

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition (C) No.274/2009

IN RE SECTION 6A OF THE CITIZENSHIP ACT 1955

TRANSCRIPT OF HEARING

12-December-2023

Document Control

Document Name & Date	Transcript of Writ Petition (C) No. 274 of 2009 Hearing dated 12.12.2023
Status	Released
Version	1.0
Last Update	12.12.2023
Nature of Update	Original version
Release Date	12.12.2023
Document Owner	Supreme Court of India

11:05 AM IST

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I'll take notice of it.

2

3 **PETITIONER'S COUNSEL 1:** My Lord, this is a demolition matter...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I know. I'll do it at lunch.

6

7 **PETITIONER'S COUNSEL 2:** My Lords, I am not mentioning any matter. Constitution
8 bench have pronounced a decision [UNCLEAR]. Small request for the taking the appearance
9 on record, because inadvertently, the advocates over...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No problem. Give it to him. Give it to the Court
12 Master.

13

14 **PETITIONER'S COUNSEL 2:** So grateful.

15

16 **PETITIONER'S COUNSEL 3:** Your Lordship, we had sent in an email for the mentioning
17 of the matter...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Don't worry. Have you already sent it
20 yesterday?

21

22 **PETITIONER'S COUNSEL 3:** Yesterday morning we had sent it...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Everything has been dealt with last evening.
25 There's no email lying unattended, but I'll check in the afternoon. Just meet Mr... Since we are
26 having a CB, anybody who has a problem, just talk to the Registrar Listing, he's here. I'll issue
27 instructions at lunch itself.

28

29 **PETITIONER'S COUNSEL 3:** Obligated, My Lord.

30

31 **PETITIONER'S COUNSEL 1:** My Lords, if I may say, I have an email today for the urgent
32 mentioning, My Lords.

33

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's alright. He's here... that's why he's in the
2 Court right now. I'll pass orders at lunch.

3

4 **SANJAY HEGDE:** Please, My Lords.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

7

8 **SANJAY HEGDE:** Please, My Lords. I appear in I.A. number 23729 of 2023, on behalf of
9 the Assam Sankhyalaghu Sangram Parishad, which is basically the Assam Minorities Struggle
10 Forum and I also appear my Lords, for an individual case, which should not have been before
11 this bench, but there is a reference. So my request is, please de-tag that.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is that about?

14

15 **SANJAY HEGDE:** An individual person who was declared to be a foreigner. Somehow that
16 is... I'll give the number. That is point 15 today, [UNCLEAR]. My submissions, My Lords are
17 in Volume 2, page 173 to 179 and Volume 2-B...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you just say that again? Volume 2?

20

21 **SANJAY HEGDE:** Page 173 to 179 and Volume 2-B, 23 to 30. But, I will confine myself
22 largely to my one pager, which is in volume 2-C, the first page.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 2-C will [UNCLEAR] one page?

25

26 **SANJAY HEGDE:** Please, My Lords...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's see what you have said.

29

30 **SANJAY HEGDE:** My Lords, just a prelude before I begin. My Lords, I've been privileged
31 somehow, to work on citizenship issues and Your Lordships had sent me to talk to people who
32 had doubts about citizenship, to Shaheen Bagh. And my request, my earnest request out here,
33 is that Your Lordships are called upon today, only to judge the validity of 6A, the constitutional
34 validity. My Lords, I'm taking a cue from what the Solicitor General said, I am not going to
35 speak too much about what happens thereafter hereafter and all that, because My Lords, my
36 experience has been, that any word with regard to citizenship, which is said even slightly here
37 and there, has consequences far beyond one State.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D. Y. CHANDRACHUD: We have made it very clear we are dealing with the validity of section 6A. Now let's see your one pager.

SANJAY HEGDE: Citizenship of India is the right to have all rights guaranteed under the Indian Constitution. The provisions of Part 2 of the Constitution were framed by the Constituent Assembly only for defining Indian citizenship. And the crucial words are, 'at the commencement of the Constitution'. This definition of citizenship was necessary, in order to define eligible voters to elect a new Parliament. That was the crucial thing, My Lord. At that point of time, we were a new nation, we were a nation that had suffered a partition. There was a question as to who was an Indian, and who was not an Indian. And therefore, the constitutional architecture of Part 2, was that we would define only at the commencement, who is a citizen. Thereafter that last one, Article 11, left the field, open to Parliament to do what it thought fit in the circumstances. The situation also had to take into account migrations due to partition. The Constituent Assembly, therefore, limited their definition for the commencement and gave full power to Parliament to define citizenship, grant it or take it away. The first Parliament therefore, enacted the Citizenship Act 1955, to regulate the citizenship. My Lords, just a couple of dates. Firstly, the date of 19th of July 1948. Why was it chosen? If Your Lordships were to go to Volume 4, page 359... 3599

JUSTICE SURYA KANT: 3059?

SANJAY HEGDE: 3599, Volume 4, Dr. Ambedkar's response.

CHIEF JUSTICE D. Y. CHANDRACHUD: Instead of reading it, just tell us... if you can just make the point...

SANJAY HEGDE: The point simply is, Dr. Ambedkar said...

CHIEF JUSTICE D. Y. CHANDRACHUD: Dr. Ambedkar said in the Constituent Assembly...

SANJAY HEGDE: In the Constituent Assembly. Dr. Ambedkar said that look, we have brought about an ordinance with effect from the 19th of July 1948, which would put in place a Permit System. Your Lordships would recall from the arguments prior, that those who had left India and gone across the border, they needed a permit to come back for resettlement. That resettlement date, after the 19th of July 1948, they needed this permission. And that

1 permission was very difficult to get. This however, applied largely to the western border. On
2 the eastern border, there is Mr. Ayyangar, who at page 3672, makes it very clear to the
3 Constituent Assembly, that the Permit System was not to apply on the eastern border. And for
4 good reasons, that there was a substantial number of Hindus who still remained in what was
5 erstwhile East Pakistan, who may have wanted to come over, who had not yet come over, and
6 it was a continuing process. Among the Hindus who later came over, was the first law minister
7 of Pakistan, Jogendra Nath Mandal. Mr. Mandal, died in poverty, but he had several crucial
8 interventions, and the most important was that he got Dr. Ambedkar elected to the Constituent
9 Assembly, from Bengal. And once that portion went over to East Pakistan. Dr. Ambedkar had
10 to be re-elected from Bombay, and that's how he came on to head the Drafting Committee. So
11 My Lords, there was a fluidity in identification of Indian citizenship. While on the western
12 border, it was reasonably clearly drawn, on the eastern border, it was as a matter of
13 constitutional history and drafting, kept deliberately fluid. My Lords, if I can now revert back
14 to my note... The second submission, My Lords is that Indian citizenship is not ethno-
15 nationalist. It's not based on language, religion or culture, there is no superior or inferior
16 citizenship based on ancestry of any type. This Court should astute any statement that may
17 ever unintentionally be judgmental of such claims, especially in the emotive areas of India's
18 Northeast. For example, this very year a seemingly innocuous statement in a tax case ended
19 up in having consequences in Sikkim. The learned Solicitor General did appear there and I just
20 will pass on the order, My Lords, for Your Lordship's consideration. Your Lordships will see
21 that it was a very... If Your Lordship sees page 3, we think it just and proper and in the interest
22 of justice to correct certain phrases in paragraphs 10A and 77 of the judgment by making the
23 following correction. The sentence, 'therefore, there was no difference made out between the
24 original inhabitants of Sikkim, namely the Bhutia Lepchas and the persons of foreign origin
25 settled in Sikkim, like the Nepalis or persons of Indian origin who had settled down in Sikkim
26 generations back' stands deleted. My Lord, this was, people from Sikkim were entitled to a tax
27 exemption. The question was, who all were citizens of Sikkim. Even an innocuous sentence
28 saying that there was no difference, then, My Lords had huge emotive consequences and My
29 Lords, I say this with some experience, particularly when I went to Shaheen Bagh, was that
30 people resent greatly when their Indianness is questioned. We are all Indians and to borrow
31 an Americanism, we may have come on different boats, but we are in the same ship.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Well, 19 July 1948, actually is the date of the
34 introduction of the Permit System?

35

36 **SANJAY HEGDE:** Yes.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I was actually just looking at 3599.

2

3 **SANJAY HEGDE:** Yes, My Lords.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just, let's actually read it because nobody had
6 read it to us. Then, my learned brothers will also have the benefit of that.

7

8 **SANJAY HEGDE:** Please, My Lord, if Your Lordships...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just, and then we'll be done. The other things
11 you have orally told us, I've also got. 3599.

12

13 **SANJAY HEGDE:** 3599.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This was not Constituent Assembly debate, this
16 was a debate in connection with, what?

17

18 **SANJAY HEGDE:** With regard to Citizenship itself. If Your Lordship sees the earlier pages.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is part of the Constituent Assembly
21 debate?

22

23 **SANJAY HEGDE:** Yes, please, My Lord.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just that part you know...I'll show you. You
26 can read that one middle of...

27

28 **SANJAY HEGDE:** When I come...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This Permit System... You need not give the
31 whole para, okay alright, just about ten lines down. This Permit System was introduced from
32 19th July .

33

34 **SANJAY HEGDE:** This provision had to be introduced because the Government of India, in
35 dealing with persons who left for Pakistan and who subsequently returned from Pakistan to
36 India, allowed them to come and settle permanently under the system which is called a Permit
37 System. This Permit System was introduced from the 19 July, 1948. Therefore, the provision

1 contained in Article 5(b) deals with citizenship of persons, who after coming from Pakistan,
2 went to Pakistan and returned to India. Provision is made that if a person has come on the
3 basis of a permit issued to him, for resettling or permanent return he alone would be entitled
4 to become a citizen on the date of commencement of the Constitution. I may say, Sir, that it is
5 not possible to cover every kind of case for a limited purpose, namely, the purpose of
6 conferring citizenship on the date of the commencement of the Constitution. If there is any
7 category of persons who are left out by the provisions contained in this amendment we have
8 given power to Parliament subsequently to make provision for them. I suggest to the House
9 that the amendments which I have proposed are sufficient for the purpose and for the moment,
10 and I hope the House will be able to accept these amendments. So, that My Lords, is why the
11 date was chosen and the architecture put in, that in the beginning we have to decide who are
12 our citizens, who will then be voters who will then participate in the general elections. My
13 Lords, curiously, all this thing about permits and if you went over to Pakistan had also
14 consequences on facts of each case. There was a gentleman who went to school in Bombay.
15 Then he went.... Then, thereafter he went off to the US for further studies. He then had
16 property in Bombay. His family had property. He wanted to hold on to it, he asserted that he
17 was an Indian citizen. His family was in Karachi, he became a Minister out there, and then
18 when questions came about his citizenship, it was as late as November '58 that he withdrew
19 his petition before this Court to assert that he was an Indian citizen. The gentleman's name
20 was Zulfikar Ali Khan Bhutto. And he chose a citizenship whose Supreme Court then probably
21 did not do him justice. Be that as it may say, it's an oddity. There were all kinds of people

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright now, I think we'll conclude there
24 because we have to finish.

25

26 **SANJAY HEGDE:** Just two minutes, My Lord, I pointed out Mirajkar and I would also urge
27 Your Lordship that any large scale decision which may have an inadvertent consequence of
28 statelessness...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That you have made a point. Thank you Mr.
31 Hegde. Who is next, now?

32

33 **SANJAY HEGDE:** Please, My Lords. I'm grateful.

34

35 **ANUPAM LAL DAS:** I'll be very, very brief because everything has been argued in extent.
36 So, I appear for Asom Gana Parishad, I have filed I.A. number 74061 in Writ Petition number
37 562 of 2012. And My Lords, my I.A. is in volume 3, page 1634.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

JUSTICE SURYA KANT: Mr. Das, I.A. number?

ANUPAM LAL DAS: 74061 of 2023 in Writ Petition Civil number 562 of 2012. And we've filed our one page written submission.

CHIEF JUSTICE D. Y. CHANDRACHUD: Brief submission is at page 2, right?

ANUPAM LAL DAS: 2 and 3, Volume 2-C. My Lords, I just have two broad submissions. One, My Lords, that we are signatories to the original Assam Accord. Two, I fully support the learned Attorney and the learned Solicitor and I just wanted to point out one judgment which has not been cited on general versus specific which is 2014, **8 SCC 319**. And I just wanted to lay emphasis on just two paras.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is the name of the case?

ANUPAM LAL DAS: The name of the case is *Commercial Tax Officer, Rajasthan vs Binani Cements Ltd.* and I just wanted to point out only two paras, paras 36 and 47, only to answer Your Lordship's query, why Assam, why not Bengal, etc. Para 36, My Lords may kindly have. The maxim, *generalia specialibus non derogant* is dealt with in Volume 44(1) of the 4th edition of Halsbury's Laws in England, at para 1300 as follows, 'the principal defence clearly from the decisions of the House of Lords in so and so, and the Privy Council in *Baker vs Edgar*, and has been affirmed and put to effect on many occasions. If Parliament has considered all the circumstances of, and made special provision for a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision. And therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case...' Para 47...

CHIEF JUSTICE D. Y. CHANDRACHUD: So, you are saying that 6A was a special provision intended to deal with a specific...?

ANUPAM LAL DAS: I am deeply obliged.

CHIEF JUSTICE D. Y. CHANDRACHUD: Got it. Thank you. Thank you. Who is next now? Mr. C. U. SINGH.

1 **C. U. SINGH:** Yes. My Lords, Rather than give Your Lordship numbers, If My Lords just
2 takes...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We've got the number. It's 117074 of 2019.

5

6 **C. U. SINGH:** And 181511 of 2019. So, my written submissions, are in Volume 2, page 119 to
7 172...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

10

11 **C. U. SINGH:** Volume 2, page 119 to 172. And the one page note is at page 4 of Volume 2-C,
12 and there are just three main points which I'll very quickly go over. The first is, the learned
13 Attorney General in para 7 of the note, My Lords, may just note this, learned Attorney General
14 in para 7 of the note and the learned Solicitor General at paras 1 to 6 of his written submissions
15 in Volume 2, page 3,. Volume 2, page 3, paras 1 to 6. And the learned Attorney General, there
16 was a note, paragraph 7 of that. I have relied on **Trilok Chand**, to say that delay in this case
17 should, My Lord, be a complete answer, this, Your Lordships, ought not to even enter into the
18 so called merits of the challenges, because this is not a case where... there are Petitioners who
19 are merely seeking assertion of some right of their own. Here, the Petitioners are seeking
20 assertion of a right, which would strip away other people, of rights which have accrued to them
21 over a 27 or 30 year period. Today it's 40 years but in 2012, when they filed a petition, it was
22 a 27 year period, and there are constitutional rights have accrued, which are the right to have
23 rights. People have become citizens by naturalization, because 6A is a sort of species of
24 naturalization. They have become citizens by birth etc, etc. And all that is sought to be stripped
25 away. Now...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next point, now?

28

29 **C. U. SINGH:** On this point, what is very important, and this is where I come in. The
30 argument was, that they cited the judgment of the learned two Judge Bench in **Assam**
31 **Sanmilita**, to say that **Trilok Chand** ought to be reconsidered. What the two Judge Bench
32 failed to notice, was that **Trilok Chand** had been followed by another Constitution Bench in
33 **Rabindra Nath Bose**, which Your Lordships will find, in Volume 5, at page 1255.

34

35 **JUSTICE SURYA KANT:** Volume?

36

37 **C. U. SINGH:** Volume 5, page 1255, **Rabindra Nath Bose**.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

CHIEF JUSTICE D. Y. CHANDRACHUD: (1970), 1 SCC 84.

C. U. SINGH: It's in my one page note, My Lords, in para 2. Now, what is important is that in *Rabindra Nath Bose*, an express plea was made that *Trilok Chand* needs to be reviewed, and was rejected by the Constitution Bench. So, My Lords, may just straight away come to page 1266 of Volume 5, I'll just show two short passages...

CHIEF JUSTICE D. Y. CHANDRACHUD: Not necessary. We're making a note of it. Just tell us the paragraphs, that's all.

C. U. SINGH: Para 31 at page 1266 of Volume 5 and para 32 and 33. In para 32, there's an express plea...

CHIEF JUSTICE D. Y. CHANDRACHUD: At page?

C. U. SINGH: Page 1266 to 1267 of Volume 5.

CHIEF JUSTICE D. Y. CHANDRACHUD: The plea for review has been also rejected by a CB?

C. U. SINGH: By a CB and para 32 is that express plea for a review.

CHIEF JUSTICE D. Y. CHANDRACHUD: Fair enough, you've made the point

C. U. SINGH: And the CB goes on the basis of accrued rights of others. Here the seniority rules were challenged, they said that people have now benefitted from seniority, that they have moved on, and therefore Article 32... So, there's a categorical... the statement of law by the CB that where third party rights have accrued, Article 32 will not be invoked and will not...

CHIEF JUSTICE D. Y. CHANDRACHUD: The point is [UNCLEAR] that if we accept... the point which has been made on your side is that if we accept the submission of the Petitioners, it will also result in statelessness because... .

CHIEF JUSTICE D. Y. CHANDRACHUD: Statelessness.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And the Solicitor also pointed out that, the
2 joint communiqué of Sheikh Mujibur Rahman and the then Prime Minister of India, stated
3 that Bangladesh assumed responsibility for those who entered India post 2000 and... Sorry,
4 post 25/03/71.

5

6 **C. U. SINGH:** '71. So, now this is one part I submit... that was not open...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, next point now.

9

10 **C. U. SINGH:** And if at all, if at all, they were right, that would have to be referred to a seven
11 Judge Bench...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, next point.

14

15 **C. U. SINGH:** So that's not really open.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Next point.

18

19 **C. U. SINGH:** Now, the next point is, My Lords that one of the principal arguments, really,
20 when they file these petitions was, that the Assam Accord has been picked... there's a picking
21 and choosing and only 6A has... the part of Assam Accord, which has been implemented is
22 only that which was enacted in the form of 6A and the rest of the Assam Accord has not been
23 implemented, leading to supposed large scale, My Lord, migration into India and what they
24 call infiltration and so on and so forth in the State of Assam. Now, the Petitioners themselves
25 prevailed on the Court while making a reference to Your Lordships and the five Judge Bench,
26 to continue to entertain the petition and to implement all the rest of the Assam Accord. And
27 between 2014 and 2021, in fact in large measure, all the other provisions have been
28 implemented, all the border fencing, the searchlights, etc., etc., the beefing up of security on
29 the borders and My Lords, the supposed weeding out of the infiltration...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Got your point. Now, if you can go to point
32 number 4, Mr. Singh.

33

34 **C. U. SINGH:** Just I...

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is something much more important
37 which we want you to explain from your note. This is okay that they...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

C.U. SINGH: I just want to point out the affidavit, that this will come on affidavit. So, My Lord, may just note that

CHIEF JUSTICE D. Y. CHANDRACHUD: Now we are in... you know...

C.U. SINGH: No, I only want to tell Your Lordships...

CHIEF JUSTICE D. Y. CHANDRACHUD: Intervenors now, we have to get on with the rejoinder.

C.U. SINGH: No, absolutely.

CHIEF JUSTICE D. Y. CHANDRACHUD: Now, go to para 4, just explain that, because that's a conceptual point nobody else has made.

C. U. SINGH: Yes. Section 6A, does not violate Article 14, but is rather a step forward to legalize the determination of foreigners as per the Assam Accord signed with stakeholders who led the agitation and definitely does not violate Article 14 rights of the Petitioners, this section may be treated as a version of citizenship by naturalization under Section 6 read with the Third Schedule. Now, My Lord...

CHIEF JUSTICE D. Y. CHANDRACHUD: Just read it and, so that we'll be able to understand.

C. U. SINGH: The only difference being, that whereas Section 6, did not apply to countries in the First Schedule, with the creation of Bangladesh in 1971, the said exclusion became meaningless as far as its citizens were concerned, and a special provision was needed to deal with them. And just as grant of citizenship to any person under Section 6, does not violate Article 14, grant of citizenship to a class of persons under Section 6A does not violate the right to equality.

CHIEF JUSTICE D. Y. CHANDRACHUD: Explain this.

C. U. SINGH: Point in... citizenship by naturalization is based on continuous residence in a country. In our case, it was seven years originally, then it was made into eleven years. So a person who is not an illegal and is residing in a country for a particular period, can then ask

1 for citizenship by naturalization under Section 6, read with the Third Schedule. Third Schedule
2 sets out the conditions. Section 6, it is granted to people. Now, 6A, is a sort of species of that
3 because it is again based on continuous residence here. But what happened was, because
4 Pakistan in 1940... in 1955 Pakistan had... East and West Pakistan had a very special status
5 with India. So, the First Schedule said that 6... Section 6 said that, naturalization will not apply
6 to citizens of those nations named in the First Schedule, that First Schedule is now repealed.
7 But it was... so basically citizens of East and West Pakistan were not eligible, to that particular
8 route. Now, in 1971, Bangladesh, is now no longer part of Pakistan. It is a friendly nation. It
9 has no, it has never had even one day of history of enmity or war or anything with India. It's
10 no longer Pakistan. The reality is that once Bangladesh was formed in December 1971, it has
11 been... in fact, we were the midwives who helped to give birth to that nation. And we have had
12 friendly relations throughout. So, now, conceptually, that exclusion really didn't... It was there
13 in the statute book. Bangladesh was still sort of a successor to...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Successor... that was their argument, actually.

16

17 **C. U. SINGH:** But being in the statute book that bar really didn't apply. So what was done by
18 the political settlement in the Assam Accord because there was this massive agitation, etc.,
19 was, that you create another section where there'll be a form of naturalization to recognize
20 those displaced persons or refugees who have come from Bangladesh and who have lived for
21 a long period of time in India. And therefore that it is sort of, it's one species of that. So, I'm
22 only saying, just as 6 is never tested on 14, which person is granted citizenship by
23 naturalization, another person can't say why have you granted it to so and so, under 14. Same
24 way I'm saying that conceptually, 6A should be tested on the same [UNCLEAR], that merely
25 because you are granting it to one class of people doesn't mean that there's a violation and
26 certainly not any violation of Petitioner's rights. Violation might be claimed by another class
27 who are denied citizenship. Another people say I am identical to Mr. Singh, why am I not given
28 citizenship when he's been given it. But can somebody else say, why are you giving it to him
29 and not to others, a person who is not eligible for it, so this is just the slight thing. Now the last
30 thing. Last thing, I'll only give you the page numbers, and I'll close that. The para 5, 6A did not
31 encourage further infiltration but rather created a fetter, the state's population growth post
32 1971 compared with the rest of the country does not support the argument that it encouraged
33 infiltration, see Union of India's affidavit dated 5th December 2014 at paras 9 to 11 and para
34 14, Volume 3, pages 1192 and 1195. Now, here Your Lordship will take 3 paras in particular,
35 para 9, 11 and 14 of that affidavit. And 14 is very important because this entire alarm, I would
36 like if Your Lordship could read para 14 at page 1195. Volume 3, page 1195. The entire alarm

1 arose in 2004, a year before the **Sarbananda Sonowal** judgment came because of his
2 answer in Rajya Sabha and that
3 answer in Rajya Sabha said that 1.2 crore people from Bangladesh are in India, of whom 50
4 lakhs are in Assam. That was an estimate given. That was corrected in Rajya Sabha saying that
5 there was a field survey done, and the field survey itself said this is only hearsay by interested
6 parties. But that footnote saying that we have not been able to verify this, this is only based on
7 hearsay by interested parties, was not placed before Rajya Sabha, so a correction was made
8 before Rajya Sabha. Please, just see that for a moment. Volume 3, page 1195. This has been
9 virtually the foundation of all this. The previous paras gave the charts in the same... I showed
10 Your Lordship, 1192, etc., now 1195. It is respectfully submitted that the Petitioner... this is the
11 Union of India, 5th December 2014, that the Petitioner in the Writ Petition had mentioned
12 about the response to the Rajya Sabha unstarred question 332, dated 14th July 2004, wherein
13 it was informed that there were 1.2 crore illegal immigrants, illegal Bangladeshi nationals
14 living in different parts of the country, out of them 50 lakhs were in Assam. In this connection,
15 it is clarified that a statement correcting the answer to the Rajya Sabha unstarred question was
16 placed in the House stating that the estimated number of illegal immigrants reported by the
17 field organization had a clarificatory note which was inadvertently not seen. The clarificatory
18 note made it clear that the reported figures were not based on any comprehensive of sample
19 study, but were based on hearsay, and that too from interested parties. Therefore, no realistic
20 figures can be given for illegal Bangladeshi migrants in Assam. In the case of West Bengal also
21 the figures are based on unreliable estimates and are incorrect. A copy of the statement
22 correcting the answer to the Rajya Sabha unstarred question is annexed herewith and marked
23 as Annexure R-1. Now, if Your Lordship, just moves 2 pages back to 1192, the actual figures...
24 1192, para 9,

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

27

28 **C. U. SINGH:** There's been a lot of alarmism, My Lords, which is not rooted or grounded in
29 reality. Now, see the actual figures at Para 9 My Lords, of the same affidavit.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

32

33 **C. U. SINGH:** It is submitted... may I read that My Lords?

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

36

1 **C. U. SINGH:** It is submitted, that as per records available... Para 9, My Lords, at 1192... It is
2 submitted that as per records available, about 52.31 lakh displaced persons from former East
3 Pakistan, had migrated to India between 1946 and 1971... Just these two paras, very short
4 paras My Lords, at para 9 and 10... It is submitted that as per records available, about 52.31
5 lakh displaced persons from former East Pakistan had migrated to India between 1946 and
6 1971. Out of these, the displaced persons numbering 41.17 lakh, who arrived up to 31st March
7 1958, were called old migrants and those who arrived between 01-01-64 and 25-03-71,
8 numbering about 11.14 lakhs were called new migrants. Out of the 41.17 lakhs old migrants,
9 about 31.32 lakh were settled in West Bengal and 4.87 lakh persons in Assam. Out of the new
10 migrants numbering 11.14 lakhs, 2.12 lakhs persons came to Assam. The remaining old and
11 new migrants were rehabilitated in different states of the country under various schemes of
12 the Government of India. Wide range of relief and rehabilitation measures were undertaken
13 by the Government of India for rehabilitation of old and new migrants. The rehabilitation of
14 old migrants was, by and large, completed by the end of 1960s and that of new migrants in
15 1980s. It is submitted that the State of Assam also witnessed migration from other provinces
16 of undivided India, even before partition of the country, due to economic reasons and Your
17 Lordships will see this decadal variation between 1911 and 1951 or 1961, there's a huge amount,
18 much higher than the national variation. The decadal growth in Assam, 1911, 1921, etc. Now
19 historically, this has been well recognized, and we've... in my written submission, I've set this
20 out that, My Lords, even in the 19th century, leave alone the 20th century, there was a lot of
21 Bengali settlements in Assam, and it led to a lot of [UNCLEAR], because at one time Bengali
22 was made the official language, for about twelve years, in the 19th century, the British had
23 made it the official language of Assam. That had led to huge resentment. So every time
24 Bengalis settled in Assam... This has nothing to do with Pakistan or India... This is way before
25 independence. There was always resentment. There was always an upsurge of this fervour, and
26 rightly so. I'm only pointing out this has to be kept in mind. This alarmism has a historical
27 background to it, which must be kept in mind, because ultimately, human beings in large
28 numbers get affected, by an alarm against a race, not people from Pakistan, by a race of people
29 who happen to be settled over there, over the last 150 and 200 years. Deeply obliged, My Lords.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Singh. Ms. Trivedi, you are for
32 the...

33

34 **TUSHAR MEHTA:** My Lords, para 9 may be seen with para 14, that's all... of course,
35 numbers may not decide the validity but...

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's see... 14 also... read out 14... that Rajya
2 Sabha clarification, that was based on hearsay.

3

4 **C. U. SINGH:** The learned Solicitor's paras 1 to 6 are very clear in your submission.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** She's appearing for... Ms. Malvika Trivedi...
7 AASU in Writ Petition Civil, 562 of 2012...

8

9 **MALVIKA TRIVEDI:** My Lords, Respondent number 6, in Writ Petition 562, of 2012, and
10 Respondent number 5, in Writ Petition 876, of 2014. My one page of written submissions are
11 in Volume 2-C, pages 7 to 8, PDF 9, 10.

12

13 **JUSTICE SURYA KANT:** Page number?

14

15 **MALVIKA TRIVEDI:** PDF Page 9, 10, My Lord.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 2 C, *na*?

18

19 **MALVIKA TRIVEDI:** Pages 7, 8, My Lord, just to... just to give a brief background on All
20 Assam Students Union, because a question had come from the Hon'ble Court that, why Assam
21 and why not West Bengal? The answer lies herein. It is because of this long agitation from 1979
22 to 1985...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's read that note, actually so that
25 [UNCLEAR]...

26

27 **MALVIKA TRIVEDI:** Please, My Lord, That first part of my note...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's read that, it's important, actually. Let's
30 read it.

31

32 **MALVIKA TRIVEDI:** So, My Lords, the first point. The backdrop of the Assam Accord,
33 dated 15th August 1985. The Assam Accord was signed between the Union of India, State of
34 Assam, All Assam Students Union and All Assam Gana Sangram Parishad in the backdrop of
35 a six year long movement, 1979 to 1985 in the State, against the unabated illegal migration of
36 foreigners into Assam, their settlement in Assam and their inclusion in the voters list. During
37 the agitation about 860 persons who are considered as martyrs during the Assam Movement

1 lost their lives and thousands were injured due to police action. Very recently, the Martyrs Day
2 was actually in commemoration of these people who had lost their lives was held, in Assam.
3 The State suffered tremendous political uncertainty, with four changes of Government and
4 three spells of President's Rule, during the six year period. And this is very important, My
5 Lords, Clause 13 and 14 of the Assam Accord, because this is on restoration of normalcy, which
6 is the underlying concept under Section 6A, that is the purpose it was brought into for the
7 purposes of restoration of peace and normalcy in the State of Assam. And a book that sums it
8 up, The Quest for Modern Assam, by Arupjyoti Saikia, which is also a part of the compilation.
9 It has two chapters on, each and every meeting that had gone on that time with the government
10 and with the All Assam Students Union. The run up till 1983, thereafter in 1985, after the
11 Prime Minister's assassination. Then in 1985, what were the events which led to the agreement
12 behind this Assam Accord, and then it came into play. And the background that was
13 discovered, was also discussed and when finally agreed upon, were the 1964 riots which had
14 happened in East Pakistan, where there was mass massacre of the populations and therefore
15 they had escaped into India. So therefore, they became a part of the 1967 Electoral Rolls. So,
16 therefore that part of the population that had come in at that stage was included, but the part
17 after that, then the government agreed, would be kept disenfranchised. Therefore, the period
18 till 1971 where they were not included in the Electoral Rolls. So, therefore in the history of this
19 entire Accord is the agitation and therefore, the difference between West Bengal and Assam
20 for the purposes of this particular section. Now, coming to my second point where a lot of
21 arguments were raised by the Petitioners on the infiltration continuing. For that, I just want
22 to point out one para, from the Reference Order itself. Para 46 is very important because the
23 points that we are making here is, that the constitutional vires of a statutory provision cannot
24 be tested on the basis of faulty or inadequate implementation, of the said provision. And if, My
25 Lords, will only have para 46 of the Reference Order, it says, if I may just read the introduction.
26 'On an overall consideration of the immediate dimensions of the issues and the potential that
27 the same have for the future. We issue the following directions under Article 142 of the
28 Constitution of India. One is border fencing, border roads and provision for flood lights. The
29 second is Foreigners's Tribunals. The third is existing mechanism of deportation of declared
30 illegal migrants. And in that, 48.1 preparatory work, such as selection of vendor system,
31 development by system integrator, appointment of staff and training, etc., has already been
32 directed to be completed by the end of January 2015 by order dated 27-11-2014 of the Court.
33 48.2, the remaining work of updating the NRC will now conform to the following time
34 schedule, which will be strictly adhered to. And 49, all the cases, so on and so forth...' So,
35 therefore, if My Lords will see that this is the implementation that had to be carried out as per
36 the Assam Accord, absence of this implementation cannot be a reason to fault Section 6A.
37 Then coming to the third point, which has already been addressed, so I will only talk about

1 the case law very briefly to say, that the Petitioners also disentitled from claiming the relief on
2 account of inordinate delay, and for that I only want to point out that whether it is
3 **Ramchandra Shankar Deodhar**, whether it is **Rabindra Nath Bose** or whether it is
4 **Trilok Chand**, the underlying concept in all these judgments is that, if the rights of another
5 set of people have already got created, then the delay in filing the petition cannot be then
6 waived off. And My Lords will just see, I have just given a few instances when they could have
7 challenged and they did not, and therefore these rights have now crystallized over 40 years.
8 One instance that I've given, the report by the Lt. General S. K. Sinha was prepared on 08-11-
9 98, which in detail talked about this problem.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then comes that reply to the unstarred
12 question 14 July 2012..

13

14 **MALVIKA TRIVEDI:** Absolutely.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And the Writ Petition **Sarbananda**
17 **Sonowal** which was filed in 2000.

18

19 **MALVIKA TRIVEDI:** Absolutely. And this actually considers the Assam Accord in para 18
20 and in para 33 in great detail. The next point I will just... on the legislative competence, I just
21 want to point out one Article, just for the purposes of saying that, how 5, 6 and 7... Articles, 5,
22 6, 7, the purpose was that they would work themselves out at the commencement of the
23 Constitution. I only want to point out Article 394. If I may read? This Article and Article 5, 6,
24 7, 8, 9... 60, 324, 366, 367 shall come into force at once, and the remaining provisions of this
25 Constitution shall come into force on the 26th day of January, 1950, which day is referred to
26 in this Constitution as the commencement of this Constitution. So, therefore, My Lords, the
27 other, the 5, 6, 7, articles were supposed to come into effect on 26 November 1949 and
28 therefore at the commencement of the Constitution. Therefore, by 26 January 1950, they were
29 supposed to come into play for the grant of citizenship. And thereafter, therefore, we have said
30 that the purpose of Article 11 was only to add, not to deprive anybody, but to add a certain class
31 of persons which were not covered by Articles 5 to 9. That is the point that I've covered in point
32 4. I have also given detailed submissions My Lords, which is there already on record. Another
33 judgment that I wanted to add, because **Izhar Ahmad**, when it discusses in great detail,
34 Article 11, it is a Constitution Bench judgment. It is very clear on what Article 11 entails, and it
35 has been followed in **State of UP vs Shah Mohammad**. I have given the volume number
36 and the pages and also the para, para 5 of the **State of UP vs Shah Mohammad**. It's a case
37 very similar to **Izhar Ahmad**, and it follows **Izhar Ahmad** and again reiterates that Article

1 11 is supposed to then come into play for the purposes of the laws to be made for citizenship.
2 My fifth point very briefly, I have tried to state that Section 6A is not the only statutory
3 provision to be based on a political
4 agreement, and I have given two instances for this Article 371(a), which is the 13th Amendment
5 Act, and it is based on the agreement between the Government of India and the leaders of the
6 Naga People's Convention.

7
8 Then I've also cited Sixth Schedule, which is based on the Memorandum of Settlement, entered
9 into between the Government of India, Government of Assam and Bodo Liberation Tigers, and
10 this is now on the autonomous districts and autonomous regions. It covers the areas in the
11 State of Assam, Meghalaya, Tripura and Mizoram. Then I have just added some case law, to
12 say that the classification on the basis of historical or geographical reasons, is absolutely valid,
13 and therefore I have only added the judgment in *State of MP vs Bhopal Sugar*, was already
14 cited before My Lords. I have only added one more judgment on geographical classification,
15 which is *Ram Krishna Dalmia vs Justice S. R. Tendolkar*. And I have also added
16 *Clarence Pais vs Union of India*. And in the end, I am only making a point, that if the
17 history of this agitation is seen, it is actually wonderfully spelt out in *The Quest for Modern*
18 *Assam*, which is also a part of Volume 4-A, by Arupjyoti Saikia. It will be very clear that what
19 had happened throughout this process, and why because of the Bihar settlers, why because of
20 the Bengali language, and why this agitation became much more than what the people of
21 Assam could handle, and therefore for peace and normalcy, the Section 6A was brought about.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you so much. Thank you Ms. Trivedi.

24

25 **SALMAN KHURSHID:** May it please Your Lordships. My Lords, I'll make a very quick five
26 points. Your Lordships will not have to be...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You're in I.A. 24 of 2017?

29

30 **SALMAN KHURSHID:** I.A... My Lords, is 24 of 2017...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Assam State Jamiat Ulama-i-Hind.

33

34 **SALMAN KHURSHID:** That's right, the State Jamiat. My Lords, we've been deeply involved
35 in all the CAA matters, etc., etc., and we've been involved in the Assam Accord Settlement,
36 right from the beginning. My Lords, we have very... I will not repeat anything that my learned
37 colleagues have said.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D. Y. CHANDRACHUD: Where is your note, Mr...?

SALMAN KHURSHID: Your Lordships will find the note in Volume 2-C at pages 5 to 6. PDF Page 7.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

SALMAN KHURSHID: And My Lords, the earlier note that I had given... Your Lordships will find in Volume 2... that is the details are all given there. This is very very brief, because Your Lordships want to just...

CHIEF JUSTICE D. Y. CHANDRACHUD: Let have a look at your notes, Mr. Khurshid.

SALMAN KHURSHID: So, if Your Lordships will see at PDF page 7, volume 2-C. My Lords, the first point, if Your Lordships will focus on that... the first point, essentially, is to disclose that the migration issue is a global issue, and for Assam, it continued over centuries. So, it wasn't as though something had suddenly happened and the amalgam of different communities moving into migration, bringing different communities into Assam, gave what Sociologists have said, is a salad bowl, My Lords, two perceptions about a salad bowl and about a mosaic or on the other hand, it would be a melting pot, so the preferred view seems to be of a salad bowl. This is how it existed, My Lords, but of course if Your Lordships yourself have heard from the others. There were issues that were different as far as the western... western border was concerned and the eastern border. The issues on the eastern border was the constant move from one part of Bengal to another part of Bengal. So, Assam was in a sense separate because they didn't want to impact on the issues between the two parts of Bengal. Assam then therefore becomes, in a sense, collateral to that issue. So, Assam issue was never resolved in terms of the Permit System that was introduced in the West. And the Permit System, Your Lordships might recall, was particularly focused on the issue that people who had left and their homes had been given to refugees coming in from western part or from West Pakistan could not then, be asked to evacuate their homes that they were given as refugees, to return to people who had come back. And therefore the Permit System was particularly carefully monitored. This didn't happen in the eastern part, and particularly as, Your Lordships saw Justice Baharul Islam's judgment, his speech in the Rajya Sabha. We've mentioned all that here My Lords, and therefore a separate issue had to be framed, as far as the eastern side was concerned. And that, of course the '64 was obviously a landmark point, '64, '66 follows, because '64 follows, with the '67 Electoral Rolls. But the critical matters is the

1 1971... 1971, if Your Lordships will see here, in point number 2, if your Lordship will see,
2 Bangladesh had already introduced their Citizenship Law in 1972. We were introducing in
3 1985. So, in effect, the 1971 aligns itself with the Bangladesh Law. So, there is no gap between
4 Indian Citizenship and Bangladesh Citizenship. Your Lordships were asking, if it had
5 something to do with, Operation Searchlight and the migrations that would have been caused
6 due to distress, because of the Pakistani army operating. The Bangladesh Government said
7 they would take back all the people who had moved during that period, because if they were
8 in Bangladesh on the first day, which was on 25th of March, there would be citizens under the
9 '72 law. And therefore, we were only concerned with people who were not in Bangladesh on
10 the 25th March, those citizens would be taken care of, or those people would be taken care of
11 by the Indian Law and it aligns. Now My Lords, if for any reason the '71 Alignment is changed,
12 for any reason, it would mean that 40 years later, there are huge number of stateless citizens.
13 Something to which we are not yet [UNCLEAR] as far as the convention is concerned. But
14 Government of India has always been careful, about not creating or not being seen in the world
15 as creating stateless citizens. And that is very critical point why Your Lordships would wish to
16 uphold that '71, as the so called cutoff date, though there is some issue about whether it should
17 be called a cutoff date at all. That's point number two in my submissions. And point number
18 three, only follows upon what arguments have already been made, that it didn't freeze... the
19 issue of citizenship didn't freeze in 1948, under the Citizenship Act of 1955, it continued with
20 6A, and then it continued subsequently in 2019, when further amendments were made for
21 citizenship. Those may well be under challenge, but at least in theory, it was possible for the
22 citizenship to continue in terms of fresh legislation. And My Lords, the last two important
23 points are now there is a fresh affidavit that's been filed by Government of India. Those two
24 points, the last two points, four and five, indicate that the alarming picture that somehow
25 emerged is not, my learned friends just before me had indicated this, but that alarming picture
26 was misplaced, that the number of people, so called coming in was completely misplaced.
27 Firstly because the migration figures, as we now see from the affidavit, are much less compared
28 to the ones that have been projected earlier. And then, My Lords, in view of this affidavit, I
29 would urge Your Lordships, to consider whether the monitoring Bench is the appropriate
30 Bench to continue with any issues that, are indicated for future and many of those issues are
31 mentioned in the affidavit, rather than this Hon'ble Bench having to worry about what to do
32 about the future of prospects.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr....

35

36 **SALMAN KHURSHID:** So, My Lords, the only issue to recall is whether we are a salad bowl
37 or we are melting pot. That's very critical in terms of Sociology to understand. Your Lordships

1 have already been told about how the cultural issue was protected by the schedules, by which
2 the culture and autonomy of the Tribes of Assam was protected, and they are the ones who
3 should really have been concerned, not the others. This is my submission. Deeply obliged, My
4 Lords.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr...

7

8 **P V SUNDRANATH:** I won't take more than 2 minutes, My Lord,

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

11

12 **P V SUNDRANATH:** My application, I.A. 26869, at page no. 1616 in Volume 3,

13

14 **JUSTICE SURYA KANT:** I.A. number 26...?

15

16 **P V SUNDRANATH:** 26869 at page 1616 of Volume 3. And my short note, in volume 2-C,
17 page 9. All the points raised by me, formulated by me, are adequately at this now. So I don't
18 want to waste the time, only to say one thing, that is, with particular reference to arguments
19 submission made by Ms. Indira Jaising, that aspect regarding 29A, that a fully adopted law,
20 because otherwise I would have argued that.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr... Mr. Farasat.

23

24 **SHADAN FARASAT:** My Lords, I am appearing... Your Lordships will have page 11 of the
25 volume 2-C. I'll only rely on the one pager, although I've submitted a detailed written
26 submission, page 11 of that is my submission. Three short points for Your Lordships'
27 consideration.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 2 C, page?

30

31 **SHADAN FARASAT:** Page 11, is a one pager. I appear for... in I.A. 10, in WPC 562 for Social
32 Justice Forum, which is an organization that works for a composite culture in Assam. My
33 Lords, the first submission for Your Lordships' consideration is that, My Lords, the right to
34 culture which they have asserted under Article 29, that in my respectful submission can never
35 extend to denying somebody's citizenship. The reason for that is, the citizenship regime under
36 Article 14, Article 14 is the only Article Your Lordships will normally test any citizenship
37 regime under. That is a regime of civic nationalism. A non-discriminatory basis of grant of

1 citizenship. The minute we elevate culture to the extent of denying somebody else citizenship,
2 effectively we have transgressed from the area of civic nationalism to cultural nationalism. 29
3 certainly cannot extend to denying somebody else citizenship, because the nature of
4 citizenship regime itself, under the constitution then changes. That's my first respectful
5 submission. Your Lordships will have Article 29 for just for a moment. The language there is,
6 have a distinct language script or culture of its own, and shall have the right to conserve. My
7 Lords, 29 is premised on a multicultural society. It is premised on multiple cultures, and you
8 have a right to conserve within that multicultural space, your own culture. It is not a right for
9 cultural exclusivity. That's my respectful submission to your Court. The way they have framed
10 it, that I have a right to cultural exclusivity under 29 to deny others citizenship. The language,
11 the plain text of 29 does not permit that. In fact, I would go so far as to say that, if their
12 arguments are accepted, Article 29, in effect, cease to exist because 29 is premised on a
13 multicultural society, and in that respect Your Lordships will have Article 51A of the
14 constitution, Sub-Clause F. That talks about fundamental duties. Article 51A, Sub-Clause F is
15 fundamental duties and it talks of composite culture. Every citizen's duty to maintain
16 composite culture. Composite culture is a mix, is a bouquet of all the cultures within India.
17 Therefore, when we read the Constitution as a whole, Article 29 can never extend to deny
18 somebody else citizenship. Now, just one example in that case. For instance, in Malaysia, we
19 have Bhoomiputras. Literally, it translates into son of the soil. Malaysia, My Lords, very
20 similar, in facts to this situation. Due to British policy, Chinese and Indian migrants were
21 moved into Malaysia. The indigenous Malays, as they were, had a problem, had an angst
22 against this movement. Now citizenship is there for everybody across the board, Chinese
23 Malaysians, Indian Malaysians or Malay Malaysians. But there is affirmative action which is
24 provided because the Malays were socio-economically backward. So, maybe there are aspects
25 which if they were to show that they are socio-economically backward, my submission is
26 nothing on the data to indicate that, then those things can be taken care of. But you can't pitch
27 it so high as to citizenship and then say nobody else will have citizenship. That's on point one.
28 My Lords, my second submission is that insofar as the reliance in Article 325 and 326 is
29 concerned, 325 on its own terms, I'm not going to take Your Lordships through it, but on its
30 own terms, has the same markers of non-discrimination as in Article 15, race, religion, caste,
31 etc. So, 325 in fact, goes against them because the citizenship regime has to be based without
32 discrimination on basis of religion, etc. So many arguments, even on the grounds of change in
33 demographics, on religion was made. 325 prohibits that kind of discrimination, number one.
34 Number two, under 326, the electorate is defined. It is by adult suffrage at intervals, it has to
35 be... the electoral list is changed. My Lords, that by itself envisages a continuously changing
36 electorate. The composition of the electorate, under 326 does not give a right to any specific
37 group to have electoral dominance, My Lords, that's my submission for Your Lordship's

1 consideration. 326 does not envisage that any specific group will continue to have electoral
2 dominance. In fact the terms of 326, are indicative that there is a flux in society, things can
3 keep on changing and therefore electoral roles must keep on changing. That's the second
4 submission. My third and final submission for Your Lordships consideration is that, Assam
5 Accord was... My Lords, one aspect of the Assam Accord has been legalized in the form of 6A.
6 There was another aspect, which was that a whole lot of violence occurred, and that was...
7 amnesty was granted for that under the Assam Accord, for instance, in '83, there was a serious
8 massacre called the Nellie massacre. Although My Lords, for serious crimes, the text of Assam
9 Accord says that... that is, in effect, excluded, but the way it operated on the ground, that all of
10 that My Lords, in effect, was effectively, amnesty was provided. So today, My Lords, after so
11 many years, to pick on one aspect of 6A, whereas the Petitioners represent groups, which
12 benefited from non-prosecution of multiple cases My Lords, in Nellie, there were deaths of
13 1500 to 2000 Bengali migrants. So, all of that was shut out, so it's a compact, to pick out one
14 now, and you have benefited from other aspects of the compact, My Lords, in my respectful
15 submission, Your Lordships will look at that very closely. That's my respectful submission. I'm
16 extremely grateful to the Court.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Farasat.

19

20 **VIVEK SHARMA:** Your Lordships, my written submission in Volume 2-C at page number
21 9, in I.A. Number 190221. I will take only one minute. Many foreigners illegally settled in the
22 Assam and also other parts of country, it affects not only national security but also democratic
23 setup in the Assam and other states like Bengal also. Section 6A confers citizenship to large
24 number of persons without being actually born within the territories of India. Section 6A seeks
25 to provide protective discrimination to the class of illegal immigrants. Fourth point is, there
26 may be some lacuna and drawbacks in the provision of the Section 6A of the Citizenship Act
27 1955, as said by the Petitioners...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You are saying 6A is unconstitutional or
30 constitutional?

31

32 **VIVEK SHARMA:** Sir, it is constitutional. I am saying only that. And there may be some
33 lacuna and the drawbacks in provision of the section 6A of the Citizenship Act as read by the
34 Petitioner, but the intention of the lawmakers is certainly fair. The provision of Section 6A, are
35 in favour of the integrity and national security of India, but there should be practical approach
36 because immigrants may be illiterate and they cannot be at the ventilator for indefinite time.
37 My humble submission...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you, Mr...

VIVEK SHARMA: My humble submission is that, the provision of Section 6A of the Citizenship Act 1955 should be declared valid and...

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright. Now, who else?

MEHMOOD PRACHA: My Lords, I'll take exactly two minutes, and I appear for My Lord 's Assamar [UNCLEAR] Khilonjia Musalman Union Parishad (APKM).

CHIEF JUSTICE D. Y. CHANDRACHUD: Give a submission, one page submission.

MEHMOOD PRACHA: Not one page, it's not...

CHIEF JUSTICE D. Y. CHANDRACHUD: Have you filed some submission?

MEHMOOD PRACHA: Yes, Your Lordships.

CHIEF JUSTICE D. Y. CHANDRACHUD: So what is your point? Who are you appearing for?

MEHMOOD PRACHA: I'm appearing for... in I.A. number, Your Lordships, in 562-41036 of [UNCLEAR] and in WPC 274, my I.A. Number is 153061 of 2022. I will not bother Your Lordships with all the... because everybody else has argued. I have been...

CHIEF JUSTICE D. Y. CHANDRACHUD: Anything special now?

MEHMOOD PRACHA: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is that?

MEHMOOD PRACHA: Otherwise, I would not bother... to decide the questions before, My Lords, in question number 4, 9, 10 and 11. There is a question of a friendly country and Your Lordships has been kind enough to take affidavit of the Union. I am only submitting for Your Lordship consideration, that if Your Lordships can also ask the Union to file an affidavit, qua their interactions with this friendly nation, on point number 4, 9, 10 and 11.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

MEHMOOD PRACHA: Two, My Lords, 6A, absolutely technically, is a restrictive in nature provision, which restricts the rights or the provisions, which were available in 6 before 1985. So, it's not actually giving out something. It's restricting something for the provisions of Section 6. 2004 Amendments came later on. That's the second aspect and third aspect to confine myself to 3 minutes, 2 minutes... is... that a culture... point number 3... the abrogation of culture and dilution of culture, will have to be considered on the parameter of the numbers. If more number of people, as it happened here, lot of Bengali origin people adopted Assamese language and therefore Assam language today is Assamese... so it is expansive in nature again. Lot of Bengali origin...

CHIEF JUSTICE D. Y. CHANDRACHUD: That point you made now, thank you.

SYED SHAHID RIZVI: I appear in special [UNCLEAR] petition, number 214.

CHIEF JUSTICE D. Y. CHANDRACHUD: What's the point?

SYED SHAHID RIZVI: The point is, I will only confine to two aspects.

CHIEF JUSTICE D. Y. CHANDRACHUD: You are for the intervenor?

SYED SHAHID RIZVI: No, My Lord, I am in the, for the Petitioner in Akhtara Khatun, 501.3 and 501.6, I have uploaded my written submission just now. That's one page only, and I confined myself only on two, three aspects.

CHIEF JUSTICE D. Y. CHANDRACHUD: What does the SLP arise from?

SYED SHAHID RIZVI: This is against the order of the High Court whereby the individuals were declared as a non-citizen.

CHIEF JUSTICE D. Y. CHANDRACHUD: High Court declared individuals as non-citizens...

SYED SHAHID RIZVI: And that is... against that the SLP was filed. That was an individual case. But it has been tagged along and this item number is 501.3... 501...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D. Y. CHANDRACHUD: We will just de-tag your case.

SYED SHAHID RIZVI: We went again...

CHIEF JUSTICE D. Y. CHANDRACHUD: We will de-tag this case.

SYED SHAHID RIZVI: Only, only...

CHIEF JUSTICE D. Y. CHANDRACHUD: We will de-tag this case, Because we don't know what the... Let the Bench deal with this. Why should we tag the [UNCLEAR].

SYED SHAHID RIZVI: The Tribunal has declared as non-citizen. Then we went to High Court. Against the High Court we came to Supreme Court and it has been tagged along with this batch of petition, My Lord. I will make only two submissions. In one minute I'll finish.

CHIEF JUSTICE D. Y. CHANDRACHUD: There are 6 SLP's apparently, one second, just for clarity. There are 6 SLPs I don't think we should be going to the facts of SLP's over here. We'll just de-tag those matters.

SYED SHAHID RIZVI: I'm only on the....

CHIEF JUSTICE D. Y. CHANDRACHUD: You see, there, some injustice may be caused to your client because you know we are hearing a question of law here, there's a constitutional challenge which we are considering. Individual facts will be 6 SLP's after we deliver judgment, let it be placed before the regular Bench.

SYED SHAHID RIZVI: It will affect the interest of my client. I will only make legal submission, not going to take up your time.

CHIEF JUSTICE D. Y. CHANDRACHUD: You have not been protected under 6A also, you have been held to be a foreigner, so you will have to argue your SLP on facts.

SYED SHAHID RIZVI: That is true, My Lord, SLP's has to be argued on facts. I'm not arguing on fact. I cannot argue before You Lordship.

CHIEF JUSTICE D. Y. CHANDRACHUD: Right

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

SYED SHAHID RIZVI: Because it is confined only...

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright what is it in just one small sentence.

SYED SHAHID RIZVI: Article 5 to Article 9 deals with specific, they are time and situation specific and Parliament has given under 246 read with...

CHIEF JUSTICE D. Y. CHANDRACHUD: That point has been made now, that point has been made now.

SYED SHAHID RIZVI: 17. So, therefore, Article 10 and 11 both gives enough power.

CHIEF JUSTICE D. Y. CHANDRACHUD: And that point, has been [UNCLEAR].

SYED SHAHID RIZVI: The Article 5 to 8, 5 to 9 are enacted for...

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you, thank you.

SYED SHAHID RIZVI: The purpose and keeping in view of the movement...

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you.

SYED SHAHID RIZVI: Okay.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes, Mr. Divan. Before Mr. Divan commences, we had asked for an affidavit by the Union of India, learned Solicitor was there. Can we just quickly look at the affidavit? Because then that way you can deal with the affidavit in the... Union of India dated 11 December '23.

TUSHAR MEHTA: May I read, My Lords? I'm sorry, I was called somewhere... Your Lordships are on page My Lord... I'll... I will not re-read My Lord. That's the only reason.

CHIEF JUSTICE D. Y. CHANDRACHUD: From which page... perhaps we can see, I think.

TUSHAR MEHTA: Yes. My apologies My Lords, I was not here. Your Lordship's queries what this issue is concerned, was how many persons have been detected to be foreigners by an

1 order of the Foreigner's Tribunal. Under the Foreigners Tribunal Order 1964, with reference
2 to the above period, that is '66 to '71. It is humbly submitted that the number is 32,381, till this
3 date, My Lord. There may be few cases, My Lords, which may be pending, somewhere in the
4 High Court or before this Hon'ble court. But broadly, this number would not vary. The... para
5 6 is the second query of My Lord, the estimated inflow of illegal migrants into India, including
6 but not confined to the state of Assam. In substance we have said, that there is a porous border.
7 They come clandestinely and therefore it is not possible to give exact figure. It may not be an
8 accurate figure, but the situation is a grim situation, My Lord. I'll not dispute the Petitioners
9 on that. Para 7, Your Lordship's query was in respect of persons who are alleged to have
10 entered India, including State of Assam, after 25th of March, it is... what is My Lords, the
11 Foreigners Tribunals status. There are hundred Foreigners Tribunals. The total number of
12 cases disposed of, are 3,34,966. The number of cases pending are 97,714 and against this
13 Tribunal's order, there is a [UNCLEAR] remedy before the High Court and 8,461 cases are
14 pending. Then My Lords, the steps taken by the Union Government at the administrative level,
15 to deal with illegal immigration into territory of India, including the North Eastern States,
16 particularly the State of Assam. My Lords, fencing part, I'll come a little later. But other My
17 Lords... In last five years, Ministry of Home Affairs, Government of India, has released a total
18 amount of Rupees 122 crores, as monetary allocation, for the functioning of Foreigners
19 Tribunals, towards the expenditure incurred to be... or to be incurred by the state. Then (b),
20 monitoring of deportation of detected foreigners and convicted foreigners in the state of
21 Assam is done by a standing committee headed by a Joint Secretary to the Government of
22 India, in the Ministry of External Affairs, and having Member from the State Government of
23 Assam. The standing committee has held six meetings so far in this regard. The State
24 Government or Union... UT administration, have been requested to take various actions with
25 regard to illegal immigrants. Periodic meetings are convened at the level of Chief Secretary
26 and DGPs to review the enforcement of legal provisions related to illegal migrants. Police
27 authorities in the State or Union Territories and other law enforcement agencies may be
28 constantly sensitized on the issue of illegal immigration of foreign nationals and be appraised
29 of the legal provisions. Police authorities and other law enforcement agencies may be advised
30 to keep a strict vigil and take appropriate... are advised... not maybe advised... are advised...
31 prompt action to detect, identify, and intercept illegal immigrants settled in State or UT
32 concerned. Adequate powers are vested with State Governments or UT administration for
33 detection, detention and deportation of illegally staying foreign nationals. Suitable penal
34 action may... are taken. There is a typo throughout... against illegally staying foreign nationals
35 after completion of legal proceedings the movement of such illegal migrants may be restricted
36 in detention or holding centres by issuing of appropriate orders under Section 3(2)(e), of the
37 Foreigners Act, read with para 11 of the Foreigners Order 1948. Action may also be taken

1 against those who abate under Section 14(c) of the Foreigners.... It's taken from the directive.
2 Therefore My Lord, it is wrong expression...

3

4 My apologies... are directed, not may. Further biographic and biometric particulars of such
5 illegally staying foreign nationals are being taken, immediate, necessary action to cancel
6 fraudulently obtained Indian identity document. It is further submitted that steps have been
7 taken by government of Assam to stop or prevent illegal immigration in Assam. It is submitted
8 that various means and mechanisms are used to prevent and stop illegal immigration in
9 Assam, as well as detection and deportation of illegal foreigners from Assam. Now second line
10 of defence. Assam police border personnel, along with Assam Police, Armed Branch personnel
11 are deployed in the second line of defence behind the border of.... border outposts of the border
12 guarding force that is BSF along the Indo-Bangladesh border to keep vigil and to trace out
13 infiltrators who might sneak past the BSF border outpost. The second line of defence is
14 established as per decision taken in a tripartite talks held in March '99, in New Delhi. Presently
15 14 number of border outposts and 14 numbers of patrol posts are functional as second line of
16 defence unit in four districts of Assam sharing international border with Bangladesh to detect
17 illegal migrants, carry out patrolling...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second Solicitor.

20

21 **TUSHAR MEHTA:** Further third numbered para, para, page 7. Further additional twelve
22 border outposts were approved at the second meeting of, state level standing committee to
23 monitor border security, held on 24-12-2019 with a government memo dated 30th December
24 2019. These two second line of defence units play a crucial role in prevention of infiltration
25 and detection of illegal foreigners. It is noteworthy to mention here, that the second line of
26 defence that is border outpost or police patrol is manned by both unarmed and armed branch
27 personnel. Headed by mostly ex-servicemen, sub-inspectors who have adequate knowledge of
28 border management security due to their past military experience and can easily coordinate
29 and communicate with BSF to carry out the joint or individual patrolling. They submitted that
30 the border outpost or patrol post personnel are not engaged in any other duties. Then every
31 district in Assam has a separate border branch under the command of the District
32 Superintendent of Police border. Further additional SP Border, Deputy SP Border are
33 specifically posted in districts to look after the border works under command, control,
34 guidance and supervision of Superintendent of Police. Further in every police station, outpost,
35 watch post as well as Foreigners Tribunal, border personnel are posted for border works.
36 Furthermore, 500 task forces are also formed as per the order of the Hon'ble Supreme Court,
37 to apprehend the declared foreigners. Because even after declaration they escape, so that they

1 may not be deported. Further, the Assam Police Border Organization takes necessary steps, to
2 detect and deport the illegal migrants from Assam, as per law. Generally based on information
3 collected during village survey, source information, public complaint and intensive revision of
4 Electoral Rolls, etc., regular Foreign Tribunal or doubtful voter cases are initiated under
5 Section 14, of the Foreigner's Act against a suspected foreigner, if he or she is not able to
6 produce any valid document, in support of his or her claim of being an Indian national.
7 Thereafter, the cases are referred to the concerned Foreigners Tribunal for opinion. On receipt
8 of Foreigner Tribunal's opinion, the declared foreigners are apprehended and detained in
9 transit camp for onward deportation to their country of origin, that is, Bangladesh. Then watch
10 posts, watch posts are established in infiltration prone areas of Assam, to conduct survey to
11 detect infiltrators and subsequent legal action against them. Case initiation, presently 159
12 watch posts are functioning in 23 districts. Border protection grid for effective border
13 management involvement....involvement of various stakeholders, central and state agencies is
14 inevitable. For this, the Ministry of Home affairs of India with a notification dated 2nd January
15 '18 had directed establishment of border protection grid along the Indo Bangladesh
16 international border with the involvement of the State Authorities and other stakeholders.
17 Government of Assam has since finalized the SOP of border protection grid for Indo-
18 Bangladesh international border of Assam. Main objective of the border protection grid are as
19 follows: to present a foolproof mechanism with a view to make Assam free from illegal
20 immigrants by detecting and deporting them to their country of origin and to prevent such
21 infiltration... to prevent such infiltrations in future. To prevent cross border crimes into Indo-
22 Bangladesh border, the functions and responsibilities of different stakeholders are clearly
23 mentioned. Then intelligence agency meetings, they are frequently held. I may skip that. 9 is
24 relevant, with reference to the query, the extent of border fencing which has been carried out.
25 The steps which the Union Government intends to take, to complete the exercise of border
26 fencing, an estimated timelines to complete the exercise of border fencing. India shares 4096.7
27 kilometre of international border with Bangladesh. It passes through the state of West Bengal,
28 Meghalaya, Mizoram, Tripura and Assam. The border is porous, crisscrossed by rivers, hilly
29 and mountainous terrains. Out of 4096.7 kilometre, Indo-Bangladesh border length, feasible
30 length for fence is about 3922 kilometres and non-feasible length is about 174.5 km. When
31 there is a mountainous terrain or river, there is no fencing possible. To secure the Indo-
32 Bangladesh border, Government of India has taken multipronged step to complete the
33 remaining length, either by fencing, fence or by technological solutions. For the entire Indo-
34 Bangladesh border, about 81.5% fence work has been completed in feasible length and work
35 is going on in those feasible stretches where encumbrance free site is available. Further, about
36 28.2% of non-feasible gaps that is riverine, nala gaps, etc., in Assam and Tripura have been
37 covered by deploying technological solutions. In remaining parts, in West Bengal, Meghalaya

1 and Mizoram, suitable technological solutions are being explored in consultation with Defence
2 Research Development Organization and Central Public Works Department. In addition to
3 above, keeping in view the vulnerability of the border BSF had carried out a vulnerable
4 mapping exercise to identify the vulnerable stretches, non-feasible stretches or stretches along
5 existing fence along the Indo-Bangladesh border. To cover these vulnerable stretches,
6 Government of India has sanctioned a low cost technological solutions covering a total length
7 of 281 km along Indo-Bangladesh border, which is in progress and likely to be completed by
8 September, 2024. Further, the Government of India reviews the progress of fencing work
9 regularly through institutionalized mechanisms like Empowered Committee on Border
10 Infrastructure being headed by the Cabinet Secretary, High Level Empowered Committee
11 being headed by the Union Home Secretary, Steering Committee being headed by the
12 Secretary Border Management, State Level Standing Committee being headed by the Chief
13 Secretary of concerned states. Apart from this to expedite the border fence work, it is being
14 reviewed in Ministry at Joint Secretary Border Management one level and Director level,
15 monthly and weekly, respectively. All efforts are being made to secure the remaining length of
16 Indo-Bangladesh border, either by fence or by technological solutions. The fence work is likely
17 to be completed in 3 years' time after availability of encumbrance free site. The site is to be
18 provided by the State, that's the problem. And the technological solutions are expected to be
19 put in place in 2 years' time. Specifically, State of Assam shares approximately 263 kilometres
20 of international border with Bangladesh. Out of which 210 kilometres has been covered by
21 fence and remaining non-feasible length has been covered by technological solutions. It is
22 specifically submitted that challenges have also been faced in the State of West Bengal with
23 regard to illegal immigration. It is submitted that the State of West Bengal shares about 2,216
24 km border with Bangladesh. Out of 2216.7 km of international border with Bangladesh, 78%
25 border of feasible length is covered with fence. The details of remaining length of feasible or
26 non-feasible stretches in the State of West Bengal is as under. I've given the figures. And (a)
27 the status of feasible length in West Bengal. It is submitted that a feasible length of 435 km
28 remains to be covered by the fence. It is submitted that out of the same 286.35 km is pending
29 due to land acquisition... acquisition by the State. Further, it may be noted, that about 149.154
30 kilometre stretch including bridges, culverts, gaps, low lying, public protest, et., which were
31 earlier considered to be non-feasible, has now been considered to be feasible for installation
32 of physical barriers, including fencing, sentry post, high mast light, etc., as per BSF and CPWD
33 recommendation. Estimates are being prepared to cover this stretch, also. It is submitted that
34 despite all efforts, the progress has been substantially hindered due to the pending land
35 acquisition issues with the Government of West Bengal. The State Government has not
36 adopted right to fair compensation and transparency in Land Acquisition and Rehabilitation
37 Act 2013. As per this Act, in cases of urgency, the appropriate government can take possession

1 of any land needed for public purpose, and such land shall thereupon vest absolutely in the
2 government, free from all encumbrances. It is submitted that West Bengal Government
3 follows a far slower, more complex, direct land purchase policy. This is My Lords, the main
4 hindrance, even for national security projects such as border fencing. Due to the non-
5 cooperation from the State Government regarding resolving various issues of land acquisition,
6 considerable delays have occurred in acquiring the necessary land, thereby impeding the
7 timely completion of fencing in West Bengal along Indo-Bangladesh border, which is a vital
8 National Security Project. My Lord, I have avoided giving any correspondence, discussions,
9 details, etc., with a view, not to make it other than, My Lords, just fact specific. But this is the
10 problem we are facing and the Central Government can do little in land acquisition. Then
11 status of non-feasible length in West Bengal...

12

13 **JUSTICE SURYA KANT:** Mr. Solicitor, who pays the compensation, Union or the State?

14

15 **TUSHAR MEHTA:** The State. But if this is not the cause for which urgency clause is to be
16 invoked, I don't think there can be any other cause. Integrity of the state, security of the
17 country... direct land purchase policy usually is adopted in case when you are acquiring land
18 for some industrial purpose or industrial township, etc., not for national security concerns

19

20 **JUSTICE SURYA KANT:** The issue is of compensation, mainly.

21

22 **TUSHAR MEHTA:** Correct, My Lord, but that has to be priority, even if... no, I am sorry My
23 Lord, I stand corrected. For border fencing, we pay the compensation. Only they are the agency
24 which can do it under the Land Acquisition Act.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But they follow the direct purchase policy?

27

28 **TUSHAR MEHTA:** Direct purchase policy. They may follow. We have no difficulty but for
29 border fencing, they cannot follow. An urgency clause will have to be invoked and My Lord,
30 I'm sorry, I stand corrected, The Union of India pays the compensation. Then status of non-
31 feasible length in West Bengal. It is submitted that the length of non-feasible stretch to be
32 completed is 112.780 km which falls in Sundarbans areas and is being planned to be covered
33 by deploying technological solutions. A joint physical inspection has been carried out by BSF
34 and CPWD to explore the feasibility for construction of 9 number of outpost towers in
35 Sundarbans areas, which can house surveillance equipment. It is further submitted, that the
36 Ministry has also sanctioned 301.25 kilometre replacement, upgradation of new design fence
37 in West Bengal. Out of this 56.21 km new design fence work is in progress and for remaining

1 length tendering is in process. It is submitted that to secure the Indo-Bangladesh border in
2 West Bengal, Government of India has taken multipronged steps to complete the remaining
3 length either by fence or by technological solutions. If the State of West Bengal co-operates in
4 acquiring the land and handing over the land for fencing, the Central Government shall
5 complete the process without any delay. This is in respectful response to the order passed by
6 Your Lordships, on the earlier occasion. Before the Petitioner starts only one thing. I don't
7 think My Lord that may have any relevance for the purpose of deciding validity of Section 6A.
8 But some history referred to by my learned senior friend. It seems he has read a wrong book
9 of history. Assam was never a part of Myanmar, because this has some relevance when we deal
10 with some other matter, at some other level, in some other composition. It was never a part.
11 Because Myanmar has now maximum immigration. And therefore to say that it was always a
12 part of Assam.

13

14 **KAPIL SIBAL:** I only said... to Myanmar.... they wanted Assam... then the British My Lord,
15 who took it over. That's what I said and I referred to in the chapter in the history...in the book,
16 My Lords, which says...

17

18 **TUSHAR MEHTA:** That's...

19

20 **KAPIL SIBAL:** That's not my statement, I mean this is completely.... Quite frankly, the
21 website of the Assam Government also says the same thing.

22

23 **TUSHAR MEHTA:** Anyway, I don't wish to join issue on that, My Lord, but this was the
24 wrong book my learned friend read. That's all. I...

25

26 **KAPIL SIBAL:** Kindly look at your own website. It says exactly that... your own website. Let's
27 not get into...

28

29 **TUSHAR MEHTA:** Anyway, I leave it at that. I don't want to embarrass, Mr. Sibal.

30

31 **ATTORNEY GENERAL R. VENKATARAMANI:** Lordship, just give me half a second.

32

33 **KAPIL SIBAL:** Part of the compilation. The treaty...

34

35 **TUSHAR MEHTA:** Permission of the, the issue of My Lord, influx from Myanmar is
36 separately pending before your Lordships, and there are other issues also pending. Therefore,
37 I repeatedly...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Hegde, also said the same thing.

TUSHAR MEHTA: This is confined to the validity of 6A.

CHIEF JUSTICE D. Y. CHANDRACHUD: Let's confine ourselves to 6A. The validity of 6-A, because...

KAPIL SIBAL: Context of not being able to map, the movement of population. That's all that I was saying.

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright. Yes, Mr. Divan.

ATTORNEY GENERAL R. VENKATARAMANI: Question of delay in [UNCLEAR]. I should have given Your Lordships a citation just the principle like this...

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

ATTORNEY GENERAL R. VENKATARAMANI: If a wrongful act causes an injury which is complete, a damage arising out of wrongful act, even continuous, will not be a continuous wrong. That is, in 1959, supplement to SCR 476.

CHIEF JUSTICE D. Y. CHANDRACHUD: 19...?

ATTORNEY GENERAL R. VENKATARAMANI: 1959, supplement to SCR 476. Paragraph 39 of the judgment, what they say is there is a distinction between a continuing wrong and a wrong or a default which is complete when it is committed. So, 1971, Assam Accord so complete will is committed. This judgment has been quoted with approval in the *Ram Janmabhumi* case that is (2020) 1 SCC 1 which is a Constitution Bench.

CHIEF JUSTICE D. Y. CHANDRACHUD: 2020?

ATTORNEY GENERAL R. VENKATARAMANI: 2020 1 SCC 1. That's it.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

1 **SHYAM DIVAN:** Now, may I just request you to take up the Citizenship Act please, and with
2 your permission, I will only make points and points in rejoinder. So I'll go point wise.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

5

6 **SHYAM DIVAN:** Now, the first set of points is what I understand... there's common ground,
7 because, we've now heard what the Respondents have to say. So, I think the first is quite
8 obvious that we are only concerned with Assam. There's a geographic limit. We are all agreed
9 on that. The second point is, I took in the written, the Respondent's reply, it appears that it's
10 now common ground, that there's no temporal limit to the operation of Section 6A. The
11 Solicitor General once mentioned transitory provision. I'll come to that separately. But 6A
12 applies even to this day. It's not as if 6A applies and there is a cutoff date or a cutoff point of
13 time, I think that's very, very important. Whereas, you can make an application even today for
14 the purposes of gaining a benefit under Section 6A. And I think that's very important. And it's
15 common ground now that there is no, therefore, temporal limits to 6 or the operational 6A.
16 The third point which I wish to make on which, again, there is commonality is, both sides are
17 agreeing that for the benefit of 6A, the notion of ordinarily resident in Assam is crucial and
18 vital. There's no running away from that. Ordinarily resident in Assam is an embedded notion
19 as far as the statute is concerned, whether you're under 2, you're under 3, that's an important
20 feature. And the final point which I want to make on which I think there is now commonality
21 is with regard to the essential ingredients for the operation of 6A. Number one, the person
22 must be of Indian origin as defined. Number two, she must come into Assam. Number three,
23 she must come from Bangladesh and number four, what I mentioned a while ago, must be
24 ordinarily resident in Assam.

25

26 These are the four, so we have now all agreed on with regard to those essential requirements.
27 Now, please take up the citizenship. Go directly to section 6A. Now I'll just make my points. I
28 am focusing initially on 6A(2). Please, take up 6A(2). First point, it's now common ground that
29 there is no machinery for the purposes of evaluating, assessing and determining the grant of
30 citizenship under 6A(2). No machinery. Now, notice, the legislature prescribes four criteria.
31 Please take up 6A(2). It prescribes the four criteria I indicated. It then provides no machinery
32 for determining any of the four criteria, which is, is the person of Indian origin, has the person
33 entered Assam before 01-01-66, has the person entered from Bangladesh and is the resident,
34 ordinarily resident in Assam? There are four specific criteria but these four specific criteria are
35 factual to qualify under 6A(2), you must meet these conditions. You must meet the.... That's
36 what the legislature says, but there's no machinery to determine these conditions. So, what is
37 the net effect of that? The net effect of that is, I believe this is a fatal flaw in the scheme as far

1 as 6A(2). I'm only on 6(A)2 now. By providing... If you just take a situation, if you have not
2 provided any criteria, then my submission would have been. this is completely void because
3 you cannot distribute citizenship without rational, reasonable criteria. That's the foundation
4 as far as the constitutional logic and the constitutional... and good governance is concerned,
5 there must be some criteria. To which the answer would be, but we have criteria, we have four
6 criteria. But when you prescribe four criteria facially, and do not couple that with a machinery
7 to evaluate and assess those criteria, you are in short prescribing no criteria at all and this is
8 now fatal, according to us, as far as 6(2), is concerned. It just can't stand. You can't prescribe
9 criteria, then have no machinery and therefore just start granting citizenship. So now, what's
10 the net effect of this? The net effect of this is, that any person because it's 57 years now, since
11 1st January '66. So anyone over the age of 57 in Assam, can claim citizenship without the
12 requirement of establishing ancestry or provenance. That's the net effect. You are just... your
13 carte blanche just granting citizenship because you have no machinery. So, basically what is
14 happening is, this is the grant of citizenship without scrutiny. It is a criteria-less citizenship,
15 6(2). I'm only on 6(2). In effect, it is a criteria-less citizenship and this I don't believe
16 Parliament can do, even though it has the legislative competence. No action under our
17 Constitution can be so completely devoid of any rationality or any basis. You prescribed it. All
18 right. Good luck. You prescribed it. But then what's your machinery to determine these four
19 points that the person has entered Assam, come from Bangladesh, is of Indian origin, which
20 is defined, and is ordinarily resident in Assam. Nothing at all, for 1st January '66. So, I would
21 respectfully therefore submit that insofar as 6(2), is concerned, it ought to go, that's all. I can't
22 say anything further. It ought to go. You can't have a system of criteria-less citizenship. Facially
23 we've got four conditions, but there are no machinery. That's the end of it. So, this is now my
24 first set of points. My focus was on 6(2). Now I move to 6A(3). Sorry.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What will happen then is this, that suppose
27 somebody is detected to be a foreigner...

28

29 **SHYAM DIVAN:** Yes, I'll come to that.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** He is detected or she is detected to be a *prima*
32 *facie* a case of a foreigner. Notice is issued to that person.

33

34 **SHYAM DIVAN:** Yes.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That person says that, look, I am protected by
37 the deeming conferment of citizenship by 6A(2). The onus is on that person then, to establish

1 that these four conditions are satisfied by them. You have to then establish that look, we must
2 also understand that we are dealing with people who came in before 1966. That's why
3 [UNCLEAR] made this classification.

4

5 **SHYAM DIVAN:** That's right.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But if notice is given to a person that look, you
8 are claiming to be under 6A(2), but you've never come before '66, you're framing something
9 which you are not. That person must show first, entry before '66 or entry by an ancestor,
10 parent, grandparent... two, entry from Assam... three ordinarily...

11

12 **SHYAM DIVAN:** Let me answer that. Let me answer that. Now I'm back. I'd move to 6A(3),
13 but now I'm going back to 6A(2)...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This deeming conferment to Citizenship is on
16 those people who genuinely meet that description in 6A(2).

17

18 **SHYAM DIVAN:** True.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It does not confer citizenship on anybody who
21 is just in India before '66.

22

23 **SHYAM DIVAN:** But now... So, let me answer that. Now, let me just, let's focus on this and
24 Your Lordship's point with regard... may I continue after lunch?

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Continue after lunch.

27

28 **SHYAM DIVAN:** Grateful.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Divan, I was actually reflecting on what
31 you said at lunch. Just look at this way. When the law provides for... I may be wrong, I'm just
32 formulating it... When a law provides for a deeming consequence, that consequence operates
33 without any adjudication, or without application of mind to the facts of a particular case.

34

35 **SHYAM DIVAN:** Generally. Not here.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The deeming consequence, what we call a
2 deeming fiction...

3

4 **SHYAM DIVAN:** I would accept that.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right? Now, when the consequence is called
7 into question in an individual case on the ground that the conditions requisite for attaining
8 that consequence are absent, your four conditions, the fact that those four conditions were not
9 satisfied or any of them was not satisfied, and therefore the person is not entitled to the benefit
10 of the deeming consequence, is always up for adjudication. Suppose for instance, somebody,
11 I'll tell you, somebody now prior.... a person, prior to '66 applies for an Indian passport. All
12 right? Or their child... Now, those people will be... Now, as you said 57 years old, that person
13 applies for a passport.

14

15 **SHYAM DIVAN:** I mean, at least 57.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The passport officer says that, "Look, I can't
18 give you a passport. You're not an Indian citizen." Then at that stage, if he says, "no, I'm an
19 Indian citizen by virtue of 6A (2)." I'm not saying, the passport officer will do that
20 adjudication. He has no power to do that adjudication. But certainly, the validity of his status
21 can be then decided. Suppose somebody applies for some other social welfare benefit which is
22 available only for a citizen. Otherwise, we can clarify that actually. That this is not that anybody
23 who claims that status gets the status.

24

25 **SHYAM DIVAN:** So let me just answer this now. Your Lordships have formulated. So I have
26 2-3 answers straight away. So, just look at 6A(2) please. Just have a look at 6A(2). I'll just read
27 some parts of it. You see, subject to the provisions of 6 and 7, all persons of Indian origin who
28 came before 1st January 1966 to Assam from the specified territory, including those etc. who
29 were included in the electoral roll for '67 and who have been ordinarily resident in Assam since
30 the dates of their entry into Assam shall be deemed to be citizens of India as and from, first
31 day of January, 1966." And as Your Lordships have seen, this provision comes onto the statute
32 book with effect from 7 December 1985. So it has... The deeming is not just deeming with
33 regard to, who becomes a citizen, but also from when the person becomes a citizen. That's very
34 important. Deemed to be a citizen as from 1st January '66. Now, we're not going there, because
35 of some rationale provided, etc, because there were elections held. We are not getting into any
36 of that. I am first examining this subsection through... facially. So, assume everything is what
37 it says, what it means to say. So four conditions Your Lordships have specified... I don't want

1 to repeat it. Now, look at the manner and the mechanics of it. First question. Are there criteria?
2 I'm just asking myself.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Criteria there are.

5

6 **SHYAM DIVAN:** I believe there are criteria. So, you cannot assay a provision on the ground
7 that this is just being handed out to anybody and everybody without criteria. And criteria is
8 necessary. I believe for the grant of citizenship. There must be some rational application of
9 mind, some objective criteria. Now, there are objective criteria. That's the other part. So, not
10 just criteria, objective criteria. Now, those objective criteria are on the basis of certain fact
11 situations. Now, I'll take a simple one. You have to enter into Assam. That's my other point,
12 but let's keep that aside. Not West Bengal, not enter.... It has to be to Assam. That's one point.
13 It has to be prior to 01-01-66. It has to be from Bangladesh. And you have to be thereafter
14 resident. Now, all these elements, I'm just suggesting to the Court, because what is deeming?
15 Deeming, according to us, is a basket of rights.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** According to you it has to be a machinery.

18

19 **SHYAM DIVAN:** Yeah, so I'll come to that. It's a basket of rights. Citizenship is a basket of
20 rights. And that basket of rights includes political rights, it includes civil rights, it may include
21 social rights, it may include economic rights. This is a very important concept because that will
22 also tie into some tentative observations made of... does proportionality have any role in this?
23 And we will try and suggest some solution.

24

25 **JUSTICE M.M. SUNDRESH:** What the Chief Justice is saying is this, you are right. Now,
26 it is ultimately for the individual to have its own view of satisfaction of these four criteria.

27

28 **SHYAM DIVAN:** It is also the state.

29

30 **JUSTICE M.M. SUNDRESH:** Now, merely because subsection 2 does not speak about it.

31

32 **SHYAM DIVAN:** Yeah.

33

34 **JUSTICE M.M. SUNDRESH:** The question is, will that take away the power of the state
35 government to go into the issue and satisfy itself whether A or B has satisfied it?

36

1 **SHYAM DIVAN:** So, may I answer that? I'll answer that straight away. My respectful
2 submission is, and there'll be some guidance from some case law which I'll place presently.
3 But there, once you specify criteria, you must, in the facts and circumstance of this case, and
4 having regard to the nature of this provision have a machinery to determine those criteria.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But see, a deeming fiction is provided by the
7 constitution itself in Article 7. The constitution itself provides for a deeming grant of
8 citizenship in Article 6.

9

10 **SHYAM DIVAN:** Yes, yes.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There's no machinery in Article 6. Of course,
13 you can't challenge an original provision of the constitution whether it is a..... See Article 6
14 also says notwithstanding etc., etc., shall be deemed to be a citizen of India by commencement
15 to the constitution.

16

17 **SHYAM DIVAN:** I accept that.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, even the Constitution provision...

20

21 **SHYAM DIVAN:** That's the starting provision. Someone had to be a citizen of India. So there
22 was a cutoff date which was prescribed and there were provisions which were made. That's
23 very different according to us.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But if somebody were to claim the benefit of
26 Article 6 citizenship.

27

28 **SHYAM DIVAN:** Yes.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then the question as to whether he or she
31 satisfies...[UNCLEAR]

32

33 **SHYAM DIVAN:** Should there be a contest?

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... that can be gone into?

36

1 **SHYAM DIVAN:** So may I, may I answer that by in this manner? I accept the provision. I
2 accept the position that you may have certain circumstances, such as at the inception of the
3 constitution or at the starting of the constitution when you may not require to have a case by
4 case determination insofar as individuals are concerned. However, the nature of 6A(2), and
5 I'm not putting it any higher than that. 6A(2) by prescribing objective criteria required,
6 according to us, a machinery to ascertain those objective criteria in individual cases. It can't
7 be just as a defence mechanism and someone wants to take action against you, that it happens.
8 Because you're conferring a basket of rights, including political rights and the full range of
9 rights. So that My Lords is my respectful submission. And according to me, our submission is
10 that this is fatal as far as this, because otherwise it really amounts to saying, no, I'll just flip it
11 around. Suppose they provided no criteria. Ultimately, what is the... That's what it means. If
12 you are not providing a machinery, it is a criteria less citizenship with a date of 1st January '66
13 because nobody is required to go through any evaluation process at all. That's exactly what
14 Chief Justice correctly observed, that that probably happened at the inception of the
15 constitution, where there was a presumption that everybody who was there on or before a
16 particular date is deemed to be the citizen of India. So that's okay there, but is it now okay,
17 here is the question for Your Lordships to consider. That permit system, etc. has been
18 explained to Your Lordships. So these My Lords are my submissions, as far as 6A is concerned.
19 Now I want to go to 6A(3).

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 6A(3).

22

23 **SHYAM DIVAN:** Now on 6A(3) again, first point, no time limit. I think that's common
24 ground. Now, if no time limit is provided for working out this section, according to us the
25 section itself is vulnerable and I have premised this submission on the basis that we suggested
26 a few expressions that the provision remains on the statute book and continues to act as a
27 beacon indefinitely. It's like a magnet which attracts people to Assam with all the
28 consequences, as far as illegal migrants are concerned. And therefore, in our respectful
29 submission, this itself this is a fatal element to it, namely that there is no time limit which is
30 prescribed within which this process is to be completed. It can be done tomorrow as well.
31 That's open ended. And that's very, very dangerous and wrong and illegal, according to us. So
32 this is our next respectful submission. Now My Lords, I'm focusing on another concept, and
33 the concept which I am now focusing on is person ordinarily resident in Assam.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is under the 6A(3) challenge, right?

36

1 **SHYAM DIVAN:** Yes, but actually, it will span both, because that same expression is used.
2 But I'll just make the point. I'll just make the point. Now, if we go to 6A(1) you will find, if you
3 just have a look at 6A(1), you will find there's a definition as far as Assam is concerned,
4 detected to be a foreigner, specified territory, deemed to be a person, deemed to be of Indian
5 origin and deemed to have been detected. Your Lordships see that? The expressions which are
6 defined? Person ordinarily resident in Assam is not defined. Now, this is very, very important
7 for my purposes because this is really the entire fulcrum on which both the Sections and the
8 Sub-sections and the entire scheme operates. And this is my primary grievance if Your
9 Lordship recalls, in the opening. This whole business of making it persons ordinarily resident
10 in India and compelling everyone to remain there. That's one aspect, but now let's focus on
11 6A(3). Now I ask myself if you have certain statutes like, say, FEMA, Income Tax Act, you have
12 notions of residency defined or linked to the number of days, maybe 182 days. It may be
13 something more, but you have to have a clear definition. It cannot suffer from this type of
14 vagueness, undefined expression, key core provision of resident in India, ordinarily resident
15 in India, person ordinarily resident in Assam. I'm sorry, what does that mean? Is it one week?
16 Is it five weeks? Is it six months? Is it five years? Is it two years? No yardstick at all provided.
17 And this according to us cuts across both subsections. It leaves it completely vague. And in our
18 respectful submission, if we are right, unconstitutionally vague. You see the vice of extreme
19 vagueness in a situation for a core concept such as this, what does it leave it? What is the
20 guidance given to a foreigner's Tribunal or anyone else? What is ordinary? That's a question,
21 I ask myself. Now, in this regard, actually, in both respects machinery, absence of machinery,
22 as well as for vagueness, we have some guidance to be obtained from a decision of Your
23 Lordships. Yes, this My Lords, I'll just give you the citation very quickly. This is judgment yes,
24 of our constitution bench. I'll give you the citation. **69 2 SCC 166, Harakchand**
25 **Ratanchand Banthia vs Union of India**. We'll just request the Court Master to put it up.
26 **69 2 SCC 166** . Now, this had to do. And the relevant paragraph, I should just indicate, is
27 paragraph 21 in the context of renewal of licenses at page 1. I think it may be at Page 1. Para
28 21, it begins with we now come to Section 20. Yes. So I just placed this word it spans both
29 issues and it's self-explanatory when I read the para. We now come to Section 27 of the act
30 which relates to licensing of dealers. It was stated on behalf of the petitioners that the
31 conditions imposed by Sub-section 6 of Section 27 for the grant or renewal of licenses are
32 uncertain, vague and unintelligible and consequently, wide and unfettered power was
33 conferred upon the statutory authorities in the matter of grant of renewal of license. In our
34 opinion, the contention is well founded and must be accepted as correct. Section 27(6)(a)
35 states that in the matter of issue of renewal of license, the administrator shall have regard to
36 the number of dealers existing in the region in which the applicant intends to carry on business
37 as a dealer, but the word region is nowhere defined in the act. Similarly Sections 27(6)(b)

1 requires the administrator to have regard to the anticipated demand as estimated by him for
2 ornaments in that region. The expression anticipated demand is a vague expression which is
3 not capable of objective assessment and is bound to lead to a great deal of uncertainty.
4 Similarly, the expression suitability of the applicant in 27(6)(e) and public interest in 27(6)(g).
5 Do not provide any objective standard or norm of guidance. For these reasons, it must be held
6 that Clauses so and so impose unreasonable restrictions on the fundamental right of the
7 petitioners to carry on their trade and are constitutionally invalid. It was also contended that,
8 there was no reason why the condition for renewal of license should be rigorous as the
9 condition for initial grant of license. The requirement of strict condition for the renewal of
10 license renders the entire future of the business of dealers uncertain and subjects it to caprice
11 and arbitrary will of the administrative authority. There is justification for this argument and
12 the requirement of Section 26 of the Act imposing the same conditions for the renewal of
13 license, as for the initial grant, appears to be unreasonable. In our opinion, so and so are
14 inextricably bound up with the other clauses in Section 27(6) and form part of a single scheme.
15 The result is, that clauses so and so are not severable, and the entire Section 27(6) must be
16 held invalid. 27(2)(d) of the act states that the valid license issued by the administrator may
17 contain such conditions, limitations and restrictions as the administrator may think fit to
18 impose and different conditions, limitations or restrictions may be imposed on different
19 classes of dealers. On the face of it, this subsection confers such wide and vague power upon
20 the administrator that it is difficult to limit its limited scope. In our opinion, 27(2)(d) of the
21 act must be struck down as unreasonable restriction on the fundamental right of the
22 petitioners to carry on business. It appears, however, to us that if Section 27(2)(d) and 27(6),
23 etc. are invalid, the licensing scheme contemplated in the rest of 27 cannot be worked. It is
24 therefore necessary for Parliament to enact fresh legislation etc. So, this is important in the
25 context of vagueness, which Your Lordship.... so this, I think... at least we feel that this is
26 persuasive on the point that when you have such key concepts which remain completely
27 undefined and open ended, we are left guessing as to what is the exact contour or parameter
28 of persons who are resident, shall be ordinarily resident in India, in Assam, I'm sorry, since
29 the dates of entry, etc. So this is too crucial a concept without any parameter or anything laid
30 out. So, anyway, I'm done now with this point. Yes. Now, this I should... Yes, Your Lordship
31 may just note it that this was followed to strike down 66A. I'll give you the citation. **Shreya**
32 **Singhal vs Union of India**. That's, of course, a two judge bench, My Lords, 2015. Volume
33 5, SCC, page 1, at paragraphs 55 to 68 and 85, two learned judges. And in **Shayara Bano vs**
34 **Union of India** this aspect is now regarded as a facet of manifest arbitrariness. In **Justice**
35 **Nariman's Judgment, 2017, 9 SCC**, page 1, paragraph 101. That is My Lords, at Index
36 number 163 of Volume 5, before Your Lordships. **Shayara Bano** is there. So now this. Is one
37 aspect. Now there's one other parallel. Sorry. One other aspect which I'll just.... since we are

1 on this machinery aspect, I'll just indicate. We have the advantage of a Constitution Bench
2 Judgment, in ***State of Madhya Pradesh vs Baldeo Prasad*** the citation is (**'61**) **1 SCR**
3 **970**. And from the SCC print, it is paragraphs 8 and 9 that are relevant. Okay, we'll try and get
4 that... It's the paragraph beginning, "The section does not provide that." Yes, just above this.
5 Your Lordship has that? Now, I'll just explain this so this was in the context of the Gunda Act,
6 and the provision was struck down by the High Court, upheld by the Supreme Court because
7 the definitions were just so completely vague. Now, just 2 paragraphs. The section does not
8 provide that the district magistrate must first take... must first come to a decision that the
9 person against whom he proposes to take action is a *gunda* and gives him no guidance or
10 assistance in the said matter. It is true that under Section 4, a *gunda* is entitled to have an
11 opportunity to be heard after he is given a copy of the grounds on which the order is proposed
12 to be made against him. But there is no doubt that all the *gunda* is entitled to show in response
13 to the notice is to challenge the correctness of the grounds alleged against him. The inquiry
14 does not contemplate an investigation into the question as to whether a person is a *gunda* or
15 not. The position, therefore, is that the District Magistrate can proceed against a person
16 without being required to come to a formal decision as to whether the said person is a *gunda*
17 or not, and in any event, no opportunity is intended to be given to the person to show cause
18 he's not a *gunda*. The failure of the section to make a provision in that behalf, undoubtedly
19 constitutes a serious infirmity in the scheme. So, what we are providing, what we are trying to
20 draw sustenance in terms of our argument is that providing a machinery for determining and
21 not just issuing a show cause notice to *gunda*, you can't.... this converse point, namely that,
22 oh, it might be weeded out in a process when, if and when someone is detected is not enough.
23 There ought to be, in our respectful submission... I am sorry.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Those who take the benefit of subsection 3.
26 There is a machinery.

27

28 **SHYAM DIVAN:** For 3, there's a machinery.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There's a machinery by the explanation.

31

32 **SHYAM DIVAN:** No, no, no, there's no doubt about that.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There's no machinery for subsection 2.

35

36 **SHYAM DIVAN:** My machinery argument is confined only to insofar as...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Subsection2?

2

3 **SHYAM DIVAN:** Subsection 2 is concerned, and also to the extent that if you haven't defined
4 a person who is ordinarily resident in Assam. I mean, then what are the inquiry going to be.
5 It's just completely vague. What machinery can.... What can the machinery do also? This is
6 such a crucial concept. It has to be some days, some numbers. Something has to be there.
7 Ordinary resident it, just otherwise completely.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have artificial definitions for fiscal
10 legislation like Income tax. 180 days.

11

12 **SHYAM DIVAN:** Yes, you are right.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** For FEMA, you know whatever, 270 days. But
15 these are not, in that sense, fiscal enactments. For the fiscal enactments, it normally will have
16 a very precise definition.

17

18 **SHYAM DIVAN:** Yeah.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You're conferring citizenship. So, ordinary
21 resident is not a term of art. It has the ordinary connotation, somebody who...

22

23 **SHYAM DIVAN:** For how many days, I ask myself...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It won't be for ordinary residents for two days,
26 or ordinary residents for three days.

27

28 **SHYAM DIVAN:** But what if it is for 6 months?

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah, there is no precise definition.

31

32 **SHYAM DIVAN:** Frankly, My Lord, the law is actually to the contrary. If you with an
33 intention move. So for example, someone like me sort of moved cities and came to Delhi. If a
34 person moves to Delhi, and even on day five, if I've intended to move to Delhi, I would then
35 probably have to describe myself as resident if I pack my bag, etc. on day two.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Intention to reside.

1

2 **SHYAM DIVAN:** Yes, but here, therefore, you have a situation. My Lord, please. This is in
3 the context of illegal migrants, it's not an ordinary person translocating within the country,
4 etc. And so, having regard to that factual matrix, absent any criteria, any guidance, I believe it
5 is constitutionally informed in terms of an absence of any definition. Now My Lord I am now
6 done with this particular aspect as well. Now I go to my next point. Now here I wish to draw
7 support from the joint communiqué. So I'll just state the point. First, the point is this, the point
8 is neither the... Sorry, one more point, My Lords in that notion of ordinarily resident in Assam.
9 I just make that point and then I'll move to the next one. This is not a concept which we found
10 embedded anywhere, either in the Assam Accord or indeed in the communiqué. I'll just state
11 that point. So that has no basis at all. That's a creation and a construct. There's no historical
12 basis. There is no commitment in terms of international obligations or anything like that as
13 far as this notion of ordinarily resident in Assam is concerned. Now, My Lords, I'm not on the
14 communiqué. Now would Your Lordships, please. Sorry. Yes, Your Lordships will find that at
15 serial number 4-A page 9398 and it's at serial number 94.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

18

19 **SHYAM DIVAN:** 4-A. So I'll just state my points quickly on this communiqué.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 4-A, page 94?

22

23 **SHYAM DIVAN:** No, no, the page is 9398. Page 9398 of volume 4-A.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

26

27 **SHYAM DIVAN:** So I have two points here. Your Lordships have the communiqué?

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

30

31 **SHYAM DIVAN:** So if you have page 9398, if you just see the second paragraph of the
32 communiqué starting with the words during his stay. During his stay, the Prime Minister of
33 Bangladesh addressed a mammoth gathering of people of Calcutta. He expressed gratitude on
34 behalf of the Government and people of Bangladesh, to the Government and people of India
35 especially to the neighbouring states of West Bengal, Tripura, Meghalaya, and Assam for the
36 hospitality and assistance given to the millions of Bangladesh citizens and for the moral and
37 material support given by the Government and the people of India to the struggle for

1 liberation. And then Your Lordships will see a further reference to that day, 25th March 1971
2 that's towards the foot. The Prime Minister of Bangladesh solemnly reaffirmed his resolve to
3 ensure by every means the return of all the refugees who have taken shelter in India since 25th
4 March 1971 and to strive etc., etc. So I make two points. The first point I wish to make is this
5 is not specific to Assam. Now, let's be very clear on that. This communiqué doesn't single out
6 Assam at all. And I make a second point, which is, in fact the communiqué treats the
7 neighbouring states of West Bengal, Tripura, Meghalaya and Assam as a single set of bordering
8 states for which the Prime Minister of Bangladesh also accords his great thanks and extends
9 his thanks to the people of these states. So I believe this supports our submissions in two
10 respects. First, this is no justification for singling out Assam, and second in terms of what was
11 recognized as the impact even then was all these border states, and therefore this amounts to
12 invidious discrimination, and it amounts to an object which is itself, by its very nature,
13 discriminatory. Now I want to just, there are several other points, but I'm just going point wise.
14 But I want to just leave a thought with you, and then I'll come back to it. Please consider if you,
15 if you consider it appropriate, and I'll deal with this in the context other submissions. I'll just
16 state the point and then cite the decision later. I believe this provision ought to be struck down
17 entirely. That's my case. But please contemplate a prospective invalidation. Think about... I
18 mean, think.... I'm sure Your Lordships will think about it, the moment we make our
19 submission in that regard. But I'm just planting the seed at this point of time. Look this is, it
20 was mentioned correctly by, well, I don't know what correctly, but the Solicitor General, at
21 least at one point reacted to the observations made by the Bench. I'm just saying it was a
22 reaction. Maybe this is in the nature of a transitory provision, etc., but. I'm not holding anyone
23 to that particular expression. But surely when you have no time, which is prescribed at all for
24 when you can take advantage of this and if it were for some historic purpose, from '66 to '71,
25 surely it should not continue on the statute book and become a license and become an
26 opportunity of fertile ground for all sorts of local industries with regard to documentation and
27 things of that sort and remain on the statute book and remain on an endless beacon only to
28 the State of Assam. So, anyway, I just made that point with regard to... So I now come to my
29 next submission. It really builds on the point regarding the communiqué. Territorial
30 classifications we accept are valid classifications. That is a valid method for the legislature to
31 certainly go about its job. We don't question that at all. The issue is, is it a valid classification
32 here when the problem was for all the border states. When the communiqué recognized all the
33 border States, when the affidavits, which have been filed by the Union Government, also
34 record and their submissions record and accept that this is a huge problem in other states as
35 well, which are just our neighbours. Then the question I ask myself is surely this is a case of
36 impermissible and a discriminatory object of itself singling out Assam for this. And when it is

1 combined with the notion of ordinarily resident in Assam and continues to be ordinarily
2 resident in Assam, it has impacts across generations and across decades.

3

4 Now, I come to the next point. So, I won't take you there. But the Solicitor General correctly
5 went through his written submissions and he pointed out 6 sets of provisions in our
6 Constitution itself, which are specific to Assam. So, I'll just comment on them because that
7 was a point which was raised. The provisions which are special to Assam in our Constitution
8 are in this regard. First, with regard to autonomy and greater autonomy to certain areas
9 including Sixth Schedule, one. That's one type. Second, it is with respect to grants being made
10 by the Central Government in lieu of export duty on jute. So again, it's something beneficial.
11 Third, it's in respect of general grants in aid to Assam, because there are parts of the country
12 which are found to be necessitating or requiring a leg up. Fourth, there are special provisions
13 by the GST Council for Assam and a number of other enumerated states. There are 6 or 7
14 states, which, the Solicitor General fairly placed before you. So it's a group of states where it
15 was felt that the GST Council, etc., has to have special regard with regard to Assam. Then it's
16 with respect to provisions for reservations of Scheduled Castes and Scheduled Tribes. And the
17 other special provision is for tribal administration. So, broadly these are special provisions
18 inuring to the benefit of the citizenry of Assam, the people of Assam and the State of Assam.
19 They are not provisions where you set out one territory and then discriminate in it. When I say
20 discriminate, what I mean is, Your Lordships have followed. I mean, I'm not saying there were
21 some animus against the State of Assam. Not that way. What we are suggesting to the court is
22 by singling Assam out and then coupling it with ordinarily resident for all times, I mean, it's
23 really a death blow or it's terrible as far as the demographic and future impacts are concerned.
24 So territorial classification we accept. All the examples given are beneficial for advantages for
25 certain social goods and uplift. I don't believe the present statute fulfils any of those
26 requirements insofar as the citizens of Assam are concerned. Now we have no... yes, I would
27 respectfully submit there is no instance of any, what I would describe as hostile
28 discrimination. These are all beneficent classifications for Assam. There is no case as at least
29 as which we could find or no situation where Assam has been singled out for the purposes of
30 something harsh or something which is disadvantageous. I'll say disadvantageous. Now I come
31 to the next point. And the next point is really in terms of now the reality is that this 6A is only
32 with respect to Assam, so I'm. Just stating the point. I believe this by itself and nothing further
33 requires heightened scrutiny or strict scrutiny, and not the relaxed scrutiny standard, which
34 was commended by the Attorney General. I will just put it at that. Now, please. Sorry. Now,
35 I'm on my next point. Now here, please consider as an alternative submission on our part, an
36 appropriate declaration. Strictly in the alternative, from my standpoint, a declaration that the
37 impugned provision Section 6A be declared prospectively to be invalid and here I'll just give

1 you the citation, the judgment that we are relying upon is ***Somaiya Organics. (2001),***
2 ***Volume 5, SCC, 519.*** The relevant paragraphs are 23 to 27. Sorry, my mistake. 23 to 37. I
3 will just read 37 Your Lordships. If it's there, well and good otherwise...37. Okay, yes.
4 Nevertheless, a enacted law without legislative competence remains on the statute book till a
5 code of competent adjudicates or declares it to be void. When the court declares it to be void,
6 only then it is known as for all purposes. In ***Synthetics and Chemicals***, invalidity of
7 provisions was declaration under Article 141 of the constitution. It was for the doing complete
8 justice that the court in exercise of the jurisdiction under Article 142 moulded the relief in such
9 a way that as to give effect to the declaration prospectively. It's not possible to accept that such
10 an order of prospective overruling is contrary to law and invalid law has to be, has not been
11 held to be valid. All that has happened is declaration of invalidity of the legislation was directed
12 to take effect from a future date. So this might be... I mean just if we are wrong with respect to
13 our primary submission. But you feel, or rather if we are right on our primary submission but
14 Your Lordships feel still there are some moulding which is required to be done, then you may
15 consider this. But according to us it is really unfair to have this continuing on the statute book
16 because it's not just a one-time issue. It's an abiding impact which continues across
17 generations. Now I come to my next point, because I understood a submission to be made that
18 with regard to culture, there has been no explanation in either the pleadings or in any of our
19 documents as to what it is, etc. So I'm just giving you the paragraph numbers and the page
20 numbers and I'll just summarize our case. In Writ Petition 876 of 2014 which Your Lordships
21 will find at volume 3. The volume 3, the averments as far as culture are concerned, in great
22 detail are from paragraphs 21 to 34 of the petition and it's at pages 3010 to 3020. So we've
23 given definitions of culture, international obligations for present... Sorry.

24

25 **JUSTICE M.M. SUNDRESH:** [INAUDIBLE]

26

27 **SHYAM DIVAN:** Yes, yes, for 6A(2).

28

29 **JUSTICE M.M. SUNDRESH:** [INAUDIBLE]

30

31 **SHYAM DIVAN:** Yes, it does.

32

33 **JUSTICE M.M. SUNDRESH:** [INAUDIBLE]

34

35 **SHYAM DIVAN:** Yeah, Right.

36

37 **JUSTICE M.M. SUNDRESH:** [INAUDIBLE]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

SHYAM DIVAN: no, but I...Can I just tell you at this distance so...

JUSTICE M.M. SUNDRESH: [INAUDIBLE]

SHYAM DIVAN: May I just respond to that? So I'll just resort to that. The question being put...Sorry.

JUSTICE M.M. SUNDRESH: [INAUDIBLE] Persons who would have not have been included but still it will open to them to contend that we were there before '66, but actually it was [UNCLEAR]

SHYAM DIVAN: So I know. That the question to, as I understand it, is that is it too late in the day to provide a machinery insofar as 6A(2) is concerned. That's one, I think. One part of the question. In my respectful submission at this distance of time, this is 37, 38 years after 1985. That's why we waited to see how are they going to place their case as far as machinery, etc. is concerned. But nobody even suggests that there's a machinery under 6A(2).

CHIEF JUSTICE D. Y. CHANDRACHUD: Actually, there's a little bit of a policy determination by Parliament. I think what Parliament seems to have done was that they say prior to 1966, they gave a very liberalized regime for deeming citizenship. After '66...

SHYAM DIVAN: It's the same four criteria.

CHIEF JUSTICE D. Y. CHANDRACHUD: You're right and the same criteria but with the addition for '66 to '71 for registration.

SHYAM DIVAN: That's included My Lord. Please see that My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: There's no registration requirement for prior to '66.

SHYAM DIVAN: Sorry. *Haan, haan*, registration required.

CHIEF JUSTICE D. Y. CHANDRACHUD: Registration and therefore, for those who came in between '66 to '71, they had one specific criterion, namely that you must have been detected as a foreigner. That is, actually. It's like an amnesty that first you had detected as a foreigner.

1 If you are not detected as a foreigner, you don't get the benefit. After you have been detected
2 as a foreigner you have to then register. If you are registered, then you get citizenship. That's
3 the scheme. For '66 to '71.

4

5 **SHYAM DIVAN:** Actually, that is how we understand it.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's right.

8

9 **SHYAM DIVAN:** Because it was suggested just to add to that we didn't find any method by
10 which you can make a self-declaration.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have to be detected.

13

14 **SHYAM DIVAN:** It has to be detected.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, prior to '66, I think there seems to be
17 some sort of a more relaxed regime, which was applied by Parliament.

18

19 **SHYAM DIVAN:** What does it mean?

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On the basis that these were things which
22 happened in the past they are not going to go out of India. We don't want them to be stateless.
23 They have assimilated, for all intents and purposes, because prior to '66 means that 19 years
24 had elapsed even when the law was brought into force, Parliament felt that all right now what
25 has happened in the past, let's now freeze it at that.

26

27 **SHYAM DIVAN:** My Lord, I would respectfully submit that would be..... So just responding
28 to the point, I would be a little more generous to Parliament in the sense, I would suggest that
29 Parliament is certainly providing criteria which are objective. So, what I'm suggesting to the
30 Court is that I believe it would be correct to interpret the statute as saying that Parliament
31 intended exactly what it mentioned. It didn't want to just hand over citizenship's, x, y, z.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There are those conditions even there.

34

35 **SHYAM DIVAN:** There are criteria which are there. Now, if you have criteria which are there,
36 there ought to be a machinery. So what Your Lordship is saying, there's not even a census. It's

1 not even after this Act comes into force that there is a count, at least we are freezing everybody
2 on this day. Not even that.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There will be a machinery under the foreigners'
5 order.

6

7 **SHYAM DIVAN:** No. There's nothing happened after 1985. It's just, we specify so that
8 nobody can really object and say it's criteria less, and then we have no machinery, so it becomes
9 criteria less, and then there's a distance of time, so therefore, an argument is advanced or
10 delay, so I think we should.... Now I'm just making the point. So now on culture, I was on that
11 aspect. I've given you the pages where we have detailed, we've cited various international
12 covenants, etc., with regard to the protection of culture. And based on the census report
13 because the studies which we placed in our opening were based on the census figures. So four
14 impacts, language, religion, land holding, and number 4, self-governance. Because if you are
15 taking away, it's a right according to our self-governance. Organizing yourself in a community
16 is all a very, very important aspect of culture. And what is happening here is there is an
17 enormous undermining of the local community by, I will use the expression non-citizens. So
18 that's the cultural impact which we have, which we believe we have been able to satisfactorily
19 project. None of this has been contested at all.

20

21 Now, I come on to the point. Next point which is with regard to proportionality and the basket
22 of rights. Now citizenship as we understand it, as I indicated that earlier is a full-fledged basket
23 of rights recognized under the Constitution, recognized under statutes. One can understand....
24 there are subordinate rights. Those subordinate rights might involve an exclusion of political
25 rights, it might involve an exclusion of certain economic rights. May.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is that point? Subordination?

28

29 **SHYAM DIVAN:** Sorry?

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the last... the second point?

32

33 **SHYAM DIVAN:** So I'm just suggesting to the court that you have a full basket of, right? Yes,
34 that's one. That's citizenship. But there can be situations. So, for example, let me just give you
35 an example. International Humanitarian Law requires, there are minimum standards under
36 International Humanitarian Law. You have to provide that. But that is short insofar as, of
37 citizenship. So, the proportionate response which would be in a situation such as this, if people

1 have come from 1966 or earlier than '66, or because of certain situations and exigencies such
2 as facing deprivation or facing much more hostile circumstances, then certain minimum
3 International Human Rights, Humanitarian Law Standards can certainly and ought to be
4 extended. But that is short of citizenship. And therefore, in our respectful submission, 6A fails
5 to narrowly tailor benefits to non-citizens. It is completely disproportionate in what it grants
6 and gives without any meaningful scrutiny. And so the expression used live and let live is
7 perhaps consistent with International Humanitarian Law in the context of illegal migrants,
8 but there is no requirement of conferring citizenship. That is something much higher and this
9 provision in doing so, perhaps exceeds permissible limits. Now, I go to my next point. So I will
10 just come to 'statelessness'. But just have a look at one provision, which was read, which is the
11 Foreigners Act. Sorry, My Lord, there are two sections I want to read. First, please just have a
12 look at the Foreigners Act, Section 3. It is at page 386 of Volume 4, serial number 6. There are
13 just two statutes I want to touch on. Your Lordships have the Foreigners Act, 1946? Because
14 this was a question...

15

16 **JUSTICE SURYA KANT:** Mr. Divan, page is? Volume 3, page?

17

18 **SHYAM DIVAN:** 386, Volume 4, Volume 4, 386. So I'm going to just read the section. So
19 Your Lordships will see, what can the Central Government do. Or what is it required to do
20 elsewhere in the country. Your Lordships have Foreigners Act, 1946?

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

23

24 **SHYAM DIVAN:** So, if we see Section 3, directly, I'll just read this. 3 (1) Power to make
25 orders. The Central Government may, by order, make provision either generally or in respect
26 to all foreigners, or with respect to any particular foreigner or any prescribed class or
27 description of foreigner for prohibiting, regulating or restricting the entry of foreigners into
28 India or their departure therefrom, or the presence of continued presence or continued
29 presence therein. In particular and without prejudice to the generality of the foregoing power,
30 orders may be made under this section that may provide to the foreigner: A). shall not enter
31 India, or shall not, or shall enter India only at such times and by such routes. B), shall not
32 depart from India or shall depart only at such time and by such route from such port. Shall not
33 remain in India or in any prescribed areas wherein. Shall, if he has been required by order
34 under this section not to remain in India, meet from any resources at his disposal, the cost of
35 removal from India. D), shall remove himself to and remain in such area in India as may be
36 prescribed. Shall comply with the conditions as may be prescribed or specified, requiring him
37 to reside in a particular place, imposing any restrictions on his movement, requiring him to

1 furnish such proof of his identity and to report to such particulars, to such authority, requiring
2 him to allow his photograph and finger impressions to be taken, requiring him to submit
3 himself to such medical examination, prohibiting him from association with persons,
4 prohibiting him from engaging in activities of a prescribed or specified description, prohibiting
5 him from using or possessing described or specified articles otherwise regulating the conduct
6 in any particulars as may be prescribed, shall enter into a bond, etc., shall be arrested and
7 detained or confined and may make provisions for any matter which is or may be prescribed
8 and for such incidental and supplementary matters. So very wide. Now, this is the regime
9 which applies across India for foreigners. This is their power, which they have and please see
10 Subsection 3. Any... of 3. Any authority prescribed in this behalf may, with respect to any
11 particular foreigner, make orders under Clauses (e), (f) of subsection 2, which, as Your
12 Lordships have seen, includes the removal requiring a person to reside in a particular place,
13 etc. and to enter into a bond, etc. So now this is the national regime. So they have these powers.
14 And I think the purpose of this section is also to draw the distinction between citizens on the
15 one hand and foreigners on the other hand. So there's a complete, there's a divide and there is
16 a huge gap, therefore, in meeting up, in lifting up to a citizen. Now, please see the other
17 provision, which was read to Your Lordships is the Immigrants Expulsion from Assam Act,
18 1950. Now, look at this statute. It's at page 424 of volume 4, and it's at serial number 10. Same
19 volume.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Expulsions from Assam?

22

23 **SHYAM DIVAN:** 1950. The Immigrants Expulsion from Assam Act 1950, which was placed
24 in court.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page? What page would that be?

27

28 **SHYAM DIVAN:** 424. Volume 4, page 424. Now see the Parliamentary mandate here. An act
29 to provide for the expulsion of certain immigrants from Assam be enacted by Parliament.
30 Short title. The act may be called the Immigrants Expulsion from Assam Act, 1950. It extends
31 to the whole of India. Power to order expulsion of certain immigrants. If the Central
32 Government is of the opinion that any person or class of persons having been ordinarily,
33 ordinarily resident in any place outside India has or have, whether before or after the
34 commencement of this act come into Assam and that the stay of such person or class of persons
35 in Assam is detrimental to the interests of the general public of India or any section thereof,
36 or any scheduled tribe in Assam, the Central Government may, by order, a) direct such person
37 or class of persons to remove himself or themselves from India or Assam within such time and

1 by such routes as may be specified, give such further directions in this regard to his removal,
2 or the removal from India or Assam, as it may consider necessary or expedient. And then the
3 proviso. Provided that nothing in this section shall apply to any person who, on account of civil
4 disturbance or fear of such disturbance in any area now forming part of Pakistan has been
5 displaced from or has left his place of residence in such area and has been subsequently
6 residing in Assam. So I'll just make two or three submissions. First where the expression in
7 Section 2 is the Central Government may, by order, direct the person to remove himself, we
8 would respectfully submit this is a power coupled with duty. That's one point I want to make.
9 So the whole emphasis is that you have a Parliamentary statute which is extant for expulsion
10 of people from here and on the same hand. How do you balance that with Section 6A and this
11 open ended no time limit provision, which continues to act as a beacon? So, the two really
12 don't stay or can't really sit side by side. And here, if you are correct that this is the act which
13 really should be worked, and its main purpose is expulsion, then I would respectfully submit
14 that as far as the proviso is concerned it has to be given its plain meaning. But it's a narrow
15 exception to the general rule. It's a narrow exception insofar as the general rule is concerned.
16 Yes, and this again, there's no question, of course, here of conferral of any citizenship. Now,
17 My Lord I just want to point out one part with regard to one other element and this is in our
18 writ petition. I'll just give you the page number. It is page 3044, Volume 3. Now, I am just
19 mentioning this because it came up in the course of Your Lordship's observations, etc. There's
20 an extract here from Dr. Namrata Goswami was an associate fellow at the Institute of Defence
21 Studies and Analysis, New Delhi and she has written a paper or a study and there is a quotation
22 here which is important from a facet which Your Lordships raised, which is economics.
23 Because the State has limited economic resources and what is happening as a result of illegal
24 migrants is that there are manifold economic impacts, which are recognized here. So, the
25 labour rates, etc., go down, and the result is that local people don't get as much of a living as
26 they might otherwise. Then there are beneficent schemes which the Government of India rolls
27 out. And those resources also get drawn up by persons who ordinarily would not be entitled to
28 it. Now, My Lords, I go to my next point and the next point is with respect to, with respect to
29 this notion of statelessness. Now, I'll just make three or four points on statelessness. Oh, sorry.
30 The whole document is also available.

31

32 **TUSHAR MEHTA:** My Lord, that issue, statelessness doesn't arise here, it arises in
33 somewhere else.

34

35 **SHYAM DIVAN:** They have argued on statelessness, and that is has real...Your Lordships.
36 That I want. Anyway, I want to just address Your Lordships on statelessness. I'll just make four
37 points or five points. First point.

1

2 **TUSHAR MEHTA:** There are there other petitions pending on this My Lord. Therefore, I
3 am cautioning my Learned Friend as a good friend that, let him not touch this issue. Nobody
4 has raised.

5

6 **SHYAM DIVAN:** It's a concern which Your Lordship, the argument made is that if you strike
7 down 6A, it will result in statelessness. I'm only meeting that argument and nothing further.
8 I'm not going beyond that. The argument of the Respondents was that please don't strike down
9 Section 6-A. That's how I understood the argument. We will be rendered stateless and then
10 be... so I'm just answering that. First point, this argument of statelessness is completely
11 unjustified. And the reason we say so is because number one, what is the regime which applies
12 across the country other than Assam, is the question I ask myself. The very same regime which
13 applies across the country doesn't result in statelessness, will apply to Assam. If we are correct
14 and this provision is struck down that's number one. Number two, nobody is asking for
15 consequential reliefs in some summary manner. We are only seeking today a suitable and
16 appropriate declaration of the law. The declaration of the law will not result in by itself. It will
17 just state what the correct, it will clarify the correct position in law. What consequential
18 provisions are to be action is to be taken, will follow from that once we have the advantage of
19 Your Lordship's ruling. But to hold up statelessness and say that goes everything. I don't
20 believe that. That is that there is any justification at all for that. Now, this takes me to the latest
21 affidavit they have find. Now, please just go to that affidavit. The new affidavit. Please go to
22 page 2, paragraph 4, I'll just focus on a couple of paragraphs. Sorry. Your Lordships have the
23 affidavit?

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

26

27 **SHYAM DIVAN:** So you may just consider on the 7th December Order I think in Clause I
28 perhaps it should be 6A(3). If you find that as an error, then that just may be...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Divan, after this affidavit. You'll wrap up
31 because then can you...

32

33 **SHYAM DIVAN:** Yes, I'm wrapping up. So, I'll just make 2 points over or 3 points. So that's
34 correction if you want. Now just see para 4. That with reference to query 1, namely the number
35 of persons to whom citizenship has been granted under the Proviso to 6A, I think it should be
36 3, namely persons who came to Assam between '66 and '71. It's humbly submitted, 17,861,
37 Your Lordship has that figure. And the next figure is, which is that the foreigners that, with

1 reference to the query how many persons have been detected to be foreigners by an Order of
2 Foreigners Tribunal under the foreigners so and so... Order 64 between '66 and '71. The answer
3 is 32,381. So the first issue, which I'm just stating the point... is, what happened with regard
4 to 32,381 less 17,861? So, that works out to 14,520 persons. So they must inform the court as
5 to what is the action which has been taken in respect of these 14,520 persons? Because these
6 people are found not even not to be entitled to any right, even under 6A(3). So, I would
7 respectfully submit.... So this is one important point which Your Lordships will consider....
8 What is the action taken with regard to that? And then please see 6A(a). Sorry, para 6A. Illegal
9 migrants enter into the country without valid travel documents in a clandestine and
10 surreptitious manner. The detection, detention and deportation of such illegally staying
11 foreign nationals is complex and ongoing process. So when Your Lordships ask them for the
12 estimated flow, this was the answer. Now, the bottom line is, there is no authentic information
13 with regard to when the 1985 Act came. Who is going to benefit or how many are going to
14 benefit under 6A(2)? There is no authentic figure, even in respect of 6A(3), because it is open-
15 ended, in terms of time. And we would respectfully submit that insofar as the notion of
16 statelessness is concerned, it is just being raised without, because we ourselves say that as far
17 as International Humanitarian Law is concerned, and that proportionate response is
18 concerned, that's the obligation of the state. We are not for a moment seeking to prejudice
19 anyone in that behalf.

20
21 Now, I'm on my last point. And the last point is with regard to delay and laches. Now, I'll just
22 very, very briefly tell Your Lordships, 3 or 4 issues. First, you will find the reference order itself
23 has gone into this issue *Inter partes*. That's one. And I said that we are entertaining this
24 petition. So it's *Inter partes*, between the same parties, that a determination has been made
25 by this Court, so we're not sitting in appeal over that judgment in the very same case. So that
26 should bind. But the reference court left it open to Your Lordships, to mould the relief
27 appropriately. So that's my first point. My second respectful point is that, if they accept, as
28 they do, that this provision continues to operate. And even tomorrow you can go and apply
29 under 6A(2) and 6A(3), then in our respectful submission, there's no question of delay and
30 laches because it's continuing in every respect. My third respectful submission is that, you
31 have a situation now which is the aspect regarding culture, community, economic rights, which
32 extends generation upon generation. So it serves and deserves to be struck down, if you are
33 correct. Even today to protect what is left, despite this huge onslaught on our cultural and
34 community rights. I'm very grateful. Thank you.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Divan.

37

1 **KAMAL NAYAN CHOUDHURY:** My Lord, the first point I would like to deal with is
2 regarding the delay, My Lord. On the point of delay, My Lord, as my learned friend, Mr. Divan
3 has pointed out, in para 31 of the Referral Judgment, virtually this point has been rejected.
4 And I'm sure this is not an... Lordship is not sitting in appeal over the Reference Court's order.
5 Therefore, My Lord, as far as the issue of delay is concerned, that stands at rest. Yes, the
6 reference code did frame one issue, in view of the fact, that these beneficiaries have enjoyed
7 certain rights over a long period of time. Therefore, one view this Honourable Court should
8 take at this stage. In other words, My Lord, it is more in the realm of moulding of relief than
9 to non-sue the petitioners as the other side would like to contend. Therefore My Lord, in my
10 written argument, I think at page 29. I have dealt with this issue in details, My Lord in detail.
11 I will indicate which are the pages.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's alright that you've told us. Well, we will
14 find it. Now summarize what you want to say.

15

16 **KAMAL NAYAN CHOUDHURY:** Yes, kindly give me 15 minutes time My Lord. Page 29 to
17 32 of my written argument of volume 1. Now, the government's affidavit which they have filed,
18 government is trying to give an impression that what we are agitating is a trivial issue. It's a
19 matter of 30,000 business. What is grave in it? With all respect, I'll submit, is it the case of the
20 government, they are constraint this litigation to be an adversarial litigation where millions of
21 immigrants are in the state, where the local people have been outnumbered and government
22 would still like to go by legalism? With great respect, this connect cannot be the correct
23 position. Yes, it is a fact. It is very difficult to make approximation as to what is the exact extent
24 of immigration which has taken place. That's very difficult. The white paper published by the
25 Government of Assam also expressed the same difficulty. But My Lord, there are
26 contemporaneous facts from which one can come to the conclusion that this immigration is of
27 substantial and My Lord it has caused change of demographic profile and other adverse effects.
28 So first, My Lord, I would like to place for Your Lordships' kind consideration in the rejoinder
29 submission, I have volume 1-A. If Your Lordships will kindly come to page number 3.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why don't you do this like Mr. Divan had
32 formulated...

33

34 **KAMAL NAYAN CHOUDHURY:** No, I have formulated.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 14 submissions of Mr. Divan. Now, you just
37 formulate points and then tell us what they are. Because we are now in rejoinder.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

KAMAL NAYAN CHOUDHURY: No, I know, My Lord, what I'm trying to say first is while opening also, I couldn't get much of time...

CHIEF JUSTICE D. Y. CHANDRACHUD: Delay. You have said that the reference judgment, para 31, volume 1, pages 29 to 30.

KAMAL NAYAN CHOUDHURY: I have dealt with that issue.

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright. Now what is the second submission?

KAMAL NAYAN CHOUDHURY: My second submission is I'm trying to, My Lord, take a stand against the affidavit filed by the government.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, tell us the submission. Formulate it now.

KAMAL NAYAN CHOUDHURY: Now. Submission formulated, My Lord. The extent of immigration is much more than 32,000. The figure which has been reflected in the affidavit. So in this regard My Lord...

CHIEF JUSTICE D. Y. CHANDRACHUD: But that really doesn't affect the validity of Section 6A.

KAMAL NAYAN CHOUDHURY: What I'm saying...

CHIEF JUSTICE D. Y. CHANDRACHUD: Assuming that the immigration is not 32,000 but 3,20,000 or 32 lakhs. The number of persons who are granted citizenship doesn't vary.

KAMAL NAYAN CHOUDHURY: It has a bearing according to us, subject to what Your Lordships may say. I'm coming to that. I'll come to the parliament's plenary power also My Lord. What are the limitations of that?

CHIEF JUSTICE D. Y. CHANDRACHUD: Extent of immigration is more than 32,381.

KAMAL NAYAN CHOUDHURY: No, much more. It is much, much more.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right. What is the next?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

KAMAL NAYAN CHOUDHURY: No, My Lord. I'll like to place two paragraphs. Kindly permit me at page 3 of my volume 1-A.

CHIEF JUSTICE D. Y. CHANDRACHUD: Volume 1?

KAMAL NAYAN CHOUDHURY: Volume 1-A of the rejoinder submission My Lord. It is second sub-para 2.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page?

KAMAL NAYAN CHOUDHURY: Page 3.

CHIEF JUSTICE D. Y. CHANDRACHUD: So what is the point you make?

KAMAL NAYAN CHOUDHURY: The point I'm trying to make is the Law Commission in its 175th report on amendment of the Citizenship Bill 2000 said that the immigration is of such an extent that it has the potential of disturbing the unity and integrity of the country. It poses serious security threat to our democracy.

CHIEF JUSTICE D. Y. CHANDRACHUD: Are you saying that the number of persons who were granted citizenship under Section 6A is more than 17,000?

KAMAL NAYAN CHOUDHURY: Millions, My Lord. It will be more than millions.

CHIEF JUSTICE D. Y. CHANDRACHUD: How can that be? You are confusing, conflating persons who are illegal immigrants with those who have been granted the benefit of citizenship between '66 and '71.

KAMAL NAYAN CHOUDHURY: No. Regarding the first batch of from up to 1-1-66. Then there's a second batch where only they would be, My Lord disenfranchised for 10 years after they follow the procedure. That's the position. And My Lord, after 25-3-71, these people are to be deported in accordance with law. That is what the My Lord Accord is all about. And that is what Section 6 says all about. Now, My Lord, by conferring citizenship to this stream of people, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: The first batch?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

KAMAL NAYAN CHOUDHURY: Yes, My Lord. Security of our country has been endangered. That is what Law Commission says. That is what My Lord, the group of Ministers also say. I'm trying to rely on those reports of the Government of India. So My Lord, Law Commission clearly says, Law Commission noted that entry of illegal.... If Your Lordships will kindly...

CHIEF JUSTICE D. Y. CHANDRACHUD: You said, it says that there's a potential to disturb the integrity and security of India. What is the next point?

KAMAL NAYAN CHOUDHURY: Yes and that was an aspect which was taken note of at the next point is, My Lord after the Kargil war the then Prime Minister of India constituted a committee or a group of Ministers.

CHIEF JUSTICE D. Y. CHANDRACHUD: That's not a point. That's material. What is the point which you are making?

KAMAL NAYAN CHOUDHURY: The point which I'm trying to make is My Lord, the recommendation or the report of the committee reveals that there are, My Lord, 12 million foreigners in north-eastern India and the report reads like this, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Where is the report?

KAMAL NAYAN CHOUDHURY: At page 3 of Volume 1-A. The report is at, the report is at My Lord page 3 to..

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Choudhry and Mr. Hansaria we are not going to extend hearing beyond 04:00 today?

KAMAL NAYAN CHOUDHURY: Yes, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Today we close, whoever not finished or whoever has finished. There's a guillotine at 04:00. No this will not spill over to tomorrow because we have another CB tomorrow. You've got about 34 minutes between the two of you. Please ration time and...

KAMAL NAYAN CHOUDHURY: We'll share amongst us.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

CHIEF JUSTICE D. Y. CHANDRACHUD: No, no, the last batsman can hit the first ball six, you see. The others are scared of getting out so they don't try to hit a first ball six. The last batsman knows that he can hit a 6 and there's nothing to lose.

KAMAL NAYAN CHOUDHURY: The run required is 45, and only two overs is remaining, it's a difficult task. Anyway My Lord report is at page 3242-3351 of Volume 4.

CHIEF JUSTICE D. Y. CHANDRACHUD: 3242?

KAMAL NAYAN CHOUDHURY: To 3351 of Volume 4.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right.

KAMAL NAYAN CHOUDHURY: It was headed by the then Home Minister of the country, My Lord and the relevant report, which I would like to read, is para 2.35 at 3254.

CHIEF JUSTICE D. Y. CHANDRACHUD: Para?

KAMAL NAYAN CHOUDHURY: 2.35 at page 3254, 2.35 page 3254.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right.

KAMAL NAYAN CHOUDHURY: And just a small paragraph.

CHIEF JUSTICE D. Y. CHANDRACHUD: Just tell us what it said. Don't read out. Just tell us. Make the point.

KAMAL NAYAN CHOUDHURY: It says there are estimated to be about 12 million foreigners in North-east. A host of problem has been created, including My Lord economic, political, communal tensions, ethnic clashes and one very significant observation regarding Assam was My Lord. 32% of the constituencies in Assam are dominated by this illegal immigrants. That means out of 156, 46. Their vote is decisive in 46.

CHIEF JUSTICE D. Y. CHANDRACHUD: 126 constituencies no?

1 **KAMAL NAYAN CHOUDHURY:** Out of 126, My Lord, 32, makes it 40 point something....
2 so, it's 40. So, therefore, My Lord in my humble submission figures do matter.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right, what's the next point?

5

6 **KAMAL NAYAN CHOUDHURY:** Yes. My friend, Mr. Sibal has mostly covered, the points
7 My Lord. Therefore I will not repeat. I would like to emphasize on a particular point, My Lord.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

10

11 **KAMAL NAYAN CHOUDHURY:** What is the scope of Parliament's plenary power. Are we
12 to understand it admits of no limitations...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just formulate it so that we can get it.

15

16 **KAMAL NAYAN CHOUDHURY:** The formulation is, My Lord, the power, plenary power
17 of the Parliament, its scope and limitations.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** According to you, the plenary power of
20 Parliament is subject to limitation.

21

22 **KAMAL NAYAN CHOUDHURY:** Yes, My Lord.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of course it is.

25

26 **KAMAL NAYAN CHOUDHURY:** Yes. Now, My Lord, from the facts which I've referred
27 just now, what emanates according to us, My Lord, subject to what Your Lordships may say,
28 that making of this classification and creating this class of deemed citizens is posing security
29 threat to this country.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That you have already said.

32

33 **KAMAL NAYAN CHOUDHURY:** Yes. Therefore My Lord, as per the decision of the
34 Honourable Supreme Court in *Indira Nehru* case, My Lords, versus *Raj Narain*, where
35 honourable Supreme Court says that amongst others, supremacy of the Constitution, and
36 unity and integrity of the country are also basic features of the Constitution.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right.

2

3 **KAMAL NAYAN CHOUDHURY:** Now, if granting of or conferring deemed citizenship to
4 this class of persons, My Lord, it poses security threat, is the object of the legislation not
5 unlawful? Therefore, would the Parliament's power be not fettered by the Constitutional
6 innovation of violation of doctrine of basic feature?

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

9

10 **KAMAL NAYAN CHOUDHURY:** Therefore....

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Choudhury.

13

14 **KAMAL NAYAN CHOUDHURY:** My Lord, in *R. C. Poudyal* case....

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Formulation. What is the formulation?

17

18 **KAMAL NAYAN CHOUDHURY:** Now the formulation is My Lord, classification has
19 resulted in creation of a class of citizen, who pose security threat, which in turn would impair
20 the nation's unity and integrity.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That point you have already made.

23

24 **KAMAL NAYAN CHOUDHURY:** Now here My Lord, I would like to refer on the judgment
25 of the Supreme Court, or this honourable court, in *R. C. Poudyal's* case, My Lord. In *R.*
26 *C. Poudyal 's* case, My Lord, the question which arose was...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Bhutia-Lepcha.

29

30 **KAMAL NAYAN CHOUDHURY:** Yes, what is the *non obstante* clause?

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Though they have 20% of the population, they
33 have reservation of 38% of the seats in Assam.

34

35 **KAMAL NAYAN CHOUDHURY:** And one of them... One person- one vote. That principle
36 was also My Lord done away with.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That was rejected by Chief Justice
2 Venkatachalliah's judgement.

3

4 **KAMAL NAYAN CHOUDHURY:** Yes, My Lord. No, what I'm trying to say is, I'm relying
5 on paragraph 102, 175 and 176. 102, is by majority, My Lord, and 176 by Honourable Justice
6 Agrawal, My Lord. Now, what I'm trying to submit for Lordship's kind consideration is, the
7 meaning of that *non obstante* clause was laid down. Now issue as whether, in view of the *non*
8 *obstante* clause, while exercising power under Clause F, they can undo the Constitutional
9 inhibition. There this Honourable Court said that, " No." Yes, the *non obstante* clause would
10 permit you to undo some of the Constitutional provisions, but if it goes to the extent of
11 overreaching or overriding the basic feature theory, then it will be backed. Now what I am
12 trying to.... The support which I seek to draw from this judgment is, My Lord, by conferring
13 citizenship right.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

16

17 **KAMAL NAYAN CHOUDHURY:** To this section of deemed citizens, My Lord, the security
18 and integrity of the country has been endangered. Therefore...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have made this point 3 times.

21

22 **KAMAL NAYAN CHOUDHURY:** Therefore the object, therefore the object of the
23 legislation is something which cannot be countenanced.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Choudhury.

26

27 **KAMAL NAYAN CHOUDHURY:** Just one more point.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** At 03:18, you said 15 minutes. It's now 03:34.
30 Do you've got one minute? Now almost 03:35 now.

31

32 **KAMAL NAYAN CHOUDHURY:** All right. Finally, My Lord. I'll just add one more point.
33 Government of India very candidly says, that as far as the allegations we have brought out in
34 the writ petition or the averments which are made in the petition regarding the adverse effect
35 of illegal immigration, they accept it. Now, is it not the government of India to do something?
36 What have they done? While opening my argument, I made a submission based on Article 355
37 that it is the duty of the Central Government to protect the interest of the indigenous people

1 of the state. Now Your Lordships would recollect, while upholding of Armed Forces Special
2 Power Act, this Honourable Court had taken the view that Article 355 enables fending of an
3 statute like Armed Forces Special Power Act where a non- commission officer, even a junior
4 commission officer can, without warrant, even act in case, even in case of a non....

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** According to you government has not done
7 anything other than it accepts the impact of illegal immigrants.

8

9 **KAMAL NAYAN CHOUDHURY:** Yes, therefore they can't accept the thing and at the same
10 time, not do anything and on the contrary coming up with this figures to show as if it's a trivial
11 issue. It's not a trivial issue. It's a very serious matter. Finally, My Lord, I'll make one
12 submission for Your Lordships kind consideration, but in the event...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually, they have not said that illegal
15 migration is immigration is a trivial issue. They are, in fact, saying it is a very serious issue but
16 they say that we can't give you an estimate. It is so large and it's impossible to give you an
17 estimate because they are all people who have clandestinely and surreptitiously in India.

18

19 **KAMAL NAYAN CHOUDHURY:** If that is the position. Absolutely correct My Lord. There
20 is no difficulty.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They are right also because they are not
23 disputing the fact that it's a very serious problem.

24

25 **KAMAL NAYAN CHOUDHURY:** Yes. And Lordships, as I have already submitted,
26 Lordship will also consider the aspect.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Nor are, we for a moment, even say, suggesting
29 it is not a serious problem. Undoubtedly it is.

30

31 **KAMAL NAYAN CHOUDHURY:** In that case they ought to come up with a more stringent
32 law as to how to deal with these foreigners instead of conferring them citizenship My Lord. It's
33 an unheard of concept anywhere in the world where My Lord's own citizens are at the risk of
34 losing their identity. They are protecting the foreigners. Don't protect.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That point you have already made.

37

1 **KAMAL NAYAN CHOUDHURY:** Finally, My Lord, having regard to the lapse of time, the
2 numbers. We all appreciate the practical difficulties. In the event Your Lordship is inclined to
3 take their view, that will not strike down 6A, there my submission would be, My Lord, let the
4 post 19-7-48 stream of people be identified and let them be relocated in these different states
5 on pro rata basis. Why Assam alone should absorb this disproportionate bodies?
6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even if Section 6A is not struck down then post
8 19?
9

10 **KAMAL NAYAN CHOUDHURY:** 7-48
11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 1971.
13

14 **KAMAL NAYAN CHOUDHURY:** Yes, stream of people should be identified by
15 undertaking an exercise like NRC and relocate them to different states on pro rata basis across
16 the country. If there is a humanitarian angle, if there is an Article 21 obligation, certainly these
17 measures can be certainly adopted by the state. Why? Assam is a very small state. The land
18 mass is also very less compared to other big states.
19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will consider that.
21

22 **KAMAL NAYAN CHOUDHURY:** So therefore, why not they should also on pro rata basis
23 they should be relocated in the other parts of east.
24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Hansaria.
26

27 **VIJAY HANSARIA:** Deeply obliged. Let me start with the disadvantage being the last
28 batsman, My Lord. Before I formulate My Lord. My Lord, the Chief Justice asked a very
29 pertinent question to Mr. Divan when he was arguing Clause 2 deemed section. Lordship said
30 Constitution also provides Article 6, a deemed provision Section 6A(2), Clause 2, says My Lord
31 deemed before 1-1- 1966. No exercise is necessary. My Lord the Chief Justice said there is a
32 Constitution also provided deemed fiction under Article 6. Would Your Lordship also kindly
33 see Article 6 for a minute? It has limitations My Lord. If Your Lordships see Article 6A. My
34 Lord Article 6(b)(2) which gives citizenship to the persons who have migrated after 19th July
35 '48. There are four criteria because My Lord here also they are giving citizenship to the persons
36 who have come after 19 July '48. They have to be registered as a citizen. They have to make an
37 application. They have to make that application before the commencement of the Constitution,

1 before 26th January 1950, and they have to be in India 6 months before. None of these
2 conditions are there in Clause 2 of 6A. It's open ended. As Mr. Divan has said, it's open-ended.
3 Today also I say I came before 1966. Constitution Article 6(b)(2) does not permit that My Lord.
4 You have to make the application before 26 January. 1950 and you have to make an
5 application. That application... so there's a fundamental distinction between Clause 2 of
6 Section 6A and Article 6(b)(2) of the constitution, My Lord.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 6(b)(2) came in because there was a permit
9 system. as Dr. Ambedkar, said...

10

11 **VIJAY HANSARIA:** That's what I'm saying My Lord.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** A permit system [UNCLEAR] 19 July 1948.

14

15 **VIJAY HANSARIA:** I'm coming to that. That's what I'm saying. 6A(3) says you have to
16 apply. But so far as 2 is concerned, My Lord, you are shifting the date. My first argument that
17 you are shifting the date from 19th July '48 to My Lord the 1st January 1966 by this legislation,
18 My Lord. You can do a 368 route this argument will not be available to My Lord, but by
19 parliamentary legislation. You are shifting the date from 19th July '48 to 1st January 1966 and
20 without those guideline riders which are there. You are making it open ended even today.
21 Wherever there is there was a time limit of 26th January 1950. Make an application so that
22 people can authenticate on that day. So that's a fundamental distinction which the Chief
23 Justice, pointed out, and my submission is that 6A(2) And Article 6 has a completely different
24 scheme.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right, then?

27

28 **VIJAY HANSARIA:** With this may I respectfully submit that draft constitution contained
29 Article 5 and 6 only which translated into Article 5, 9 and 11. It did not have article 6, 7, 8 and
30 10, which were introduced during the debate by Sri Ambedkar, Dr. Ambedkar on 10th August
31 1949, by view of 5(a), 5(aa), 5(b) and 5 (c). And the debates which my Learned Solicitor read,
32 in my respectful submission relate to the draft Articles 5 and 6, there's a different debate and
33 My Lord expression of opinion by all the three learned eminent members of the Constituent
34 Assembly on 5 (a), 5 (aa), 5(b) and 5(c), and our reason not regarding 5 (a) and 5 (aa), which
35 is Article 6 and 7. If Your Lordship kindly see that it contains a complete code. I'll invite Your
36 Lordship's attention.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Hansaria what is your submission?

2

3 **VIJAY HANSARIA:** My submission is My Lord that the submission of the Central
4 Government, the Learned Solicitor that the Parliament was given due leverage to extend and
5 amend under Article 11 does not apply to the persons who come under 6 and 7. That is the
6 migration from Pakistan. And there is a clear distinction drawn by all the three eminent
7 members of the Constituent Assembly in the debate, and I'll show Your Lordship is from the
8 debate only. What has been read to Your Lordship relate to general powers of the Parliament,
9 no dispute, but not My Lord those were covered by Article 6 and 7, which is Article 5 (a) and 5
10 (b) (aa) draft Constitution. Would also see now kindly see My Lord, to this preface, Volume 4,
11 the debates, My Lord, page 887.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You've made that point.

14

15 **VIJAY HANSARIA:** No My Lord, please permit me to read that... It goes...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will not read that now. We are at.... Mr.
18 Hansaria, you must understand you are in a rejoinder.

19

20 **VIJAY HANSARIA:** My Lord, I'm in the rejoinder meeting the argument of the learned
21 Solicitor.....

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You made the point in your opening that look
24 these people, you have taken 25th March 1971. On 25th March 1971, they were citizens of
25 undivided Pakistan. Liberation takes place much later. Therefore you can't confer on citizens
26 of Pakistan any provision which is beneficial by virtue of the power and Article 11A, under
27 Article 11, which is at variance with the date of 19 July, 1948.

28

29 **VIJAY HANSARIA:** What I'm saying is, I am meeting the argument...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 19th July according to Article 6 is
32 comprehensive in its coverage of those who emanated from Pakistan.

33

34 **VIJAY HANSARIA:** I want to show that from the speeches made by the learned three
35 eminent authors, My Lord....

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You put it in your written submission, we will
2 take as read. We will read it later.

3

4 **VIJAY HANSARIA:** My Lord, may I just say this?....

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why don't you go to the next point?

7

8 **VIJAY HANSARIA:** I will. Not be doing justice to my brief and... this is my main submission.
9 It will not... would Your Lordships just permit me to show two or three things, because the
10 submission has been made by the learned Solicitor that the due latitude was given by the and
11 from the speeches made by the Dr. Ambedkar, Alladi Swami and....

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Constituent Assembly debate... We can't
14 control the language of the provision. So, we got your point. You made that point right in the
15 opening. That Article 11 cannot give leverage to Parliament to expand on the ambit of those
16 who are granted citizenship by Article 6 and 7.

17

18 **VIJAY HANSARIA:** That is what founding father, said in the debate.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But we have to... It's a point, worth
21 considering. We will consider it.

22

23 **VIJAY HANSARIA:** I've no doubt about that. What I'm trying to say My Lord, when
24 extensively debates were read to Your Lordships, My Lord, it was said that Parliament has
25 been given complete leverage My Lord, that three eminent speakers, Dr. Ambedkar, Alladi
26 Krishnaswamy Iyer and Kunzru's statements were read to Your Lordships. I want to read they
27 were in the context of Article 5, 9 and 11, not in the context of My Lord, 6 and 7 which are Draft
28 Article. They specifically said, My Lord....

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We've noted it now.

31

32 **JUSTICE SURYA KANT:** We've noted, we will read.

33

34 **VIJAY HANSARIA:** May I just give the page number then?

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah. Just give us the page number.

37

1 **VIJAY HANSARIA:** I will give the page numbers. Dr. Ambedkar's speech starts from
2 Volume 4, page 887. But the regarding this Article 5A and 5 (AA) is My Lord, at page 892 and
3 893, in which My Lord, may I just only now ...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Gives us Dr. Ambedkar... Sir Alladi, Sir Alladi.

6

7 **VIJAY HANSARIA:** On 5A and 5 (AA) at page 892 and 893. And just one sentence My
8 Lord....

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just give us Alladi... Sir Alladi's reference.

11

12 **VIJAY HANSARIA:** Alladi Krishnaswamy Iyer, My Lord, relevant... It starts at 953 on the
13 same volume. Which is on 12th August. 953, starts. The relevant is 955. And Pandit Kunzru's
14 speech starts from 961. What is read to Your Lordships is 961. And the relevant on this 5A and
15 5 (AA) is 962 and 964. And he clearly says this is extraordinary provision. Nowhere available
16 in the world. We are making it for an extraordinary situation like this has happened. And up
17 to 1948 only. My Lord, can the Parliament extend the date from 1948 to '66 or to '71? And all
18 the three learned speakers who are founding fathers, and they are the heart and soul of the
19 entire Constitution which they've made, My Lord.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Made your point. Now, what is the next point?

22

23 **VIJAY HANSARIA:** I think... My Lord, I will cut short on other point, let me read one or
24 two paragraphs from this.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right, read it. You are 12 minutes short of
27 rising time.

28

29 **VIJAY HANSARIA:** I will try to do.... I'll said, the handicap of the last batsman My Lord.
30 962 to 964. Yes. May I just read 955 for a minute? 955, Volume 4, My Lord. This is Alladi
31 Krishna Swamy Iyer explaining 5A. 5A is intended to provide for all cases of this mass
32 migration, if I may use this expression from Pakistan into India and to provide for that class
33 of persons who have made present India as their home. I will skip to that. Certain safeguards
34 are provided for Clause 2, so as to make it quite clear that the authorities cannot accept
35 migrated people as bona fide citizens of this country. That is the object of the clause. This is
36 the provision to the effect that no registration shall be made. So My Lord, it requires a
37 registration as shown to Your Lordship, Article 6(b)(2). Unless the person making the

1 application is residing in the territory for 6 months, so there are two safeguards that will be
 2 registration There will be no registration unless the applicant has resided in the territory for 6
 3 months. If 5A stood by itself it would mean, that even if a person went to Pakistan with
 4 deliberate intention of making Pakistan as a permanent home, and re-migrate to India, they
 5 might be entitled to 5A. In order to provide such a contention that 5A is provided, then quoted
 6 which is now 6 proviso. There is no use of dealing with the subject if a person has deliberately
 7 and intentionally chosen to be citizen of another country. After question has arisen, after
 8 Pakistan has declared territory independent from India, then there is no point in conceding
 9 the citizenship to such a person but this proviso takes note of this impertinent etc., etc.

10
 11 So My Lord clearly deals with, what is....these are the extraordinary provisions which have
 12 been set. And at 962 Pandit Kunzru says, last three lines of 962 and 963. Now 962 if My Lords
 13 can kindly go. Last paragraph. Now I shall come to Article 5A. In this article as [UNCLEAR] it
 14 has been criticised on the grounds of provisions undesirable [UNCLEAR] open to the doors of
 15 citizens who have no moral ground to be regarded. I do not personally agree because let us
 16 consider calmly what 5A, that is Article 6 lays down and the circumstance we require certain
 17 articles should form part of our Constitution. Article 5A and 5AA. That is, Article 6 and 7
 18 contain extraordinary provisions arising out of the present extraordinary circumstances
 19 arising out of extraordinary situation created by the partition of India. You will find no
 20 counterpart to them in the Constitution of any other country. Then they say that there are
 21 conditions which are prescribed. Now, My Lord, Section 6A does away with all the conditions
 22 below with the founding fathers try to justify for 6 and 7. Article 6 and 7. So far as 366 is
 23 concerned. No condition, no requirement which the founding fathers thought even 48 requires
 24 My Lord and 50 requires. So My Lord, to say that, the founding father, thought gave
 25 untrammelled power to the parliament to make law under 11 is not correct. These observations
 26 does not apply or the statement does not apply to the extraordinary provision made under 6
 27 and 7. That's my first submission. Second, My Lord, Your Lordship would kindly see the
 28 Constitution My Lord, Article 7 starts with a *non-obstante* clause against 5 and 6. Article 6, 7
 29 says notwithstanding 5 and 6. And 6 says, notwithstanding 5. So 7 takes precedence. And then
 30 6, then 5. Kindly see that My Lord.

31
 32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

33
 34 **VIJAY HANSARIA:** So, My Lord, if 7 is to be given precedence, that fixes the cutoff date as
 35 1st March, 1947. So, anybody who has come to India after going to Pakistan after 1st March
 36 1947, he does not get citizenship. Under 6, he gets a citizenship up to '48 and thereafter, My
 37 Lord, he has to go by the registration and application, etc., etc. Now the section 6A(2) and (3)

1 Mr. Divan has said, so far as 2 is concerned, there are four requirements and unending
2 requirements. Even today, there's no cut off required date My Lord for that. 6A(3) requires
3 two more conditions for My Lord . That is, he must be detected to be foreigner by the
4 Foreigners' Tribunal and he must apply for registration. Now, would Your Lordship kindly
5 consider it My Lord saying that as per the affidavit of the Government of India, 30,000 and
6 odd has been detected to be foreigner till date. So it must never, it cannot be open ended. It
7 must confine to those 30,000 alone. It cannot be My Lord millions till after.... in case My Lord
8 wish to held My Lord 6A to be valid. My submission is not the four conditions which Mr. Divan
9 has said, and that is what I have said in my rejoined submissions, which is circulated to Your
10 Lordship, those four conditions. Plus, he must be declared as a foreigner, My Lord by the
11 Foreigner's Tribunal. Plus he must make an application. And this must be confined to the
12 30,000 people. Because till today, My Lord 30,000 people has only been detected to be
13 foreigner. Can it be said after 100 years it becomes 3 million? Would Your Lordship kindly see
14 the written submission of My Lord which you have circulated today. And in paragraph 9, My
15 Lord, paragraph 3 if they have not been detected till date. My Lord , where is the question of
16 granting them citizenship a lot up to the millions of people, as Mr. Choudhury has said, no It
17 may be it is an apprehension. It has happened. So Lordship would confine in your judgment,
18 My Lord. That's what. You can kindly see My Lord para 3 of my rejoinder submission
19 circulated today which is there before Your Lordship's screen. Para 3 and para 9 which says
20 not the 6 conditions are mentioned in para 9, and My Lord I have submitted that. Thus the
21 grant of citizens of the person entering India after 19-7-48 must comply with the mandatory
22 condition. It is submitted that the Section 6A(2) required expressive..... and the Government
23 of India says 30,000. So it must be confined to those 30,000 people and not beyond that My
24 Lord. That's our submission before Your Lordship. Next submission before My Lord they have
25 the plenary power. No doubt they have the plenary power but it is not My Lord if Your Lordship
26 contradict, see this Article 4(2) for a minute and contrast it with Article 11. 4(2) says My Lord
27 , no law made under 4 (1) shall be deemed to be amendment to the Constitution. But Article
28 11 does not say. So whatever law you made under Article 11 or 246 entry 11 must be consistent
29 with other provisions of the Constitution, which would include 6, 7, Article 14, etc., and there
30 are ten provisions of the nature of Article 4(2) shall also see Article 4(2) for a minute, it says,
31 may not. No such law as a aforesaid shall be deemed to be an amendment to this Constitution
32 for the purpose of Article 368 for a minute My Lord kindly see. And My Lord there are such
33 ten provisions, which is in my written submission. Paragraph... main written submissions,
34 Volume 1, page 146 Your Lordship would find. There are ten provisions in the Constitution
35 which says law made under this foregoing provision shall not be deemed to be an amendment
36 of the Constitution, and that's not, My Lord... so if you cannot amend, the Constitution by the
37 circuitous method. In Your Lordship yesterday judgment, rule 370, paragraph 390, My Lord

1 , achieved the you cannot use 367 method to change 370. This is the same thing. You cannot
2 use the circuitous method of a Parliamentary Legislation to amend the Constitution, which
3 you can do only under 368 route, not the 346 route My Lord . So that's my next submission
4 before Your Lordships kind consideration. And I initially submitted, My Lord, that the persons
5 who get citizenship under Section 6 and 7, 5, 6 My Lord, they must admit they must take an
6 oath of allegiance to the Constitution of India. So far as 6A is concerned, My Lord, there is no
7 such requirement of oath of allegiance and. They come from a country in which it is recognized
8 Islam is the... Islamic country of Pakistan. In my recent submissions, I have said, My Lord in
9 case Your Lordship wants to held that. 6 A is valid. Any person who are given those 30,000
10 person or 70,000 person, they must subscribe an oath in the form of Schedule 2. And also, My
11 Lord, they must say, if Your Lordship kindly see my written submissions, in rejoinder written
12 submissions para 8 My Lord. Lordship kindly make a note. In para 8 I say that there is no
13 answer to the oath of allegiance. And will not Rule 19(2) and Form 18 under which they make
14 an application. If Your Lordship sees that My Lord.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

17

18 **VIJAY HANSARIA:** I have another two minutes. I have another three balls to play. Para 8
19 of my rejoinder submissions.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

22

23 **VIJAY HANSARIA:** I have noted, My Lord, under Rule 19(2) Of the Citizenship Rule and
24 Form 18 of the Citizenship Rule. They are required to make an application. In that application
25 Your Lordship would read it My Lord they must subscribe in oath in some Second Schedule to
26 the Citizenship Act. They must additionally say I believe in the secularism and I will uphold
27 the unity and integrity of India. That's a very serious concern of ours My Lord. So those
28 conditions My Lord would incorporate that in case Your Lordships were to held it is
29 constitutionally valid. And finally My Lord the note by the Government of India says there are
30 100 Tribunals and there are 96,000 cases. That means that 1000 cases per Tribunal. We do
31 not know how many years it will take. Not to decide those cases. Just Your Lordships note
32 factually, 200 Tribunals were constituted on 06-02-2020.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Sorry? 26?

35

36 **VIJAY HANSARIA:** 6th of February 2020, 200 additional Tribunals were constituted My
37 Lord by the Government of India to decide these cases. But they were discontinued on, 14th

1 October, 2022. I have that order of the Government of India, My Lord. 14th October, 2022, all
2 these 200 Tribunals were discontinued, saying that there is no sufficient work. And in fact, I
3 must point it out, some of the members of the Tribunal filed a writ petition, before Lordships
4 and My Lord, the Chief Justice said, My Lord, "this is not a public interest litigation. Your
5 term was under a contract. So, you cannot go beyond that." And Lordships say that "in case it
6 is there, then it will be considered in accordance with law." So, what I'm saying Your Lordship,
7 in case Your Lordship was to held against me, there are only 100 Tribunals. 200 Tribunals
8 were constituted. They were discontinued on 14th October, 2022, they have to.... My Lord, all
9 these cases have to be decided fast, My Lord. It cannot be remained for, another 5 years, 10
10 years these cases will pending. So, those Tribunals....

11

12 **TUSHAR MEHTA:** One minute, My Lord, one important judgment is missed.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

15

16 **TUSHAR MEHTA:** It's under 6A, therefore, My Lord, it's necessary for me to cite. Volume
17 5, page 5238, the relevant part. My Lord, 6... It starts at 5226 it was concerned with... I would
18 be missing if I don't cite this. Since Mr. Divan cited My Lord, this ordinary resident is not
19 defined. In rejoinder, I did not cite it. It's on record 6A(2). My Lord, Your Lordships have My
20 Lord, page 5238.... otherwise I may read...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 5238?

23

24 **TUSHAR MEHTA:** 5238.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just give us the citation.

27

28 **TUSHAR MEHTA:** Yes. *1994, supplementary 1 SCC*, page 615, paragraph is 62. Please
29 read, My Lord, it's a short, 5-line paragraph. Under 6A, Sub-section 2. I'm sorry. The condition
30 number 2 of 6A. My Lords, 5238. My Lords. May I read para 62? "Turning to condition number
31 2, the requirement is ordinarily resident in Assam, from the date of entry, till the incorporation
32 of Section 6A, namely, December 7, 1985. As to the meaning of ordinary resident, we may refer
33 to *Shanno Devi vs so and so....* This is a Constitution Bench. We find the following
34 observations at page 590 opposing. It is not necessary that for every day of this period, he
35 should have resided in India. In absence of the definition of the words "ordinarily resident"
36 in the Constitution, it is reasonable to take the words to mean, "residents during this period,
37 without any serious [UNCLEAR]." That's it.

1

2 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else?

3

4 **VIJAY HANSARIA:** I'm extremely grateful, My Lord. In the rejoinder submissions, My
5 Lord, because I had very limited time, in the rejoinder submissions whatever I have said, I
6 filed today are before Your Lordships.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Certainly. Thank you, everyone.

9

10 **TUSHAR MEHTA:** Grateful to Your Lordships.

11

12

13

END OF THIS PROCEEDING