

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.313 OF 2013***

Shri Robert John Ryalls,
Aged 61 years, married,
Son of Shri Ronald Ryalls,
Residing at House no.521,
Caraim, Chora, Tiswadi, Goa.

... Petitioner.

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Bardez, Goa.
2. Dy. Supdt. Of Police &
Foreigners Registration Officer,
Office of the Foreigners Registration Officer,
Police Head Quarters, Panaji, Goa.
3. Union of India, through Ministry of
Home Affairs, Foreigners Division,
Represented by Shri Vinod Kumar,
major of age
Dy. Secretary to the Govt. of India,
Jaisalmer House, 26, Mansingh Road,
New Delhi-110011.
4. Smt.Kay Kanizbanu Ryalls alias
Kay Kanizbanu Raipar alias Kaniz Ryalls
Mohammedali Rajpar alias Kaniz Kay Ryalls,
Married, aged about 57 years,
Daughter of Shri Mohamedali Rajpar,
Residing at House no.485, Caraim, Chora, Tiswadi, Goa at present residing at

C/o Nazrana Shaikh, Plot no.A-18, First Phase,
House no.B-23/A-2,
Navelkar Hill City, Kadamba Plateau,
Baiguinim, Goa.

... Respondents

Mr. Jitendra Supekar with Mr. S.Sayed, Advocates for the Petitioner.

Mr. A.Jamadar, Additional Government Advocate for Respondent nos.1 and 2.

Mr. Mahesh Amonkar, Standing Counsel for Respondent no.3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 4 October 2018.

Oral Judgment (Per N.M.Jamdar, J.) :

1. By this Petition, the Petitioner has challenged the orders dated 17 August 2011 and 1 May 2013 passed by the Ministry of Home Affairs - Respondent no.3. The Petitioner has also sought that his 'Person of Indian Origin Card' issued to him by the High Commission of India in London, be returned to him.

2. The Respondent no.4 is an African National and the Petitioner is a British National. They were married on 29 December 1993 at Sheffield in United Kingdom. The marriage was registered in the office of the Marriage Registrar District of Sheffield in United Kingdom. Since the Respondent no.1 is holding a PIO (Person of Indian Origin) Card, being a spouse, the Petitioner was granted

Person of Indian Origin Card. The Respondent no.4 filed an application on 15 May 2009 under Section 28 of the Special Marriages Act, 1982 in the Court of the Principal District and Sessions Judge, North Goa, for mutual divorce. The Respondent no.4 claimed that the Petitioner and the Respondent no.4 are living separately since the year 2005 and they did not wish to continue with the marriage. The learned Principal District Judge recorded the statements of the Petitioner and the Respondent no.4 granted Provisional Divorce, dated 13 January 2010, on the ground that the parties were residing separately and there was no possibility of reconciliation between them.

3. On 23 February 2011, the Respondent no.4 filed an application that provisional divorce granted on 13 January 2010 made absolute under Article 40 of the Law of Divorce and the final decree be published. Notice of the application was served on the Petitioner. The Petitioner filed reply stating that the Special Marriage Act was not extended to the State of Goa and the Court had no jurisdiction to pass the order dated 13 January 2010. The Petitioner also informed that he had withdrawn his consent.

4. On 17 August 2011, the Respondent no.3 - the Deputy Secretary, Ministry of Home Affairs passed an order that the PIO Card issued to the Petitioner be surrendered since the marriage

between the Petitioner and the Respondent no.4 has been dissolved by mutual consent. On 19 August 2011, pursuant to the order the Petitioner surrendered the PIO Card for residential purpose. On 22 August 2011 the Petitioner sent a legal notice to the Respondent no.3 in respect of the order dated 17 August 2011. The Petitioner pointed that the order of the Court is only a provisional divorce and he has withdrawn his consent. The Petitioner called upon the Respondent no.3 to recall the order dated 17 August 2011. On 26 August 2011, the Respondent no.3 wrote to the Respondent no.4 whether any application for confirmation of provisional divorce has been filed. On 17 September 2011 the Petitioner made one more representation to the Respondent no.3. On 16 February 2011 the Director of Non Resident Indian Affairs, Ministry of Home Affairs, wrote to the Respondent no.3 in respect of the revocation of the Petitioner's PIO Card to expedite the proceedings.

5. In the meanwhile, the matrimonial proceeding were considered by the learned Principal District Judge. The learned Principal District Judge by an order dated 4 October 2012 upheld the contention of the Petitioner of lack of jurisdiction and that he has withdrawn the consent, and recalled the order dated 13 January 2010 and the application for divorce by mutual consent was dismissed. We are informed that this order is under challenge in this Court.

6. The Petitioner again wrote to the Respondent no.3 on 2 November 2012 drawing his attention to the fact that the learned Principal District Judge had withdrawn the order granting provisional divorce and the marriage subsists between the parties. The Petitioner, in the meanwhile, was directed to quit India and he filed Writ Petitions in this Court, which were disposed of on 9 July 2012 and the Authorities were directed to consider the matter. Protection was granted to the Petitioner subject to reporting him to the Police Station and to surrender the Passport. The Passport was accordingly surrendered by the Petitioner.

7. On 1 May 2013, the Respondent no.3 passed an order wherein the orders passed in the Writ Petition by this Court were considered and the representation of the Petitioner was also considered. The Respondent no.3 observing that the Petitioner and the Respondent no.4 are no longer living together as husband and wife and the wife is not willing to revive his PIO Card, there is no merit in the request of the Petitioner for revival of his PIO Card. Challenging this order and earlier order directing to deposit the PIO Card, the Petitioner has approached this Court.

8. Notice was issued to the Respondents on 8 May 2013. The Registry had endorsed that the Respondents were served and the matter was placed for admission before the Division Bench. When

the Petition came up before us for final hearing. On 19 September 2018 we had passed the following order:-

“Heard learned Counsel for the Petitioner. None appears for the Respondents. The private Respondent has been served. No appearance is filed on behalf of the private Respondent.

2. The learned Counsel for the Petitioner submitted that by the impugned order whereby the PIO Card issued to the Petitioner has been revoked is contrary to the regulations framed by the Government of India. He submitted that as long as marriage between the Petitioner and the private Respondent subsists, the Petitioner continues to be the spouse of a Person of Indian Origin and therefore, entitled to the PIO Card.

3. In the impugned order, it is only stated that the Private Respondent has objected to continuation of the PIO Card on the ground that the Petitioner and the private Respondent have been separated. The learned Counsel for the Petitioner submitted that this ground is not contemplated under the Regulations.

4. Even though Rule has been issued in the year 2013, no reply has been filed by any of the Respondents. Prima facie, reading of the Regulations does not indicate that separation is contemplated under the Regulations.

5. None appears for the Respondents. We give them one more opportunity. S.O. to 4 October 2018. To be listed for final disposal. If no reply affidavit is filed by next date, the Respondents will forfeit their right to file reply affidavit.

6. *The learned Counsel for the Petitioner points out that in view of an order passed earlier, the Petitioner is reporting the Old Goa Police Out Post twice a week between 4 to 5 p.m. The learned Counsel for the Petitioner submits that the Petitioner is a senior citizen, he is resident in Goa and his passport is also in the custody of the Police and therefore, this condition be relaxed. There is merit in this submission.*

7. *We direct that till further orders, direction to the Petitioner to report to the Police Out Post twice in a week, stands suspended.”*

None appears on behalf of Respondent no.4. In spite of the fact that the Petition is pending since the year 2013, no reply is filed by any of the Respondents.

9. We have heard Mr. Jitendra Supekar, learned counsel for the Petitioner, Mr. A.Jamadar, learned Additional Government Advocate for the Respondent nos.1 and 2 and Mahesh Amonkar, learned Standing Counsel for Respondent no.3.

10. Mr. Supekar, the learned counsel for the Petitioner submitted that as per the 'Person of Indian Origin Card Scheme' a person who is spouse of a Person of Indian Origin is entitled to the Card. He submitted that there is no divorce between the Respondent no.4 and the Petitioner as on date and merely because they were living separately, the PIO Card validly issued, cannot be taken away

from the Petitioner. It is submitted that without there being legal severance of the status merely on the letter of the Respondent no.4, the PIO Card cannot be taken away. Mr. Supekar submitted that even the order dated 1 May 2013 all that the Respondent no.3 has stated is that the Petitioner and the Respondent no.4 are living separately and the purpose of living together as husband and wife has failed, which is not a germane fact.

11. The order dated 1 May 2013, which is under challenge is reproduced hereinbelow:

*“F.No.25022/82/2011-F.II
Government of India
Ministry of Home Affairs
(Foreigners Division)*

*1st Floor, NDCC-II Building Jai
Singh Road, New Delhi-110001
dated 01.5.2013.*

To,

*Mr. Tony M. Fernandes,
Superintendent of Police &
Foreigners Regional Registration
Officer, Panaji, Goa.*

*Sub: W. P. Nos.32/2012 and 382/2012 filed by
Mr.Robert Ryalls, UK national v/s. State &
ors.*

Sir,

I am directed to enclose herewith a copy of letter No.2013-14/PNG/C-619/007 dated 6.4.2013 along with a copy of his application dated 2.11.2012 and Court Order dated 3.4.2013 passed by Hon'ble High Court of Bombay at Goa, wherein it has mentioned that an application dated 2.11.2012 has already been made to the competent authority for revival of his PIO card. However, our ASG submits "that the competent authority shall accordingly decide the said application within eight weeks from today (i.e. from 3.4.2013). The statement was accepted by the Court and both the petitions accordingly disposed of."

2. Simultaneously, this Ministry has received a letter dated 8.4.2013 from Ms. Kanik Rajpar, wife of Mr. Robert John requesting not to re-instate his PIO card on the grounds that they have been separated since 2005 and have no relationship at all. A copy of her letter is enclosed herewith.

3. His application dated 02.11.2012 was earlier considered in this Ministry in the light of the above court cases pending before Hon'ble High Court and he was granted extension of X visa upto 31.3.2013. The said request dated 2.11.2012 for revival of his PIO card or grant of extension of his X visa has now been examined in this Ministry taking into account the PIO Card Scheme and the representation made by his wife and it is stated that the PIO card was issued to him on the ground of being married to an Indian to live together as a Husband and Wife. They have not been living together as Husband and wife for the last eight years and his wife is not willing to revive his PIO card. The very first purpose to issue a PIO card to the spouse of an Indian was to

facilitate them to live together without trouble of getting visa again and again. In this instant case, the purpose of living together as husband and wife has already failed. Therefore, there is no merit of revival of his PIO card.

4. *If there is pending court case, which requires his presence in India, he may be considered extension of X visa, otherwise he should be asked to leave India.”*

Thus, perusal of the order shows that the Respondent no.3 has held that because the Petitioner and the Respondent no.4 are not living together for last eight years and the Respondent no.4 is not willing to revive his PIO Card, the same cannot be revived.

12. The Respondent no.3 has not proceeded on the basis that there is a severance of relationship as husband and wife between the Petitioner and the Respondent no.4. The question is whether the fact that the Petitioner and the Respondent no.4 are not living together can be a ground for not reviving the PIO Card.

13. The Scheme for issuance of Person of Indian Origin Card Scheme of 2002 was brought into effect from 15 September 2002. Regulation 2 (b) defines “Person of Indian Origin” as under:

“2(b) “Person of Indian Origin” means a foreign Citizen (Not being a citizen of Pakistan, Bangladesh and other countries as may be specified by the Central Government from time to time) if,

- (i) he/she at any time held an Indian Passport; or*
- (ii) he/she or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the aforesaid countries [as referred to in (2)(b) above; or*
- (iii) he/she is a spouse of a citizen of India or a person of Indian origin covered under (1) or (ii) above.”*

This definition shows that, to be a Person of Indian Origin, the Person either has to fall in category (b) (i) or (ii) and even that Person to the spouse of Person of Indian Origin covered under Clause (i) and (ii) is entitled to PIO Card. As regards the entitlement of the Petitioner at the first instance to be given up the PIO card, there is no dispute as the Petitioner was given such Card. The cancellation of PIO Card is specified in the Regulation 12, which reads thus:

“Cancellation of PIO Card:

The Central Government may, by order, cancel a PIO Card, if it is satisfied that:

- (a) the PIO Card was obtained by means of fraud, false representation or the concealment of any material fact; or*
- (b) the PIO Card holder has shown himself by act or speech to be disaffected towards the Constitution of India and other laws of India; or*

(c) the PIO Card holder is a citizen or subject of any country at war with, or committing external aggression against India; or of any other country assisting the country at war with, or committing such aggression against India; or

(d) the PIO Card holder has been sentenced in India for indulging in acts of terrorism, smuggling of narcotics, arms, ammunition etc. or has been sentenced for committing an offence punishable with imprisonment upto one year or fine up rupees ten thousand; or

(e) it is not conducive to the public interest that the person should continue to hold a PIO Card. No reasons shall be assigned for cancellation of the Card”.

Admittedly, in the communication dated 1 May 2013, none of the above grounds have been put against the Petitioner. Therefore, the cancellation is not on any of the grounds.

14. The Respondent no.3 has stated that the Petitioner no longer is eligible to continue to hold the PIO Card. But under which provision this conclusion is founded, is not made clear. As on date, the relationship between the Petitioner and the Respondent no.4 as husband and wife has not been put to an end by any Court of law.

15. Needless to state that in case the marriage between the Petitioner and the Respondent no.4 is determined by any Competent Court of law, the status of the Petitioner as a spouse for a Person of

Indian Origin would come to an end.

16. But the Petitioner as on today continues to be a spouse of Person of Indian Origin. The Respondent no.3 cannot enter in various complicated issues regarding the emotional status of the relationship. This is clearly beyond the jurisdiction vested in the Respondent no.3. The Respondent no.3 cannot conclude that the purpose of marriage is lost. Even otherwise, the factum of living separately could be for various reasons. The Respondent no.3 is not a Court taking evidence to determine the emotional status of the parties to deduce there from the purpose of living together as husband and wife has failed. After sending one communication on 8 April 2013, the Respondent no.4 has not even appeared in this petition, let alone contest it. Respondent no.3 has not bothered to justify the order.

17. In view of the impugned orders, the Petitioner has surrendered not only the PIO Card but also the Passport and was visiting the Police Station twice in a week. The order of the Respondent no.3, which was beyond jurisdiction, has resulted in a needless harassment to the Petitioner. There is nothing in the impugned order to show that the Petitioner's presence in the Court is detriment to the security of the nation or any of the grounds in the Regulation 12 are made out against him. Merely on one letter of the

Respondent no.4, with a complete non-application of mind, the impugned order was passed. These orders cannot be sustained.

18. Accordingly, the impugned orders are quashed and set aside. The Respondent nos.2 and 3 are directed to return the PIO Card, Residential Permit and the Passport to the Petitioner, unless for any other lawful and valid reason, the same are required to be retained by the Authorities. These documents shall be returned within four weeks from today.

19. The Petitioner was directed to report the Police Station twice in a week, by an interim order. It has been pointed out to us that this direction was only because of the present controversy and for no other reason. In these circumstances, since we have disposed of the Writ Petition finally, this interim direction obviously will not continue.

20. Rule is made absolute in above terms.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.