

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

1. BRELITHAMARAK

[REDACTED]

.... PETITIONER NO. 1

2. BHANU JAY RABHA

[REDACTED]

... PETITIONER NO. 2

VERSUS

1. UNION OF INDIA

THROUGH SECRETARY TO
THE GOVERNMENT OF INDIA,
MINISTRY OF LAW AND JUSTICE
NEW DELHI - 110001

...RESPONDENT NO.1

2. THE DELIMITATION COMMISSION
THROUGH SECRETARY, NIRVACHAN
SADAN, ASHOKA ROAD, NEW DELHI
PIN-110001

...RESPONDENT NO.2

3. THE STATE OF ASSAM
THROUGH THE CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM
DISPUR, GUWAHATI, ASSAM – 781006

...RESPONDENT NO. 3

**A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That The petitioner herein, *bona fide* residents of the State of Assam, have preferred the instant petition under Article 32 of the Constitution of India challenging the promulgation of the Presidential Order bearing No. S.O. 903 (E) dated 28th February 2020 [hereinafter referred to as the 'impugned order'], through which earlier Notification number S.O. 283 (E) dated 8th February 2008 [Hereinafter referred to as "S.O. 283(E)"], deferring the process of delimitation for the State of Assam, has been rescinded and it has been further decided to resume the process of delimitation of the Assembly and Parliamentary constituencies for the State of Assam. The petitioners herein submit that the decision to conduct the pending process of delimitation of assembly and

parliamentary constituencies, is not only arbitrary and hasty decision but stands contrary to the very idea behind conducting delimitation inasmuch as the present delimitation exercise is sought to be conducted on the basis of Census 2001, while Census 2011 has already been conducted and Census 2021 is underway, apart from also being unjustified with regard to the conclusion of the NRC preparation for the State of Assam, one of the reasons why the same was deferred in 2008. The petitioners submit that the impugned order is liable to be quashed being in violation of Article 14, 19 and Article 21 of the Constitution of India, which guarantee equality, the right to life and freedom of speech and expression respectively, *firstly* for the reason that the impugned order seeks to resume an exercise of delimitation, ideally to be conducted on the most recent census, but here it is based on stale and old figures of Census 2001 and secondly, since the reasons as contained in the notification number S.O. 283(E), are still prevailing and the impugned order fails to provide any reasonable basis for the change in circumstances, as existed prior to deferment of delimitation in the State of Assam.

1A. That the petitioner has not preferred any other petition before this Hon'ble Court or any other Court

seeking the reliefs as have been sought in the present petition.

1B. That in light of the urgency of the present issue and as the delimitation commission has already been constituted, the petitioners herein have not preferred any representation as the remedy lies with this Hon'ble Court.

2. FACTS:-

2.1. That for the first time after independence, Delimitation of Assembly and Parliamentary Constituencies was resorted to by forming a Delimitation Commission under the Delimitation Commission Act, 1952. Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country or a province having a legislative body. The basis for the delimitation exercise in 1952 was the population figures from the then recent Census of 1951.

2.2. That Another delimitation commission was formed pursuant to the Delimitation Commission Act, 1962 for delimiting the Assembly and Parliamentary Constituencies in India. The basis for the delimitation exercise in 1963 was the population figures from the 1961 Census.

2.3. That another delimitation commission was formed pursuant to the Delimitation Act, 1972 for delimiting the Assembly and Parliamentary Constituencies in India. The basis for the delimitation exercise in 1973 was the population figures from the 1971 Census.

2.4. That the Delimitation Act, 2002 was enacted for the formation of another Delimitation Commission that had been tasked with delimiting the parliamentary and assembly constituencies for the entire country. As per the Delimitation Act, 2002, the basis for conducting delimitation was the most recent census then i.e., Census 2001. A copy of the Delimitation Act, 2002, as amended till date, has been marked and annexed herewith as **Annexure No. P-1 (Pgs. ____ to ____)**.

2.5. That subsequent to the formation of the delimitation commission, P.I.L. No. 62 of 2007 came to be filed before the Hon'ble Gauhati High Court, which was referred to a larger bench of five judges of the Hon'ble High Court. Vide order dated 16.08.2007, the 5 judge bench of the Hon'ble High Court had noted the following concerns, with

regard to delimitation in the State of Assam based on the 2001 Census:

“In so far as the State of Assam is concerned, the main grievance of the petitioners appears to be identification of what is contended, on a definite basis in view of the judgment of the Supreme Court in Sarbananda Sonowal’s case reported in (2005) 5 SCC 665, to be a large number of illegal migrants who have been covered by the Census Report of the year 2001. The aforesaid question is inextricably linked to the process of de-limitation of the territorial boundaries of the constituencies as a whole with ultimate result that such illegal migrants in the State may not be permitted to participate in the electoral process. The submission made by the learned counsels for the parties are capable of raising hypothetical question of exclusion of a large number of a segment of the population constituting the State Assembly from the electoral process. Permitting such illegal migrants to participate in the electoral process of the country would be contrary to the letter and spirit of the Constitution and the laws and, therefore, the exercise of de-limitation process which is carried on the basis of the data published by the Census Commission without first determining the citizenship in question would be inconsistent with the Constitutional rights of the citizens.”

A typed copy of the order dated 16.08.2007 passed by the Hon’ble Gauhati High Court, Guwahati in P.I.L. No. 62 of 2007 has been marked and annexed herewith as **Annexure No. P-2 (Pgs. ___ to ___)**.

2.6. That once the Delimitation Commission had given its report, the process of delimitation for the State of Assam was deferred by the issuance of Notification No. S.O. 283(E) by the President under Section 10A of the Delimitation Act, 2002. The decision was taken, *inter alia*, in light of the aggravated law and order situation in Assam, non-availability of the NRC, Assam, etc. A copy of Notification Number S.O. 283(E) dated 08.02.2008 published by the Ministry of Law and Justice has been marked and annexed herewith as **Annexure No. P-3 (Pgs. _____ to _____)**.

2.7. That the reasons stated in the Notification number S.O. 283 (E) dated 08.02.2008, deferring the process of delimitation for the State of Assam, are by and large still in existence and it is submitted that the present decision for resuming the exercise of delimitation in the State, issued vide the Impugned Order No. S.O. 903 (E) dated 28.02.2020 (Annexure-2), is devoid of any reasons justifying the change in situations since 2008.

2.8. That to summarise, the decision for deferment of delimitation exercise for the State of Assam had been taken, *inter alia*, citing the following reasons:

- a) That the delimitation work was stayed pursuant to the orders of the Gauhati High Court in PIL No. 62/2007 (Shri Ram Prasad Sarmah Vs. UOI) and *"resumption of delimitation by the Delimitation Commission consequent to the Hon'ble Supreme Court's stay on the order of the Guwahati High Court (in the aforesaid petition) is likely to arouse the sentiments of the people living in the State of Assam due to their apprehension that the ongoing delimitation in many electoral constituencies may result in break-up of affiliation between public and its representatives, change of boundaries thereof, which may cause alienation of different groups of tribes"*;
- b) That delimitation exercise should be postponed *"till such time as the National Register of Citizens (NRC) is updated to reflect the true population configuration in the State"*;
- c) That the process of delimitation in Assam had evoked strong opposition from all concerned in the State, with various organisations strongly opposing the delimitation exercise, which had given apprehensions with regard to break down of public order in the State of Assam. It was stated that *"issues in regard to delimitation of*

constituencies in the State of Assam are very serious and sensitive in nature and may give rise to break down of public order on account of serious law and order situation in different districts and more, particularly, in the areas which are disturbed areas or very sensitive areas”;

d) That the Central Government had declared the entire State of Assam as "*disturbed area*", under Section 3 of the Armed Forces (Special Powers) Act, 1958;

e) That the National Democratic Front of Bodoland (NDFB) and the United Liberation Front of Assam (ULFA), declared as unlawful associations under the Unlawful Activities (Prevention) Act, 1976, were "*likely to exploit the sentiments of the local people, and create large scale violence and disruption of the public order, in furtherance of their agenda*";

f) That "*strong objections*" had been lodged by "*the legislators, parliamentarians, all political parties, Panchayats and public leaders on the proposed delimitation of Assembly and Parliamentary constituencies*";

g) That the State Government was *"of the view that the delimitation process should be kept in abeyance and has requested for the maintenance of status quo in the interest of peaceful co-existence of people of the State and its territorial integrity and the maintenance of public order."*;

2.9. That as the NRC is being prepared on the basis of Section 6A of the Citizenship Act, 1955, it must also be pointed out that the said provision, added to the Citizenship Act in 1985, is also challenged before the Hon'ble Supreme Court of India, which has referred the challenge to Section 6A of the Citizenship Act, 1955, to a larger bench vide order dated 17.12.2014 passed in Writ Petition (Civil) No. 562 of 2012. A copy of judgment dated 17.12.2014 passed in Writ Petition (Civil) No. 562 of 2012 has been marked and annexed herewith as **Annexure No. P-4 (Pgs. _____ to _____)**.

2.10. That the State of Assam, ever since the introduction of Citizenship (Amendment) Bill, 2016 till the enactment of the Citizenship (Amendment) Act, 2019 on 12.12.2019, has seen widespread and violent protests, bandhs, curfews etc. leading to loss of not only public and private property but also of the precious lives of Indian Citizens.

2.11. That as the situation in Assam, due to opposition of CAA as well as apprehensions related to the publication of the National Register of Citizens, Assam, had so aggravated, the entire State of Assam was declared as a “*disturbed area*” for the purposes of the Armed Forces (Special Powers) Act, 1958 with effect from 28.08.2019, for a period of six months. A copy of the order of the governor dated 05.09.2019 declaring the entire state of Assam as a disturbed area for a period of six months w.e.f. 28.08.2019 has been marked and annexed herewith as **Annexure No. P-5 (Pgs. ____ to ____)**.

2.12. That vide the impugned order number S.O. 903(E), a decision was taken to rescind the aforesaid Notification S.O. 283(E) dated 08.02.2008 by means of which the exercise of delimiting the constituencies in Assam, as per the Delimitation Act, 2002, was deferred by the President of India citing a number of reasons, by and large still existing. A copy of the order Number S.O. 903(E) dated 28.02.2020 issued by Ministry of Law and Justice has been marked and annexed herewith as **Annexure No. P-6 (Pgs. ____ to ____)**.

2.13. That the Ministry of Law and Justice, notified, through Notification No. S.O. 1015(E), the

constitution of the Delimitation Commission for the purpose of delimiting assembly and parliamentary constituencies in the Union Territory of Jammu and Kashmir and the states of Assam, Arunachal Pradesh, Manipur and Nagaland. A copy of the Notification No. S.O. 1015(E) dated 06.03.2020 published by the Ministry of Law and Justice constituting the Delimitation Commission has been marked and annexed herewith as **Annexure No. P-7 (Pgs. ____ to ____)**.

3. That the petitioner seeks the leave and liberty of this Hon'ble Court to add, alter, modify, amend and/or substitute any of the aforesaid facts, if so advised, at a later stage.
4. That, in view of the aforesaid facts and circumstances and the grounds set out herein below, the petitioners had no other alternative but to approach this Hon'ble Court in order to challenge the *vires* of the impugned order number S.O. 903(E) dated 28.02.2020 published by the Ministry of Law and Justice.
5. That this petition is made bona-fide and for the ends of justice.

6. That the Petitioner has preferred the present petition on the following, amongst other, grounds:-

GROUND

- A. **BECAUSE** the decision to conduct the pending process of delimitation of assembly and parliamentary constituencies, is not only an arbitrary and hasty decision but stands contrary to the very idea behind conducting delimitation, having proposed to be conducted not on the basis of the population figures obtained from the most recent Census but rather on the basis of stale figures of 2001 Census. The petitioners reason that while vide the aforesaid S.O. 283(E) the process of delimiting the constituencies, in the State of Assam, had been deferred, the same is being resumed almost 10 years later and so far, in absence of an amendment to the Delimitation Act, 2002, will be conducted on the basis of the population figures as emerging in the Census of 2001, which in itself is a ground sufficient enough to quash the impugned order.
- B. **BECAUSE** the very purpose of conducting delimitation is to ascertain an equal number of division of the electorates in the various assembly and parliamentary constituencies and the same has been historically based on the population figures as obtained from the most recent Census. However, by the promulgation of

the impugned order, this very purpose behind delimitation has become redundant, as the most recent population figures, can in no manner be gathered from a census conducted 20 years ago. Not only, an older Census data from 2001 is proposed to be used as the basis for delimitation in the State of Assam, the haste is evident inasmuch as the most recent population figures will be available from the Census of 2021, the preparations whereof are already underway.

C. **BECAUSE** a five judge bench of the Hon'ble Gauhati High Court had, vide order dated 16.08.2007 passed in P.I.L. No. 62 of 2007, had noted its concerns with regard to the 2001 census being used as the basis for delimitation, in the following words:

“Insofar as the State of Assam is concerned, the main grievance of the petitioners appears to be identification of what is contended, on a definite basis in view of the judgment of the Supreme Court in SarbanandaSonowal’s case reported in (2005) 5 SCC 665, to be a large number of illegal migrants who have been covered by the Census Report of the year 2001. The aforesaid question is inextricably linked to the process of delimitation of the territorial boundaries of the constituencies as a whole with ultimate result that such illegal migrants in the State may not be permitted to participate in the electoral process. The submission made by the learned counsels for the parties are capable of raising hypothetical question of exclusion of a large number of a segment of the population constituting the State

Assembly from the electoral process. Permitting such illegal migrants to participate in the electoral process of the country would be contrary to the letter and spirit of the Constitution and the laws and, therefore, the exercise of delimitation process which is carried on the basis of the data published by the Census Commission without first determining the citizenship in question would be inconsistent with the Constitutional rights of the citizens.”

(Emphasis Supplied)

D. **BECAUSE** one of the reasons for deferring delimitation in the State of Assam, as stated aforesaid, was the preparation of the National Register of Citizens (NRC), Assam. It must be noted that while the NRC, Assam is being prepared under the orders of this Hon’ble Court, the same is yet to be finalised. While the results of NRC had been published by the State Co-ordinator, NRC, Assam on 31.08.2019, the process with regard to more than 19 lakh persons, excluded therefrom, is underway. Moreover, as the NRC is being prepared on the basis of Section 6A of the Citizenship Act, 1955, it must also be pointed out that the said provision, added to the Citizenship Act in 1985, is also challenged before the Hon’ble Supreme Court of India, which has referred the challenge to Section 6A of the Citizenship Act, 1955, to a larger bench vide order dated 17.12.2014 passed in Writ Petition (Civil) No. 562 of 2012.

E. **BECAUSE** the very purpose of the delimitation exercise is to alter the boundaries of respective constituencies as per the latest census figures so as to reflect an equal and proportionate representation. It would not only be expedient but more practical to defer the present delimitation process until the finalisation of NRC, Assam as well as the Census-2021, so that the most recent and correct figures may form the basis for delimitation. In this context, it is pertinent to note here that the delimitation exercise being conducted in the Union Territory of Jammu & Kashmir will be taken up by using the Census-2011 instead of Census-2001, as provided under the Jammu & Kashmir Re-organisation Act, 2019 whereas in Assam the Census-2001 is to be used for same reference.

F. **BECAUSE** the process of delimitation in Assam, in 2008, had evoked strong opposition from all concerned in the State, with various organisations strongly opposing the delimitation exercise which had given apprehensions with regard to break down of public order in the State of Assam. It was considered that the issues in regard to delimitation of constituencies in the State of Assam were *very serious and sensitive in nature and may give rise to break down of public order on account of serious law and order situation in different*

districts and more particularly, in the areas which are disturbed areas or very sensitive areas.

G. **BECAUSE** the reasons that had prevailed during the previous decision for deferment of the delimitation process vide Notification No. S.O. 283 (E) dated 08.02.2008 still exist with same force and therefore the decision to conduct a fresh delimitation of Assembly and Parliamentary Constituencies in Assam and to rescind the aforesaid Notification No. S.O. 283 (E) dated 08.02.2008 is an arbitrary decision by overlooking the totality of facts and the circumstances prevailing in the State of Assam. The Impugned Order No. S.O. 903 (E) dated 28.02.2020, has stated that there is a significant improvement in the security situation in the State of Assam by citing reduction in insurgency incidents and improvement in law and order, making the situation “*conducive*” for carrying out the delimitation exercise which was deferred in 2008. But the same has not accounted for the CAA protests. The State of Assam and other north eastern States have witnessed widespread opposition, protests, marches, violence, losses to public and private properties and deaths with injuries to hundreds during the anti-CAA agitations.

H. **BECAUSE** the situation in Assam had grown so out of control that the entire State of Assam was declared as a

“disturbed area” for the purposes of the Armed Forces (Special Powers) Act, 1958 with effect from 28.08.2019, for a period of six months. This period of six months had come to an end on the very day that the impugned Order No. S.O. 903 (E) came to be issued rescinding the deferment of delimitation and deciding to conduct the same. The same flies on the face of the claim that the situation is now conducive for the process of delimitation.

- I. **BECAUSE** the constitutional validity of the Citizenship (Amendment) Act, 2019 remains pending before the Hon’ble Supreme Court of India (challenged in more than 160 petitions). The enactment of the same had already led to such wide scale protests, a decision to undertake a delimitation exercise in the State of Assam is bound to lead to more apprehensions in the minds of people, more opportunity to unlawful elements for exploiting such apprehensions and thereby leading to disruption of public order which remains fragile in the State.

7. **PRAYER**

In the facts and circumstances of the case, as mentioned above, it is, therefore, most humbly prayed that this Hon’ble Court may graciously be pleased to:

- a. Issue a writ of Mandamus/Certiorari or any other writ quashing Order No. S.O. 903(E), dated

28.02.2020 published by Ministry of Law and Justice, and/or

- b. Direct the respondents to defer the exercise of delimitation in the State of Assam, promulgated vide the Impugned Order No. S.O. 903(E), until completion of Census 2021, so that the most recent population figures are available for this exercise,
- c. Pass any order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present appeal.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL, AS IN THE DUTY BOUND EVER PRAY.

DRAWN BY:
Mustafa Khaddam Hussain
& Ibad Mushtaq
Advocates

FILED BY:

FUZAIL AHMAD AYYUBI
(ADVOCATE FOR PETITIONER)

New Delhi