

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.02.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition Nos.3026 to 3028 of 2017
and WMP.Nos.2951 to 2956 of 2017

Rebecca Ann Malstead .. Petitioner in
W.P.No.3026/2017

Abigail Mala Malstead, (minor)
rep. by her mother &
natural Guardian
Rebecca Ann Malstead ..Petitioner
in W.P.No.3027/2017

Morgan Roger David Malstead, (minor)
rep. by her mother &
natural Guardian
Rebecca Ann Malstead .. Petitioner in W.P.No.3028/2017

Vs.

1.Union of India
rep. by its Secretary,
Ministry of Home Affairs,
Foreigners Division,
Opp. Parliament Road,
Near Jandhar Mandhar,
NDCC-2 Buildings,
New Delhi.

2.The District Magistrate cum
District Collector,
Office of the Collectorate,
Udagamandalam,
The Nilgiris.

3.The Principal Secretary to Government,
Public (Foreigners) Department,
Chennai-600 009.

4.The Superintendent of Police,
Office of the Superintendent of Police,
The Nilgiris. .. Respondents in all W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for a writ of Certiorari, calling for the records connected with the second respondent's order No.RC-C328735/2015 dated 24.01.2017 and to quash the same.

For Petitioners: Mr.P.Wilson, Senior Counsel
for M/s.Paul & Paul

For Respondent : Mr.G.Rajagopalan,
No.1 Additional Solicitor General
for Mr.Rabu Manohar

For Respondent : Mr.S.Rajeswaran,
Nos.2 to 4 Special Government Pleader

C O M M O N O R D E R

By consent, the writ petitions are taken up for final disposal.

2.The writ petitions have been filed by the petitioners challenging the order of the second respondent in his proceedings in RC-C3.28735/2015 dated 24.01.2017 and to quash the same.

3.The germane facts leading to the filing of the present writ petitions are as follows:

a)The first petitioner is the mother and the petitioners 2 and 3 are the children of the first petitioner. They are Overseas Citizens of India (herein after referred to as OCI). The first petitioner and her husband, who are now in India were carrying on the noble activities of rescuing women from trafficking. They are also helping the children. They have been doing the said activities with the help and assistance of the police officials.

b)In the year 2001, when they were in Mumbai, the first petitioner's husband was asked to leave India along with his family by a notice of the Deputy Commissioner of Police, Special Branch-II, CID and FRRO, Mumbai, dated 16.04.2001, on the ground that he was acting as a Human Right Activist in India which amounts to violation of Visa Rules. This was challenged by her husband in Bombay High Court by way of filing a writ petition in W.P.No.1051 of 2001. Bombay High Court vide order dated 27.04.2001, disposed of the said petition with a direction that the authority shall pass orders in accordance with law, after affording due opportunity of personal hearing to the petitioner's husband. However, no further action was taken by the authorities.

c)After some time, the first petitioner and her family moved down to Ooty, Tamil Nadu. According to the first petitioner, there also they continued to rescue the children from prostitution and also fighting against sex trafficking and they have not done anything against Visa norms. They are not doing missionary activities but only doing legal works. The first petitioner's two children are studying in Hebron School at Udagamandalam in Grades 12 and 13 respectively. They are students and they never involved in any missionary activities or any other illegal activities.

d)While so, in the year 2015, i.e., on 14.12.2015, the second respondent issued a notice under Section 3(2)(c) of the Foreigners Act, 1946 read with Government of India Notification of the Ministry of Home Affairs dated 13.07.2000, all bearing Ref. No.RC.C3.28735/2015 dated 14.12.2015, directing them to leave India within seven days. This time also, neither notice was issued nor any opportunity was given to the petitioner's family by the authorities concerned. Challenging the same, they filed writ petitions in W.P.Nos.40955 to 40958 of 2015 before this Court. This Court, by order dated 24.12.2015, set asides the order of the second respondent dated 14.12.2015 only on the ground that no notice was issued and further, gave a direction to the second respondent to pass an appropriate orders in accordance with law, after giving an opportunity of personal hearing and notice to the parties concerned. The first petitioner and her husband were called for a personal hearing on 20.04.2016 and they also had appeared before the second respondent and their statements were recorded.

e)In the meanwhile, in May 2016, when their elder daughter who was studying in USA, came to India, was stopped from entering into India at Delhi Airport, on the ground that she was indulging in missionary activities and sent back. Similarly, the husband of the first petitioner who went to Nepal for a meeting was also stopped by the Indian Immigration officials at Raxaulin, Bihar from entering into India on 19.11.2016, on the ground that he was indulging in missionary activities and on national interest, confiscated the PIO card from him and he was sent back.

f)According to the first petitioner, She, her husband and their family members have not indulged in any missionary work. Today, her husband and elder daughter are prohibited from entering into India. While so, she was once again called by the office of the second respondent on 30.01.2017 for attending an enquiry on 31.01.2017. When she appeared before the second respondent on 31.01.2017, she was served with the impugned order dated 24.01.2017, directing the first petitioner and her two children who were aged about 15 and 14 years respectively, to leave India within 15 days. Hence, the petitioners have left with no other option except to file the present writ petitions.

4.The learned Senior counsel for the petitioners would draw the attention of this Court to Section 7A of the Citizenship Act, 1955 which was amended in 2015, speaks about the rights and privileges of the OCI, under Section 7(B)(1) of the Citizenship Act, except certain rights which has been specifically mentioned under Section 7(B)(2) of the Citizenship Act. He would submit that neither the petitioners nor her family members have engaged in any missionary works. That apart, the learned Senior counsel contended that Article 25 of the Constitution of India guarantees to all persons freedom to profess, practice and propagate religion and missionary activity and hence, the same is per se neither banned nor an unlawful in any part of India under any statute till date. Therefore, the impugned order passed by the second respondent dated 24.01.2017 against the petitioners is illegal. The authorities concerned have mechanically invoked the provision under Section 7(D)(e) of the Citizenship Act.

5.Moreover, the alleged reports of the Superintendent of Police, Nilgiris, which were obtained on 07.11.2016 and 26.12.2016 calling upon the petitioners is only an after thought. Even the copies of the said reports have not been furnished to the petitioners, so as to enable them to give their reply or refute the allegations levelled against them and therefore, without giving an opportunity to the petitioners is per se illegal and therefore, the learned Senior Counsel would contend that the impugned order passed by the second respondent dated 24.01.2017 is liable to be set aside.

6.In support of his contention, the learned Senior counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in Ravi Yashwant Bhoir V. District Collector, Raigad and others [2012(4) Supreme Court Cases 407], wherein at para 47, it has held as follows:

"47.This Court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite."

7.In the light of the aforesaid decision, the learned Senior counsel would submit that something done without lawful excuse is legal malice and it is a deliberate act done by the

authority in disregard to the rights of the others and if it is an act done wrongfully or wilfully without any proper reason or cause, then it is illegal.

8.The learned Additional Solicitor General appearing on behalf of the first respondent, on instructions though not filed any counter, even at the admission stage mainly would contend that first of all, the first petitioner cannot seek the relief of Guarantee under Article 25 of the Constitution of India, unless she specifies that she is doing the missionary work. He would contend that without filing an affidavit to that extent, merely, contending that she is also entitled to do missionary work or to profess, practice and propagate religion, cannot be a ground to seek the relief as stated in the prayer.

9.According to the learned Additional Solicitor General, the first petitioner had admitted that neither she nor her family members indulged in any missionary work whereas the learned Senior counsel for the petitioners argues that even missionary work is not prohibited under Constitution of India. Therefore, he is aware that the petitioners are involved in missionary activities.

10.Apart from that, the learned Additional Solicitor General would contend that under the Citizenship Act and Foreigners Act, there is no prohibition for the Government to take necessary action if they are in doubt on national security, especially, in case of foreigners in the interest of the country under the Citizenship Act and the Foreigners Act. It would be taken in this case as the allegations against the petitioners is that they are doing missionary activities from the year 2001 onwards.

11.Furthermore, it is the contention of the learned Additional Solicitor General that the order passed on 14.12.2015, was challenged by the petitioners in W.P.Nos.40955 to 40958 of 2015 before this Court and the same was allowed only on the ground that no notice was issued and enquiry was conducted. In the instant case on hand, the first petitioner and her husband were given an opportunity of personal hearing on 20.04.2016 and in the statement given by the first petitioner herself reveals that they have been asked whether they have indulged in any missionary activities and they have also clearly stated that they have not involved in any alleged missionary activities and it is only a false one and they only abide by the Constitution of India. After sufficient opportunity having been given, the authority not only on the basis of the reports of the Superintendent of Police, Nilgiris, wherein the persons involved have been specifically stated to be doing missionary work, which are against the provisions of the Visa Norms and it is specifically stated that no person can do the missionary work without a Specific permission and Visa and they should obtain Special Visa for

doing missionary work. Therefore, the present argument of the petitioners that there is no bar for doing even a missionary work under Constitution of India whereas as per Visa Norms, to carry out missionary work, they should obtain Missionary Visa which has been clearly stated by the Government in their letter dated 04.01.2016. It is clearly stated that OCI Card is a special benefit of Indian origin in the form of lifelong Visa. However, as per the provisions of the Visa norms, they need to get prior permission as per the manual of the Foreigners Act for involvement in such activities and without permission, indulging in such activities amounts to Visa violation and hence, invites appropriate action under the Foreigners Act.

12. Apart from that, it is also specifically stated that any foreigner indulging in any missionary activities shall do the same only on requirement of Missionary Visa and therefore, when the petitioners did not have Missionary Visa, any such activities done was found out by the police and on enquiry by the Department, if it confirms their doubt, then they are entitled to pass an order under the Foreigners Act. The various notification under Section 7(B) of the Citizenship Act, 1955, OCI persons are given only a restricted rights and it is not the entire right as a citizen given. Therefore, the impugned order passed by the second respondent is valid. In fact, as per the direction of this Court, opportunity of personal hearing of the petitioners was given and they did not asked for any other documents, they have been put on notice regarding the alleged offences and only thereafter, they have passed the impugned order dated 24.01.2017. When that being so, they cannot have any grievance against the order passed and according to him, the Government of India is empowered to deport any person from the country when it affects the national interest. Therefore, the order passed by the second respondent dated 24.01.2017 is in accordance with law.

13. In fact, the learned Additional Solicitor General submitted that as per the direction of this Court, file also placed before this Court. The said file contains the reports of the Superintendent of Police, Nilgiris, recommending for necessary action.

14. Heard the learned counsel appearing for the petitioners and learned Additional Solicitor General for the first respondent as well as the learned Special Government Pleader appearing on behalf of the respondents 2 to 4.

15. Even as per the documents, it is a case where the Overseas Citizens of India is seeking interference of this Court on their deportation. First of all, the main contention raised by the learned Senior counsel for the petitioners is that even if missionary activities are being done, it is not any illegal act under the Constitution of India and according to Article 25 of the Constitution of India, they got legal

right to do anything in India. Constitution of India empowers to follow any religion, that being so, the present notice calling upon the petitioners to go out of the country is illegal. Further, he would contend that the authority has simply passed the order dated 24.01.2017.

16. On a careful perusal of the entire records, pleadings and documents produced on the side of the petitioners as well as the file produced by the Government of India, it is obvious that right from the year 2001, the petitioners and their family members alleged to have been committed violation of Visa Norms. According to the letter dated 04.01.2016, it is very crystal clear that no person can conduct any missionary work in India without valid Visa, even if they are OCI. The following notification of the Government clearly speaks about it and the same is extracted hereunder for ready reference:

CURRENT CENTRAL LEGISLATION:

RULES, ORDERS AND NOTIFICATIONS OF CENTRAL GOVERNMENT

"126. Ministry of Home Affairs, Not.No.S.O.542(E), dated April 11, 2005, published in the Gazette of India, Extra., Part II. Section 3(ii), dated 11th April, 2005, p.2, No.373 [F.No.26011/2/2005-IC.I]

In exercise of the powers conferred by sub-section (1) of Section 7-B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7-A of the said Act shall be entitled, namely:-

a) grant of multiple entry lifelong visa for visiting India for any purpose;

b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and

c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

49. Ministry of Overseas Indian Affairs, Noti.No.S.O.12(E), dated January 5, 2007, published in the Gazette of India, Extra., Part II, Section 3(i), dated 6th January 2007, p.1, No.7

In exercise of the powers conferred by sub-section(1) of Section 7-B of the Citizenship Act, 1955, (57 of 1955), the Central Government hereby specifies the following rights to which persons registered as Overseas Citizens of India under Section 7-A of the said Act, shall be entitled, with

effect from the date of publication of this notification in the Official Gazette, namely:-

1.Registered Overseas Citizens of India shall be treated at par with Non-Resident Indians in the matter of inter-country adoption of Indian children.

2.Registered Overseas Citizens of India shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.

3.Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.

48.Ministry of Overseas Indian Affairs, Noti.No.S.O.36(E), dated January 5, 2009, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 6th January 2009, P.1, No.33

In exercise of the powers conferred by sub-section (1) of Section 7-B of the Citizenship Act, 1955, (57 of 1955), and in continuation of the notifications of the Government of India in the Ministry of Home Affairs, Number S.O.542(E), dated the 11th April, 2005 (2005-CCL-III-386[126]) and in the Ministry of Overseas Affairs, S.O.12(E), dated the 6th January 2007 (2007-CCL-III-131 [49]), the Central Government hereby specifies the following rights to which the persons registered as the overseas citizen of India under Section 7-A of the said Act, shall be entitled, namely:-

a)parity with non-resident Indian in respect of -

i)entry fees to be charged for visiting the national monuments, historical sites and museums in India;

ii)pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:-

i)doctors, dentists, nurses and pharmacists;

ii)advocates;

iii)architects;

iv)chartered accountants;

b)to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts."

17.The learned Additional Solicitor General contended that in view of the above legislations of the Government of India, the impugned order passed by the second respondent

dated 24.01.2017 is only in accordance with law. Whereas the learned Senior counsel for the petitioners cited a website and would submit that what are all the activities can be conducted by the OCI Card holder and the relevant portion of the comparative chart is as follows:

COMPARATIVE CHART ON NRI/PERSON OF INDIAN ORIGIN/OCI CARDHOLDER

	NRI	Person of Indian Origin	OCI Cardholder
10.What activities can be undertaken in India?	All activities	Activity as per the type of visa obtained	All activities except research work for which special permission is required from the Indian Mission/Post/F RRO concerned.

Therefore, according to the learned Senior counsel for the petitioners that the petitioners have right to do all activities except research work, which implies that they can also do missionary work.

18.In response, the learned Additional Solicitor General drew the attention of this Court to the affidavit filed by the petitioners in which they have stated that they have not indulged in any missionary activities whereas the learned Senior counsel for the petitioners in his argument stated that as per the Constitution of India, the petitioners are not barred from doing missionary activities, which is neither banned nor an unlawful activity and also further contended that the petitioners are not willing to file an affidavit to the effect that they are doing missionary work.

19.Be that as it may, the question arises is that whether the impugned order passed by the second respondent dated 24.01.2017 is in accordance with law. It is to be noted that right from the year 2001, the petitioners have been directed to leave India i.e., on 16.04.2001 and 14.12.2015 but both the orders were passed without any notice or affording an opportunity of personal hearing to the petitioners. Admittedly, now, the second respondent has passed the impugned order dated 24.01.2017, after issuing notice and affording an opportunity of personal hearing to the petitioners. It is also accepted by the first petitioner/Rebecca Ann Malstead that she and her husband had already participated in the enquiry. It is also admitted by the first petitioner that her elder daughter who was not allowed to enter into India on the

ground that she has indulged in missionary activities and similarly, in the month of November 2016, her husband who came from Nepal after attending a meeting was prevented from entering into India. Now both her husband and her elder daughter are not in India.

20. In view of the impugned order dated 24.01.2017, the District Magistrate cum District Collector has categorically given the details of personal hearing of the petitioners and further, he has also considered the detailed report of the Superintendent of Police, Nilgiris but he does not mean that he is only been guided by the Superintendent of Police's report. If it is so, in the impugned order, it is stated that through the enquiry conducted and report received from the Superintendent of Police, Nilgiris, it is confirmed that Mr. Gregory Omar Malstead, Mrs. Rebecca Ann Malstead and their two children Abigail Mala Malstead, Morgan Roger David Malstead are actively involved in missionary and proselytization activities, which are detrimental to national interest, in violation of their POI/OCI norms as per Section 7D (e) of the Citizenship Act, 1955. It implies that the authority has independently come to a conclusion de hors the finding or an opinion or reports given by the Superintendent of Police, Nilgiris and on the earlier occasion, this Court has directed only to give opportunity of personal hearing to the petitioners before passing any orders and the same has been done at the instant case on hand. Section 3(1) of the Foreigners Act speaks out that the Central Government is empowered to make order/rules/provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India, or their departure therefrom or their present or continued presence therein. Foreigners Act also envisages that Government is empowered to pass necessary orders.

21. The learned Senior counsel for the petitioners relied on the judgment of the Hon'ble Apex Court and contended that unfair procedure has been adopted by the authority which violates Article 21 of the Constitution of India, does not arise in this case in view of the fact that the petitioners were given opportunity of personal hearing and thereafter only, the impugned order has been passed by the second respondent and under those circumstances, the order of the authority/District Magistrate cum District Collector, Nilgiris dated 24.01.2017 does not suffer from any material irregularities or patent illegalities in the eye of law and the same does not warrant any interference by this Court.

22.The very important aspect is also to be considered by this Court before coming to the conclusion is that Central Government definitely in the interest of nation safety can always take a decision especially in respect of a foreigner to leave the country of course only after giving reasonable opportunity as contemplated under Law and in fact, that the order of deportation in respect of the first petitioner/Rebecca Ann Malstead is absolutely correct. However, in regard to the other petitioners namely, Abigail Mala Malstead and Morgan Roger David Malstead, who are children studying in 12th and 13th standard respectively in the Hebron School and their courses will only be completed in the month of June 2017 and June 2018, if they are deported now then it will affect their future life.

23.It is to be taken into consideration that already the first petitioner's husband and her elder daughter are outside India. Though the impugned order is correct, considering the condition of these children that if they are also deported, their education and future will become a question and therefore, this Court deems it fit only to extend the time for deportation of children taking note of their education. Even according to the two children, one child is in the hostel and another is in the house. Since they are completing their studies in the month of June 2017 and June 2018 respectively, this Court taking into consideration the inordinate difficulties faced by the children, so as to give some opportunity atleast to safeguard their future, the order of the second respondent in respect of deportation only with respect of the children though held is correct only is postponed till July 2017. Among the two children, one will complete the course in the month of June 2017 itself and other will have time to get admission for the next academic year which will commence only in the month of August 2017 and by that time, they would have settled in their country.

24.It is made clear that this Court having confirmed the impugned order of the second respondent dated 24.01.2017 but only postponed the deportation time in respect of the children upto 31st July 2017 taking into account, the education of the children. Similarly, in respect of the the first petitioner/Rebecca Ann Malstead, since 15 days period expires for her, as she has to make arrangements for her children who have been left to stay upto 31st July 2017 in India, in order to accommodate hostel for the other child, deportation time for her also is postponed or extended only till 26th February 2017.

25.The writ petition is dismissed with the above observations and directions. It is made clear that the impugned order passed by the second respondent dated

24.01.2017 is hereby confirmed but the period of deportation of the petitioners are extended as stated supra. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy/

Sub Assistant Registrar

DP

To

- 1.The Secretary,
Union of India
Ministry of Home Affairs,
Foreigners Division,
Opp. Parliament Road,
Near Jandhar Mandhar,
NDCC-2 Buildings,
New Delhi.
- 2.The District Magistrate cum
District Collector,
Office of the Collectorate,
Udagamandalam,
The Nilgiris.
- 3.The Principal Secretary to Government,
Public (Foreigners) Department,
Chennai-600 009.
- 4.The Superintendent of Police,
Office of the Superintendent of Police,
The Nilgiris.

+3ccs to M/s. Paul & Paul, Advocate, S.R.No.9887 to 9889
+1cc to Mr.B. Rabu Manohar, Advocate, S.R.No.9817
+1cc to the Government Pleader, S.R.No.10227

GJII(CO)
Eu 22.02.17

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