

ITEM NO.104

COURT NO.14

corrected
SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Case (Criminal) No. 1/2013

MS MAJA DARUWALA & ANR.

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ANR.

Respondent(s)

Date : 30-01-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) : Mr Soutik Banerjee, Adv.
Mr. Zoheb Hossain, AOR

For Respondent(s) : Mrs. Aishwarya Bhati, A.S.G.
Mr.Kunal Mimani, Adv.
Ms. Astha Sharma, AOR
Mr. Raj Bahadur Yadav, AOR
Ms. Chitrangda Rashtravara, Adv.
Ms. Shagun Thakur, Adv.
Mr. Aditya Shankar Dixit, Adv.
Ms. Satvika Thakur, Adv.
Mr. Ishaan Sharma, Adv.

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

1. We have heard Mr. Soutik Banerjee, the learned counsel appearing for the petitioner nos. 1 and 2, Ms. Aishwarya Bhati, the learned A.S.G. appearing for the Union of India and Mr. Kunal Mimani, the learned counsel appearing for the State of West Bengal.

2. At the outset we take notice of the order passed by this Court dated 19th November, 2012, the order read thus:-

"We have heard Mr. S.K. Dholakia, learned senior counsel for the petitioners and Mr. Soumitra G. Chaudhuri, learned counsel for the respondent No. 1 - State of West Bengal.

2. No body appears for the respondent No. 2 - Union of India, although vakalatnama has been filed on its behalf.

3. We have perused the order passed by the High Court on November 18, 2011 which reads as follows:

"Learned counsel for the petitioners brought to our notice that the Supreme Court of India is seized with the similar issues involved in this petition as it is dealing with the petition filed by one Bhim Singh (W.P. (Crl.) No. 310 of 2005 Bhim Singh vs. Union of India and others. It is submitted that the petitioners would like to apply before the Supreme Court of India for transferring the present writ petition before the Supreme Court of India, so that the Supreme Court can deal with the matter.

Learned Additional Solicitor General and the learned Government Pleader have no objection.

We grant leave to the petitioners to move the Hon'ble Supreme Court by getting this matter transferred from our file to Supreme Court."

4. Having regard to the above, we grant this Transfer Petition and transfer Writ Petition No. 8105 (W) of 2011 - Ms. Maja Daruwala and others vs. State of West Bengal and another, pending before the Calcutta High Court to this Court. The Registrar General of the Calcutta High Court shall send the record of the above case to this Court as expeditiously as may be possible.

5. Transfer Petition stands disposed of accordingly."

3. It appears from the materials on record that the petitioners herein a Public Spirited Citizen Associated with an Organisation by name "Commonwealth Human Rights Initiative (NGO) addressed a letter

dated 2nd May, 2011 to the Chief Justice of the High Court of Judicature at Calcutta highlighting the plight of illegal immigrants from Bangladesh who after being convicted for the offence under the Foreigners Act are being kept confined to correctional homes.

4. The letter brought to the notice of the High Court that all those illegal immigrants from Bangladesh who are put to trial for the offence punishable under the Foreigners Act after undergoing sentence instead of being deported to their own country are being detained in the Correctional Homes of the State of West Bengal.

5. The letter referred to above, reads thus:-

**"IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
[SPECIAL ORIGINAL JURISDICTION]
LETTER PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
[As against the illegal and continued detention of Bangladeshi
nationals in detention/ correctional facilities throughout West
Bengal, India]**

To,
The Hon'ble Chief Justice
And His Companion Judges of the
Hon'ble High Court of Judicature at Calcutta
The Petitioners undersigned,
Most Respectfully Showeth:

1. This Letter Petition is to bring to the immediate and urgent attention of this Hon'ble Court, the plight of Bangladeshi nationals who had been convicted for illegal entry into India and consequently imprisoned, as under section 14A and/or section 14B of the Foreigners' Act, 1946 (as amended by the Foreigners (Amendment Act, 2004) and who despite having completed their prescribed sentence, continue to be illegally detained in various correctional facilities throughout West Bengal, India, whilst awaiting repatriation. A copy of the aforesaid provisions as inserted into the Foreigners Act, 1946 by the 2004 Amendment Act is annexed hereto as Annexure P-1.

2. As per the official records maintained and issued by the Directorate of Correctional Services, Government of West Bengal; as on 1st February, 2011, out of 858 Bangladeshi persons lodged in various correction facilities, there were 495 such Bangladeshi nationals (421 men and 74 women) who had been released upon completion of their sentence and were awaiting repatriation. (Annexure P-2).

2. Recent estimates from a number of correctional facilities in West Bengal record that as many as 259 persons who were released after having completed their prescribed term of sentence, continue to remain lodged or detained as "jaankalash" convicts in the various correctional facilities throughout West Bengal, whilst merely awaiting the repatriation process. (Annexure P-3 - Excel sheet). This number, i.e. 259 persons, is necessarily an under-estimation, because not all of the correctional facilities in which Bangladeshi persons may be lodged, have been taken into account. Also, given the governmental policy as described further below, it is likely that all persons released upon serving sentence terms are detained as "jaankalash" convicts, pending the repatriation procedures.

3. It is most respectfully submitted that the prolonged and continued imprisonment of such persons, after their completion of the statutorily prescribed term of sentence and that too, while merely awaiting administrative process, is in blatant violation of their fundamental rights guaranteed to even foreign nationals within India, as enshrined in Article 21 of the Constitution of India and as held by the Hon'ble Supreme Court of India in a catena of decisions. In particular, recent orders passed by the Hon'ble Supreme Court relating to the release and repatriation of Pakistani prisoners held in India, are annexed hereto as Annexure P-4.

4. In respect of foreign nationals who are apprehended in India and found to have illegally entered Indian territory without the requisite authority and/ or documents, in contravention to the aforementioned provisions of the Foreigners Act, 1946, the Government of West Bengal, Home (Foreigners and NRIs) Department vide Memo dated 6th March 2007, issued a Standard Operating Procedure ('SOP') for deportation/repatriation of foreigners, and Bangladeshi nationals in particular. This Memo No. 241-43 FNB/ 12-01-06 dated 06.03.2007 is annexed hereto. (Annexure P-5).

5. Clause 1 of the aforesaid Memo clearly states that in respect of adult (male and female) convicts who have been released after their term of sentence, upon receiving such a convict, the Superintendent of Correctional Homes must inform the DIB Office of the same alongwith the documents of the convict, stating the date of probable release. However, it is clear that there is no time limit prescribed by the executive authorities for the continued detention of persons who have already completed the prescribed sentence under the Foreigners Act, 1946 and have been released. Moreover, the rationale and sole basis for such continued detention is that the governmental authorities may complete the purely administrative process of repatriation.

6. Further, clause 4 of the said Memo provides that pending the repatriation process, the released convict *"may stay in the correctional home as 'jaankalash convict', waiting for repatriation."* It is clear upon reading the said clause alongwith other relevant provisions of the said Memo that the detention of such persons in correctional facilities is not even mandatory. It is perfectly possible for the departmental authorities to rehabilitate such persons upon their release during the pendency of the repatriation process. The reality however, as per the Government's own statistics, is that several persons who have undergone and completed their prescribed sentence, continue to be imprisoned or detained in correctional facilities for a prolonged period of time during the pendency of their repatriation process.

7. It is respectfully submitted that such provisions as contained in the executive/governmental policies, are blatantly illegal, unconstitutional and violative of the fundamental rights prescribed under Article 21 of the Indian Constitution, and are consequently liable to be struck down.

8. Further, in 2009, the Ministry of Home Affairs, (Foreigners Division), Government of India, prescribed the revised procedure for deportation of Bangladeshi nationals apprehended in India vide Circular No. F 14011/55/09-FVI dated 23rd November 2009, (Annexure P-6). The relevant provision is extracted hereinbelow for ready reference:

"iv. The illegal immigrants from Bangladesh who are apprehended in the country and against whom action is taken under section 14A(b) of the Foreigners Act, 1940 and whose cases are referred to the Bangladesh High Commission for nationality verification through the Ministry of External

Affairs, shall be repatriated/ deported after the confirmation of their nationality. Till the nationality of such Bangladeshi national is confirmed, they may be kept in detention centres set up/to be set up in the States/UTs concerned."

9. Thus, even as per the revised procedure, the governmental policy allows the continued detention/imprisonment of persons who have already undergone and completed their sentence, merely on account of awaiting purely administrative procedures of repatriation. Such an executive policy is illegal, arbitrary, unconstitutional and amounts to a gross illegality on the part of the concerned administrative/executive authorities, insofar as it is violative of the longstanding and well-settled legal principles in respect of Article 21 of the Indian Constitution.

10. It is pertinent to emphasise herein that the revised procedure as prescribed in the above Circular dated 23rd November 2009, itself mandates that where the Border Security Forces intercept persons in Indian territory i.e. in West Bengal, and find such persons to be foreign/Bangladeshi nationals as well as lacking the requisite documents for legal entry into India, the BSF must immediately send the persons back to Bangladeshi territory. However, there appears to be no coherent or consistent procedure or policy evolved by the executive authorities, as to the systematic identification and treatment/handling of the persons who are apprehended and/or convicted under the Foreigners' Act, 1946.

11. In terms of practical realities, it is relevant and important to highlight the fact that the problem of apprehension and subsequent conviction/imprisonment of Bangladeshi nationals by Indian border security forces in West Bengal is likely to be a continuing and complex issue. This is because of the fact that the border land demarcation between India and Bangladesh has, for long, been a fraught and disputed affair. For instance, there are several overlapping territories, such as, "enclaves" i.e. Bangladeshi/foreign territories enclosed within Indian territory and vice versa. India has 111 enclaves within Bangladesh (approximately 70 square kilometres) while Bangladesh has 51 enclaves of its own, comprising 28 square kilometres surrounded by India. Recently, it has been widely reported that the countries are moving towards an agreement to absorb the enclaves and/ or "swap territory" (as reported in The Economist dated February 15, 2011). The relevant newspaper and magazine articles are collectively annexed hereto as Annexure P-7 (Colly).

12. Given the particular nature of the Indian-Bangladeshi border situation, for persons living in these enclaves, stepping in and out of the folds on foreign/ domestic territory is a logistical and necessary compulsion and an unavoidable fact of life. Legally though, the residents of these enclaves may only go to their respective countries on the production of an identity card or like documentation, after seeking permission from the border guards. It is reasonable to assume that it is the persons who reside in such enclaves who are most likely to be apprehended and detained by border security forces for simply stepping into Indian territory, even though they do so by reason of residing in such enclaves and do not intend to illegally enter and remain in Indian territory.

13. It must be emphasised that the residents of these enclaves live in abysmal conditions, to say the least, with a near-total lack of basic facilities such as water, roads, electricity, schools and medicines. As per newspaper reports and human rights' agencies such as Human Rights Watch, crime is rampant in these enclaves in the absence of any effective - law enforcement agencies. In such a situation, excessive force meted out by the border forces on these persons remains a sad and irrefutable reality. Often, the persons who are apprehended and subsequently convicted and imprisoned in India, are the sole earning members of their respective families. Upon their imprisonment and throughout the time they spend in confinement away from their homes and families, their dependant family members left behind are plunged into an even more desperate and vulnerable position. Worse, there have been several instances where entire families, including women and children, are apprehended all together and the family members, are forcibly separated from each other and detained in different, separate facilities for prolonged periods of time, while the adults are subjected to legal/formal procedures.

14. Thus, for those persons who have been convicted and subsequently imprisoned for violating legal entry requirements under the Foreigners Act, 1946 - the trauma of continued imprisonment in India cannot be overemphasised. The prescribed term of sentence is itself harsh - the prescribed sentence under the said Act is not less than two years and extends to eight years. The result is that families are uprooted, individual family members are imprisoned separately and parents are compelled to live apart from their children and spouses, for several years. That the continued imprisonment of

these people even after their completion of the prescribed sentence should be on account of executive/administrative failings, is and continues to be, a shocking travesty of law and justice.

15. There is no doubt that the continued detention of such persons even after their completion of their terms of sentence, is illegal and violative of their constitutionally guaranteed human rights. It is respectfully submitted that it would be fair and just for this Hon'ble Court to ensure that such persons are recompensed in some measure so as to alleviate the grave, systemic injustice meted out to them. It would also be imperative to ensure that such persons are reunited with their respective families and provided with shelter facilities in India whilst the governmental authorities execute the procedural formalities for their repatriation.

16. It is hoped that the Legislature/Parliament will finalise the territorial demarcation between India and Bangladesh in order to achieve clarity with regard to the persons living in the border areas and enclaves. Pending the same, it is respectfully submitted that the present situation in the border territories of India, particularly in West Bengal, is nothing short of an exigency in terms of human rights violations. It is a situation which warrants monitoring by this Hon'ble Court, especially in light of the express failings of the governmental authorities in complying with basic legal process and constitutional principles.

17. In light of all these facts and in the interests of law, justice and the clear public interest in terms of protection of fundamental rights of persons as enshrined in our Constitution, it is humbly and most respectfully prayed that the Hon'ble Chief Justice of the High Court of Calcutta may consider this Letter Petition to be in the nature of a *bona fide* Public Interest Litigation and pass the following orders, in addition to any other(s) that this Hon'ble Court may deem fit and proper:

a. grant leave of the instant Letter Petition as being in the nature of Public Interest Litigation and issue notice to the Central Government of India (through Ministry of External Affairs) State Government of West Bengal (and the concerned departmental bodies in the State) as well as the Government of Bangladesh through its local consulate;

b. order/ direct the immediate release of all persons who, despite having completed their terms of sentence under the Foreigners Act, 1946, continue to be detained/imprisoned in Indian correctional facilities

c. order/direct that as per the administrative deportation/repatriation procedures, Clause (4) of Memo No. 241-43 FNB/ 12-01-06 dated 06.03.2007 and Clause (iv) provided in Circular No. F 14011/55/09-FVI dated 23rd November 2009 are unconstitutional insofar as they prescribe continued detention in respect of persons who have already completed their prescribed terms of sentence.

d. order/ direct the concerned governmental authorities to accordingly revise their present standard procedures for deportation/repatriation of foreign nationals and evolve comprehensive and sound procedures in conformity with the law;
e. pass any such further orders/directions as this Hon'ble Court may deem fit.

SIGNED AND AFFIRMED

On behalf of and as authorised by
Commonwealth Human Rights Initiative ("CHRI")
being the main Public Interest Litigator in the instant case:

1. Sd/-

(Ms. Maja Daruwala, Director, CHRI)

2. Sd/-

(Ms. Madhurima, Advocate & Consultant, Prison Reforms Programme, CHRI)

3. Sd/-

(Ms. Aarthi Ranjan, Advocate, Supreme Court of India)

Dated: 02.05.2011

Place: Kolkata

(Drafted by: Aarthi Rajan, Advocate)"

6. It appears that the High Court took *suo motu* cognizance of the letter, referred to above, and passed an order dated 13th May, 2011, which reads thus:-

"Heard the learned counsel for the parties.
Issue notice to the Principal, Secretary, Home Department, West Bengal.

Returnable on 10th June, 2011.

Copy of the petition addressed to this Court, furnished to the learned Advocate General.

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties."

7. The State of West Bengal filed its reply to the letter referred to above.

8. It appears that thereafter the petitioners preferred a Transfer Petition before this Court praying that the Writ Petition No. 8105 of 2011 be transferred to this Court.

9. This Court *vide* its order, referred to above, directed that the petition shall stand transferred to this Court.

10. It appears that almost 12 years have passed by, but till this date there is no further progress.

11. *Prima facie*, the subject matter of challenge appears to be an order issued by the Government of West Bengal, Home (Foreigners and NRI's Department), Calcutta dated 6th March, 2007, which reads thus:-

"Memo. No.241(43)-FNB/12-01/06, dt. 6-3-2007

Government of West Bengal
Home (Foreigners & NRI's) Department
Writers' Buildings,
Kolkata

Subject: Standard operating Procedure(SOP) for
Deportation/ Repatriation of the Foreigners Specially
for Bangladeshi.

Illegal immigrants are apprehended by the appropriate
authority and put up under law on various reasons. By

the order of Hon'ble Court, the Foreigners' Juvenile or adult, lodged in different Correctional Homes/Shelter Homes and after completion of their sentence, the juvenile is/are released and lodged in different shelter Homes in West Bengal and the adults are lodged in the correctional Homes as a 'Jaankhalash' convict. Then the Repatriation/ Deportation process may arise.

To complete the process, the following procedure should be observed by the different Authorities in their respective areas of functions.

For Adult (Male & Female) convict:-

1. On receiving the convict, the Supdt. of Correctional Home: should inform the respective DIB, Office with documents of the convict stating the probable date of release.
2. The DIB concerned may send the papers to the Home (F&NRI's) Department for fixing up the National Status of the convict.
3. The Home (F&NRI's) Department may transmit the documents to the Branch Secretariat, M.E.A., Kolkata for verification of the National Status of the convict by the Office of the Deputy High Commission for the People's Republic of Bangladesh in Kolkata.
4. Meanwhile the released convict may stay in the Correctional Homes as a 'Jaankhalash' convict, waiting for repatriation.
5. On receiving the documents from the Office of the Deputy High Commission for the People's Republic of Bangladesh in Kolkata on the fixation of national status of the convict, only Home (E&NRI 's) Department may issue Repatriation Order, addressing the Addl. Director General of Police(B), Intelligence Branch, West Bengal, 13, Lord Sinha Road, Kolkata-71 to execute the same in consultation with the BSF Authority in Kolkata and the local DID Authority and also the Jail Authority.
6. The DIB Authority may thereafter convoy this Department the date of Ex-India departure of the Foreigner's.

Juvenile (Male & Female) Convict :-

1. On receiving the Juvenile convict the Supdt. of Home/ Social Welfare Directorate may send the related documents to the D.I.B. concerned with request to take action for repatriation.
2. The D.I.B. concerned may send the papers to the Home (F&NRI 'S) Department for fixing up the National Status

of the juvenile convict.

3. The Home(F & NRI's) Department may transmit the documents to the Branch Secretariat, Ministry of External Affairs in Kolkata for verification of the National status of the juvenile convict by the office of the Deputy High Commission of the People's Republic of Bangladesh in Kolkata under intimation to the different N.G.O.'s if necessary, with a request to expedite the verification process, with the help of their counterpart in Bangladesh.

4. Meanwhile the released Juvenile convict may stay in the shelter Homes as a 'Jaankhalash' convict, waiting for repatriation.

5. On receiving the documents from the Office of Deputy High Commission for the People's Republic of Bangladesh in Kolkata to on the Fixation of National Status of the juvenile convict, only Home (F & NRI's), Department may issue Repatriation Order, addressing the Addl. Director General of Police (s), Intelligence Branch, West Bengal in consultation with the B.S.F. Authority in Kolkata, the Local D.I.B. Authority the Supdt. of Shelter Homes and also with the N.G.O. concerned, if necessary.

6. The D.I.B. Authority may thereafter convey this Department the date. of Ex-India departure of the Foreigner/s.

Special Secretary to the
Government of West Bengal."

12. It also appears that there is a challenge to a circular issued by the Government of India, Ministry of Home Affairs, Foreigners Division dated 25th November, 2009, which reads thus:-

"F.14011/55/09 F-VI
Government of India
Ministry of Home Affairs
(Foreigners Division)

New Delhi, the 23rd November, 2009/
25th November 2009

- (1) The Chief Secretaries of all State Governments and Union Territories
- (2) Director General, Border Security Force, New Delhi.

Subject: Procedure of deportation of Bangladeshi nationals- revised instructions regarding.

Sir/Madam,

I am directed to say that Bangladeshi nationals, who came to India legally on or after the 25th March, 1971 are treated as illegal immigrants Bangladeshi infiltrators and those overstaying unauthorisedly after the expiry of their visa are to be deported back to Bangladesh. Deportation of such Bangladeshi nationals is at present carried out in accordance with the procedure laid down in the instructions issued by the Ministry of Home Affairs vide letters no: 14011/8/96-F.VI dated 16th September, 1997 and 9th September, 1998.

2. The entire issue relating to deportation of Bangladeshi nationals has been reviewed and it has been decided, in supersession of all the earlier instructions issued on the subject, that the deportation of Bangladeshi nationals will, henceforth; be carried out in the following manner:-

(i) Bangladeshi nationals who are intercepted at the border while crossing into India unauthorizedly shall immediately be sent back by the Border Security Force (BSF) then and there.

(ii) In case of inadvertent crossers, BSF should take them into custody and interrogate them. After interrogation, if found innocent, they may be handed over to BDR after holding a flag meeting. Records of such Bangladeshi nationals handed over to the BDR after holding a flag meeting. Records of such Bangladeshi nationals handed over to BDR should be maintained by BSF and furnished to the Ministry of Home Affairs every month. This report is mandatory and shall be furnished by BSF every month to the Foreigners Division of the Ministry of Home Affairs by the 15th day of the following month. The report may be sent to Joint Secretary (Foreigners) or Deputy Secretary (Foreigners), Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi- 110 011.

(iii) All State Governments/UT Administrations may, set up Special Task Forces in each District of the State/UT to detect, identify and intercept illegal immigrants

from Bangladesh settled in the State /UT concerned.

(iv) The illegal immigrants from Bangladesh who are apprehended in the country and against whom action is taken under section 14 A(b) of the Foreigners Act, 1946, and whose cases are referred to the Bangladesh High Commission for nationality verification through the Ministry of External Affairs, shall be repatriated/deported after the confirmation of their nationality. Till the nationality of such Bangladeshi national is confirmed, they may be kept in detention centers set up/to be set up in the States/UTs concerned.

(v) In respect of Bangladeshi nationals found to be staying unauthorizedly in any particular State/UT, proper inquiry shall be conducted by the State Government/UT concerned. If the suspected Bangladeshi 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 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 competent authority will ensure, by obtaining permission of the court wherever necessary, the detention of such persons to ensure physical availability at the time of deportation. If no report is received within the period. of 30 days, the competent authority may take necessary action to deport the suspected Bangladeshi national.

(vi) All State, Governments/UT Administrations may set up sufficient number of detention centers in each State/UT where such suspected illegal immigrants would be detained pending their deportation.

(vii) After completion of the inquiry as mentioned in sub-para (v) above, the illegal immigrants from Bangladesh detected in States/UTs other than the border

States with Bangladesh shall be taken by the concerned State/UT Police under proper escort, in groups as far as possible, and handed over to the BS in West Bengal at the places designated. The State/UT Police who is escorting the illegal immigrants from Bangladesh 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 inquiry. Thereafter, the BSF shall facilitate their exit from India to Bangladesh. BSF shall inform all the State Governments/UTs (other than the border States with Bangladesh), the name, designation, telephone numbers and e-mail address of the designated officer of BSF to whom the illegal immigrants are to be handed over and also intimate the designated place in West Bengal where the illegal immigrants are to be handed over.

(viii) Those State Governments having borders contiguous with Bangladesh shall also hand over the illegal Bangladeshi immigrant to the designated officer of BSF at the designated place in the State after completion of the inquiry as mentioned in sub-para (v) above. The State Police who is escorting the illegal immigrants from Bangladesh should carry the appropriate order issued by the competent authority of the State Government under section 3(2)(c) of the Foreigners Act, 1946. In the case of Assam, the deportation of a person declared as a foreign national by the Foreigners Tribunal, would also be done following the same procedure. BSF shall inform the State Governments having borders contiguous with Bangladesh, the name; designation, telephone numbers and e-mail address of the designated officer of BSF to whom the illegal immigrants are to be handed over and also intimate the designated place in the border State where the illegal immigrants are to be handed over.

(ix) Advance information about the movement of deportees under police escort by State/UT through another State/UT would be given by the State/UT from which deportees are being sent to the concerned State/UT Police. Appropriate mechanism in this regard would be set up by the concerned States/UTs. Advance information about the movement of deportees would also be sent to the Home Secretary and Director General of Police of the bordering State through which deportation is to be

effected. The designated officer in BSF shall also be informed of the same by the State Government/UT Administration in advance.

(x) BSF shall furnish to the State/UT police authorities proper acknowledgment of the illegal Bangladeshi immigrants handed over to them for deportation by the State/UT Police authorities. BSF shall also furnish a report to the State Government/UT, Administration concerned after the deportation of the illegal Bangladeshi immigrant.

(xi) All State Governments/UT Administrations should maintain a record of illegal Bangladeshi immigrants handed over to BSF for deportation and send a report in this regard to the Ministry of Home Affairs every month. This report is mandatory and shall be furnished by the State Governments/UT Administrations every month to the Foreigners Division of the Ministry of Home Affairs by the 15th day of the following month. The report may be sent to Joint Secretary (Foreigners) or Deputy Secretary (Foreigners), Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi - 110 011.

(xii) BSF shall also maintain a record of illegal Bangladeshi immigrants handed over to them by the State Police authorities and furnish a report in this regard to the Ministry of Home Affairs every month. This report is mandatory and shall be furnished by BSF every month to the Foreigners Division of the Ministry of Home Affairs by the 15th day of the following month. The report may be sent to Joint Secretary (Foreigners) or Deputy Secretary (Foreigners), Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi - 110 011.

3. It has also been decided that the State Governments/UT Administrations would initially incur expenditure for transportation of the Bangladeshi nationals to the designated points before being handed over to BSF and subsequently get this amount reimbursed alongwith the amounts incurred by them for performing the agency functions on behalf of the Central Government under the Foreigners Act, 1946 etc. However, the entire expenditure involved in the setting up and running of detention centers shall be borne by the State Government/UT Administration concerned.

4. All State Governments/UT Administrations and the Border Security Force are requested to strictly follow the above instructions and take pro-active action according to the above mentioned revised instructions for deportation of the Bangladeshi nationals staying unauthorizedly in the country. It is also requested that the State Governments/UT Administrations concerned should take measures to avoid unnecessary publicity on the issue of deportation of Bangladeshi nationals."

13. The challenge, more particularly, to the aforesaid circular issued by the Government of India is to Clause 2(iv), referred to above.

14. The pivotal issue that falls for our consideration is that if an illegal immigrant from Bangladesh after being apprehended and proceeded under Section 14A(b) of the Foreigners Act, 1946 is convicted and sentenced to undergo a particular term of imprisonment then after he completes his term of sentence should be immediately repatriated/deported to his own country or should he be kept for an indefinite period in the Correctional Homes in India. The only confusion in our mind is that once an illegal immigrant is put to trial and is held guilty then what is the requirement for further verification of his nationality at the end of the Ministry of External Affairs.

15. At the relevant point of time, when the petition was filed, it appears that there were almost 850 illegal immigrants detained in the correctional homes. We would like to know the figure as on date. How many illegal immigrants as on date are in various

detention camps/correctional homes after being convicted and having undergone the entire sentence under the Foreigners Act?

16. We would like to understand from the respondents that once an illegal immigrant from Bangladesh has been convicted for the alleged offence is it not established that he is not a citizen of India. What is the idea in keeping hundreds of such illegal immigrants in Detention Camps/Correctional Homes for an indefinite period of time?

17. The Union of India owes an answer to all the aforesaid questions put by us.

18. We also take cognizance of Clause 2(v) of the circular issued by the Government of India dated 25th November, 2009. Clause 2(v) reads thus:-

“(v) In respect of Bangladeshi nationals found to be staying unauthorizedly in any particular State/UT, proper inquiry shall be conducted by the State Government/UT concerned. If the suspected Bangladeshi 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 competent authority will ensure, by obtaining permission of the court wherever necessary, the detention of such persons

to ensure physical availability at the time of deportation. If no report is received within the period of 30 days, the competent authority may take necessary action to deport the suspected Bangladeshi national."

19. The plain reading of Clause 2(v) indicates that the entire exercise is to be completed i.e. the exercise of deportation, verification etc. within a period of 30 days.

20. We want to know why this Clause 2(v) is not being strictly complied with.

21. We would also like to know from the State of West Bengal whether they have any role to play in this litigation.

22. We would also like to know from the Union of India what is expected of the State of West Bengal to do in these type of matters.

23. We grant one last opportunity to both Union of India as well the State of West Bengal to place their stance on record by way of an appropriate report or an affidavit explaining all the relevant aspects of the matter.

24. Registry shall provide one copy of this Order at the earliest to Ms. Aishwarya Bhati, the learned A.S.G. appearing for the Union of India and Mr. Kunal Mimani, the learned counsel appearing for the State of West Bengal for its onward communication.

25. Post this matter on 06.2.2025 top of the board.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

ITEM NO.104

COURT NO.14

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Case (Criminal) No. 1/2013

MS MAJA DARUWALA & ANR.

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ANR.

Respondent(s)

Date : 30-01-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) : Mr Soutik Banerjee, Adv.
Mr. Zoheb Hossain, AOR

For Respondent(s) : Mrs. Aishwarya Bhati, A.S.G.
Mr.Kunal Mimani, Adv.
Ms. Astha Sharma, AOR
Mr. Raj Bahadur Yadav, AOR
Ms. Chitrangda Rashtravara, Adv.
Ms. Shagun Thakur, Adv.
Mr. Aditya Shankar Dixit, Adv.
Ms. Satvika Thakur, Adv.
Mr. Ishaan Sharma, Adv.

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

1. We have heard Mr. Soutik Banerjee, the learned counsel appearing for the petitioner nos. 1 and 2, Ms. Aishwarya Bhati, the learned A.S.G. appearing for the Union of India and Mr. Kunal Mimani, the learned counsel appearing for the State of West Bengal.

2. At the outset we take notice of the order passed by this Court dated 19th November, 2012, the order read thus:-

"We have heard Mr. S.K. Dholakia, learned senior counsel for the petitioners and Mr. Soumitra G. Chaudhuri, learned counsel for the respondent No. 1 - State of West Bengal.

2. No body appears for the respondent No. 2 - Union of India, although vakalatnama has been filed on its behalf.

3. We have perused the order passed by the High Court on November 18, 2011 which reads as follows:

"Learned counsel for the petitioners brought to our notice that the Supreme Court of India is seized with the similar issues involved in this petition as it is dealing with the petition filed by one Bhim Singh (W.P. (Crl.) No. 310 of 2005 Bhim Singh vs. Union of India and others. It is submitted that the petitioners would like to apply before the Supreme Court of India for transferring the present writ petition before the Supreme Court of India, so that the Supreme Court can deal with the matter.

Learned Additional Solicitor General and the learned Government Pleader have no objection.

We grant leave to the petitioners to move the Hon'ble Supreme Court by getting this matter transferred from our file to Supreme Court."

4. Having regard to the above, we grant this Transfer Petition and transfer Writ Petition No. 8105 (W) of 2011 - Ms. Maja Daruwala and others vs. State of West Bengal and another, pending before the Calcutta High Court to this Court. The Registrar General of the Calcutta High Court shall send the record of the above case to this Court as expeditiously as may be possible.

5. Transfer Petition stands disposed of accordingly."

3. It appears from the materials on record that the petitioners herein a Public Spirited Citizen Associated with an Organisation by name "Common Health Human Rights Initiative (NGO) addressed a

letter dated 2nd May, 2011 to the Chief Justice of the High Court of Judicature at Calcutta highlighting the plight of illegal immigrants from Bangladesh who after being convicted for the offence under the Foreigners Act are being kept confined to correctional homes.

4. The letter brought to the notice of the High Court that all those illegal immigrants from Bangladesh who are put to trial for the offence punishable under the Foreigners Act after undergoing sentence instead of being deported to their own country are being detained in the Correctional Homes of the State of West Bengal.

5. The letter referred to above, reads thus:-

**"IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
[SPECIAL ORIGINAL JURISDICTION]
LETTER PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
[As against the illegal and continued detention of Bangladeshi
nationals in detention/ correctional facilities throughout West
Bengal, India]**

To,
The Hon'ble Chief Justice
And His Companion Judges of the
Hon'ble High Court of Judicature at Calcutta
The Petitioners undersigned,
Most Respectfully Showeth:

1. This Letter Petition is to bring to the immediate and urgent attention of this Hon'ble Court, the plight of Bangladeshi nationals who had been convicted for illegal entry into India and consequently imprisoned, as under section 14A and/or section 14B of the Foreigners' Act, 1946 (as amended by the Foreigners (Amendment Act, 2004) and who despite having completed their prescribed sentence, continue to be illegally detained in various correctional facilities throughout West Bengal, India, whilst awaiting repatriation. A copy of the aforesaid provisions as inserted into the Foreigners Act, 1946 by the 2004 Amendment Act is annexed hereto as Annexure P-1.

2. As per the official records maintained and issued by the Directorate of Correctional Services, Government of West Bengal; as on 1st February, 2011, out of 858 Bangladeshi persons lodged in various correction facilities, there were 495 such Bangladeshi nationals (421 men and 74 women) who had been released upon completion of their sentence and were awaiting repatriation. (Annexure P-2).

2. Recent estimates from a number of correctional facilities in West Bengal record that as many as 259 persons who were released after having completed their prescribed term of sentence, continue to remain lodged or detained as "jaankalash" convicts in the various correctional facilities throughout West Bengal, whilst merely awaiting the repatriation process. (Annexure P-3 - Excel sheet). This number, i.e. 259 persons, is necessarily an under-estimation, because not all of the correctional facilities in which Bangladeshi persons may be lodged, have been taken into account. Also, given the governmental policy as described further below, it is likely that all persons released upon serving sentence terms are detained as "jaankalash" convicts, pending the repatriation procedures.

3. It is most respectfully submitted that the prolonged and continued imprisonment of such persons, after their completion of the statutorily prescribed term of sentence and that too, while merely awaiting administrative process, is in blatant violation of their fundamental rights guaranteed to even foreign nationals within India, as enshrined in Article 21 of the Constitution of India and as held by the Hon'ble Supreme Court of India in a catena of decisions. In particular, recent orders passed by the Hon'ble Supreme Court relating to the release and repatriation of Pakistani prisoners held in India, are annexed hereto as Annexure P-4.

4. In respect of foreign nationals who are apprehended in India and found to have illegally entered Indian territory without the requisite authority and/ or documents, in contravention to the aforementioned provisions of the Foreigners Act, 1946, the Government of West Bengal, Home (Foreigners and NRIs) Department vide Memo dated 6th March 2007, issued a Standard Operating Procedure ('SOP') for deportation/repatriation of foreigners, and Bangladeshi nationals in particular. This Memo No. 241-43 FNB/ 12-01-06 dated 06.03.2007 is annexed hereto. (Annexure P-5).

5. Clause 1 of the aforesaid Memo clearly states that in respect of adult (male and female) convicts who have been released after their term of sentence, upon receiving such a convict, the Superintendent of Correctional Homes must inform the DIB Office of the same alongwith the documents of the convict, stating the date of probable release. However, it is clear that there is no time limit prescribed by the executive authorities for the continued detention of persons who have already completed the prescribed sentence under the Foreigners Act, 1946 and have been released. Moreover, the rationale and sole basis for such continued detention is that the governmental authorities may complete the purely administrative process of repatriation.

6. Further, clause 4 of the said Memo provides that pending the repatriation process, the released convict *"may stay in the correctional home as 'jaankalash convict', waiting for repatriation."* It is clear upon reading the said clause alongwith other relevant provisions of the said Memo that the detention of such persons in correctional facilities is not even mandatory. It is perfectly possible for the departmental authorities to rehabilitate such persons upon their release during the pendency of the repatriation process. The reality however, as per the Government's own statistics, is that several persons who have undergone and completed their prescribed sentence, continue to be imprisoned or detained in correctional facilities for a prolonged period of time during the pendency of their repatriation process.

7. It is respectfully submitted that such provisions as contained in the executive/governmental policies, are blatantly illegal, unconstitutional and violative of the fundamental rights prescribed under Article 21 of the Indian Constitution, and are consequently liable to be struck down.

8. Further, in 2009, the Ministry of Home Affairs, (Foreigners Division), Government of India, prescribed the revised procedure for deportation of Bangladeshi nationals apprehended in India vide Circular No. F 14011/55/09-FVI dated 23rd November 2009, (Annexure P-6). The relevant provision is extracted hereinbelow for ready reference:

"iv. The illegal immigrants from Bangladesh who are apprehended in the country and against whom action is taken under section 14A(b) of the Foreigners Act, 1940 and whose cases are referred to the Bangladesh High Commission for nationality verification through the Ministry of External

Affairs, shall be repatriated/ deported after the confirmation of their nationality. Till the nationality of such Bangladeshi national is confirmed, they may be kept in detention centres set up/to be set up in the States/UTs concerned."

9. Thus, even as per the revised procedure, the governmental policy allows the continued detention/imprisonment of persons who have already undergone and completed their sentence, merely on account of awaiting purely administrative procedures of repatriation. Such an executive policy is illegal, arbitrary, unconstitutional and amounts to a gross illegality on the part of the concerned administrative/executive authorities, insofar as it is violative of the longstanding and well-settled legal principles in respect of Article 21 of the Indian Constitution.

10. It is pertinent to emphasise herein that the revised procedure as prescribed in the above Circular dated 23rd November 2009, itself mandates that where the Border Security Forces intercept persons in Indian territory i.e. in West Bengal, and find such persons to be foreign/Bangladeshi nationals as well as lacking the requisite documents for legal entry into India, the BSF must immediately send the persons back to Bangladeshi territory. However, there appears to be no coherent or consistent procedure or policy evolved by the executive authorities, as to the systematic identification and treatment/handling of the persons who are apprehended and/or convicted under the Foreigners' Act, 1946.

11. In terms of practical realities, it is relevant and important to highlight the fact that the problem of apprehension and subsequent conviction/imprisonment of Bangladeshi nationals by Indian border security forces in West Bengal is likely to be a continuing and complex issue. This is because of the fact that the border land demarcation between India and Bangladesh has, for long, been a fraught and disputed affair. For instance, there are several overlapping territories, such as, "enclaves" i.e. Bangladeshi/foreign territories enclosed within Indian territory and vice versa. India has 111 enclaves within Bangladesh (approximately 70 square kilometres) while Bangladesh has 51 enclaves of its own, comprising 28 square kilometres surrounded by India. Recently, it has been widely reported that the countries are moving towards an agreement to absorb the enclaves and/ or "swap territory" (as reported in The Economist dated February 15, 2011). The relevant newspaper and magazine articles are collectively annexed hereto as Annexure P-7 (Colly).

12. Given the particular nature of the Indian-Bangladeshi border situation, for persons living in these enclaves, stepping in and out of the folds on foreign/ domestic territory is a logistical and necessary compulsion and an unavoidable fact of life. Legally though, the residents of these enclaves may only go to their respective countries on the production of an identity card or like documentation, after seeking permission from the border guards. It is reasonable to assume that it is the persons who reside in such enclaves who are most likely to be apprehended and detained by border security forces for simply stepping into Indian territory, even though they do so by reason of residing in such enclaves and do not intend to illegally enter and remain in Indian territory.

13. It must be emphasised that the residents of these enclaves live in abysmal conditions, to say the least, with a near-total lack of basic facilities such as water, roads, electricity, schools and medicines. As per newspaper reports and human rights' agencies such as Human Rights Watch, crime is rampant in these enclaves in the absence of any effective - law enforcement agencies. In such a situation, excessive force meted out by the border forces on these persons remains a sad and irrefutable reality. Often, the persons who are apprehended and subsequently convicted and imprisoned in India, are the sole earning members of their respective families. Upon their imprisonment and throughout the time they spend in confinement away from their homes and families, their dependant family members left behind are plunged into an even more desperate and vulnerable position. Worse, there have been several instances where entire families, including women and children, are apprehended all together and the family members, are forcibly separated from each other and detained in different, separate facilities for prolonged periods of time, while the adults are subjected to legal/formal procedures.

14. Thus, for those persons who have been convicted and subsequently imprisoned for violating legal entry requirements under the Foreigners Act, 1946 - the trauma of continued imprisonment in India cannot be overemphasised. The prescribed term of sentence is itself harsh - the prescribed sentence under the said Act is not less than two years and extends to eight years. The result is that families are uprooted, individual family members are imprisoned separately and parents are compelled to live apart from their children and spouses, for several years. That the continued imprisonment of

these people even after their completion of the prescribed sentence should be on account of executive/administrative failings, is and continues to be, a shocking travesty of law and justice.

15. There is no doubt that the continued detention of such persons even after their completion of their terms of sentence, is illegal and violative of their constitutionally guaranteed human rights. It is respectfully submitted that it would be fair and just for this Hon'ble Court to ensure that such persons are recompensed in some measure so as to alleviate the grave, systemic injustice meted out to them. It would also be imperative to ensure that such persons are reunited with their respective families and provided with shelter facilities in India whilst the governmental authorities execute the procedural formalities for their repatriation.

16. It is hoped that the Legislature/Parliament will finalise the territorial demarcation between India and Bangladesh in order to achieve clarity with regard to the persons living in the border areas and enclaves. Pending the same, it is respectfully submitted that the present situation in the border territories of India, particularly in West Bengal, is nothing short of an exigency in terms of human rights violations. It is a situation which warrants monitoring by this Hon'ble Court, especially in light of the express failings of the governmental authorities in complying with basic legal process and constitutional principles.

17. In light of all these facts and in the interests of law, justice and the clear public interest in terms of protection of fundamental rights of persons as enshrined in our Constitution, it is humbly and most respectfully prayed that the Hon'ble Chief Justice of the High Court of Calcutta may consider this Letter Petition to be in the nature of a *bona fide* Public Interest Litigation and pass the following orders, in addition to any other(s) that this Hon'ble Court may deem fit and proper:

a. grant leave of the instant Letter Petition as being in the nature of Public Interest Litigation and issue notice to the Central Government of India (through Ministry of External Affairs) State Government of West Bengal (and the concerned departmental bodies in the State) as well as the Government of Bangladesh through its local consulate;

b. order/ direct the immediate release of all persons who, despite having completed their terms of sentence under the Foreigners Act, 1946, continue to be detained/imprisoned in Indian correctional facilities

c. order/direct that as per the administrative deportation/repatriation procedures, Clause (4) of Memo No. 241-43 FNB/ 12-01-06 dated 06.03.2007 and Clause (iv) provided in Circular No. F 14011/55/09-FVI dated 23rd November 2009 are unconstitutional insofar as they prescribe continued detention in respect of persons who have already completed their prescribed terms of sentence.

d. order/ direct the concerned governmental authorities to accordingly revise their present standard procedures for deportation/repatriation of foreign nationals and evolve comprehensive and sound procedures in conformity with the law;
e. pass any such further orders/directions as this Hon'ble Court may deem fit.

SIGNED AND AFFIRMED

On behalf of and as authorised by
Commonwealth Human Rights Initiative ("CHRI")
being the main Public Interest Litigator in the instant case:

1. Sd/-

(Ms. Maja Daruwala, Director, CHRI)

2. Sd/-

(Ms. Madhurima, Advocate & Consultant, Prison Reforms Programme, CHRI)

3. Sd/-

(Ms. Aarthi Ranjan, Advocate, Supreme Court of India)

Dated: 02.05.2011

Place: Kolkata

(Drafted by: Aarthi Rajan, Advocate)"

6. It appears that the High Court took *suo motu* cognizance of the letter, referred to above, and passed an order dated 13th May, 2011, which reads thus:-

"Heard the learned counsel for the parties.
Issue notice to the Principal, Secretary, Home Department, West Bengal.

Returnable on 10th June, 2011.

Copy of the petition addressed to this Court, furnished to the learned Advocate General.

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties."

7. The State of West Bengal filed its reply to the letter referred to above.

8. It appears that thereafter the petitioners preferred a Transfer Petition before this Court praying that the Writ Petition No. 8105 of 2011 be transferred to this Court.

9. This Court *vide* its order, referred to above, directed that the petition shall stand transferred to this Court.

10. It appears that almost 12 years have passed by, but till this date there is no further progress.

11. *Prima facie*, the subject matter of challenge appears to be an order issued by the Government of West Bengal, Home (Foreigners and NRI's Department), Calcutta dated 6th March, 2007, which reads thus:-

"Memo. No.241(43)-FNB/12-01/06, dt. 6-3-2007

Government of West Bengal
Home (Foreigners & NRI's) Department
Writers' Buildings,
Kolkata

Subject: Standard operating Procedure(SOP) for
Deportation/ Repatriation of the Foreigners Specially
for Bangladeshi.

Illegal immigrants are apprehended by the appropriate
authority and put up under law on various reasons. By

the order of Hon'ble Court, the Foreigners' Juvenile or adult, lodged in different Correctional Homes/Shelter Homes and after completion of their sentence, the juvenile is/are released and lodged in different shelter Homes in West Bengal and the adults are lodged in the correctional Homes as a 'Jaankhalash' convict. Then the Repatriation/ Deportation process may arise.

To complete the process, the following procedure should be observed by the different Authorities in their respective areas of functions.

For Adult (Male & Female) convict:-

1. On receiving the convict, the Supdt. of Correctional Home: should inform the respective DIB, Office with documents of the convict stating the probable date of release.
2. The DIB concerned may send the papers to the Home (F&NRI's) Department for fixing up the National Status of the convict.
3. The Home (F&NRI's) Department may transmit the documents to the Branch Secretariat, M.E.A., Kolkata for verification of the National Status of the convict by the Office of the Deputy High Commission for the People's Republic of Bangladesh in Kolkata.
4. Meanwhile the released convict may stay in the Correctional Homes as a 'Jaankhalash' convict, waiting for repatriation.
5. On receiving the documents from the Office of the Deputy High Commission for the People's Republic of Bangladesh in Kolkata on the fixation of national status of the convict, only Home (E&NRI 's) Department may issue Repatriation Order, addressing the Addl. Director General of Police(B), Intelligence Branch, West Bengal, 13, Lord Sinha Road, Kolkata-71 to execute the same in consultation with the BSF Authority in Kolkata and the local DID Authority and also the Jail Authority.
6. The DIB Authority may thereafter convoy this Department the date of Ex-India departure of the Foreigner's.

Juvenile (Male & Female) Convict :-

7. On receiving the Juvenile convict the Supdt. of Home/ Social Welfare Directorate may send the related documents to the D.I.B. concerned with request to take action for repatriation.
8. The D.I.B. concerned may send the papers to the Home (F&NRI 'S) Department for fixing up the National Status

of the juvenile convict.

9. The Home(F & NRI's) Department may transmit the documents to the Branch Secretariat, Ministry of External Affairs in Kolkata for verification of the National status of the juvenile convict by the office of the Deputy High Commission of the People's Republic of Bangladesh in Kolkata under intimation to the different N.G.O.'s if necessary, with a request to expedite the verification process, with the help of their counterpart in Bangladesh.

10. Meanwhile the released Juvenile convict may stay in the shelter Homes as a 'Jaankhalash' convict, waiting for repatriation.

11. On receiving the documents from the Office of Deputy High Commission for the People's Republic of Bangladesh in Kolkata to on the Fixation of National Status of the juvenile convict, only Home (F & NRI's), Department may issue Repatriation Order, addressing the Addl. Director General of Police (s), Intelligence Branch, West Bengal in consultation with the B.S.F. Authority in Kolkata, the Local D.I.B. Authority the Supdt. of Shelter Homes and also with the N.G.O. concerned, if necessary.

12. The D.I.B. Authority may thereafter convey this Department the date. of Ex-India departure of the Foreigner/s.

Special Secretary to the
Government of West Bengal."

12. It also appears that there is a challenge to a circular issued by the Government of India, Ministry of Home Affairs, Foreigners Division dated 25th November, 2009, which reads thus:-

"F.14011/55/09 F-VI
Government of India
Ministry of Home Affairs
(Foreigners Division)

New Delhi, the 23rd November, 2009/
25th November 2009

- (1) The Chief Secretaries of all State Governments and Union Territories
- (2) Director General, Border Security Force, New Delhi.

Subject: Procedure of deportation of Bangladeshi nationals- revised instructions regarding.

Sir/Madam,

I am directed to say that Bangladeshi nationals, who came to India legally on or after the 25th March, 1971 are treated as illegal immigrants Bangladeshi infiltrators and those overstaying unauthorisedly after the expiry of their visa are to be deported back to Bangladesh. Deportation of such Bangladeshi nationals is at present carried out in accordance with the procedure laid down in the instructions issued by the Ministry of Home Affairs vide letters no: 14011/8/96-F.VI dated 16th September, 1997 and 9th September, 1998.

2. The entire issue relating to deportation of Bangladeshi nationals has been reviewed and it has been decided, in supersession of all the earlier instructions issued on the subject, that the deportation of Bangladeshi nationals will, henceforth; be carried out in the following manner:-

(i) Bangladeshi nationals who are intercepted at the border while crossing into India unauthorizedly shall immediately be sent back by the Border Security Force (BSF) then and there.

(ii) In case of inadvertent crossers, BSF should take them into custody and interrogate them. After interrogation, if found innocent, they may be handed over to BDR after holding a flag meeting. Records of such Bangladeshi nationals handed over to the BDR after holding a flag meeting. Records of such Bangladeshi nationals handed over to BDR should be maintained by BSF and furnished to the Ministry of Home Affairs every month. This report is mandatory and shall be furnished by BSF every month to the Foreigners Division of the Ministry of Home Affairs by the 15th day of the following month. The report may be sent to Joint Secretary (Foreigners) or Deputy Secretary (Foreigners), Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi- 110 011.

(iii) All State Governments/UT Administrations may, set up Special Task Forces in each District of the State/UT to detect, identify and intercept illegal immigrants

from Bangladesh settled in the State /UT concerned.

(iv) The illegal immigrants from Bangladesh who are apprehended in the country and against whom action is taken under section 14 A(b) of the Foreigners Act, 1946, and whose cases are referred to the Bangladesh High Commission for nationality verification through the Ministry of External Affairs, shall be repatriated/deported after the confirmation of their nationality. Till the nationality of such Bangladeshi national is confirmed, they may be kept in detention centers set up/to be set up in the States/UTs concerned.

(v) In respect of Bangladeshi nationals found to be staying unauthorizedly in any particular State/UT, proper inquiry shall be conducted by the State Government/UT concerned. If the suspected Bangladeshi 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 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 competent authority will ensure, by obtaining permission of the court wherever necessary, the detention of such persons to ensure physical availability at the time of deportation. If no report is received within the period. of 30 days, the competent authority may take necessary action to deport the suspected Bangladeshi national.

(vi) All State, Governments/UT Administrations may set up sufficient number of detention centers in each State/UT where such suspected illegal immigrants would be detained pending their deportation.

(vii) After completion of the inquiry as mentioned in sub-para (v) above, the illegal immigrants from Bangladesh detected in States/UTs other than the border

States with Bangladesh shall be taken by the concerned State/UT Police under proper escort, in groups as far as possible, and handed over to the BS in West Bengal at the places designated. The State/UT Police who is escorting the illegal immigrants from Bangladesh 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 inquiry. Thereafter, the BSF shall facilitate their exit from India to Bangladesh. BSF shall inform all the State Governments/UTs (other than the border States with Bangladesh), the name, designation, telephone numbers and e-mail address of the designated officer of BSF to whom the illegal immigrants are to be handed over and also intimate the designated place in West Bengal where the illegal immigrants are to be handed over.

(viii) Those State Governments having borders contiguous with Bangladesh shall also hand over the illegal Bangladeshi immigrant to the designated officer of BSF at the designated place in the State after completion of the inquiry as mentioned in sub-para (v) above. The State Police who is escorting the illegal immigrants from Bangladesh should carry the appropriate order issued by the competent authority of the State Government under section 3(2)(c) of the Foreigners Act, 1946. In the case of Assam, the deportation of a person declared as a foreign national by the Foreigners Tribunal, would also be done following the same procedure. BSF shall inform the State Governments having borders contiguous with Bangladesh, the name; designation, telephone numbers and e-mail address of the designated officer of BSF to whom the illegal immigrants are to be handed over and also intimate the designated place in the border State where the illegal immigrants are to be handed over.

(ix) Advance information about the movement of deportees under police escort by State/UT through another State/UT would be given by the State/UT from which deportees are being sent to the concerned State/UT Police. Appropriate mechanism in this regard would be set up by the concerned States/UTs. Advance information about the movement of deportees would also be sent to the Home Secretary and Director General of Police of the bordering State through which deportation is to be

effected. The designated officer in BSF shall also be informed of the same by the State Government/UT Administration in advance.

(x) BSF shall furnish to the State/UT police authorities proper acknowledgment of the illegal Bangladeshi immigrants handed over to them for deportation by the State/UT Police authorities. BSF shall also furnish a report to the State Government/UT, Administration concerned after the deportation of the illegal Bangladeshi immigrant.

(xi) All State Governments/UT Administrations should maintain a record of illegal Bangladeshi immigrants handed over to BSF for deportation and send a report in this regard to the Ministry of Home Affairs every month. This report is mandatory and shall be furnished by the State Governments/UT Administrations every month to the Foreigners Division of the Ministry of Home Affairs by the 15th day of the following month. The report may be sent to Joint Secretary (Foreigners) or Deputy Secretary (Foreigners), Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi - 110 011.

(xii) BSF shall also maintain a record of illegal Bangladeshi immigrants handed over to them by the State Police authorities and furnish a report in this regard to the Ministry of Home Affairs every month. This report is mandatory and shall be furnished by BSF every month to the Foreigners Division of the Ministry of Home Affairs by the 15th day of the following month. The report may be sent to Joint Secretary (Foreigners) or Deputy Secretary (Foreigners), Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi - 110 011.

3. It has also been decided that the State Governments/UT Administrations would initially incur expenditure for transportation of the Bangladeshi nationals to the designated points before being handed over to BSF and subsequently get this amount reimbursed alongwith the amounts incurred by them for performing the agency functions on behalf of the Central Government under the Foreigners Act, 1946 etc. However, the entire expenditure involved in the setting up and running of detention centers shall be borne by the State Government/UT Administration concerned.

4. All State Governments/UT Administrations and the Border Security Force are requested to strictly follow the above instructions and take pro-active action according to the above mentioned revised instructions for deportation of the Bangladeshi nationals staying unauthorizedly in the country. It is also requested that the State Governments/UT Administrations concerned should take measures to avoid unnecessary publicity on the issue of deportation of Bangladeshi nationals."

13. The challenge, more particularly, to the aforesaid circular issued by the Government of India is to Clause 2(iv), referred to above.

14. The pivotal issue that falls for our consideration is that if an illegal immigrant from Bangladesh after being apprehended and proceeded under Section 14A(b) of the Foreigners Act, 1946 is convicted and sentenced to undergo a particular term of imprisonment then after he completes his term of sentence should be immediately repatriated/deported to his own country or should he be kept for an indefinite period in the Correctional Homes in India. The only confusion in our mind is that once an illegal immigrant is put to trial and is held guilty then what is the requirement for further verification of his nationality at the end of the Ministry of External Affairs.

15. At the relevant point of time, when the petition was filed, it appears that there were almost 850 illegal immigrants detained in the correctional homes. We would like to know the figure as on date. How many illegal immigrants as on date are in various

detention camps/correctional homes after being convicted and having undergone the entire sentence under the Foreigners Act?

16. We would like to understand from the respondents that once an illegal immigrant from Bangladesh has been convicted for the alleged offence is it not established that he is not a citizen of India. What is the idea in keeping hundreds of such illegal immigrants in Detention Camps/Correctional Homes for an indefinite period of time?

17. The Union of India owes an answer to all the aforesaid questions put by us.

18. We also take cognizance of Clause 2(v) of the circular issued by the Government of India dated 25th November, 2009. Clause 2(v) reads thus:-

“(v) In respect of Bangladeshi nationals found to be staying unauthorizedly in any particular State/UT, proper inquiry shall be conducted by the State Government/UT concerned. If the suspected Bangladeshi 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 competent authority will ensure, by obtaining permission of the court wherever necessary, the detention of such persons

to ensure physical availability at the time of deportation. If no report is received within the period of 30 days, the competent authority may take necessary action to deport the suspected Bangladeshi national."

19. The plain reading of Clause 2(v) indicates that the entire exercise is to be completed i.e. the exercise of deportation, verification etc. within a period of 30 days.

20. We want to know why this Clause 2(v) is not being strictly complied with.

21. We would also like to know from the State of West Bengal whether they have any role to play in this litigation.

22. We would also like to know from the Union of India what is expected of the State of West Bengal to do in these type of matters.

23. We grant one last opportunity to both Union of India as well the State of West Bengal to place their stance on record by way of an appropriate report or an affidavit explaining all the relevant aspects of the matter.

24. Registry shall provide one copy of this Order at the earliest to Ms. Aishwarya Bhati, the learned A.S.G. appearing for the Union of India and Mr. Kunal Mimani, the learned counsel appearing for the State of West Bengal for its onward communication.

25. Post this matter on 06.2.2025 top of the board.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)