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Supreme Court Reaffirms Due Process in Citizenship Determination, Sets Aside 27 Gauhati High Court Judgments on Foreigner Declarations

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Recent Developments:

- The **Supreme Court** has set aside 27 judgments of the **Gauhati High Court** that had upheld **Foreigners Tribunal (FT)** orders declaring individuals as foreigners in Assam.
- The Court held that **citizenship or foreigner status can be determined only through a fair, lawful, and reasonable procedure**, consistent with **Article 21** of the Constitution.
- All matters have been **remanded to the respective Foreigners Tribunals** for fresh adjudication after giving the appellants a meaningful opportunity to present their case.

Background of the Case:

Origin of the Dispute:

- The appeals arose from 27 individuals in Assam who had been declared foreigners through **ex parte proceedings**, where decisions were passed in their absence.
- One of the lead cases involved **Sabitri Dey** and **SambhDey**, who were declared illegal migrants by the then **Illegal Migrants (Determination) Tribunal** in 1997 after they failed to appear before the tribunal.
- The tribunal relied mainly on the **Enquiry Officer's report**, as no written statement or documentary evidence was produced before it.
- The petitioners later contended that they had **never received effective notice** and became aware of the tribunal's order only in 2019.

Proceedings Before the Gauhati High Court:

- The petitioners challenged the tribunal's order by contending that:
- The proceedings violated the **principles of natural justice**.
- No **legal aid** or **amicus curiae** was provided.
- The findings were based largely on **hearsay evidence** instead of substantive proof.
- They possessed **government-issued documents** supporting their claim to Indian citizenship.
- In 2020, the Gauhati High Court dismissed the petitions after observing that:
- The petitioners had failed to appear before the tribunal.
- No written statement or documentary evidence had been produced.
- The challenge had been filed after an unexplained delay of nearly 23 years.
- **Section 9 of the Foreigners Act, 1946** places the burden of proving citizenship upon the individual concerned.

Supreme Court's Key Observations:

Citizenship Must Be Determined Through Fair Procedure:

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: 044 4353 9988 / 98403 94477 / Whatsapp : 09710729833

- The Court held that **citizenship involves profound constitutional, civil, and human rights consequences**, making procedural fairness indispensable.
- The Court observed that **no individual can be deprived of citizenship except through a fair, lawful, and reasonable process**, as required under **Article 21**.
- The Bench clarified that procedural lapses alone cannot justify deprivation of citizenship where substantive rights are involved.

Greater Scrutiny of Ex Parte Orders:

- The Court expressed concern regarding declarations of foreigner status through **ex parte proceedings**, particularly when individuals claim lack of knowledge about the proceedings.
- Before confirming such declarations, tribunals must ensure:
- Proper service of notice upon the concerned person.
- A genuine opportunity to produce evidence.
- Compliance with the principles of natural justice.

Natural Justice is Fundamental:

- The Court reaffirmed that **audi alteram partem** (hear the other side) is an indispensable element of a fair adjudicatory process.
- The requirement becomes even more stringent where the consequences may include **detention, deportation, separation from family, or statelessness**.

Merits Must Prevail Over Technicalities:

- The Court observed that where individuals claim to possess **government-issued documents** establishing Indian citizenship, such evidence must be examined on merits.
- Citizenship disputes should be decided on **substantive documentary evidence** rather than being rejected solely because of earlier procedural defaults.

Section 9 of the Foreigners Act Does Not Override Due Process:

- The Court accepted that **Section 9** places the burden of proving citizenship upon the concerned individual.
- However, it clarified that the statutory burden **does not dilute the constitutional obligation** of tribunals to conduct fair proceedings consistent with natural justice and due process.

Fresh Adjudication Ordered:

- The Supreme Court remanded all **27 cases** to the concerned **Foreigners Tribunals**.
- The appellants must be provided an effective opportunity to:
- File written statements.
- Produce documentary evidence.
- Present witnesses wherever necessary.
- Be heard before fresh orders are passed.

Foreigners Tribunals in India:

About Foreigners Tribunals:

- **Foreigners Tribunals (FTs)** are **quasi-judicial bodies** constituted under the **Foreigners (Tribunals) Order, 1964**, issued under the **Foreigners Act, 1946**.
- Their primary function is to determine whether a person is a **foreigner** under Indian law.
- They are used extensively in **Assam**, particularly in matters relating to citizenship verification and illegal migration.

Burden of Proof:

- Under **Section 9 of the Foreigners Act, 1946**, the burden of proving Indian citizenship rests upon the person whose nationality is questioned.
- Nevertheless, tribunals remain bound by constitutional requirements of fairness, impartiality, and reasoned decision-making.

Constitutional and Legal Provisions:

Constitutional Provisions:

- **Articles 5–11** deal with citizenship at the commencement of the Constitution and empower Parliament to regulate citizenship by law.
- **Article 21** guarantees that no person shall be deprived of life or personal liberty except according to a **procedure established by law**, which the Supreme Court has interpreted to mean a **fair, just, and reasonable procedure**.
- **Article 14** guarantees equality before law and protection against arbitrary State action.

Statutory Framework:

- **Citizenship Act, 1955** governs acquisition, determination, and termination of Indian citizenship.
- **Foreigners Act, 1946** regulates the entry, presence, and exit of foreigners in India and empowers authorities to determine foreigner status.
- **Foreigners (Tribunals) Order, 1964** provides the legal framework for constitution and functioning of Foreigners Tribunals.

Constitutional Significance of the Judgment:

Protection of Due Process:

- The judgment reinforces that **citizenship determination cannot be reduced to a procedural formality**, especially where fundamental rights are at stake.

Strengthening Natural Justice:

- The ruling strengthens procedural safeguards by requiring tribunals to provide meaningful opportunities before declaring an individual a foreigner.

Balancing Sovereignty and Individual Rights:

- The Court recognised the **State's legitimate interest** in preventing fraudulent citizenship claims while simultaneously ensuring that constitutional guarantees are not compromised.

Impact on Foreigners Tribunals:

- The decision is expected to encourage **greater procedural diligence**, proper appreciation of documentary evidence, and stricter compliance with natural justice by Foreigners Tribunals in Assam.

Value Addition for UPSC:

Important Constitutional Doctrines:

- **Procedure Established by Law.**
- **Due Process through Judicial Interpretation.**

- **Audi Alteram Partem.**
- **Principles of Natural Justice.**
- **Reasoned Administrative Decision-Making.**

Relevant Supreme Court Cases:

- **Maneka Gandhi v. Union of India (1978):** Expanded **Article 21** by holding that the procedure established by law must be **fair, just, and reasonable**.
- **Sarbananda Sonowal v. Union of India (2005):** Struck down the **Illegal Migrants (Determination by Tribunals) Act, 1983**, leading to citizenship determination in Assam being governed by the **Foreigners Act, 1946**.
- **National Human Rights Commission v. State of Arunachal Pradesh (1996):** Affirmed that **Article 21** protects every person, including non-citizens, against arbitrary deprivation of life and liberty