

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (PIL) No. 6547 of 2022

Danyaal Danish **Petitioner**
Versus
The State of Jharkhand and Ors. **Respondents**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

For the Petitioner : Mr. Rajeev Kumar, Advocate
Mr. Rajendra Krishna, Advocate
For the Resp.-State : Mrs. Niteshwari Kumari, Advocate
: Mr. Rajiv Ranjan, Advocate General
: Mr. Sachin Kumar, AAG-II
For the Resp.-U.O.I. : Mr. Prashant Pallav, D.S.G.I.
: Mr. Parth Jalan, A.C. to D.S.G.I.
For the Resp.-ECI : Mrs. Richa Sanchita, Advocate
For the N.I.A. : Mr. Amit Kumar Das, Advocate

ORAL ORDER

16/Dated: 8th August, 2024

1. Reference may be made to the orders dated 3rd July, 2024 and 18th July, 2024.
2. The background in passing the aforesaid orders was the illegal immigrants leading to change in the demography of the country as a whole including the State of Jharkhand. Further, the direction, as contained in the aforesaid orders, has been passed based upon the pleading made in the writ petition as under Paragraphs 2(E) and 2(H).
3. Further, this Court has passed the aforesaid order taking into consideration the seriousness of issue and the judgment rendered by the Hon'ble Apex Court in the case of ***Sarbananda Sonowal V. Union of India and Anr. [(2005) 5 SCC 665]*** followed in the case of ***Assam Sanmilita Mahasangha and Ors. V. Union of India and Ors.***

- [(2015) 3 SCC 1]*, wherein the similar issue of illegal immigrants have been considered to be the external aggression within the meaning of Article 355 of the Constitution of India.
4. This Court has passed specific direction, vide order dated 3rd July, 2024 as under paragraph-8, upon the competent authority of Central Government i.e., Ministry of Home Affairs, to file an affidavit by taking appropriate decision as to how such situation will be dealt with in tandem with the State Government, but, no affidavit has been filed as per the direction passed by this Court.
 5. Further direction was passed upon the Deputy Commissioner of the districts of Godda, Jamtara, Pakur, Dumka, Sahibganj and Deoghar to file separate affidavits by giving details of infiltrators after going through their Aadhar Cards, Voter Cards by comparing it with the Record of Rights to establish their residency in the area which falls under the Santhal Pargana region, which is to be dealt with under the provision of Santhal Pargana Tenancy Act, 1949.
 6. It has further been directed in order dated 3rd July, 2024 that the immediate steps be taken in addition to the identification and deportation by way of preventive measures, so that, there must not be any further infiltration in the area, which was directed to be personally monitored by the Chief Secretary of the State.
 7. The matter was again heard on 18th July, 2024. It is evident from order dated 18th July, 2024 that though the affidavits have been filed in furtherance of order dated 3rd July, 2024, but the same was not sworn by the Deputy Commissioner, as directed by this Court, rather, the same was filed by subordinate to the rank to the Deputy Commissioners. Therefore, the affidavits, so filed by subordinate in the rank to Deputy Commissioners, were rejected by the Co-ordinate Bench of this Court.
 8. Therefore, direction was passed by the Co-ordinate Bench on 18th July, 2024 to file the affidavits as per the direction earlier passed by this Court vide order dated 3rd July, 2024.

9. For ready reference, the order dated 18th July, 2024 is being quoted as under:-

“Since the affidavit has been filed subordinate in rank to the Deputy Commissioner which is contrary to the direction passed by this Court dated 03.07.2024.

2. This Court rejects the said affidavit and directs to file the same as per the direction earlier passed by this Court vide order dated 03.07.2024.”

10. It appears that the State has also not filed any affidavit in this regard, however, the learned Advocate General appearing for the respondents-State has submitted that the meeting has been convened by the Chief Secretary of the State, in which, he has also participated, wherein, the issue of illegal immigrants has been discussed in detail.

11. He has submitted that the detail, which has been discussed for the purpose of taking decision in this regard, will be brought on record by way of an affidavit.

12. But, it needs to refer herein that the affidavit which was directed to be filed, in pursuant to the order dated 3rd July, 2024 by the Deputy Commissioner of the Districts of Godda, Jamtara, Pakur, Dumka, Sahibganj and Deoghar has not been filed till date, even though, the specific direction was passed by the Co-ordinate Bench of this Court on 18th July, 2024 by rejecting the affidavit filed on 16th July, 2024 considering the same to be not in consonance with the order dated 3rd July, 2024.

13. No affidavit has been filed by the Deputy Commissioner of the concerned districts, the reasons are best known to them. The Deputy Commissioners, for any reason whatsoever, ought to have made an application/affidavit showing the reason as to why the affidavits have not been filed.

14. However, we are granting a week's time to file affidavit in compliance to the direction passed by this Court vide order dated 3rd July, 2024, as under at Paragraph-11 of the said order, wherein direction has been passed to file separate affidavit by the Deputy Commissioner of district concerned by giving details of infiltrators

after going through their Aadhar Cards, Voters Cards by comparing it with the Record of Rights to establish their residency.

15. In view thereof, let a specific affidavit be filed by the Deputy Commissioner of the districts of Godda, Jamtara, Pakur, Dumka, Sahibganj and Deoghar as per direction passed in order dated 3rd July, 2024.
16. Mr. Prashant Pallav, learned counsel appearing on behalf of the Union of India has submitted that in compliance of order dated 3rd July, 2024, the affidavit could not be filed but on instruction he has submitted that by the next date of hearing, appropriate affidavit on the issue shall be filed.
17. However, he has submitted, on the basis of the paper cutting, that taking into consideration the current situation in the neighbouring country, i.e., Bangladesh as per the decision of the Central Government, hundreds of people have restrained by the Border Security Force from crossing the border of our country.
18. Let the same be brought on record by way of filing affidavit.
19. At this stage, Mr. Rajendra Krishna, learned counsel has sought for leave of this Court to place a document showing the demographic set up in the State of Jharkhand in particular the Santhal Pargana region as per Census for the period 1951 to 2011.
20. This Court, considering the fact that it is not an adversary litigation rather it is a 'Public Interest Litigation' and the document produced by him is having bearing in the instant 'Public Interest Litigation', as such permission as sought for by learned counsel is granted.
21. Mr. Rajendra Krishna, learned counsel has placed copy of document showing the comparative tabular chart and pi-chart of Census in between the period 1951-2011 of Santhal Pargana Region.
22. Referring to the tabular chart and pi-chart, submission has been made that as per national census, the percentage of tribal population in Santhal Pargana Region has decreased drastically from **44.67%** in the year 1951 to **28.11%** in the year 2011 whereas, on the other hand, the Muslim population in the said region has increased

manifold i.e., from **9.44%** of total population in the year 1951 to that of **22.73 %** in the year 2011, and if this trends goes on, then days are not far away, the tribal community in the region will become extinct one. However, the percentage of population of others has changed marginally by **3.3%** for the said period in that region.

- 23.** It has further been submitted due to infiltration, illegal immigration etc., the demographic set up of Jharkhand in particular Santhal Pargana Region is changing rapidly and now the situation in the bordering area of State of Jharkhand is alarming and if it would not be checked and a concrete steps would not be taken by the Government, the situation would be out of control.
- 24.** On the basis of said document, issue has been raised that if the population of the schedule tribe will be decreasing in Santhal Pargana region, as would be evident from the aforesaid chart, then the entire interest of the State of Jharkhand in particular the tribal community, would be jeopardised, as such the question would be that for what purpose the tenancy law i.e., Santhal Pargana Tenancy Act, 1949 has been enacted and further what will happen to the reservation policy which is being extended to the schedule tribe community.
- 25.** This Court, considering the aforesaid fact, is of the view that the same is also required to be responded by the State, and if that be so the matter appears to be very serious, in addition to the issue of illegal immigrants as it is a question of extinguishment of tribal community from the State for which the State of Jharkhand was created to protect their interest as also for securing their right, the tenancy law was enacted in the State of Jharkhand i.e., the Santhal Pargana Tenancy Act, 1949 in the Santhal Pargana area and Chotanagpur Tenancy Act, 1908 in the Chotanagpur region.
- 26.** The State is also directed to respond on this issue by way of filing affidavit by or before the next date of hearing.
- 27.** So far as the issue of infiltrations are concerned, Mr. Pallav, learned DSGI appearing for the Union of India has submitted at Bar that as

per the decision of the Central Government, hundreds of people have restrained by the Border Security Force from crossing the border of our country, as such this Court posed a question that why such measure is not being taken for the future so that the further the matter of infiltration be taken care of strictly.

28. Upon this, the learned counsel for the parties i.e., learned counsel for the petitioner, learned D.S.G.I, appearing for the Central Government and Mr. Rajiv Ranjan, learned Advocate General appearing for the State Government are fair enough to submit that some functionaries are required to be impleaded as party respondent, i.e.,

- (i) The Director General, Border Security Force, New Delhi.
- (ii) The Director General, Unique Identification Authority of India.
- (iii) The Election Commission of India through the Chief Election Commissioner.
- (iv) The Director General, Intelligence Bureau, New Delhi.
- (v) National Investigation Agency through the Director, New Delhi.

29. Considering the nature of issue and taking into consideration the judgments passed by the Hon'ble Apex Court in ***Sarbananda Sonowal V. Union of India and Anr. (supra)*** and ***Assam Sanmilita Mahasangha and Ors. V. Union of India and Ors. (supra)***, this Court is of the view that these functionaries are necessary parties in the proceeding. Accordingly, the Director General, Border Security Force, New Delhi; the Director General, UIDAI; the Chief Election Commissioner of India; the Director General of Intelligence Bureau and National Investigation Agency through its Director, New Delhi be impleaded as party respondents.

30. Mr. Prashant Pallav, learned D.S.G.I. waives notice on behalf of the Director General of Border Security Force, the Director General of

Intelligence Bureau and the Director General of Unique Identification Authority of India.

31. Mrs. Richa Sanchita, learned counsel waives notice on behalf of the Election Commission of India.
32. Mr. Amit Kumar Das, learned counsel waives notice on behalf of National Investigation Agency.
33. Let the response by way of affidavit(s) be filed as to how effective mechanism be taken to deal with the issues.
34. The learned Advocate General, in course of argument, has submitted that the local authorities including the police administrations are facing difficulty in the matter of identification.
35. However, we are of the view that the State is having a Special Branch for giving such information, as such this Court has failed to understand that why services of Special Branch is not being utilized by the State for the purpose of identification of the issue of infiltrators.
36. Further, the same also is being considered by this Court that the same reveals the lackadaisical approach of the district administration since the ration card, the voter card and even the Aadhar Card have been reported to be prepared on the basis of documents which cannot be said to be genuine one and based upon the said documents the infiltrators are utilizing the beneficial schemes which are being floated by the State to take care of welfare of the local people of the area.
37. Therefore, the State is directed to utilize the Special Branch for the purpose of identification of infiltrators/illegal immigrants.
38. The Deputy Commissioner of the concerned districts since have already been directed to file an affidavit, hence, let such exercise of identification of the infiltrators having Ration card, the Voter card and the Aadhar Card be conducted on the basis of the 'record of rights'.
39. The Deputy Commissioner of the concerned districts are further directed to pass necessary order/communication restraining the

revenue/competent authority who have been conferred with the power to issue Ration card, the Voter card and the Aadhar Card or the B.P.L. Card etc. and these documents be issued only on the basis of verification of the 'record of rights'.

40. This Court is further of the view that since the issue of infiltration has been considered as an external aggression by the Hon'ble Apex Court in the case of *Sarbananda Sonowal V. Union of India and Anr. (supra)* and *Assam Sanmilita Mahasangha and Ors. V. Union of India and Ors. (supra)*, and as such this Court is of the view that the services of Intelligence Bureau will also be effective one to deal with the issue.
41. Therefore, the Intelligence Bureau is directed to submit a report on the issue which shall be placed in sealed cover.
42. Let the names of the respective counsel be reflected in the daily cause list henceforth.
43. Let this matter be listed on 22nd August, 2024.
44. Let the document produced by Mr. Rajendra Krishna, learned counsel be kept on record.

(Sujit Narayan Prasad, A.C.J.)

(Arun Kumar Rai, J.)

Samarth/-