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ITEM NO.1 COURT NO.1 SECTION PIL-W

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

Writ Petition (Civil) No.274/2009

ASSAM PUBLIC WORKS Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

WITH W.P.(C) No.1045/2018 (PIL-W)
(With appln.(s) for intervention)

Date : 30-05-2019 These petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIRUDDHA BOSE
(VACATION BENCH)

Mr. Gourab Banerji, Sr. Adv., A.C.

Mr. Prashant Bhushan, Adv., A.C. (N/P)
Mr. Govind Jee, Adv.
Ms. Alice Raj, Adv.

For Petitioner(s)
Mr. Kailash Prashad Pandey, AOR

For Respondent(s) Mr. Tushar Mehta, SG
Ms. Rekha Pandey, Adv.
Ms. Binu Tamta, Adv.
Mr. R.M. Bajaj, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. Ankur Talwar, Adv.
Mr. Raghavendra Mohan Bajaj, Adv.
Mr. B. V. Balaram Das, AOR

Mr. B. Krishna Prasad, AOR

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**Mr. Gaurav Dhingra, AOR**

**Ms. Madhumita Bhattacharjee, AOR**

**Mr. Shadan Farasat, AOR**

**Mr. Snehasish Mukherjee, AOR**

**Mr. Guntur Prabhakar, AOR**

**Mr. Mohit D. Ram, AOR**
**Ms. Monisha Handa, Adv.**

**Mr. Abhijit Sengupta, AOR**

**Mr. Abdul Qadir, Adv.**
**Mr. Ibad Mushtaq, Adv.**
**Mr. Fuzail Ahmad Ayyubi, AOR**

**Mr. Tushar Mehta, SG**
**Mr. Shuvodeep Roy, AOR**
**Mr. Rajat Nair, Adv.**

**Mr. Mohan Pandey, AOR**

**Mr. Shibashish Misra, AOR**

**Ms. Malvika Trivedi, Adv.**
**Mr. Ankit Yadva, Adv.**
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**Mr. Sanand Ramakrishnan, AOR**

**Ms. Rashmi Singhania, AOR**

**Mr. Avijit Roy, AOR**

**Ms. Rashmi Nandakumar, AOR**

**M/s. Corporate Law Group**

**Mr. Mansoor Ali, AOR**

**Mr. Vijay Hansaria, Sr. Adv.**
**Mr. P.I. Jose, Adv.**
**Mr. Shakeel Ahmad, Adv.**

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Mr. Sadiq Shakeel, Adv.

Ms. Vishakha, Adv.
Ms. Hemantika Wahi, Adv.

Mr. M. Yogesh Kanna, Adv.
Mr. S. Parthasarathi, Adv.

UPON hearing the counsel the Court made the following

O R D E R

I.A. No.85011/2019 in W.P.(C) No.1045/2018

The application for intervention filed on behalf of All Assam Students Union and Another stands allowed.

W.P.(C) No.1045/2018

Shri Tushar Mehta, learned Solicitor General appearing for the State of Assam has placed before the Court a set of documents relevant to the issue under consideration i.e. setting up of additional Foreigners Tribunals in the State of Assam.

Amongst the documents filed, our attention has been drawn to the proceedings dated 24th May, 2019, held in connection with selection of the Members and staff for the proposed additional Foreigners Tribunals.

In the meeting held on 24th May, 2019, the following steps have been envisaged for filling up the posts of Members to man the 200 Foreigners Tribunals. The relevant extract

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from the Minutes of the Meeting dated 24th May, 2019, is extracted below:-

> "In this regard, the Government of Assam shall write to the Gauhati High Court by 30-05-2019 with a request to initiate the recruitment process. On receipt of the letter, the Registry shall issue advertisement by 10-06-2019/12-06-2019 for selection of Members for the 200 (two hundred) Foreigners Tribunals in Phase – I. The interview process is to commence w.e.f. 15-07-2019, with the result being declared by 20-08-2019. Once the entire recruitment process for selection of Members is completed, the newly recruited Members are to join duty by 01-09-2019. Further, it is proposed that a 2 (two) day orientation programme for the newly appointed Members be conducted before the Members report for duty."

Pursuant thereto, a letter dated 29th May, 2019 has been addressed by the Secretary to the Govt. of Assam, Home & Political Department to the Registrar (Judicial), Gauhati High Court, indicating the following to be the qualifications and conditions of service of the Members to be selected to man the additional Foreigners Tribunals:

> "(i) Advocates not below the age of 35 years of age with at least 7 years of practice: or
> (ii) Retired Judicial Officers from the

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Assam Judicial Service; or

(iii) Retired IAS of ACS Officers (not below the rank of Secretary/Addl. Secretary) having experience in quasi-judicial works.

(iv) The retirement age of the Members so appointed will be 67 years."

While the process of selection and appointment of Members of the Foreigners Tribunals, as indicated in the meeting held on 24th May, 2019 (extracted above), shall continue, the Court is of the view that so far as the qualification of Members to be indicated in the advertisement to be issued shall, instead of clause (iii) as proposed, be as follows:-

"(iii) Retired civil servants (not below the rank of Secretary and Additional Secretary) having judicial experience."

The above stipulation in the advertisement with regard to the qualification, in our considered view, would meet the requirement of clause 2(2) of the Foreigners (Tribunal) Order, 1964, which has been pointed out by Shri Vijay Hansaria, learned senior counsel appearing for the High Court of Gauhati and Shri Gourab Banerji, learned Amicus Curiae.

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**The concerned Registrar of the Gauhati High Court and the concerned authority in the State Government shall now proceed to act in the matter as per the resolution of the Meeting dated 24th May, 2019 (as extracted above), subject to the modification in clause (iii) of the qualifications indicated in the present order. The aforesaid authority shall ensure that 200 additional Foreigners Tribunals are functional on or before 1st September, 2019.**

**Insofar as the main matter i.e. Writ Petition (Civil) No.274 of 2009 is concerned, we have taken note of the Report submitted by the learned State Coordinator, Shri Prateek Hajela. Shri Hajela shall ensure that the hearing of the claims and objections, which are currently going on, are complied with strictly in accordance with law by the concerned officers and authorities who are considering such claims and objections and that all such claims and objections are heard and disposed of well in time to ensure publication of the final NRC on the date stipulated by the Court i.e. 31st July, 2019. While doing so, Shri Hajela will ensure that all affected parties get a fair opportunity of hearing and to produce relevant documents.**

**Shri Hajela is also permitted to mention the matter before the Secretary General or Registrar J-I/J-II of this**

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**Court for being taken up any day during the summer vacation, if so required.**

**All developments in the matter of constitution of additional Foreigners Tribunals and policy decisions arrived at with regard to deportation, be informed to Shri Gourab Banerji, learned Amicus Curiae from time to time.**

**Both the matter to be listed analogously immediately on reopening unless otherwise mentioned.**

**(Chetan Kumar)**
**A.R.-cum-P.S.**

**(Anand Prakash)**
**Court Master**