

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.07.2018

+ **W.P.(C) 2286/2018 & CM 9443/2018, 20057/2018,
23854/2018**

KASHA ELIZABETH VANDE

..... Petitioner

Versus

MINISTRY OF HOME AFFAIRS AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Shoumendu Mukherji and Mr Raghav Awasthi.

For the Respondents : Mr Ashim Sood, CGSC with Mr Rhythm Buaria for Respondent Nos. 1 to 4.
Mr Kirtiman Singh, Mr Waize Ali Noor,
Mr Prateek Dhanda Respondent Nos.5 and 6.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that the order dated 18.12.2017 (hereafter 'the impugned order') passed by respondent no.1 (the Bureau of Immigration, Ministry of Home Affairs) be quashed. By the impugned order, the petitioner has been blacklisted in Category 'B'. The impugned order indicates that the petitioner has been blacklisted for visa violation for the reason for being involved in NGO activities in Puducherry while holding a Tourist Visa and, thus, violating the provisions of the Visa Manual. However, the respondents have affirmed that the reference to a Tourist Visa in the impugned order is an

inadvertent error and the petitioner was blacklisted for violation of the terms of the Business Visa issued to the petitioner.

2. The petitioner has assailed the impugned order, essentially, on the ground that no show cause notice was issued to her before the blacklisting and, thus, it is in violation of the principles of natural justice. The petitioner also contends that “being involved in NGO activities” is no valid reason for her to be blacklisted in terms of Category ‘B’ for visa violations.

Factual Background

3. The petitioner is a well-known woman entrepreneur and a citizen of United States of America (USA). Admittedly, she has been residing in India for last 14 years on a Business Visa. The petitioner came to India for the first time in 2001 with her family. The petitioner claims that in 2004, she opened a business concern (a café) named as KKA Exports Pvt. Ltd. also known as ‘Kasha ki Asha’ (hereafter ‘KKA’) in Puducherry. The said business concern was a retail business offering Indian products. It is also stated by the petitioner that she has been listed on “Lonely Planet” – a globally reputed Travel Guide – for the last fourteen years. In the meanwhile, the petitioner has been granted a Business Visa in 2007 and again in 2012.

4. The petitioner states that in 2012, the petitioner also started an enterprise (NGO) by the name of ‘PondiART’ for providing free access to art in public spaces. In pursuance of the object of PondiART, the petitioner has been organizing photography exhibitions/public

photography festivals every year since last five years. On 01.03.2016, the enterprise named 'PondiART' was registered as public charitable trust in Puducherry with the petitioner as one of its trustees.

5. In 2017, the petitioner submitted her application for Business Visa citing the purpose as "business visit to India for small and medium businesses". In her visa application, the petitioner had further mentioned that she is an employee of a restaurant in Tennessee, USA. The petitioner's Business Visa was renewed as a multiple entry business visa for the period commencing from April 26, 2017 up to April 25, 2027. Before this renewal, the petitioner was granted a Business Visa on two previous occasions, that is, on February 16, 2007 and April 10, 2012.

6. Thereafter, to the petitioner's surprise, a memorandum was issued on 18.12.2017 (the impugned order) by the Bureau of Immigration, Ministry of Home Affairs (MHA) directing to place the petitioner in the black list in Grade 'B' category for visa violation for being involved in NGO activities in Puducherry. Pursuant to this, a Look Out Circular (LOC) was also issued in the name of the petitioner with the instructions of preventing the petitioner from entering into India. The petitioner left India on 22.12.2017 and when she returned to India on 05.01.2018, she was refused permission to enter past the immigration. She was further informed by the immigration office that there was a particular noting on her file and, as a result, she will be required to leave the country. The aforesaid noting on the petitioner's file stated "PREVENT SUBJECT FROM ENTERING INDIA AND INFORM ORIGINATOR".

7. Aggrieved by the said action of the MHA, the petitioner filed a habeas corpus petition before this Court (W.P. (Crl.) 49/2018) on 05.01.2018. The said petition was taken up by the Court on 08.01.2018 and the Court was informed that the petitioner had arrived at the Chennai Airport on 05.01.2018, but was not permitted to enter India and was sent back on the same date on Kuwait airways flight no. KU334. In view of the above, the question of granting any relief restraining the respondents from deporting the petitioner did not arise and the petition was disposed of.

8. Thereafter, on 06.02.2018, the petitioner made a representation to various authorities including Ministry of External Affairs – MEA (respondent no.3), Ministry of Home Affairs – MHA (respondent no.1) and the Commissioner of Immigration (respondent no.2). On 12.02.2018, further representations were made on behalf of the petitioner to the concerned authorities. On 16.02.2018, the petitioner received a communication stating that the representations made on behalf of her had been referred to the MEA. Thereafter, on 24.02.2018, a representation was also made to the Lieutenant Governor of Puducherry by a number of local residents in support of the petitioner's return to Puducherry.

9. Subsequently, the petitioner also filed an application in the present petition (CM No. 9443/2018) seeking stay of the impugned order. The said application was listed before this Court on 12.03.2018. On that date, the Court issued notice to the respondents and further directed them to file the counter affidavit. Thereafter, another application was filed by the petitioner (CM No. 20057/2018) seeking a modification of the order dated 12.03.2018. The said application was withdrawn on 22.05.2018. In the

meanwhile, the petitioner also filed an appeal before the Division Bench of this Court (LPA 232/2018 captioned *Kasha Elizabeth Vande v. Ministry of Home Affairs & Ors.*) against the order dated 12.03.2018 passed by the Co-ordinate Bench of this Court. The said appeal was disposed of by an order dated 02.05.2018 directing the respondents to furnish to the petitioner the relevant documents containing reasons, which led to the blacklisting of the petitioner, within five days.

10. As noticed above, the petitioner has been blacklisted from entering into India on the basis of several allegations. First of all, it is alleged that the petitioner had made an incorrect statement in her visa application. The petitioner had stated in her visa application that she was employed and her employer's name was stated to be Nona Lisa LLC and employer's address was stated as "208, East Main Street, Watertown, TN 37184". In her pleadings, the petitioner has stated that she has been residing in India for the last 14 years and has been running her business venture in the name of "Kasha ki Aasha", which is a popular eatery and restaurant in Puducherry.

11. In view of the above, the respondents have claimed that the statement made by the petitioner in her Visa application, that she was employed with Nona Lisa LLC, is incorrect. This allegation has not been countered or refuted by the petitioner. Lastly, the learned counsel for the petitioner had also not contested the submissions made on behalf of the respondents in this regard.

12. The declaration on the visa application clearly indicated that the petitioner had understood that if the information provided in the form was

incorrect, she would be liable for denial of visit/entry. In the aforesaid circumstances, the decision of the respondents in denying entry to the petitioner cannot be faulted.

13. Secondly, the respondents have also alleged that the petitioner had overstayed in India beyond the permissible limit in violation of the visa conditions. It is specifically stated that in the year 2013 and in the year 2016, the petitioner had stayed in India beyond the period of 180 days on a single visit. This allegation is also not disputed.

14. Thus, the decision of the respondents to deny entry to the petitioner cannot be stated to be arbitrary or unreasonable. Lastly, it is also alleged that the petitioner has violated the terms of a visa. Admittedly, the petitioner had floated a Non-Government Organization (NGO) and involved in various activities undertaken by the said NGO 'PondiART'. It is also pointed out that the said NGO invites donations for funding its activities. It is also alleged that some of the photography exhibitions organized by the petitioner under the banner of PondiART have political overtones. This Court is not called upon to examine whether the allegation that the activities conducted by the petitioner have any political overtones is correct. Concededly, the petitioner had been carrying out various activities under the banner PondiART and this was not the purpose for which Visa was granted to the petitioner. The business Visa entitled the petitioner to visit India for commercial purpose. The petitioner was also not permitted to set up any proprietorship firm or partnership firm in India. Thus, there can be little doubt that the petitioner had, in fact, violated the Visa conditions by engaging in activities that did not strictly

fall within the scope of the activities for which the Visa had been granted.

15. The learned counsel for the petitioner had earnestly contended that most of the activities conducted by the petitioner as a trustee of the NGO (PondiART), was in association/cooperation with the Government agencies and, therefore, the Government of the Union Territory of Puducherry was fully aware of such activities which was for the benefit of the public at large. The question whether the Government of Puducherry was aware of the petitioner's activities is of little relevance. It is possible that public at large has also benefited from the activities conducted by the petitioner; however, that also is not the issue in the present proceedings. The limited scope of the controversy is whether the decision of the respondents to deny entry to the petitioner is informed by reason.

16. It is also material to note that the petitioner is a foreign citizen and does not enjoy the fundamental rights conferred on the citizens of the country. Article 19(1)(d) and 19(1)(e) of the Constitution of India guarantee the citizens of this country, a right to move freely throughout the territory of India and to reside and settle in any part of India. This right is not granted to any foreigner and, thus, a foreigner cannot claim any such right.

17. In *Hans Muller of Nuremburg vs. Superintendent, Presidency Jail, Calcutta and Ors.: AIR 1955 SC 367*, the Supreme Court held as under:

“33. Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India,

among them, the right "to move freely throughout the territory of India" and "to reside and settle in any part of India", subject only to laws that impose reasonable restrictions on the exercise of those rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land. This is conferred by article 21....

35. The Foreigners act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.

18. In *Louis De Raedt v. Union of India : (1991) 3 SCC 554*, the Supreme Court held as under:

“13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental right under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta and Ors.* MANU/SC/0074/1955 : 1955CriLJ876 that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to

be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.”

19. It is also well settled that Court will exercise powers under Article 226 of the Constitution of India only where the petitioner is able to establish a legal right. In *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors.: AIR 1962 SC 1044*, a Constitution Bench of the Supreme Court had observed as under:

“The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *The State of Orissa v. Madan Gopal Rungta*: [1952] 1 SCR 28, this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution.”

20. In view of the above, this Court finds no merit in the present petition and the same is, accordingly, dismissed. All pending applications are also disposed of.

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VIBHU BAKHRU, J

JULY 18, 2018
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