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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10499/2016 and CM Nos. 41196/2016 & 5559/2017**

LIGY ABRAHAM

..... Petitioner

Through: Mr Robin David, Mr Dhiraj Philip
and Ms Sambha Rumnong,
Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr Sanjeev Narula and Mr Amit
Mahajan, CGSC with Mr Kunal Dutt,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.09.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition being aggrieved by the decision of the respondents to revoke the petitioner's status as an Overseas Citizen of India (hereafter 'OCI') and proscribe her entry in this country. The petitioner is residing in India since 2014.

2. The petitioner migrated to Houston, Texas, USA in May 2005 and completed her undergraduate degree in Architecture (B. Arch) from Anna University, Chennai, India in July 2006. Thereafter, in May 2010, the petitioner completed her Masters in Construction Management from University of Houston, in Houston, Texas, USA.

3. The petitioner was granted US Citizenship on 31.07.2012 and was issued a US Passport bearing No. 497756027. Thereafter, the petitioner applied for being considered as an Overseas Citizen of India. She was registered as an Overseas Citizen of India on 12.03.2014 and was issued an OCI Card bearing Registration No. A1539742 along with a life - long Indian Visa.

4. The petitioner states that she was working as an Architect in India since March 2014 and travelled to Houston, USA to meet her friends and relatives in January 2016. She travelled back to India on 17.08.2016; however, was not permitted to enter the country and was deported.

5. The petitioner contends that her parents are residing in Kerala and the respondents' action of cancelling her OCI card and placing her name on the 'barred list' has effectively disabled her from attending to her parents in India. The petitioner also impugns the respondents' actions as ill-informed and violative of Article 14 of the Constitution of India.

6. The counter affidavit filed on behalf of the respondents indicated that the Consul General of India (hereafter 'CGI') in Houston had issued a Look Out Circular (hereafter 'LOC') on 27.01.2016 which was then forwarded to the Ministry of Home Affairs, Foreign Division under the cover of the letter dated 12.04.2016. It was alleged that certain nationals of US/Zimbabwe/Canada were involved in Missionary activities in India and their visas have been refused and cancelled. It is further stated that CGI at Houston had also requested that the petitioner be blacklisted.

7. It is, therefore, apparent that the petitioner was denied entry pursuant

to the LOC issued by CGI at Houston, USA. By an order dated 17.07.2017, this Court directed the respondents to produce all relevant documents on the basis of which the respondent had taken a decision to blacklist the petitioner and/or issue the LOC. Thereafter, on 08.08.2017, this Court was informed that the files available with the respondents do not indicate any material which would warrant issuing the LOC, except that there was a request made by the CGI at Houston.

8. In the circumstances, this Court directed the respondents to produce the file of the CGI at Houston. The said file has now been produced in Court. Apart from mentioning that the petitioner is a part of an organisation, which is engaged in Missionary activities, there is no material whatsoever, which would not even remotely indicate that the petitioner had carried out any unlawful activity in India.

9. Mr Sanjeev Narula, learned counsel appearing for the respondent also drew the attention of this Court to a communication issued by Ministry of External Affairs for withdrawal of blacklisting order.

10. This Court finds it very difficult to countenance the manner in which the respondents have proceeded to issue the LOC without reference to the petitioner. In the event, the respondents were desirous for withdrawing the petitioner's OCI Card, the least that was expected of them was to give an intimation of the same to the petitioner. In the present case, no steps were taken to either issue a show cause notice or provide a hearing to the petitioner. The petitioner was not even informed that her OCI Card had been cancelled; she became aware of the same at the IGI Airport, when she

was not allowed to enter in this country.

11. The provisions relating to Overseas Citizenship of India were introduced in the Citizenship Act, 1955 by the Citizenship (Amendment) Act, 2003 by Act No. 6 of 2004 with effect from 03.12.2004. Section 7A of the Citizenship Act, 1955 as introduced with effect from 03.12.2004 and as amended by Act No. 32 of 2005, reads as under:-

"7A. Registration of Overseas Citizen of India Cardholder.—(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

(a) any person of full age and capacity,—

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grandchild or a great grandchild of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.

(2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing persons of Indian Origin Cardholders shall be deemed to be Overseas Citizens of India Cardholders.

Explanation.—For the purposes of this sub-section, “Persons of Indian Origin Cardholders” means the persons registered as such under notification number 26011/4/98 F.I., dated the 19th August, 2002, issued by the Central Government in this regard.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder."

12. Section 7D provides for cancellation of the registration as Overseas Citizen of India Cardholder and reads as under:-

"7D. Cancellation of registration as Overseas Citizen

of India Cardholder.—The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that—

(a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or

(c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person."

13. Section 7B of the Act provides for conferment of rights on the Overseas Citizens of India.

14. It is apparent from a plain reading of Section 7D of the Citizenship Act, 1955 that an OCI registration can be cancelled only in certain circumstances as specified there in.

15. Concededly, in the present case, none of the conditions as specified in Section 7D are met. Thus the Ministry has rightly called for restoration of the petitioner as an Overseas Citizen Card Holder.

16. As noticed above, the manner in which the petitioner's Overseas Citizenship had been cancelled, falls short of standards of fairness that is expected of any State agency. Plainly, the decision to cancel the petitioner's Overseas Citizenship as well as the manner in which the same was done is arbitrary and unreasonable and falls foul of Article 14 of the Constitution of India.

17. In view of the above circumstances, the present petition is allowed with cost quantified at ₹25,000/-.

18. The respondents are directed to forthwith restore the petitioner's OCI Card. The cost awarded, be paid within a period of two weeks from today. The LOC issued against the petitioner is set aside and it is directed that the name of the petitioner be removed from the 'black list' maintained by the respondents.

19. The present petition and pending applications are disposed of with the aforesaid directions.

VIBHU BAKHRU, J.

SEPTEMBER 11, 2017
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