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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 65/2017 & CrI.M.A. No. 265-266/2017

AMIR AHMED KHMES AHMED & ANR.

..... Petitioner

Through: Mr. Fazal Abdali and Mr. Gunjan
Singh, Advocates

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mr. Dev P Bhardwaj, CGSC with Mr.
Surender Kumar and Meena Pathak,
Adv. for respondents

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

10.01.2017

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1. The counter affidavit has been tendered in court and the same is taken on record. Learned counsels have been heard. The counter affidavit filed on behalf of respondent no.2 by Mr. Prabhakar, the Foreigners Regional Registration Officer (FRRO) has been perused.

2. The petitioners have filed the present writ petition to seek a restraint against their deportation. They also seek a direction for quashing of the decision taken by the respondents to deport them. They seek a direction that their detention at Lampur Detention Centre be quashed and they also seek a direction that the respondents should sympathetically consider their

application for grant of a Long Term Visa (LTV) as per the internal guidelines of the Ministry of Home Affairs.

3. The two petitioners, namely, Amir Ahmed Khmes Ahmed and Salih Ali Balal Eissa are Sudanese nationals. They have disclosed in their writ petition that they belong to a non-arab ethnic tribe. They allege that the people of their tribe are being persecuted and hounded in Sudan. The petitioners have set out in the petition whatever they claim to be there past in Sudan.

4. In the writ petition the petitioners merely state that in respect of both of them, United Nations High Commissioner for Refugees (UNHCR) has issued certificates, whereby they have been recognised as refugees. In the synopsis filed along with the writ petition, in respect of petitioner no.1, it is, inter alia, stated:

“Seeing no scope of surviving in the camp, the petitioner took the first available escape opportunity afforded to him and fled to India with the help of his employer (on a student Visa)”.

He further stated:

“In India, the petitioner no.1 was studying BCA from Aditya Institute of Management, Bangalore. Later he approached the UNHCR on 26.03.2014 to seek asylum in India. During the pendency of his application, and while he still held a valid visa, residential permit, registration certificate and an asylum seeker’s certificate from UNHCR, the petitioner no.1 was detained by the FRRO, Delhi and sent to Lampur on 11.09.2014. He was released on the very next day. No justification for this detention was ever given by the FRRO.

Subsequently, petitioner no.1 was recognised as a refugee by the UNHCR on 03.08.2015 and the UNHCR also sent a letter dated 23.09.2016 to the FRRO recommending that Mr. Amir be

issued a LTV and his delay/ overstay if any be condoned”.

5. In respect of petitioner no.2, in the synopsis, the following disclosure is made:

“Thus on 08.11.2011, the petitioner no.2 managed to obtain a student visa to India and enrolled in the BCA course at the Krupanidhi Degree College in Bangalore on his arrival.

On moving to Delhi, the petitioner no.2 approached the UNHCR to seek asylum in India and was recognised as a refugee by the UNHCR on 02.01.2016. The UNHCR vide letter dated 04.08.2016 recommended to the FRRO that the petitioner no.2 be issued a LTV and his delay/ overstay if any, be condoned”.

6. The counter affidavit filed by the respondents, however, reveals the status of the petitioners and, in particular, the manner in which they obtained student visa and violated its terms and conditions. In relation to petitioner no.1, in para 3 and 4 of the counter affidavit under the heading preliminary submission/ brief facts of the case, the following is stated:

“3. That the scrutiny of his records revealed that Sudan national Amir Ahmed Khmes arrived in India on 26.09.2013 via ICP Bangalore on the strength of Sudanese Passport No.P00868204 (DOI:14.05.2013 & DOE: 13.05.2018) and Indian Student Visa No.AP5013940 (DOI:17.09.2013 & DOE 17.09.2016). That he took admission in a BCA course at Aditya Institute of Management & Research, Bangalore. He was registered with FRRO, Bangalore vide RCF/16807/Sudan/2010 and RP (Residence Permit) was issued upto 30.07.2015. However, thereafter he didn't get renewed his registration. That it is also worth mentioning that petitioner no.1 (Amir Ahmed Khmes) is not in possession of his original Passport and has submitted copy of police report (dt. 06.05.2015) with regard to loss of his passport.

4. *That during confrontation petitioner no.1 accepted that he has not completed his education/ studies in India, which was the sole basis of his entry into India. Further, he left his registered address in Bangalore without informing the registering authority (i.e. FRRO, Bangalore) and was illegally residing in India, in violation of visa rules & conditions”.*

7. Similarly, in relation to petitioner no.2, the facts disclosed in the counter affidavit are as follows:

“8. That the scrutiny of his records revealed that Sudanese national Salih Ali Belal Eissa arrived in India on 08.11.2011 via ICP Bangalore on the strength of Sudanese Passport No.P00384682 (DOI: 11.10.2011 & DOE: 10.10.2016) and Indian Student Visa No.AP3074720 (DOI: 25.10.2011 & DOE: 25.10.2014). That he took admission in a BCA course at Krupanidhi Degree College, Bangalore. He was registered with FRRO, Bangalore vide RCF/26778/Sudan/ 2011 and RP (Residence Permit) was issued upto 25.10.2014. That it is also pertinent to mention here that in between the said foreign national visited his native country as he departed from India on 25.05.2014 and re-entered into India on 18.08.2014. That FRRO, Bangalore intimated that he was overstaying since 26.10.2014 and his whereabouts were also not confirmed by local police, therefore, a LOC was got opened vide LOC No.2015406706 (Old Suspect SR No.452841), with the remark “DETAIN AND INITIATE SUITABLE LEGAL ACTION & INFORM ORIGINATOR”.

9. That during confrontation petitioner no.2 also accepted that he has not completed his education/ studies in India, which was the sole basis of his entry into India. He left his registered address in Bangalore without informing the registering authority (i.e. FRRO, Bangalore). That he is illegally residing in India despite expiry of his Indian visas (which was valid upto 25.10.2014), in violation of visa rules & conditions”.

8. From the above, it would be seen that both the petitioners came to India on a student visa and took admission at institutions in Bangalore. Both

the petitioners did not complete their education and left their registered address at Bangalore without intimation and in violation of the Visa rules and conditions. The aforesaid relevant and material facts have been suppressed by the petitioners in the writ petition.

9. The submission of learned counsel for the petitioner is that the petitioners were granted refugee status by the UNHCR and if they are deported to their native country i.e. Sudan, it is likely that they may not survive in view of the persecution of their tribe. Learned counsel submits that both the petitioners were granted refugee status while they were still holding a valid student visa.

10. The petitioners violated the visa conditions and the said fact has not been disclosed in the writ petition. They may have been declared refugees on account of the threat perceived by them in their native country. However, firstly, while approaching this court, they were bound to make full and complete disclosure of all the relevant facts, which have not been done. Consequently, this court is not obliged to exercise its discretionary writ jurisdiction in favour of the petitioners. Secondly, the persons who violate the terms and conditions of the visa, on which they arrived in this country, cannot turn around and assert their right to remain in the country and to obtain a LTV. If there is a threat perceived by them in returning to their own country, they can be deported to another country that they may opt to proceed in consultation with the UNHCR. There is no absolute right in the petitioners that they must continue to reside in this country and that too after having violated the law.

11. Learned counsel for the petitioner has sought to place reliance on the

judgment of this court in *Dongh Lian Kham v. Union of India & Anr.*, W.P. (CrI.) No. 1884/2015 decided on 21.12.2015 in support of his submission.

12. A perusal of the said decision, firstly, does not show that the petitioners were found to have suppressed material and relevant facts from the court and, secondly, it was not found by the court that they had violated the visa conditions on which they were permitted to enter the country.

13. For all the aforesaid reasons, I find no merit in this petition. The same is, accordingly, dismissed.

14. In view of the aforesaid, the respondents are at liberty to deport the petitioners. The petitioners may be deported to their own country, namely, Sudan, or to another country, in consultation with UNHCR, provided the other country is willing to accept them.

VIPIN SANGHI, J

JANUARY 10, 2017

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