judgment dated 08.06.2012 passed by the Sessions Court, the petitioner preferred Criminal Appeal No.2509/2012 before the High Court of Judicature at Allahabad and vide order dated 06.07.2012 passed in the said appeal, the appeal of the petitioner was admitted and the petitioner was ordered to be enlarged on bail. That the appeal is pending consideration before the High Court of Judicature at Allahabad.

5. It is further contended that the petitioner was illegally detained by the respondent - authorities and the petitioner seeking a writ of Habeas Corpus filed WP (HC) No.40/2026 before this Court. That when the said Habeas Corpus petition was listed before the Court, the impugned order dated 05.03.2026 was produced in the said proceedings. Accordingly, the said WP (HC) No.40/2026 was disposed of vide order dated 17.04.2026, reserving liberty to the petitioner to challenge the

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impugned order dated 05.03.2026. Accordingly, the present writ petition is filed.

6. That the petitioner is the primary earning member of his family, which includes his wife and child and that the petitioner has been deprived of his liberty by virtue of the impugned order dated 05.03.2026 and the same has prevented him from earning his livelihood for himself and his family.

7. On behalf of the respondents, a counter affidavit, on behalf of respondent No.5 is filed. The said counter affidavit is sworn to by the Assistant Director, Bureau of Immigration of the respondent No.5.

8. In the said counter affidavit it is affirmed that the Birth Certificate (Annexure - E to the writ petition) relied upon by the petitioner to contend that he was born on 14.04.1979 at Guru Gobind Singh Government Hospital, Delhi, is not a genuine document, as when the respondents made enquiries regarding the veracity of the said Birth Certificate, the report of the said enquiry revealed that Guru Gobind Singh Government Hospital was established in December 1995 and there is no birth record

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of Sri.Abdul Rahim s/o Mohd. Shah Jamal. That the enquiry further revealed that there is no record of the Death Certificate of the father of the petitioner at the Municipal Corporation of Delhi[9] and the registration number of the said certificate does not exist. It is further sought to be placed on record that in WP (HC) No.40/2026, the petitioner had produced a Birth Certificate whereunder the date of birth were mentioned as 14.04.1979 and the date of registration was mentioned as 24.08.2001 and issued on 18.03.2026 respectively and bearing registration number B202609903470063096, whereas in the present petition, in the Birth Certificate although the date of birth is mentioned as 14.04.1979, the date of registration is mentioned as 27.09.2019, and the date of issuance as 31.03.2026 respectively, bearing registration number B2026090143507. The copies of the said Birth Certificates are produced as Exhibits R5 and R6 along with the said counter affidavit.

9. Heard Sri. Clifton D Rozario learned counsel appearing for the petitioner and the learned Additional Solicitor General Sri.

[9] Hereinafter referred to as 'MCD'

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Arvind Kamath appearing along with Smt. Swamini Ganesh Mohanambal, learned Central Government Counsel, for the respondent - authorities.

10. It is the vehement contention on behalf of the petitioner that the impugned order dated 05.03.2026 is an arbitrary action on the part of the official respondents and that the liberty of the petitioner has been curtailed without the petitioner having been afforded an adequate opportunity to put forth his case. It is further contended that the petitioner having been prosecuted in criminal proceedings under the provisions of the Foreigners Act, 1946, and since adjudication of the same is pending consideration in Criminal Appeal No.2509/2012 before the High Court of Judicature at Allahabad and the petitioner having been granted bail in the said proceedings, the liberty of the petitioner cannot be curtailed by the impugned order dated 05.03.2026. It is also contended that the impugned order is an executive action by which the liberty of the petitioner granted pursuant to a judicial order cannot be curtailed.

11. On behalf of the respondent - authorities, it is contended that the petitioner, being a Bangladeshi National, the issuance

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of the impugned order is just and proper. That having regard to the fact that the petitioner is a Bangladeshi National, who is claiming to be an Indian citizen by virtue of forged/fabricated documents, the question of considering the various measures as contemplated under Section 7 of the Foreigners Act 2025 for the purpose of regulating/restricting the movement of the petitioner, does not arise. That the writ petition of the petitioner on its merits ought not to be considered in view of the fact that the petitioner has produced false/fabricated/contradictory material in the course of judicial proceedings. Hence, it is contended that the writ petition of the petitioner is liable to be dismissed on the said ground alone.

12. The submissions of the parties were heard at length. Both the learned counsels relied upon various judgments, which shall be referred to during the course of this order to the extent that the same are required for deciding the issue that arises for consideration in the present writ petition.

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**Statutory Provisions & Legal Position**

13. Before considering the various contentions put forth by the respective parties, it is relevant to notice the various statutory stipulations.

14. Sub-section (1) of Section 3 of the Citizenship Act, 1955[10] reads under:-

> *"3. Citizenship by birth.—(1) Except as provided in sub-section (2), every person born in India—*
> *(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;*
>
> *(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship(Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth;*
>
> *(c) on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where—*
>
> *(i) both of his parents are citizens of India; or*
>
> *(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth."*

15. Sub-section (1) of Section 3 of the Citizenship Act stipulates the persons who shall be citizens of India. In the

[10] Hereinafter referred to as 'Citizenship Act'

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present case, reliance is placed by the petitioner on Section 3(1)(a) of the Citizenship Act to contend that the petitioner, having been born in India after 26.01.1950 but before 01.07.1987 is a citizen of India by birth.

16. Section 3 of the Foreigners Act, 1946 reads as under:

> *"3. Power to make orders.—*
>
> *(1)The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into [India] or their departure therefrom or their presence or continued presence therein.*
>
> *(2)In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—*
>
> *(a) shall not enter [India] or shall enter [India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;*
>
> *(b) shall not depart from [India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;*
>
> *(c) shall not remain in [India] or in any prescribed areas therein; [(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;]*

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*(d) shall remove himself to, and remain in, such area in [India] as may be prescribed;*

*(e) shall comply with such conditions as may be prescribed or specified—(i)requiring him to reside in a particular place;(ii)imposing any restrictions on his movements;(iii)requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;(iv)requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;(v)requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;(vi)prohibiting him from association with persons of a prescribed or specified description;(vii)prohibiting him from engaging in activities of a prescribed or specified description;(viii)prohibiting him from using or possessing prescribed or specified articles;(ix)otherwise regulating his conduct in any such particular as may be prescribed or specified;*

*(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;[(g) shall be arrested and detained or confined;]and may make provision [for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.[(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) 5 [or clause (f)] of sub-section (2).]"*

17. The Foreigners Act, 1946 stipulates the provisions for entry of foreigners into India, their presence in the country and their departure therefrom. Sub-section (1) of Section 3 empowers

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the Central Government to make any provision with respect to prohibiting, regulating or restricting the entry, departure or their presence/continued presence in India. Sub-section (2) of Section 3 of the Foreigners Act, 1946 prescribes the various measures that could be stipulated by the Central Government with respect to a foreigner.

18. The Foreigners Act, 2025 (Act No.13/2025) was published in the Official Gazette on 04.04.2025. Sub-section (1) of Section 36 of the Foreigners Act, 2025, repeals *inter alia* the Foreigners Act, 1946. Section 7 of the Foreigners Act, 2025 empowers the Central Government to make orders/directions, as also issue instructions with respect to prohibiting / regulating / restricting the entry / continued presence or departure of foreigners therefrom. The said Section 7 reads as under:

> *"7(1) The Central Government may, by an order direction or instruction. make provisions, either generally or with respect to all foreigners or with respect to any particular foreigner or any specified class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.*
>
> *(2) In particular, and without prejudice to the generality of the foregoing power, the orders or directions or*

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*instructions issued under this section may provide that the foreigner-*

*(a) shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be specified;*

*(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be specified;*

*(c) shall not remain in India or in any specified area therein;*

*(d) shall, if he has been required by order or direction or instruction under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;*

*(e) shall remove himself to, and remain in, such area in India as may be specified;*

*(f) shall comply with such conditions as may be specified—*
*(i) requiring him to present himself for examination for such information in such manner, at such time, as may be required;*

*(ii) requiring him to reside in a particular place;*

*(iii) imposing any restrictions on his movements;*

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

*(v) requiring him to allow his photograph and biometric information, as may be specified, to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be specified;*

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

*(vii) prohibiting him from association with persons of a specified description;*

*(viii) prohibiting him from engaging in activities of a specified description;*

*(ix) prohibiting him from using or possessing specified article;*

*(x) regulating his conduct in any such particular as may be specified.*

*(3) In addition to the foregoing, the Central Government may make provision for any matter which is to be or may be specified and for such incidental and supplementary matters as may be expedient or necessary for giving effect to this Act.*

*(4) Any authority specified in this behalf may, with respect to any particular foreigner, issue order or direction or instruction under clause (f) of sub-section (2)."*

19. In exercise of the powers conferred under Section 7 read with Sections 3 and 11 of the Foreigners Act, 2025, the Ministry of Home Affairs, Government of India, has issued the Foreigners Order 2025, which was published in the Official Gazette on 31.08.2025. The Foreigners Order, 2025 is issued in supersession of, *inter alia*, the Foreigners Order, 1948, which

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was issued under the provisions of the Foreigners Act, 1946. Chapter II (paras 8 to 11) of the Foreigners Order, 2025, stipulates the restrictions on certain activities / movement of a foreigner. Para 8 of the Foreigners Order, 2025 reads as under:

> *"8. Power to impose restrictions. (1) The civil authority or any authority as specified by the Central Government in this behalf may, by order in writing, direct that any foreigner shall comply with such conditions specified therein regarding -*
>
> *(a) his place of residence;*
>
> *(b) his movements;*
>
> *(c) his association with any person or class of persons specified in the order;*
> *and*
>
> *(d) his possession of such articles as specified in rule 20 of the rules.*
>
> *(2) Every State Government and Union territory Administration shall set up dedicated holding centers or camps for the purpose of restricting the movement of foreigners, till they are deported."*

20. Para 9 stipulates the restrictions that could be imposed on the employment of a foreigner and para 10 stipulates the restrictions that could be imposed on certain activities of a foreigner.

21. It is a settled proposition of law that the rights under Article 19 of the Constitution of India, which *inter alia*,

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recognises the right to move freely throughout India and the right to reside and settle in every part of the Country are available only to the citizens of India and not to foreigners. However, the rights stipulated under Article 14 i.e., equal protection of laws and the right to life and liberty in terms of Article 21 of the Constitution of India are available to all persons in India, including foreigners.

22. The Supreme Court in the case of ***Hasan Ali Raihany v. Union of India and Others***[11] considered a writ petition filed by a foreigner challenging an order of deportation passed against him. In the said case, the question of procedural fairness of a decision to deport a foreign national, who had entered into the territory of India on a valid visa was considered. In the said context, the Supreme Court held as under:

> *"6. The question that arises for consideration is whether the authorities intend to deport him again and if so, whether they are obliged to disclose to the petitioner the reasons for his proposed deportation.*
>
> *8. Having regard to the facts and circumstances of the case, particularly, having regard to the fact that the petitioner has entered this country legally*

[11] (2006) 3 SCC 705

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> *upon the Single Entry Permit issued to him, it is only fair that the competent authority must inform him the reasons for his deportation. If such a decision is taken, the petitioner must be given an opportunity to submit his representation against his proposed expulsion. The competent authority may thereafter consider his representation and pass appropriate order. As observed by this Court, this procedure may be departed from for compelling reasons of national security etc. In the instant case, we have not so far noticed any fact which may provide a compelling reason for the State not to observe this procedure.*
>
> *9. We, therefore, dispose of this writ petition with the directions to the competent authority, who we are told is the Deputy Commissioner of Police and FRRO, Mumbai, to communicate to the petitioner the reasons why he is sought to be deported from this country. The reasons disclosed must be sufficient to enable the petitioner to make an effective representation, if he wishes to do so. The petitioner shall be given two weeks' time to make a representation which shall be considered by the competent authority as soon as possible. Any order passed shall be communicated to the petitioner forthwith. "*
>
> *(emphasis supplied)*

23. In the case of ***Sabitri Dey alias Swasti Dey and others v. Union of India***[12] the Supreme Court was considering a batch of appeals arising out of the proceedings before the Foreigners' Tribunal in the State of Assam. While considering

[12] Civil Appeal No. 2820/2024 along with connected matters vide judgment dated 13.07.2026.

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the various questions that arose therein, the Supreme Court *inter alia,* held as under:

> *"20. It is necessary to lay emphasis on the language of both uses the expression "no person". Neither provision is expression "any person". Article 21 of the Constitution confined to citizens. The protection of equality before is, therefore, available to every person within the law, equal protection of laws, life and personal liberty 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 of fairness, constitutional requirements 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 India³, this Court (1991) 3 SCC 554 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, 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.*

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*23. The content of Article 21 of the Constitution was thoroughly explained by this Court in Maneka Gandhi v. Union of Indias. The Court held that the mere prescription of some procedure does not satisfy Article 21 of the Constitution. The procedure must be oppressive or arbitrary". This principle is directly "fair, just and reasonable" and cannot be "fanciful, determining whether a person is a foreigner. The fact attracted where a statute creates a mechanism for 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, 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,*

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*not a mere rule of technical procedure. It is a rule of fair play in action.*

*xxxxxxxx*

*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."*

*(emphasis supplied)*

24. A Division Bench of this Court in the case of ***Obinna Jeremiah Okafor Vs. Foreigners Regional Registration***

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***Officer***[13]***,*** considering an appeal filed by a Nigerian National who was issued with a student visa to study in India and against whom an impugned order was passed, which was affirmed by a Single Judge of this Court. Considering the same, this Court, *inter alia* held as under:

> *"33. In the present case, the visa issued to the appellants was cancelled prior to its expiry. Undeniably, the Movement Restriction order, does curtail the liberty of the appellants. Thus, it was necessary to comply with the minimum procedural fairness standards. The appellants were required to be informed of the reasons for the said order, and at the very least ought to have been given an opportunity to submit their representation."*
>
> *(emphasis supplied)*

**Reasoning & Conclusion:**

REG. DOCUMENTS PRODUCED BY THE PETITIONER:

25. In this context, it is pertinent to note that while the petitioner has produced his birth certificate with the date of issue as 31.03.2026 (Annexure-E to the writ petition), it is the contention on behalf of the respondents that the petitioner had produced a birth certificate with the date of issue as 18.03.2026 (Annexure-R5 to the counter affidavit of

[13] WP No.1503/2025 - Order dated 27.01.2026

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respondent No.5) along with WP.HC.No.40/2026. The relevant details/particulars of the said birth certificates are as under:

| **Sl.No.** | **Particulars** | **Details as forthcoming in the birth certificate produced in WP HC No.40/2026** | **Details as forthcoming in the birth certificate produced in the present writ petition (Annexure-E to the writ petition)** |
|---|---|---|---|
| 1. | Name | Abdul Rahim | Abdul Rahim |
| 2. | Date of Birth | 14.04.1979 | 14.04.1979 |
| 3. | Place of Birth | Guru Gobind Singh Government Hospital | Guru Gobind Singh Government Hospital |
| 4. | Name of Mother | Asneyara Begam | Asneyara Begam |
| 5. | Name of Father | Mohd Shal Jamal | Mohd Shah Jamal |
| 6. | Address of Parents at the Time of Birth of the Child | No. 495, Jhuggi, E-43, New Seema Puri, Delhi - 110095. | No. 495, Jhuggi, E-43, New Seema Puri, Delhi - 110095. |
| 7. | Permanent Address of Parents | No. 495, Jhuggi E-43, New Seema Puri, Delhi - 110095. | No. 495, Jhuggi E-43, New Seema Puri, Delhi - 110095. |
| 8. | Registration Number | B202609903470063096 | B2026090143507 |
| 9. | Date of Registration | 24.08.2001 | 27.09.2019 |
| 10. | Date of Issue | 18.03.2026 | 31.03.2026 |

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26. It is further forthcoming that in support of the assertion on behalf of the petitioner that he is a citizen of India, the following documents are produced:

i) Passport (Annexure-E1 to the writ petition) bearing No.S4301192 in the name of Abdul Rahim showing the date of birth as 14.04.1979 and place of birth as Seema Puri, Delhi East, Delhi issued on 20.06.2018;

ii) Voter Identity Card (Annexure-E2 to the writ petition) issued on 05.12.2005 by the Election Commission of India, Delhi bearing No. GVC1067974 in the name of Abdul Rahim; father's name as Md Sahajaha, and the address as 495, Jhuggi E-43, New Seema Puri, Delhi.

iii) Aadhar Card (Annexure-E3 to the writ petition) bearing No. 3560 5602 0295 issued to Abdul Rahim s/o Mohd. Shal Jamal showing the date of birth as 14.04.1979 and address as No. 170/4 Kudlu Main Road, Opposite Sadguru Sainath School, Kudlu, Bommanahalli, Anekal Bengaluru, Karnataka - 560068.

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iv) PAN Card (Annexure-E4 to the writ petition) issued by the Income Tax Authorities bearing No. AKAPR2832H, in the name of Abdul Rahim; father's name as Mohd Shal Jamal, showing date of birth as 14.04.1979.

v) Driving Licence (Annexure-E5 to the writ petition) issued by the Transport Department of Government of NCT of Delhi, bearing Licence No. DL-0520020070560, in the name of Abdul Rahim s/o Sh.Md. Shah Jamal, showing date of birth as 14.04.1979, address as D-140, New Seemapuri, Delhi-110095, issued on 20.03.2010, having validity till 19.03.2013.

vi) UDYAM Registration Certificate (Annexure-C to the writ petition) issued by the Ministry of Micro, Small and Medium Enterprises bearing the registration number UDYAM-KR-03-0310627 wherein the name of the enterprise is shown as 'A.R.Enterprises'; date of incorporation as 04.10.2017; address as Ground Floor, Madivala, Bengaluru Urban - 560068 issued on 03.10.2023.

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vii) GST Registration Certificate (Annexure-D to the writ petition) issued by the Assistant Commissioner, on 20.09.2023, bearing registration number 29AKAPR2832H1Z3 in the name of Abdul Rahim, A.R.Enterprises Proprietorship, Ground floor, No. 170/4, Kudlu Village, Madivala, Bengaluru, Bengaluru Urban, Karnataka-560068.

viii) Bruhat Bengaluru Mahanagara Palike Identity Card (Annexure-E6 to the writ petition) issued to Abdul Rahim, bearing designation as Auto Driver, in Ward No. 191 Singa Sandra, showing date of birth as 14.04.1979, and address as No. 170/4, Kudlu Main Road, Opposite Sadguru Sainath School, Kudlu, Bengaluru-560068.

ix) Death Certificate of the father of the petitioner (Annexure-B to the writ petition) bearing registration number MCDOLIR-0210-004202074 and the name as Shahjmal, date of death as 16.08.1989, and the date of registration as 22.11.2010.

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27. It is also contended on behalf of the respondents that when the birth certificate of the petitioner was sought to be verified by the respondents - authorities, a communication dated 10.08.2026 was submitted by the office of the Medical Superintendent, Government of NCT of Delhi, Guru Gobind Singh Government Hospital indicating that the report has been submitted by the office of the Medical Superintendent, Government of NCT of Delhi, Guru Gobind Singh Government Hospital (a copy of which is produced as Annexure-R3 along with the counter affidavit of respondent No.5) , wherein it is stated that there is no birth record of Abdul Rahim S/o Mohammad Shah Jamal (D. O. B. 14.04.1979) as the said hospital was established in December 1995. The enquiry report dated 12.08.2006 (Annexure-R4 to the counter affidavit) submitted to the FRRO, discloses that no record was found of the death certificate of Shahjmal (father of the petitioner) at MCD, Shahdra North Zone, New Delhi and that the said registration number does not exist.

28. In response to the counter affidavit filed on behalf of respondent No. 5, a rejoinder has been filed on behalf of the

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petitioner, wherein it has been affirmed that the documents furnished by the concerned authorities have been furnished by the petitioner and that the petitioner cannot be held responsible/accountable for any error in mentioning the requisite details.

29. The petitioner asserts that he is an Indian citizen and relies on various documents in support of the same. It is the contention on behalf of the respondent - authorities that the petitioner is a Bangladeshi National and that the petitioner is relying upon fraudulent documents.

30. Although, it is the contention of the respondents that the petitioner has furnished different birth certificates in WP.HC.No.40/2026 and in the present petition, the chart (at para 25 hereinabove) clearly indicates that the details forthcoming in the said certificates are the same and that the certificates have been applied for on different dates.

31. Although, it is contended on behalf of the respondents that based on enquiry made by its officials that the hospital where the petitioner is stated to have been born in the year 1979 was

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established only in the year 1995 and on the said ground alone the writ petition filed by the petitioner is to be rejected, there are various other documents which have been relied upon by the petitioner, which have been noticed at para Nos.26(i) to (ix) herein above. A perusal of copies of the said documents which are annexed along with the writ petition would indicate that the Voter Identity Card which has been issued on 05.12.2005 is the earliest document. Further, the documents relied upon by the petitioner include a Passport which indicates that the same has been issued after a process of verification. The said documents clearly indicate that the petitioner has been residing in India for a considerably long period of time, throughout the period of which the petitioner has consistently asserted that he was an Indian citizen.

32. It is also contended on behalf of the respondents that the birth certificate of the petitioner has been registered beyond the period of 2 years from the date of birth and the birth certificate produced by the petitioner ought not to be relied upon. However, the said contention cannot be the sole basis for

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adjudication of the case of the petitioner since there are other documents relied upon by the petitioner.

33. It is the contention on behalf of the respondents that since the birth certificate that is relied upon by the petitioner is found to be fraudulently issued, and various other documents having been issued based on the birth certificate, no benefit ought to accrue in favour of the petitioner on the basis of the other documents. However, the said contention is not to be accepted. The petitioner has been issued various identity cards by statutory authorities. A passport has also been issued to the petitioner, which itself would indicate that some process of verification has been undertaken by the concerned authorities before the said documents were issued.

34. Having regard to the aforementioned circumstances, since the petitioner is asserting that he is an Indian citizen by birth and is relying upon various documents in support of the same, the respondent - authorities ought to have afforded an opportunity to the petitioner and a fair process ought to have been undertaken to adjudicate the aspect regarding the assertion of citizenship by the petitioner by considering the

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various documents relied upon by him before any order is passed, whereunder the petitioner is sought to be removed from India.

REG. CONTENTION OF THE PETITIONER OF DOUBLE JEOPARDY AND WHETHER THE IMPUGNED MOVEMENT RESTRICTION ORDER DATED 05.03.2026 COULD HAVE BEEN PASSED HAVING REGARD TO THE BAIL GRANTED IN CRIMINAL APPEAL NO. 2509/2012:

35. It is also contended on behalf of the petitioner that criminal proceedings that have been initiated against the petitioner in ST No.1577/2010, which is the subject matter of Criminal Appeal No.2509/2012 and the impugned order tantamounts to double jeopardy and is violative of Article 20(2) of the Constitution of India. Article 20 of the Constitution of India reads as under:

> ***"20. Protection in respect of conviction for offences***
>
> *(1)No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
>
> *(2)No person shall be prosecuted and punished for the same offence more than once.*

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*(3)No person accused of any offence shall be compelled to be a witness against himself."*

36. In the writ petition the petitioner has averred that he was prosecuted for the offences under Section 14-A(b) of the Foreigners Act, 1946, in ST.No.1577/2010 before the Sessions Court. That vide the judgment and order dated 08.06.2010 the petitioner was convicted on the allegation that he was a Bangladeshi National by name Abdul Rahim s/o Shahjamal, resident of District Bagerhat, Bangladesh. That being aggrieved, the petitioner has preferred Criminal Appeal No.2509/2012 before the High Court of Judicature at Allahabad. A copy of the order dated 06.07.2012 passed in the said criminal appeal has been produced as Annexure-H to the writ petition (a certified copy of the said order has been produced by the petitioner along with the memo dated 09.10.2026). The said order dated 06.07.2012 reads as under:

*"Heard learned counsel for the appellant as well as learned A.G.A. and perused the record.*

*Admit. Summon the lower court record.*

*The maximum sentence awarded is four years' R.I. under section 14-A(B) Foreigner Act, 1946.*

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*On the bail application, learned counsel for the appellant submitted that the co-accused Smt. Ladli @ Lali has already been granted bail by this Court on 04.07.2012 in Criminal Appeal No. 2451 of 2012 and the role of the present appellant is also identical to her and on the ground of parity the appellant is entitled to be enlarged on bail.*

*Learned A.G.A. has opposed the bail application of the appellant. However, it is not disputed that the co-accused having similar role has already been granted bail by this Court.*

*Without touching the merit of the case and considering the fact that co-accused Ladli @ Lali having similar role has already been granted bail by this Court, on the ground of parity, the appellant also is entitled to be enlarged on bail.*

*Let the accused appellant Abdul Raheem convicted by judgement and order dated 08.06.2012 passed by Additional District & Sessions Judge, Court No. 1, Ghaziabad in S.T. No. 1577 of 2010 under section 14-A (B) Foreigner Act, 1946 and 3/12 Passport Act be released on bail during the pendency of the Appeal on his executing a personal bond with two sureties each in the like amount to the satisfaction of the Court concerned.*

*The realisation of half of the fine shall remain stayed during pendency of the appeal, provided the appellants deposit remaining half of the fine within one month.*

*On acceptance of the bail bonds and personal bonds, the lower court shall transmit photo stat copies thereof to this Court for being kept on the record of this appeal.*

*Connect this Appeal with Criminal Appeal No. 2451 of 2012 (Smt. Ladli @ Lali Vs. State of U.P.) and Criminal Appeal No. 2508 of 2012 (khalil alias Alam and another Vs. State of U.P.). "*

*(emphasis supplied)*

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37. It is also contended that the petitioner having been convicted in the proceedings before the Sessions Court and the petitioner having been enlarged on bail pursuant to the order dated 06.07.2012 in Criminal Appeal No.2509/2012 (which is extracted at para 36 hereinabove), by an executive order, the liberty granted to the petitioner by the said order dated 06.07.2012 cannot be curtailed.

38. In this context, a perusal of the order dated 06.07.2012 passed in Criminal Appeal No.2509/2012 would clearly indicate that the judgment of the Sessions Court convicting the petitioner has not been stayed.

39. It is the contention on behalf of the petitioner that after being granted bail, he has shifted to Bengaluru along with his family members and is pursuing various activities for the purpose of earning his livelihood. That on 05.03.2026, police official/s attached to Parappana Agrahara Police Station, pursuant to the instructions issued by the Deputy Commissioner of Police, Electronic City Division, Bengaluru, as part of a drive purportedly undertaken to drive out illegal Bangladeshi immigrants, took the petitioner into custody since

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he was suspected to be a foreign national and handed over to the FRRO. That although he repeatedly asserted that he was an Indian citizen by birth and offered to produce documents, on the same day, the impugned order dated 05.03.2026 was passed.

40. Further, it is the contention on behalf of the petitioner that pursuant to the order dated 06.07.2012 passed in Criminal Appeal No.2509/2012, the petitioner is residing in Bangalore at the address mentioned in the cause title. The said address of the petitioner as mentioned in the cause title is also evidenced by various other material on record, as well as the impugned order dated 05.03.2026 has been passed.

41. It is pertinent to notice the impugned order dated 05.03.2026, which reads as under:

> *"No: FRRO/BOI/BLR/MRO/2026-100 Dated: 05.03.2026*
>
> *MOVEMENT RESTRICTION ORDER*
>
> *With reference to the request letter dated 05.03.2026 of The Police Inspector, Parappana Agrahara Police Station, Bengaluru City. I, Foreigners Regional Registration Officer, in pursuance of notification of Government of India, Ministry of Home Affairs, vide number S.O. 3990 (E), dated 01.09.2025, after due*

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*verification of available records and thoroughly profiling of the person to my satisfaction, hereby impose the following restrictions under clause (1) of Sub Section (2) of Section 7 of the Immigration and Foreigners Act, 2025 and under Para 8 of the Immigration and Foreigners Order, 2025 on the following foreigner with immediate effect:*

| *Sl.No.* | *Name* | *Nationality* | *National ID* |
|---|---|---|---|
| *1* | *Md Rahim Howladar* | *Bangaldesh* | *Nil* |

*Produced by the Police personnel of Parappana Agrahara Police Station, Bengaluru City.*

*The above mentioned foreign national is being referred to the Utile Foundation, Kothanur, Bengaluru under Kothanur Police Station limits with immediate effect. He will not move out of the Utile Foundation till his repatriation, as there is every likelihood that he may disappear and indulge in undesirable activities.*

*Non-compliance of this order will render him liable for prosecution under Section 23 of The Immigration and Foreigners Act, 2025. The officials of Parappana Agrahara Police Station, Bengaluru City are escorting the above foreign national from office of the FRRO Bangalore to Utile Foundation, Kothanur, Bengaluru.*

*Foreigners Regional Registration Officer."*

42. It is pertinent to note that the impugned order does not refer to the pendency of Criminal Appeal No.2509/2012. The conviction order passed by the Sessions Court which is the subject matter of consideration in Criminal Appeal No.2509/2012 is not the basis for the passing of the impugned

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order dated 05.03.2026. The impugned order is passed on the presumption/premise that the petitioner is a foreigner.

43. It is also pertinent to note that the name mentioned in the impugned order is "Md Rahim Howladar", whereas the name of the petitioner in the present petition, is mentioned as "Shri Abdul Rahim s/o Mohd. Shal Jamal". The impugned order records a finding that the same is passed against a foreign national.

44. While the petitioner was enlarged on bail vide the said order dated 06.07.2012, he was not ordered to be confined in a detention centre by the High Court of Allahabad. However, it cannot be said that the authorities acting under the provisions of the Foreigners Act 2025 are not empowered to detain a Foreign National which is in the nature of an executive order.

REG. THE BASIS FOR ISSUANCE OF THE IMPUGNED MOVEMENT RESTRICTION ORDER DATED 05.03.2026:

45. It is the contention of the respondents that the petitioner being a Bangladeshi is required to be sent back having regard to steps / measures being taken by the authorities in that

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regard. Reliance is placed by the respondents on a communication dated 02.05.2025.

46. It is the contention on behalf of the respondents that a communication dated 02.05.2025 has been issued by the Government of India, Ministry of Home Affairs, to all the officials in the States and Union Territories[14] as to the procedure for deportation of illegal Bangladeshi Nationals / Rohingyas (Myanmar Nationals). A copy of the said communication dated 02.05.2025 is placed on record. The said communication prescribes guidelines for orderly migration and timely exit of illegal migrants. In the said communication, guidelines are set out for deportation/sending back of illegal Bangladeshi Nationals/Rohingyas, who are intercepted at the Border (land or maritime), as well as, those who are apprehended in the country. The guidelines stipulated for the protocol to be followed while dealing with cases of Bangladeshi Nationals / Rohingyas illegally staying in the country and who have been apprehended are as under:

> *"Illegally staying Bangladeshis / Rohingyas (Myanmar nationals) apprehended in the country*

[14] Hereinafter referred to as 'UT'

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*Xxxxxx*

*9. The following protocols shall be followed in dealing with cases of illegally staying in Bangladeshis / Rohingyas (Myanmar nationals) apprehended in the country.*

*(i) All State Governments/UT Administrations shall set up a Special Task Force in each District under the police of the State/UT to detect, identify and deport /send-back illegal immigrants from Bangladesh / Myanmar settled in the State/UT concerned.*

*(ii) All State Governments/UT Administrations shall set up adequate Holding Centers in each District under the Police of the State/UT to detain illegal Immigrants from Bangladesh/Myanmar.*

*(iii) In respect of Bangladesh/ Myanmar nationals identified to be staying unauthorizedly in any particular State/UT, an inquiry shall be conducted by the State Government/UT concerned.*

*(iv) If the suspected Bangladesh / Myanmar national claims Indian citizenship and residence of a place in any other Indian State/UT, the concerned State Government/UT would send to the Home Secretary of the State/UT and District Collector/District Magistrate of the District from where the suspected person claims to hail, the details including name, parentage, residential address, details of near relatives etc. The State Government/ UT/Collector/District Magistrate concerned in turn will ensure that appropriate report is sent to the deporting State Government/UT after proper verification within a period of 30 days. All the States/UTs shall issue appropriate instructions to the District Collectors/District Magistrates for ensuring verification of claim of such suspected persons well in time. During the period of 30 days, the suspected person shall be kept in the Holding Center to ensure physical availability at the time of deportation/ send-back. If no report is received within the period of 30 days, the Foreigners Registration Officer may take necessary, action to deport/ send-back the suspected Bangladesh / Myanmar national.*

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*(v) If a person is identified as an illegal Bangladesh national / Rohingya after the enquiry, the State/ UT shall immediately capture their biometrics (fingerprints and facial photographs) and demographic details on the Foreigners Identification Portal (FIP) https://identification.mha.gov.in of the MHA. Where connectivity is not available, these shall be captured offline and then shall then be uploaded on the Foreigners Identification Portal (FIP) https://identification.mha.gov.in of the MHA as soon as possible. For this purpose, the State/ UT shall use the biometric equipment available at the Districts under the District Police Module for capturing the biometric data on FIP. In case biometric equipment is available at the Police Station in the State/UT, the same may be used to upload data on FIP. The use of NAFIS to capture biometrics will stand to be discontinued.*

*(vi) After completion of the enquiry and capturing of biometric and demographic details as above, the illegal immigrants from Bangladesh/ Myanmar detected States/UTs other than the border States with Bangladesh/ Myanmar shall be taken by the concerned State/UT Police under proper escort, in groups as far as possible, and handed over to the designated Border Guarding Forces / Coast Guards at the places designated by the Central Government. The State/UT Police who is escorting the illegal immigrants from Bangladesh / Myanmar should carry the appropriate order issued by the competent authority of the State Government/UT Administration under section 3(2)(c) of the Foreigners Act, 1946 after proper enquiry. Thereafter, the designated Border Guarding Forces/Coast Guards shall facilitate their exit from India to Bangladesh or Myanmar as the case may be. Such illegal immigrants from Bangladesh / Myanmar shall also Blacklisted.*

*(vii) Those State Governments having borders contiguous with Bangladesh or Myanmar shall also hand over the illegal Bangladeshi or Rohingya migrants the officer of designated Border Guarding Forces / Coast Guards at the designated place after completion of the enquiry and capturing of biometric and demographic*

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*details as above. Such illegal immigrants from Bangladesh/ Myanmar shall also be Blacklisted.*

*(viii) In emergent situations, after enquiry is complete, the designated Border Guarding Force/ Coast Guards can also pick up the illegal Banglades nationals/ Rohingyas from the Holding Centers in the State/ UT and take them directly to India's border for deportation/send-back.*

*(ix) Advance information about the movement of deportees under police escort would be given by the State/UT from which deportees are being sent to such State/UT through which the movement is done. Advance information about the movement of deportee would also be sent to the Home Secretary and Director General of Police of the border State through which deportation/ send-back is to be effected. The Nodal officer in designated Border Guarding Forces / Coast Guards shall also be informed of the same by the State Government/UT Administration, from which deportees are being sent, in advance.*

*(x) Designated Border Guarding Forces/Coast Guards shall furnish to the State/UT police authorities proper acknowledgment of the illegal Bangladeshi or Rohingya migrants handed over to them for deportation/send-back by the State/JT Police authorities. The designated Border Guarding Forces / Coast Guards shall also furnish a report to the State Government/UT Administration concerned after the deportation of the illegal Bangladeshi or Rohingya migrant,*

*(xi) The details, i.e. the name, designation, telephone numbers and e-mail address, of the nodal person in the designated Border Guarding Forces / Coast Guards to whom the illegal immigrants are to be handed over for deportation/ send-back shall be informed to all the State Governments/UTs.*

*(xii) All State Governments/UT Administrations should*

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*maintain a record of illegal Bangladesh national or Rohingya handed over to designated Border Guarding Forces / Coast Guards for deportation and send a report in this regard to the Ministry of Home Affairs by the 15th day of every month through the FRRO. This report is mandatory.*

*(xiii) The Bureau of Immigration shall publish a list of illegal Bangladesh nationals/Rohingyas who have been deported / sent-back on a public portal so that the same can be used for verification. This data shall also be shared with the UIDAI, Election Commission of India, Ministry of External Affairs (Passports Division), and any other Government agencies who grant Government Identity cards/ offer social benefits under Government schemes to enable deactivation / suspension of Identity cards / social benefits connected with the illegal Bangladesh national/ Rohingya.*

47. The said guidelines specifically stipulate that "if the suspected national claims Indian citizenship and residence of a place in India", the concerned State Government/UT was required to send to the Home Secretary of the State/UT and the District Collector or District Magistrate of the District, details regarding from where the suspected person claims to hail, the details of the said person and the concerned State Government is to ensure that an appropriate report is sent to the deporting State Government/UT after proper verification within 30 days. It is further stipulated that during the said period of 30 days, the suspected person was to be kept in a Holding Centre to

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ensure protocol is followed at the time of deportation/sending back. That if no report is received within 30 days, the FRRO is to take necessary action to deport/send back the suspected Bangladeshi Nationals / Rohingyas (Myanmar Nationals). It is further stipulated that if the person is identified as an illegal Bangladeshi National, after enquiry the biometric fingerprints, official photographs and demographic details are to be captured on the Foreigners Identification Portal[15].

48. It is also pertinent to notice that in the communication dated 02.05.2025 with regard to the procedure / protocols to be followed for deportation of illegal Bangladeshi Nationals / Rohingyas (Myanmar Nationals), there is no mention of either the provisions of the Foreigners Act 2025 or the Foreigners Order 2025.

49. It is also to be noticed that the process as contemplated in the guidelines mentioned in the communication dated 02.05.2025, issued by the Ministry of Home Affairs, Government of India (the relevant portion of which has been extracted at para 46 hereinabove), as to the protocols to be

[15] Hereinafter referred to as 'FIP'

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followed while dealing with cases of illegally staying Bangladeshi Nationals / Rohingyas (Myanmar Nationals) was commenced by the respondent authorities only after filing of the present writ petition as is forthcoming from the communication dated 10.07.2026 (Annexure-R1 to the writ petition filed along with the counter affidavit of respondent No.5).

50. It is also relevant to note Section 8 of the Foreigners Act, 1946 provided for determination of Nationality. The said Section 8 reads as under:

> *"8.Determination of nationality.—*
>
> *(1)When a foreigner is recongnised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected.*
>
> *Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to*

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*protection by the Government of the country whose nationality he has so acquired.*

*(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court.*

*Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision."*

51. However, in the Foreigners Act, 2025 a similar provision requiring determination of nationality is not forthcoming. In this context, it is pertinent to note that Sections 6 to 16 in Chapter III of the Foreigners Act, 2025, stipulate the matters relating to foreigners. Sections 15 and 16 of the said Act, read as under:

*"15. When a foreigner, while in India with a valid passport or other travel document and valid visa, is recognised as a national by the law of more than one foreign country, the civil authority or Immigration Officer may, after due verification of all available documents and inquiry, treat that foreigner as the national of the country on whose passport or travel document he had entered into India or with which he appears to be most closely connected for the time being and the decision of civil authority or Immigration Officer in this regard shall be final:*

*Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.*

*16. If in any case, not falling under section 15, any question arises with reference to this Act or any rule or order made or direction given thereunder, whether any*

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*person is or is not a foreigner of a particular class or description, the us of proving that such person is not a foreigner or is not a foreigner of such rticular class or description, as the case may be, shall, notwithstanding anything contained in the Bharatiya Sakshya Adhiniyam, 2023, lie upon such person."*

52. It is pertinent to note herein that while the respondent-authorities seek to assert that the petitioner is a Bangladeshi National, the present fact situation is not one where the petitioner has been apprehended by the respondent - authorities when the petitioner was illegally entering the country. The documents on record clearly indicate that the petitioner is residing in India for the past 21 years and the petitioner asserts that he is an Indian citizen by birth. Having regard to the same, the contention of the petitioner, whereunder he claims to be an Indian citizen vis-à-vis the allegation of the respondents wherein it is asserted that the petitioner is a Bangladeshi National, is to be adjudicated in accordance with law.

53. In the counter affidavit filed by respondent No.5, at para 7 it is deposed that the Electoral Photo Identity Card of the petitioner was verified and no Voter Identity Card record was

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found in the official Electoral Database. It is further deposed at para 12 of the said affidavit that the Passport of the petitioner has been verified pursuant to communication dated 13.07.2026 sent by respondent No.5 and the Regional Passport Office vide its response dated 15.07.2026, the petitioner submitted his PAN Card, Registration Certificate of a four wheeler bearing No. KA401477 (Model TATA 207 Di B III) which was registered on 06.02.2006, the address in the said Vehicle Registration Card is mentioned as Madiwala, Koramangala, Bangalore. It is further deposed that a three month Bank account statement for Axis Bank of which he was a joint holder, and Aadhar Card was also furnished. It is deposed at para 14 of the said counter affidavit that the petitioner has failed to establish his citizenship under the applicable provisions of the Citizenship Act and that the primary documents produced by him, namely the Birth Certificate, father's Death Certificate and Voter Identity Card having fraudulently been obtained, fabricated / forged, the secondary documents such as Aadhar Card, PAN Card, and Driving Licence having been issued on the basis of the said fraudulent documents carrying no legal sanctity.

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54. The respondents have also produced a communication dated 10.07.2026 (Annexure-R1 filed along with the counter affidavit of respondent No.5), whereunder the FRRO has forwarded documents to the Home Department, Government of NCT, Delhi, as well as the Home Department, Kolkata. The said communication dated 10.07.2026 is issued in terms of para 9(iv) of the procedure for deportation of illegal Bangladeshi Nationals / Rohingyas (Myanmar Nationals). In the said communication, it is stated that the suspected Bangladeshi National is "Mr. Mohd Rahim Howladar" (Bangladeshi NID No.2690812881). The petitioner has also been referred to as Abdul Rahim @ Mohd. Rahim Howladar in the said communication. Details of the judgment of the Sessions Court as well as pendency of Criminal Appeal No.2509/2012 have also been stated. However, there is no response that is placed on record to the said communication dated 10.07.2026.

55. It is also pertinent to notice a Division Bench judgment of the Calcutta High Court in the case of ***Amir Khan V/s Union of India***[16] wherein the High Court was dealing with a writ of

[16] Order dated 26.09.2025 passed in W.P. (AH ) 51/2025

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Habeas Corpus filed for production of the relative of the petitioner who was deported to Bangladesh on the ground that the corpus was a Bangladeshi National. In the said case, it is also contended that the corpus was an Indian citizen and possessed various identity cards. The High Court disposed of the said writ petition and set aside the order of detention and deportation and directed the concerned authorities to bring back the corpus by making necessary correspondence with the authorities at the High Commission of India, Dhaka, Bangladesh. The relevant portion of the said judgment reads as under:

> *"29. A police officer is clearly a person in authority. Insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to. Frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Article 20(3). Legal penalty may by itself not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion.*
>
> *30. The law presumes that a statement to a police officer may have been obtained through pressure or force and is therefore not voluntary. A confessional statement made before a police officer and without any safeguards, would be a direct infringement of the*

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*constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India. A close perusal of the interrogation forms as annexed would reveal that in the column 'details of family members and where they are residing', the names of family members have been mentioned without mentioning the place where they are residing. Suspicion, howsoever high, cannot be a substitute of actual proof. There is no appellate authority. In the affidavit filed by the respondent nos. 1 to 4, it is stated no enquiry was required but in the memo date 23.06.2025 it was stated that an enquiry was conducted. There is also no 'adverse security report' against the detainees.*

*31. The detainees have their relations residing in the State of West Bengal. There is no allegation that they are indulging in activities prejudicial to the State and as such, the kind of overenthusiasm in deporting the detainees, as visible herein, is susceptible to misunderstanding and disturbs the judicial climate in the country. That the proceeding for deportation was conducted in hot haste.*

*32. Sweety, Kurban and Imam were produced before the Sub-Inspector, K.N. Katju Marg Police Station, on 21.06.2025. Thereafter, the FRRO by a memo dated 24.06.2025 directed that the said persons shall be kept in the community Centre, near Lal Quarter, Vijay Vihar Phase-2, P.S Vijay Vihar, Rohini District, Delhi. Thereafter, the deportation order was passed on 26.06.2025. From such sequence of fact it is explicit that the respondents admittedly did not follow the provisions of the memo dated 02.05.2025 inasmuch as the details of the said persons were not forwarded to the State of West Bengal of which they are the residents. It is only after such documents are forwarded, the concerned State Government has to ensure that appropriate report is sent to the deporting*

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*to the State Government/UT after proper verification within a period of 30 days. Admittedly no such enquiry was conducted and the Delhi Administration did not even wait for a week before issuance the order of deportation. The memo dated 02.05.2025 also provides that in any emergent situation and after enquiry is completed step towards deportation may be taken. No statement is forthcoming that there was any such emergent situation. The respondents have thus acted in hot haste and have not adhered to the said memo and such act cripples the constitutional grant of fairness and reasonableness. The non-impleadment of the FRRO is also not fatal for maintainability of the writ petition inasmuch as the order is inextricably bound with the chain of events starting from the production of the persons before the Inspector of the police station at Rohini, Delhi. Moreover, the storied jurisprudence on the anvil of protection of constitutional rights in this country, has repeatedly held that when substantial justice is pitted against technical considerations, the cause of the former demands preference over the other especially when the writ court can visualise that deference to such technical considerations would have the consequence of throwing out an otherwise meritorious claim right at the threshold.*

*33. The question of citizenship should be considered based on further documents and evidence before an appropriate Court. In the limited scope of the writ petition, though the Aadhaar Card, PAN Card, and Voter ID Card were part of the Writ Petition, however, as none of these aforementioned documents are proof of citizenship and proof of identity, it may not be sufficient to decide the issue of citizenship finally. Having said this it cannot be denied that the memo of 02.05.2025 applies only to Bangladeshi and Rohingya Muslims from Myanmar; thus, if we take the worst-case scenario of the detainees, that they were not Indian citizens, the steps and procedures laid down in the memo ought to have been followed by the concerned authorities. Not following such procedure and acting in hot haste*

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*to deport them is a clear violation which renders the deportation order bad in law and liable to be set aside. The process and procedure adopted in the deportation raise a suspicion that the concerned authorities, while acting in hot haste, have clearly violated the provisions of the memo of 02.05.2025.*

*34 .xxxx*

*35. The life style of the people shapes the profile of the law and not vice versa. Law cannot be disjuncted from context. The fundamental rights cannot be read as dull lifeless words. If an uncontrolled or unguided power is conferred without any reasonable and proper standards or limits being laid down in the enactment for guidance and control of exercise of such power, the act cannot by the furthest of imagination be construed to be a 'procedure established by law'. The executive cannot be vested with any non-fettered discretion. If officials exercise their public authority in an arbitral whimsical manner, the same would bring such act within the scope of prohibition of the equity clause. The Court cannot doggedly hold fast to principles which tend to compel a litigant to retreat from a path of pursuing writ remedies, especially when social realities of the current generation mandates that the law must be rid of these principles and bring itself in accord 'with the felt necessities of the times'.*

*36. For and on the strength of the totality of reasons afore-indicated, the order of detention dated 24.06.2025 and the order of deportation dated 26.06.2025 so far as Sweety, Kurban and Imam are concerned, are set aside and the respondent nos. 1 to 6 are mandatorily directed to take all steps to bring back Sweety, Kurban and Imam to India within a period of 4 weeks from the date of communication of the order. The said respondents, for such purpose, shall make necessary correspondence and interact*

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*with the authorities at High Commission of India, Dhaka, Bangladesh."*

*(emphasis supplied)*

56. As noticed above, the Division Bench of the Calcutta High Court after noticing that the person in question was detained and deported without any fair and reasonable opportunity having been granted, ordered for steps to be taken to bring back the person in question.

57. It is also pertinent to notice the judgment of a Division Bench of the High Court of Gujarat in the case of ***Rasidaben w/o. Sidikbhai Daudbhai Sheikh (alias Ilyas) V/s State of Gujarat.***[17] In the said case, the High Court was dealing with a fact situation wherein a writ of Habeas Corpus was filed for production of the son of the petitioner who was alleged to have been illegally detained by the concerned authorities on the ground that he was suspected to be a Bangladeshi National. In the said case, the petitioner and her husband possessed various documents demonstrating the identity issued by the Indian Authorities. It was contended by the petitioner that the

[17] Order dated 04.02.2022 Passed in Special Criminal Application No.2844/2020.

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son of the petitioner was born in India. However, there were no documents to prove his birth. But there were various other documents to demonstrate the identity of the son of the petitioner. In the said fact situation, the High Court considered the legal position as well as the circular dated 02.05.2025 issued by the Central Government for the purpose of deportation of Bangladeshi immigrants, the High Court set aside the order of detention and directed the question of nationality to be decided by the concerned authorities, till which time the son of the petitioner was directed to be released on reasonable terms and conditions as deemed appropriate by the concerned authorities. The relevant portion of the said judgment is as under:

> *"20.1 In Special Criminal Application (Habeas Corpus) No.8527 of 2016, the husband of the petitioner was a citizen of Bangladesh and several criminal cases were registered against him. He resided in India without proper documents. The petitioner was granted bail in connection with the criminal cases. The order came to be passed under Section 11(1) and 11(2) of the Foreigners Act ordering to keep the husband of the petitioner in confinement/restrictions. The petitioner also produced certain documents that he was an Indian national. As the question of nationality surfaced, the Court directed him to approach the concerned authority under Section 8 and disposed of the habeas corpus petition.*

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*20.2 Likewise, in Special Criminal Application No. 315 of 2017, it was contended by the respondent – State that prima facie material emerged that the petitioner's wife was a Bangladesh national and she was staying in India without permission. She was, therefore, kept in confinement by the Special Operational Group. The concern was voiced about the wellbeing of hers and the authorities had been directed to produce her before the Court. On inquiry, there was no ill treatment found. As there was a question of nationality of the lady, the Court held that the same cannot be decided in the habeas corpus petition. There were several original documents such as Voter's Card, Aadhar Card etc. concerning the lady which had been supplied to the SOG to show that she was a citizen of India. The Court directed that it would be open for the petitioner to bring these to the notice of the authorities and produce the copies of such documents for consideration and despite that exercise, if the question of nationality remain undecided, it would be always open to the petitioner to take up the issue with the concerned ministry or the Central Government in terms of the Foreigners Act.*

*21. Being conscious of these decisions and also conscious of the fact that in the event of deciding the question of nationality, the issue shall have to be raised before the appropriate authority by the petitioner, this Court is restricting its inquiry into the validity and propriety of the order passed by the civil authority by examining the principles of administrative law. It shall have to be questioned as to whether the order passed was legal, rational and the procedural propriety also shall need to be inquired into. The principle of natural justice would demand the hearing as also considering the material which has been placed before the authority concerned.*

*22. Without entering into the aspect of the nationality, if one looks at the report prepared by the Deputy Commissioner of Police in his capacity as a senior officer reporting to the Additional*

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*Commissioner of Police who has been made a civil authority, it is quite apparent that the inquiry has been limited to the visa and the passport. The person concerned since could not produce the same on the very day of patrolling i.e. on 20.06.2020, the respondent no.3 along with other four persons has been detained at the detention centre of SOG and since then, the corpus continues to be at the SOG Centre.*

*23. It is to be noted at this stage that there are various documents which have been produced before this Court, which in the report, are missing. There has been no inquiry at all made of the parents of the present corpus as the mother is the petitioner and her nationality is not questioned nor doubted even. There are six children of the petitioner and the corpus is one of them. Several years before, the SOG had also made an inquiry and detained the respondent no.3 and later on, he was released on having not found anything adverse. The corpus has been once again during the patrolling questioned by the authority and since he could not show his passport and visa, he has been detained on the ground that he is a Bangladeshi national. It is admitted by the respondent authority that he has no criminal background. He is a labourer working for his livelihood. He has his wife who is an Indian national and four children are born out of their wedlock. The documents of his parents, his siblings, his wife and his children have not been regarded by the authority concerned as there was no opportunity given for him to establish his nationality. The Central Government has delegated the powers to the civil authority which is from the State Government and the powers also are given to them to inquire into the nationality of a person, therefore, the powers are to be exercised in accordance with law. The least that is expected of the person who has been given such wide and vital powers of recommending the deportation of a person on the basis that he is not an Indian national, is to avail an opportunity of hearing to the person concerned. We had pertinently queried learned Public Prosecutor as to whether there is any notice given*

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*and a separate opportunity has been made available for those who have been suspected as foreign nationals, to adduce the relevant material for proving the nationality. So far as the corpus is concerned, his education from 3rd standard is in the school at Juhapura. He also has produced before this Court his Aadhar Card so also his Election Card. Certain anomalies in the names from Aamir to Amir is much emphasized. It is to be highlighted here specifically that the report of the Deputy Police Commissioner and of the Additional Police Commissioner, Special Group also refers him as Amir and not Aamir and thus, this anomaly can surely not been blown out of proportions.*

*24. Be that as it may, there is no doubt with regard to his identity. His entire family is in India. The order mentions his relatives and family being in Bangladesh, this being a common order for all the five persons who had been detained on the same day, the authority possibly being unmindful of the individual case, has reported it. The form filled-in by the authority also gives the details which are incorrect and based on the same, the Additional Police Commissioner has on 02.07.2020 exercised the powers under Section 3(2)(g) of the Foreigners Act, 1946, Section 5 of the Foreigners Orders and the authorization he received vide notification dated 02.12.1960 of the State Government and directed the order or detention till the order of deportation is received.*

*25. Worthwhile it is to make a mention that when this Court requested the learned ASG to address the Court on possible time period for the deportation in case of the foreign nationals and particularly Bangladeshi nationals, he fairly submitted that depending on the response received from the Bangladesh Authority, on due verification of the nationality of those persons for whom the proposal is sent for deportation, the implementation is made.*

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*There is no fix period, as a lot depends on other outer agencies. Although, it is not confirmed by the respondent, by way of an affidavit it is claimed that there are persons who are not deported for more than four to eight years. This Court is not choosing to enter into that as this is not the scope of this petition, at the same time, so far as the case on hand is concerned, when it has been noticed by this Court incidentally while addressing the issue raised by the petitioner, let this aspect be taken up with requisite seriousness by the concerned authority dealing with issue of deportation at the level of External Affairs Ministry and learned ASG is expected to play a vital role in streamlining this aspect and its due implementation, up-keeping the human dignity. It is quite obvious from the order passed on 02.07.2020 that the same is without availing any opportunity to the corpus to adduce the necessary material.*

*26. Without evaluating the material which has been produced before this Court by the corpus, we deem it appropriate to direct the authority concerned to avail that opportunity and for the corpus to produce, for consideration of the authorities, the necessary testimonials.*

*27. Admittedly, as mentioned above, the report prepared by the DCP was without even availing opportunity to the corpus and the Additional Commissioner has acted upon the same. We are conveyed that till date, nothing has moved and the corpus continues to be at the detention centre. When serious flaw is noticed in observing principles of natural justice, without entering the issue of nationality, on a limited ground of non-availment of opportunity, this Court deems it appropriate to intervene and to that limited extent, indulgence would be inevitable, noticing unbridled powers assigned to the authority, of course, for catching illegal/unauthorized nationals. Resultantly, the opportunity requires to be availed noticing apparent breach of administrative law and very peculiar facts concerning respondent no.3 and his family.*

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> *28. Till that exercise is completed, the petitioner shall be released on the reasonable terms and conditions, as deemed appropriate by the concerned authority within one week of receipt of copy of this order, so as to ensure his availability if he cannot satisfy the authority on the strength of his testimonials.*
>
> *29. The corpus since has questioned his confinement at the SOG, without entering into the issue of nationality and its nuances, to be determined by the concerned authority as the same is found to have been done in disregard to the basic requirement of availing opportunity. This petition to that limited extent is allowed and disposed of in above terms."*
>
> *(emphasis supplied)*

58. As noticed above, the Division Bench of the High court of Gujarat after noticing that the person in question was detained without an adequate opportunity having been granted, ordered for the release of the said person having regard to the documents that were sought to be relied upon.

59. It is the contention of the learned counsel for the petitioner that the whereabouts of the petitioner were not known and WP.HC No.40/2026 was filed. That in the said proceedings the impugned order dated 05.03.2026 was produced by the respondents, consequent to which WP HC No.40/2026 was disposed of vide order dated 17.04.2026 reserving liberty to

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the petitioner to challenge the impugned order dated 05.03.2026.

60. Hence, it is the contention of the learned counsel for the petitioner that no opportunity was afforded to the petitioner before he was detained at the Foundation. It is further contended that on a mere apprehension that the petitioner was a Bangladeshi National, the impugned order has been passed without any finding having been recorded in any proceedings as contemplated under law, prior to issuance of the impugned order.

61. In this context, it is contended on behalf of the respondents that the filing of the present writ petition itself is a procedure that would meet the requirement of law, wherein an opportunity is afforded to the petitioner to produce material to demonstrate that he is an Indian citizen. Reliance is placed by the respondents on the judgment of a Co-ordinate Bench of this Court in the case of ***Mr Christopher Charles Kamolins v. Union of India***[18] to contend that post-decisional representation and judicial review under Article 226 of the

[18] WP.No.26412/2019 - Order dated 09.02.2026; NC:2026:KHC:8290

Constitution of India satisfy the requirement of natural justice.

The relevant portion of the said judgment reads as under:

> *"17.15 Applying the proportionality doctrine articulated in Modern Dental College v. State of Madhya Pradesh and reaffirmed in K.S. Puttaswamy v. Union of India, the impugned action satisfies constitutional scrutiny. The objective of regulating foreign presence is legitimate. The direction to leave is rationally connected to that objective. No less restrictive measure would achieve removal where continued stay is impermissible. The impact is limited to termination of territorial presence and does not entail penal consequences. The balance clearly favours sovereign regulatory interest.*
>
> *17.16. The contention regarding violation of natural justice must be examined contextually. Principles of audi alteram partem are flexible and not rigid. In Maneka Gandhi, the Hon'ble Supreme Court recognised that a pre-decisional hearing is not an invariable constitutional mandate in every context.*
>
> *17.17. In matters of immigration control, closely connected with sovereignty and public order, Parliament has not prescribed a mandatory adjudicatory hearing prior to issuance of an order under Section 3(2)(c). In Hans Muller, the Hon'ble Supreme Court did not read such a requirement into the statute.*
>
> *17.18. Where power is preventive and regulatory, particularly concerning non-citizens, fairness may be satisfied through contextual safeguards, including availability of postdecisional representation and judicial review under Article 226. The existence of constitutional oversight serves as a significant check against abuse."*

62. The reliance placed on the judgment of ***Mr Christopher Charles Kamolins[15]*** will not aid the case of the respondents,

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inasmuch as in the said case an Australian citizen was granted an Employment Visa. It was subsequently found by the concerned authorities that the documents/material that was furnished for issuance of the Employment Visa was fraudulent. Hence, during the period of the Employment Visa, a Leave India Notice was issued to the petitioner therein, which was assailed before this Court. The said factual matrix is completely different from the factual matrix of the present case.

63. It is pertinent to notice para 16 of the Foreigners Order, 2025, which reads as under:

> *"16. Constitution of Foreigners Tribunals.-(1) The Central Government or the State Government or the Union territory Administration or the District Collector or the District Magistrate may, by order, refer the question as to whether a person is or is not a foreigner within the meaning of the Act to a Foreigners Tribunal constituted for the purpose by the Central Government, for its opinion.*
>
> *(2) The registering authority appointed under sub-rule (1) of rule 19 of the Citizenship Rules, 2009 may also refer to the Foreigners Tribunal the question whether a person of Indian origin, complies with any of the requirements under sub-section (3) of section 6A of the Citizenship Act, 1955 (57 of 1955).*
>
> *(3) Any person referred to in paragraph 8 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 may prefer an appeal, on the terms and conditions*

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*specified therein, before the Foreigners Tribunal constituted under this Order.*

*(4) The Foreigners Tribunal shall consist of maximum three members having judicial experience as the Central Government may think fit to appoint.*

*(5) Where the Foreigners Tribunal consists of two or more members, one of whom shall be appointed as the Chairperson thereof."*

64. It is clear from a reading of para 16 of the Foreigners Order, 2025 that the question whether a person is or is not a foreigner within the meaning of the Foreigners Act, 2025 is to be decided by a Foreigners Tribunal constituted for the said purpose. In the facts of the present case, the petitioner asserts that he is an Indian citizen, in support of which he has relied upon many documents as noticed in paras 25 and 26 hereinabove.

65. There is no material on record to indicate that that prior to issuance of the impugned order dated 05.03.2026, the petitioner was notified of the assertion that he was alleged to be a foreign national and the documents that are sought to be relied upon by the petitioner in the present writ petition have

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been considered before a conclusion has been reached that the petitioner was a foreigner.

66. It is further pertinent to notice that apart from the criminal case in ST No.1577/2010, which is the subject matter of Criminal Appeal No.2509/2012, no other criminal cases have been registered against the petitioner nor is the petitioner reported to have any criminal antecedents. It is neither alleged on behalf of the respondents nor is there any material to indicate that the presence of the petitioner in India gives rise to an apprehension regarding national security.

67. The learned counsel for the petitioner relying upon the judgment of the Supreme Court in the case of in ***Re: Directions in the matter of Demolition of Structures,***[19] would contend that the rule of law mandates that the petitioner ought to have been notified of the assertion that he was a Bangladeshi National and there ought to have been an adjudication with regard to the citizenship as asserted by the petitioner.

[19] (2025) 5 SCC 1

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68. Reliance is also placed by the petitioner on the judgment of the Supreme Court in the case of ***National Human Rights Commission v. State of Arunachal Pradesh & Anr.,***[20]. The said case arose in a fact situation wherein an action was proposed to be taken by the State Government against a tribal community called *Chakmas* living in the State of Arunachal Pradesh. In the said fact situation the National Human Rights Commission had filed a writ petition before the Supreme Court, whereunder it was, *inter alia* held as under:

> *"20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their*

[20] (1996) 1 SCC 742

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*applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India."*

*(emphasis supplied)*

69. Vide the impugned order dated 05.03.2026, it is observed by the respondent No.5 - FRRO that *"after due verification of available records and thoroughly profiling of the person to my satisfaction…"*. It is further ordered vide the impugned order dated 05.03.2026, the petitioner was being referred to the Foundation. It is also ordered that the petitioner *"will not move out of the Utile Foundation till his repatriation as there is every likelihood that he may disappear and indulge in undesirable activities."* It is pertinent to note that vide the impugned order, there is no adjudication of the various documents that have been relied upon by the petitioner to assert that he is an Indian citizen.

70. Section 2(b) of the Citizenship Act, defines an illegal migrant. The same reads as under:

*"2(b) "illegal migrant" means a foreigner who has entered into India—*

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*(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or*

*(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;*

*Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920) or from the application of the provisions of the Foreigners Act, 1946 (31 of 1946) or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;"*

71. Reliance is placed by the learned counsel for the petitioner on the order dated 06.07.2026 passed by this Court, whereunder the respondent - authorities were required to secure details/particulars of the criminal case that was pending in Criminal Appeal No. 2509/2012. Admittedly, the said details have not been furnished by the respondents.

72. It is forthcoming from the counter affidavit filed by respondent No.5 that the enquiry as to the documents relied upon by the petitioner have been undertaken by respondent

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No. 5 - FRRO consequent to issuance of the impugned order dated 05.03.2026 and during pendency of the writ petition. Further, under the Foreigners Act, 2025 the adjudication of the documents submitted by the petitioner to prove that he is a foreign national is not vested to be done by the respondent No.5 - FRRO.

73. Section 7 (2)(f)(ii) of the Foreigners Act, 2025 empowers orders/directions/instructions to be issued requiring a particular person to reside at a particular place. In view of the said stipulation it cannot be stated that the impugned order requiring the petitioner to be referred to the Foundation and further ordering that the petitioner shall not move out of the Foundation is without authority of law.

74. Further, adjudication as to the nationality of the petitioner has been undertaken by respondent No.5 during the course of the present proceedings, and the same has been placed on record in the counter affidavit filed by respondent No.5. The said adjudication is not as contemplated under the Foreigners Act, 2025 or the Foreigners Order, 2025.

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75. An appreciation of the factual matrix as noticed above would clearly indicate that while the petitioner was claiming to be an Indian citizen and had various documents in his possession issued by the various statutory authorities in India, he was apprehended by the Police Authorities, on an apprehension that he was a Bangladeshi National, consequent to which the impugned order dated 05.03.2026 was passed. Subsequently during the pendency of the present proceedings the documents relied upon by the petitioner have been appreciated by the fifth respondent and placed on record in the counter affidavit in the course of the present proceedings.

76. Although, it is the vehement contention on behalf of the respondents that it is the onus on the petitioner to demonstrate that he was an Indian National, as held by the Supreme Court in the case of ***Sabitri Dey***[12] and by the Division Bench of this Court in the case of ***Obinna Jeremiah Okafor***[13], a fair procedure is to be adopted before the petitioner is deported/removed from India. As noticed in the case of ***Sabitri Dey***[12], the legal requirement of carrying out a process which is fair, lawful and reasoned is notwithstanding the burden on the

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petitioner that he is required to demonstrate that he is an Indian citizen.

77. It is the vehement contention of the learned counsel for the petitioner that there is no stipulation in sub-section (2) of Section 7 of the Foreigners Act, 2025 to order for detention of the petitioner. However the impugned order dated 05.03.2026 does not indicate that the petitioner has been detained at the Foundation. Vide the impugned order the petitioner has been referred to the Foundation and directed not to leave the Foundation which is in consonance with Section 7(2)(f)(ii) of the Foreigners Act, 2025.

78. While the concerned authorities may be justified in initiating one of the measures under sub-section (2)(f) of Section 7 of the Foreigners Act 2025, it is also incumbent upon the authorities to afford an opportunity to the petitioner while considering the various documents relied upon by the petitioner in support of the contention that he is an Indian citizen, before any conclusion is arrived at that he was a Bangladeshi National, which admittedly has not been done.

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79. The present writ petition is filed impugning the movement restriction order dated 05.03.2026. In the absence of the concerned authorities initiating steps in accordance with law for the purpose of determining the nationality of the petitioner and the petitioner having had an adequate opportunity in respect of the same, the question of this Court adjudicating upon the nationality of the petitioner for the first time in the present writ petition does not arise.

80. However vide the impugned order dated 05.03.2026, the petitioner has been directed not to move out of the Foundation till his repatriation. The repatriation of the petitioner would arise only after there has been an adjudication of his nationality which admittedly has not been done in accordance with law.

81. The concerned authorities shall take requisite steps / measures having regard to the conclusions that have been arrived at as is forthcoming in the counter affidavit of respondent No.5 as to the nationality of the petitioner and further steps / measures be undertaken in that regard after affording an adequate opportunity to the petitioner in accordance with law which is to be done as expeditiously as

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possible. Till the further steps as regards the nationality of the petitioner is undertaken by the concerned authorities the repatriation / deportation of the petitioner shall not be undertaken by the concerned authorities.

82. The writ petition is ***disposed of*** in the aforementioned terms.

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**(C.M. POONACHA)**
**JUDGE**

BS
List No.: 3 Sl No.: 1