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

+ LPA 548/2018 & CM. Nos. 39589/2018, 39590/2018, 39591/2018
and 39592/2018

KASHA ELIZABETH VANDE

..... Appellant

Through: Mr. Ankur Sood, Mr. Shoumendu
Mukherji, Mr. Romila Mandal and
Mr. Ankush Bhardwaj, Advs.

versus

MINISTRY OF HOME AFFAIRS & ORS

..... Respondents

Through: Mr. Ashim Sood, CGSC with
Mr. Rhythm Buaria, Advs. for R1 to
R4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **26.09.2018**

CM No. 39590/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM No. 39591/2018 (for delay)

This is an application filed by the appellant seeking condonation of 32 days delay in filing the appeal.

For the reasons stated in the application, the delay of 32 days in filing the appeal is condoned, the same is allowed.

Application stands disposed of.

LPA 548/2018

1. This appeal has been filed by the appellant challenging the order dated July 18, 2018 passed by the learned Single Judge in W.P. (C) 2286/2018 whereby the learned Single Judge has dismissed the writ petition filed by the petitioner challenging her blacklisting for visa violation on the ground that she is involved in NGO activities in Puducherry while holding a Tourist Visa and, thus, violating the provisions of the Visa Manual.

2. That facts as noted from the record are that the appellant, who is a citizen of United State of America (USA) has been residing in India for last 14 years on a Business Visa having come to India for the first time in 2001 with her family. It is her case that she opened a business concern, (a Cafe) named as “*KKA Exports Pvt. Ltd*” in Pudcherry. The appellant was granted Business Visa in the year 2007 and again in 2012. It is the case of appellant that in 2012, she also started an enterprise (NGO) by the name of ‘*PondiART*’ for providing free access to art in public spaces and have been organising photography exhibitions / public photography festivals every year for the last five years. In fact, the enterprises ‘PondiART’ was registered as public charitable trust in Puducherry with the appellant as one of its trustees. In 2017, the appellant submitted her application for Business Visa citing the purpose as “*business visit to India for small and medium*

businesses". It is noted that in her application the appellant had further mentioned that she is an employee of a restaurant in Tennessee, USA. The appellant's Business Visa was renewed as a multiple entry business visa for the period commencing from April 26, 2017 up to April 25, 2027.

3. On December 18, 2017 a memorandum was issued by the Bureau of Immigration, Ministry of Home Affairs (MHA) directing to place the appellant in the black list in Grade 'B' category for visa violation for being involved in NGO activities in Puducherry. A look out circular was also issued in the name of the appellant with the instructions of preventing the appellant from entering India. The appellant left India on December 22, 2017 and when she returned to India on January 05, 2018, she was refused permission to enter past the immigration. She was informed that a decision has been taken to prevent her from entering India.

4. Learned Single Judge, rejected the challenge by noting the following facts:

(i) The appellant had made an incorrect statement in her visa application that she was employed in Watertown, TN 37184.

(ii) It was clearly mentioned in the visa application that if the information provided in that form was incorrect she would be liable for denial of visit / entry.

(iii) The respondents have alleged that the appellant had overstayed by 180 days in India beyond the permissible limit in violation of the visa conditions.

(iv) The appellant had floated a Non-Government Organisation and involved in various activities undertaken by the said NGO "PondiART" which invites donation for funding its activities and some of the exhibitions organised by the appellant under the banner of "PondiART" have political overtones.

(v) The appellant has been carrying out various activities under the banner of the NGO and this was not the purpose for which visa was granted to the petitioner.

(vi) The Business Visa entitled the appellant to visit India for commercial purposes.

(vii) The appellant was also not permitted to set up any proprietorship firm or partnership firm in India.

(viii) The appellant 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.

5. The learned Single Judge has also rejected the plea taken on behalf of the appellant that the impugned action of the respondents is violative of Article 19(1)(d) and 19(1)(e) of the Constitution of India.

6. The learned counsel for the appellant submits that the appellant has been staying in this country for the last 14 years, and that too on a business visa and was carrying community service through her NGO activities. In fact, she had done extensive work for the local, economic, tourism and or in

Puducherry which are permissible in view of the nature of visa granted to her.

7. Even otherwise, it is his submission that the impugned action is in violation of principle of natural justice as no hearing was given to her before the impugned action was taken and even otherwise, the blacklisting of the appellant is disproportionate to the violations alleged against her.

8. We are not impressed by the submissions made by the learned counsel for the appellant, in view of the findings arrived at by the learned Single Judge as noted above, which we find are justified in the facts of this case. That apart, it is conceded by the learned counsel for the appellant that as she was on business visa, she could not have started proprietorship firm / partnership firm in India as was done by her by running a cafe.

9. The appeal is dismissed.

CM Nos. 39592/2018 (for permission) & 39589/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 26, 2018/aky