Concerns with Foreigners Tribunal - Abdul Kuddus Case

What is the issue?

- The Supreme Court recently decided on a batch of 15 petitions, regarding the National Register of Citizens (NRC) in Assam, under the title Abdul Kuddus v Union of India.
- The judgement, strengthening the Foreigners Tribunal, seems contentious on human rights grounds, and thus need a relook.

What are the concerns in citizenship registration process?

- In the State of Assam, there are two ongoing processes concerning the question of citizenship -
  i. proceedings before the Foreigners Tribunals, which have been established under an executive order of the Central government
  ii. the NRC, a process overseen and driven by the Supreme Court
- [Foreigner's Tribunal is a quasi-judicial body meant to decide whether a person is a foreigner or not within the meaning of Foreigners Act, 1946.]
- While nominally independent, both processes nonetheless influence one another.
- This has caused significant chaos and confusion for individuals who have found themselves on the wrong side of one or both.
- Evidently, citizenship proceedings were mixed with administrative (and other kinds of) errors.
- However, this often came to light much later, and often by chance; but the implications were serious.

What is the petition?

- The petition was to resolve a "perceived conflict" in the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
- It involved the status of an "opinion" rendered by a Foreigners Tribunal, as to the citizenship (or the lack thereof) of any individual.
- The petitioners argued that an opinion rendered by the Foreigners Tribunal had no greater sanctity than an executive order.
- Under the existing rules, this meant that an adverse finding against an individual would not automatically result in their name being struck off the

NRC.

- Furthermore, the Tribunal's opinion could be subsequently reviewed, if fresh materials come to light.
- The petitioners called for challenging the decision of the Foreigners Tribunal if it is used to justify keeping an individual out of the NRC.
- This would then have to be decided independently of the decision arrived at by the Tribunal.
- In short, the petitioners' case was that the processes of the Foreigners Tribunal and of the NRC should be kept entirely independent of each other.
- Also, primacy should not be given to one over the other.

What is the Court's judgement?

- The Supreme Court rejected the petitioners' arguments.
- It held that the "opinion" of the Foreigners Tribunal was to be treated as a "quasi-judicial order".
- It was, therefore, final and binding on all parties including upon the preparation of the NRC.
- The Supreme Court's judgement might severely affect the rights of millions of individuals, as there are serious shortfalls with the Foreigners Tribunal's functioning.

What are the concerns with Foreigners' Tribunals?

- Essentially, Foreigners Tribunals were established by a simple executive order.
- **Officials** - The qualifications to serve on the Tribunals have been progressively loosened.
- Notably, the vague requirement of "judicial experience" has now been expanded to include bureaucrats.
- **Functioning** - The Foreigners' Tribunals are far from the normal understandings of 'courts', both in its form and functioning.
- Under the current rules, Tribunals are -
    i. given sweeping powers to refuse examination of witnesses if in their opinion it is for unworthy/unjustified purposes
    ii. bound to accept evidence produced by the police
    iii. not required to provide reasons for their findings
- [As it is not a judgment, a concise statement of the facts and the conclusion would suffice unlike courts that add "reasons" to "facts" and "conclusions".]
- **Flaws** - In effect, Tribunals are left free to regulate their own procedure for disposal of cases.
- Consequently, over the last few months, glaring flaws in the working of the Foreigners Tribunals have come to light.

- As many as 64,000 people have been declared non-citizens in ex-parte proceedings, i.e., without being heard.
- People are often not even served notices telling them that they have been summoned to appear.

Why is the judgement contentious?

- The Court says that fixing time limits and recording of an order rather than a judgment is to ensure that these cases are disposed of expeditiously and in a time bound manner.
- However, rejecting a person's citizenship could have drastic and severe result of rendering a human being stateless.
- So, when adjudicating upon a person's citizenship, only the highest standards of adjudication can ever be morally or ethically justifiable.
- The Foreigners Tribunal, however, is by design and practice manifestly the exact opposite of this principle.
- So, in further strengthening the Tribunal, the Supreme Court has fallen short of being the last protector of human rights under the Constitution.
- It seems to be a departure from the most basic principles of the rule of law.
- Given this, if Article 21 (right to life) of the Constitution is to be meaningful, this entire jurisprudence must be reconsidered.

Source: The Hindu

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