

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

Judgment reserved on: 27.02.2018

Judgment pronounced on: 20.07.2018

+ W.P.(C) No.10587/2016

MOHAMMAD ABDUL MOYEEDPetitioner

Through: Ms. Abha Roy with Mr. Piyush
Kant Roy, Advocates.

VERSUS

UNION OF INDIA & ORSRespondents

Through: Mr. Jasmeet Singh, CGSC for UOI
with Mr. Srivats Kaushal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Prefatory facts

1. The petitioner before this Court is a person by the name Md. Abdul Moyeed who seeks to enter India but has been denied permission to do so as he has been, evidently, put on a “Blacklist” by the respondents. The petitioner who was born and brought up in India migrated to Canada in 1997 and thereafter, applied and consequently, acquired Canadian citizenship in May, 2001.

1.1 The petitioner is also an Overseas Citizen of India Cardholder (in short ‘OCI cardholder’). The record reveals that the petitioner has two wives, one of whom is a Canadian national. From his Canadian wife, i.e., Ms. Rayees Fathima, he has three children whereas, from his Indian wife, i.e., one, Ms. Syeda Kausar, he has four children who hold Indian passports. It is also not in dispute that the petitioner is a Civil Engineer

by profession, which is a qualification that he acquired in India and that, his mother was a teacher in a Government school in Musheerabad, Hyderabad.

2. It is averred by the petitioner that since he received information that one of his sons who is differently abled was seriously ill, he decided to visit India and, accordingly, boarded a British Airways flight (BA0098) on 26.12.2015 to reach London from where he boarded another flight bearing no. BA0277 to reach India. This flight landed at Rajiv Gandhi International (RGI) Airport in Hyderabad.

2.1 Evidently, the petitioner arrived at the RGI Airport in Hyderabad, on 28.12.2015. It is when he reached the immigration barrier that he was accosted by an immigration officer, one, Ms. Afroza, who told him that he would have to return to Canada as the Government of India (in short 'GOI') had banned his entry into India.

2.2 It is the petitioner's case that he was questioned about his religion and after being confined, as indicated above, was forced to take the next flight out of Hyderabad, albeit, to Canada.

3. The petitioner, on 20.1.2016, wrote to respondent no.1 seeking explanation for what he construed was an illegal action. The petitioner, briefly, gave his background and also referred to the fact that for self-discipline, self-reformation and meditation he had attended "Tableeghi Jamaat"; which is a non-political and non-missionary organisation that works within the community. With this communication, the petitioner attached copies of his passport and the OCI card.

4. Since the petitioner received no favourable response to his communication dated 20.1.2016, his brother, one, Mr. A.K. Nazeer took recourse to the Right to Information Act, 2005 (in short 'RTI Act'). It appears that via Mr. Nazeer the petitioner's application dated 6.5.2016 was forwarded under the RTI Act to respondent no.1. In this application, like in the earlier communication, the petitioner set out his background and also adverted to the fact that he had attended "Tableeghi Jamaat" for the purposes already referred to above by him. What is important though, is that in this application the petitioner sought to know as to whether any case was registered against him so that he could take recourse to legal remedies. The petitioner also indicated in his application that he had authorised his brother i.e., Mr. Nazeer, to do the needful in the matter.

5. Evidently, respondent no.1, on receipt of the RTI application, transferred the same to respondent no.2 as it was linked with its functioning, by taking recourse to the provisions of Section 6(3) of the RTI Act. The transfer of the petitioner's application took place under a cover of letter dated 24.5.2016 and was addressed to the CPIO of respondent no.2; a copy of the said communication was sent to the petitioner's brother i.e. Mr. Nazeer.

6. Via communication dated 17.6.2016, Mr. Nazeer was informed by respondent no.2's CPIO that the information sought could not be furnished as the said entity was exempted from the provisions of the RTI Act. In this behalf, reference was made to Section 24(1) and the Second Schedule appended to the RTI Act. As per this communication, both, respondent no.2 and 3, being entities which are referred to the Second

Schedule of the RTI Act, were exempted from furnishing information of the kind sought for by the petitioner.

7. Being aggrieved, the petitioner preferred an appeal under the RTI Act. The Appellate Authority sustained the view taken by the CPIO by holding that since the information sought did not involve aspects concerning corruption or human rights violation the said information could not be furnished due to the exemption granted to both respondent no.2 and 3.

8. Not being satisfied, the petitioner approached this Court by way of a petition Article 226 of the Constitution. The notice in this petition was issued on 9.11.2016, whereupon, pleadings in the matter were completed. The respondents have filed a common counter affidavit wherein, broadly, the following stand has been taken:

(i) First, that no cause of action occurred within the territorial jurisdiction of this Court. This Court, therefore, ought not to entertain the present petition. In support of this plea, reference has been made to the judgment of this Court in *M/s Sterling Agro Industries Ltd. v. UOI & Ors.*, AIR 2011 (Del.) 174.

(ii) Second, the petitioner, who is a Canadian National was put on the Blacklist (Grade B) at the behest of the Superintendent of Police Mewat, Haryana vide reference no.12046/Sec, dated 23.10.2015 for violating the visa norms. In this behalf, a reference is made to the fact that the petitioner visited mosques and interacted with local muslim people in Mewat District, Haryana, to propagate “Tabligh-e-Jamath” ideology. The assertion was that since the petitioner had entered India on a tourist visa, he could not

have undertaken the said activity. In this regard, a reference is made to paragraph 16.2 of the Visa Manual.

(iii) Third, since the petitioner had violated the visa norms he was put in Grade B, which implied that his entry into India would stand banned for a period of 10 years and that it could be reviewed only after five years, and therefore, in the petitioner's case after October 2020. A reference in this regard was made to the Office Memorandum (O.M.) dated 23.8.2005, which was revised from time to time by the Ministry of Home Affairs vide O.M.s dated 21.10.2005, 12.4.2013 and 12.3.2014.

(iv) Fourth, though the aforementioned activity carried on by the petitioner was flagged even on 20.11.2015, he was not detained by the immigration officers while he was on his way to Toronto, Canada. The reason furnished for this apparent inaction was that what had been requested by the SP, Mewat, Haryana, was to ban the petitioner's entry into India. It is averred that information in this regard was furnished to the originator vide communication dated 30.12.2015.

(v) Lastly, the GOI had the sovereign right to regulate the entry and exit of foreigners into the country. The petitioner's entry into India was banned on the recommendation of SP, Mewat, Haryana, as he had violated the visa norms. The inclusion of the petitioner in the Blacklist by respondent no.2 was in consonance with the prevailing procedure as established by GOI, Ministry of Home Affairs vide O.M. dated 23.8.2005.

Submissions of counsel

9. The record will reveal that the petitioner has not filed a rejoinder to the counter affidavit filed on behalf of the respondents, though written submissions have been filed by both sides.

9.1 Arguments on behalf of the petitioner were advanced by Ms. Abha Roy, while submissions on behalf of the respondents were made by Mr. Jasmeet Singh, Central Government Standing Counsel (in short 'CGSC').

9.2 Ms. Abha Roy has, broadly, argued on the following lines. Firstly, that the petitioner's right under Article 21 of the Constitution cannot be curtailed at the whim and fancy of the respondents. The petitioner has a family in India with whom he wishes to interface. The action of the respondents whereby his entry into India has been banned has violated the petitioner's right under Articles 21 and 14 of the Constitution. It was emphasized that the petitioner had an unblemished past and that he had no criminal record either in India or Canada or even in any other country. In other words, the point that was sought to be made was that the petitioner was not a fugitive and hence the respondents' action of preventing his entry into the country was unlawful and *mala fide*, which was not supported by authority of law.

9.3 According to the learned counsel, the impugned action of the respondents which violated the petitioner's fundamental right to personal liberty, in effect, impinged upon his right to travel abroad. The charge was that the action of the respondents was arbitrary, discriminatory and violative of equal protection of law as provided under Article 14 of the Constitution.

9.4 The learned counsel submitted that the petitioner is an OCI cardholder, since 2006, when it was first introduced by the GOI to enable

hassle free travel to and from India qua persons who were foreign citizens of Indian Origin. The grounds on which an OCI Card can be cancelled are contained in Section 7D of the Citizenship Act, 1955 (in short the '1955 Act'). Since, there is no allegation whatsoever against the petitioner his OCI card remains intact.

9.5 In other words, the argument was that the respondents could not adopt the route of putting the petitioner on the Blacklist and ban his entry into the country while allowing him to hold the OCI card. Ms. Roy emphasized that since the petitioner's OCI card was valid and alive, he had a right to travel to India being in possession of a valid passport as the purpose of issuing the OCI card was to confer on the holder a valid lifetime visa. The cancellation of the OCI registration could be carried out by the Central Government only, if it is satisfied that the petitioner's case falls within the ambit of any one or more of the circumstances set out in clauses (a) to (f) of Section 7D of the 1955 Act. Since, the petitioner's case did not fall in any of the circumstances set out in clauses (a) to (f) of Section 7D of the 1955 Act his OCI registration had not been cancelled. Therefore, the respondents in denying entry to the petitioner had failed to follow due process of law and had, hence, violated Article 21 of the Constitution. In support of her submissions, learned counsel relied upon the following judgments:

(i) *Kent v. Dulles*, 1957 US 116;

(ii) *Maneka Gandhi vs. Union of India*, 1978 AIR 597; and

(iii) *E.P. Royappa v. State of Tamil Nadu*, 1974 2 SCR 348.

9.6. Besides this, learned counsel also argued that the principles of natural justice had been violated inasmuch as the petitioner was denied

the right to enter the country without having been issued a show cause notice or being given a hearing in the matter. Reference in this behalf was made to the judgment in the matter of *Schmidt v. Secretary of State of Home Affairs*. (1969) 2 Ch. D149.

10. Mr. Jasmeet Singh, on the other hand, argued in line with the stand taken in the counter affidavit which has been noted by me hereinabove. Learned counsel, however, emphasized the fact that the petitioner's name had been included in the Blacklist (Grade B) on account of misuse of the visa norms. In support of this contention, reliance was placed on an O.M. dated 30.12.2015 issued by the Foreigners Regional Registration Office (FRRO).

10.1 Learned counsel also submitted that the action qua the petitioner was taken in consonance with the O.M. dated 19/23.8.2005 as amended from time to time and that these O.M.s had to be treated as valid as no challenge had been laid qua them in the instant petition.

10.2 Furthermore, learned counsel submitted that since the petitioner had taken part in "Tableeghi Jamaat" activities; a fact which had not been refuted by the petitioner, his blacklisting was in order.

10.3 More importantly, learned counsel took the stand that the O.M. dated 30.12.2015 brought the petitioner's case within the circumstances adverted to in Section 7D of the 1955 Act. It was stated that since the petitioner had been blacklisted, therefore, his entry had been banned under O.M. dated 19/23.8.2005 for a period of 10 years, subject to review, as stipulated therein. In support of this submission, reliance was placed on the judgment of the Bombay High Court in *Satish Nambiar v. Union of India*, AIR 2008 Bom. 158.

10.4. Furthermore, learned counsel distinguished the judgments cited by the petitioner on Article 21, that is, the judgments rendered in *Satwant Singh Sawhney* and *Maneka Gandhi's* case by emphasising the fact that those were cases where Indian citizens wanted to travel outside India. The learned counsel relied upon the judgments of the Supreme Court rendered in *Louis De Raedt* to contend that the petitioner had a very limited right under Article 21 of the Constitution. Reliance was also placed on a judgment by a Single Judge of this Court in *Karm Kumar v. Union of India.*, 172 (2010) DLT 521 in support of his contention that just because the petitioner had been granted a lifelong visa in the form of an OCI card he could not flout visa norms.

Reasons

11. I have heard the learned counsel for the parties and perused the record. What emerges upon perusal of the record is as follows:

- (i) The petitioner migrated to Canada in 1997 and acquired Canadian Citizenship in and about May, 2001.
- (ii) The petitioner has two wives. From his first wife, who resides in India, he has four children who hold Indian passports. Both the wife and the children are Indian nationals. From this wife the petitioner has two sons and two daughters. The daughters were aged 16 years and 5 years. One of his sons who is apparently 20 years of age is differently abled. The petitioner claims that his decision to visit India in December, 2015 was triggered by the information received by him that his child who was differently abled was ill.

(iii) Besides this, the petitioner also claims that he is responsible for taking care of his mother-in-law, who is aged, approximately, 90 years and is residing in India.

(iv) The petitioner was denied entry into India when he landed in India on 28.12.2015.

(v) The petitioner has been blacklisted for his involvement in Tabligh activities at the behest of S.P., Mewat, Haryana.

(vi) The petitioner was issued an OCI Card in 2006 which remains valid and it has not been cancelled till date.

12. Given the aforesaid facts and circumstances and the arguments advanced on behalf of the parties, the following issues arise for consideration: -

i) Whether this Court would have territorial jurisdiction to entertain and adjudicate upon the instant petition?

ii) Whether the petitioner is entitled to invoke the provisions of Article 21 of the constitution?

iii) Whether the petitioner could be put on the Blacklist without following the principles of natural justice, especially, in the circumstances that he holds an OCI card which has not been cancelled as yet?

Issue No.(i)

13. Insofar as issue no.(i) is concerned, one needs to note the following:

- i) First, that all three authorities i.e., the respondents, are located in the territorial jurisdiction of this Court.
- ii) Second, though the petitioner was put on the Blacklist based on the input received from the Superintendent of Police, Mewat, Haryana via communication dated 23.10.2015, the decision to put the petitioner in the Blacklist under Grade 'B' category was taken by respondent no.2.

13.1 Therefore, not only does the cause of action, clearly, arise within the territorial jurisdiction of this Court, but also, as indicated above, respondent no.2 is located within the territorial jurisdiction of this Court. As a matter of fact, a perusal of Annexure-1 appended to the counter affidavit of the respondents would show that the petitioner was initially put in Grade 'C', and thereafter, the decision was taken to categorize him under Grade 'B'. Thus, the decision cited on behalf of the respondents that this court had no territorial jurisdiction to entertain the petition or that it was not a convenient forum and, therefore, the petition should not be entertained, to my mind is a submission that cannot be sustained.

13.2 The other ingredients, which, in this case, are a part of the cause of action i.e. filing of RTI application dated 06.05.2016, and its rejection as well as the dismissal of the Appeal by the Appellate Authority also occurred within the jurisdiction of this Court. For all these reasons, as alluded to above, this plea advanced on behalf of respondents cannot be accepted. Thus, the judgment of this Court in *Sterling Agro Industries Ltd.* cannot advance the cause of the respondents.

Issue No.(ii)

14. The Constitution of India makes it clear that certain fundamental rights provided in Part III are available only to the citizens of this country. Articles 15, 16 and 19 fall in this category, while the protection afforded by Article 14 and 21, amongst others, is also available to persons who are not citizens of India. Therefore, though the petitioner, to begin with, was an Indian national and upon migration to Canada, gave up his Indian citizenship, would also be entitled to invoke the provisions of Article 21 of Constitution of India on the ground that his personal liberty was fettered by denying him entry in the country, as that, in effect, prevented him from interfacing and mingling with members of his family who were domiciled in India. The fact that the petitioner's Indian wife and his children from her are Indian passport holders and are residing in Hyderabad, an aspect which is not disputed by the respondents, only strengthens his case for invoking the provisions of Article 21 of the Constitution.

14.1 Furthermore, the petitioner's assertion that even though he has been accorded lifelong visa by virtue of being issued an OCI card, which has been made inefficacious by including his name in the Blacklist without following the principles of natural justice is also an aspect which will get encompassed within the provisions of Article 21 of Constitution (see *Maneka Gandhi's case* AIR 1978 SC 596; *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675; *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360; *State of Maharashtra v. Champalal*, AIR 1981 SC 1675; and *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180).

14.2. Thus, this issue is decided in favour of the petitioner and against the respondents.

Issue No.(iii)

15. The facts, as they have emerged, show that the petitioner's name has been included in the Blacklist for having violated the visa norms, in particular, para 16.12 of the Visa Manual. The petitioner, according to the respondents, had visited India in and about October of 2015, when he is said to have taken part in Tabligh work.

15.1 According to the respondents since no permission was given to the petitioner to carry on Tabligh work and the fact that he had entered the country on a tourist visa led to the petitioner being put on the Blacklist under Grade 'B'.

15.2 The proposal in this behalf, even according to the respondents, was made by SP, Mewat, Haryana vide his communication dated 23.10.2015. The record shows that the petitioner was, originally put under Grade 'C' which after discussion was upgraded to Grade 'B'.

15.3 Given this background, there are two important things which are required to be borne in mind. First, that this activity i.e. Tabligh¹ work, is not a banned activity as it finds mention in the Visa Manual. The relevant provisions made in this behalf in the Visa Manual are contained in paragraph 16.12. The said paragraph is extracted hereafter for the sake of convenience: -

"16.12 Foreigners visiting for tabligh work:

All applications from foreigners intending to visit India in connection with tabligh work, or for training in such work,

¹ Communication of a message or revelation; fulfilment of a mission. Interchangeable with dawah (propagation of faith) in modern usage. It forms the spiritual imperative behind the largest contemporary Muslim transnational movement, the Tablighi Jamaat.

Tabligh, Oxford Islamic Studies, 7/20/2018, 10:00 AM
<http://www.oxfordislamicstudies.com/article/opr/t125/e2295>

shall be referred to the Ministry of Home Affairs before a visa is granted. The Mission Post must send full particulars including details about the applicant institution/ organization sponsoring the applicant. The organization/ institution where the foreigner intends to work, the places proposed to be visited, details of financial status, etc."

15.4. As is evident that a person wanting to do Tabligh work or wanting to train in such work is required to have their cases referred to the Ministry of Home Affairs before visa can be granted by the concerned Mission to enter the country. The concerned Mission is required to send full particulars of the applicant as also the organization/ institution where the foreign national intends to work and the places that he proposes to visit. The details of financial status are also required to be set out in the application.

15.5 The petitioner avers that he attended the Tableeghi jamat for self-discipline and self-reformation and meditation. It is not his case that he indulged in Tabligh activity or wanted to train in Tabligh work. Since, these were not aspects put to the petitioner by the proposer i.e. SP, Mewat, Haryana, the petitioner was unable to put forth his stand before him. A perusal of memorandum dated 30.10.2015, issued by the Foreigners Regional Registration Office (FRRO), shows that an LOC was issued qua him which also had its origin in the request made by the SP, Mewat, Haryana. The petitioner, on 20.11.2015, had left India via Hyderabad, when, as per the respondents he was allowed to leave the country as the request of the originator was to prevent his entry into India and not impede his exit from the country. Therefore, *prima facie*, the activity undertaken by the petitioner did not violate any provisions of the

Indian law as otherwise he could have been detained at the immigration barrier on 20.11.2015 itself.

15.6. Second, this very memorandum also shows that three things have been put against him. First, he visited various important mosques in Indian cities for Tabligh activities to strengthen Islamic brotherhood. Second, it was noticed that he believed in orthodox Islam with an intention to propagate that muslims should unite and should fight against western countries and the USA. Third, he may be involved in arranging funds for anti-national groups. A plain reading of these assertions made in the said memorandum show that they are nebulous and based on surmises, at least, at this stage. The only factual aspect qua which, perhaps, there is little room for denial is that the petitioner visited certain mosques where Tabligh work was carried out. The other aspects which are suggested in the memorandum do not follow as has been, presently, sought to be portrayed by the respondents. At least, I was not shown any material which would demonstrate that the petitioner wanted to propagate the idea of muslims uniting and fighting against the western countries and USA or that he was involved in arranging funds for anti-national groups. What has to be kept in mind is that the petitioner is residing in Canada and that if he was indulging in propagating the idea of uniting muslims to fight against the western countries and the USA surely the Canadian authorities would have taken note of these aspects. The petitioner seems to be moving around like any other free citizen of Canada.

15.7 It is in this context that one has to look at the petitioner's statutory rights as an OCI cardholder. The fact that the petitioner, despite being put on the Blacklist has his OCI registration intact shows that the

respondents are unsure of their assertions reflected in the O.M. dated 30.12.2015. The proposer i.e. the SP, Mewat, Haryana, apart from saying that the petitioner took part in Tabligh work did not insinuate or suggest that he wanted to unite the muslims and have them fight against the western countries and the USA or that he was involved in arranging funds for anti national groups. Because, if that was the case, surely the Central Government would have stepped in and exercised its powers under Section 7D of the 1955 Act to seek cancellation of the petitioner's OCI registration.

15.8 The grounds for cancellation are set out in Section 7D², and if what is asserted in the O.M. dated 30.12.2015 is right then, surely, the Central Government would have exercised powers under Section 7D sub-clause (e) of the 1955 Act.

15.9 The fact that the petitioner has a lifelong visa by virtue of his holding an OCI card is not disputed by the respondents. That being said one can also not quibble with the proposition that a foreigner cannot claim unimpeded entry into the country. However, if the State chooses to

² Section 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 of India, 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, has been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interest 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.

(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.

deny a foreign national's request to enter India, the decision of the State can be tested on the anvil of Article 21 and 14 of the Constitution by Courts in India. This is more so where the foreigner is a person of Indian origin who has been given certain rights which are notified by the Central Government under Section 7B³ of the 1955 Act. One of these rights, even according to the respondents, is the right to have a lifelong visa, unless cancelled in accordance with law.

16. The petitioner chooses to bank on these rights to visit members of his family which includes his ailing and differently abled son and other children including his wife and aged mother-in-law. The respondents have denied him that right without giving him an opportunity to explain himself. The provisions of 1955 Act do not provide for a pre-decisional hearing. It is, however, far too well settled that even if a statute does not provide for a personal hearing, the said right will be read into the statute.

³ Section 7B - Conferment of rights on Overseas Citizen of India Cardholder.—

(1) Notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An Overseas Citizen of India Cardholder shall not be entitled to the rights conferred on a citizen of India—

- (a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
- (b) under article 58 of the Constitution for election as President;
- (c) under article 66 of the Constitution for election as Vice-President;
- (d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;
- (e) under article 217 of the Constitution for appointment as a Judge of the High Court;
- (f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;
- (g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;
- (h) under sections 5, 5A and section 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;
- (i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order in that behalf, specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

The respondents cited in support of their stand a decision of a Division Bench of the Bombay High Court in *Satish Nambiar's* case to contend that pre-decisional hearing need not be given when the OCI registration is cancelled. According to me, the said judgment is distinguishable on facts as in this case the petitioner's OCI registration has not been cancelled as yet. In any event, if a pre-decisional hearing was not possible the respondents, to my mind, were obliged to grant in the very least a post-decisional hearing to the petitioner. The respondents have not, admittedly, done so and have placed him on a Blacklist which has exposed him to grave civil consequences. As per the respondents' own stand, the decision to include the petitioner's name in the Blacklist is valid for 10 years but reviewable after 5 years. The record shows that the petitioner was put under Grade 'C' which was upgraded to Grade 'B'. Had the respondents given the petitioner an opportunity to explain himself, it may have led to a situation that even if the decision to include him in the Blacklist was sustained, his grading could have been different. It is only when an authority which is conferred with powers to take a decision is open to affording an opportunity to persons qua whom it proposes to take a decision which has civil consequences that a wholesome and just decision can be rendered. Many a time, what seems to be an open and shut case, upon hearing the accused persuades the decision maker to reach a different conclusion. The observation of Megarry J, in *John vs Rees* (1969) 2 All. ER 274 being apposite are set forth hereafter:

"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice, 'When something is obvious,' they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and

giving an opportunity to be heard? The result is obvious from the start.” Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were of unanswerable charges which, in the end, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events”

16.1 This decision was cited with approval by a Division Bench of this Court of which I was also a member, in the judgment dated 19.12.2018, passed in W.P.(C) No. 6974/2008, titled: *Moser Baer India Ltd v The Additional Commissioner of Income Tax & Anr.*

17. Having regard to the aforesaid, I am of the view that the respondents have wronged the petitioner inasmuch as that they have not afforded him any opportunity to explain his stand. Accordingly, the respondents are directed to reconsider the decision taken qua the petitioner of including his name in the Blacklist by affording him an opportunity to explain himself. The respondents will be at liberty to grant the petitioner a personal hearing in the matter by arranging for a video conference at its Mission in Canada. While reconsidering their decision the respondents will also take into account the family status of the petitioner, his status in the Canadian society, his track record of having claimed no involvement whatsoever in any criminal activity and his general reputation amongst the members of his community who reside in India.

17.1 The respondents while re-examining the petitioner's case will also bear in mind the doctrine of proportionality which is deeply embedded in the constitutional ethos of this country. It forms part of the concept of judicial review. One of the facets of Article 14 is that the punishment accorded to a delinquent should be proportionate to the offence committed by him. (See *Ranjit Thakur v Union of India (UOI) & Ors.*, (1987) 4 SCC 611 and *S.R. Tewari v Union of India*, (2013) 6 SCC 602)

17.2 Every violation of visa norm cannot possibly lead to banning a person from entering into the country unless there is material to show that the person concerned acted in a manner which was inimical to our national interest. As noted above, in this case no such material was placed before me. It is to be borne in mind that profiling a person solely on the basis of the religion he or she practices is contrary to our constitutional creed.

18 The needful will be done by the respondents within eight (8) weeks of receipt of the copy of this judgment. Furthermore, the respondents will pass a speaking order and serve a copy of the same on the petitioner.

19. The writ petition is disposed of in above terms.

RAJIV SHAKDHER
(JUDGE)

JULY 20, 2018/rb/hs