

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 26342 OF 2019

Azhar Yusuf Jethawa & Anr	...Petitioners
<i>Versus</i>	
State of Maharashtra & Anr	...Respondents

Mr Ashok Yadav, *for the Petitioners.*
Mr BV Samant, *AGP for State-Respondent No.1.*
Mr Parag A Vyas, *for Respondent No.2.*
Mr SB Sable, *PI and Mr Abhijit Shinde, API, F.R.R.O. Office and SB-II, C.I.D., Mumbai, present.*

**CORAM: S. C. Dharmadhikari &
G. S. Patel, JJ.**

DATED: 27th September 2019

PC:-

1. Not on board. Urgency is made out.

2. By this Writ Petition under Article 226 of the Constitution of India the Petitioners are challenging a notice styled as a 'Leave India Notice', a copy of which is at Exhibit "A" at page 21 to the Petition.

3. To appreciate the challenge, we must set out the facts. These facts are taken from the Writ Petition itself and there is no dispute. The 1st Petitioner is not the recipient of this notice for the simple reason that his own citizenship is not in dispute.

4. The 2nd Petitioner is the mother in law of the 1st Petitioner, having married her daughter. The Petitioner says that her daughter, Susanna Petrosyan, came to India in 2004 on a tourist visa. The daughter stayed in India for one month, and went back on 18th August 2004. The daughter was in continuous touch with a person named Sumith Yeram Reddy. The 2nd Petitioner along with her daughter came to India in February 2006. The daughter married the said Sumith Reddy on 27th October 2007 in Hyderabad. It is then complained that the said Sumith Reddy went to Australia and never came back.

5. The 2nd Petitioner, therefore, along with her daughter went back to Armenia (undisputedly she is an Armenian citizen), from where she got her Indian visa extended for four years. Sumith Reddy was however not willing to return to India. The petitioner No. 2

along with her daughter went back to Armenia. On various occasions, this goes on, but once Sumith Reddy was unwilling to join the company of the daughter of petitioner No. 2 in India, the daughter applied for divorce by instituting a case in the Family Court at Bandra, Mumbai. Ultimately that marriage was dissolved by mutual consent on 31st March 2016.

6. When the daughter of the petitioner was going through a difficult phase in her life, she met one Azhar Jethwa, petitioner No. 1. They fell in love and got married on 13th December 2016. Thus, the daughter of petitioner No. 2 is stated to be the legally wedded wife of petitioner No. 1.

7. The petition projects a grievance that being a senior citizen and an old lady residing alone, she has none to take care of her in her old age. It was, therefore, decided by the daughter and the mother that the mother would reside in India. Possibly the petitioner No. 1 has no objection to this stay of his mother-in-law in India. However, it is common ground that the 2nd petitioner's citizenship is of a foreign country. It is further common ground that the Foreigners

Act 1946 is the Act applicable to such cases. It is further undisputed that there is a distinction in law between holding an Indian passport and a passport of another country which would enable that holder to visit India only by obtaining what is popularly known as visa. There are categories of visas issued by the respondents before us. One such visa is the 'X' category visa. That is elaborated to be a tourist visa. Naturally, therefore, such a visa holder has an outer limit prescribed within which he must leave India.

8. Now the petitioners counsel would argue before us that this Leave India Notice is ex facie vitiated by breach of principles of natural justice. Secondly, the mandate of Articles 14 and 21 of the Constitution of India can be invoked even by a non-citizen for the wording therein is "person". Thirdly and importantly, when the petitioner No. 2 has made an application and that application is under consideration, the authorities could not have abruptly terminated her stay in India by directing her to Leave India within seven days from the impugned notice.

9. Mr Parag Vyas who had appeared yesterday when this matter was circulated and today when it is taken out of turn, brought to our notice that this petitioner No. 2 can come back to India only when she returns to Armenia and applies for 'X-2' visa (dependent visa) and that application would be considered in accordance with law. Presently Mr Vyas has been instructed to state that even the daughter of petitioner No. 2 has applied for extension of her visa and that application is under consideration. His argument is that we must not equate both requests together or consider the case of mother-in-law, petitioner No. 2 along with the couple. These are distinct applications and they would be considered in accordance with law is the submission of Mr Vyas.

10. Now, such a writ petition as was presented yesterday naturally would require us to make a reference to the facts as set out in the writ petition itself. The petitioner No. 2 in paragraph 3 of this petition says that her visa was extended till January 2018. She applied for extension being Application ID No. 17121861D5J9 together with her daughter. She applied for a visa extension for two

years. She received a letter dated 21st December 2017 directing her to furnish the requisite documents of her son-in-law. Now, the requisite documents could not have been anything other than establishing the citizenship and Indian citizenship of petitioner No. 1. The petitioner was called upon to do so, so that the authorities can take a call whether the daughter of the petitioner No. 2 has married an Indian citizen. The petitioner claims to have sent all the documents to the concerned authorities. She claims in paragraph 4 of the petition that whenever she attended the office of the authorities, an assurance or promise was given to her. She would wait for quite some time and claims to have been misguided by the authorities. The authorities ill-treated her and insulted her and did not pay any attention to her application. In fact, in paragraph 4 even the daughter's application is referred to. We at once clarify that we are not concerned with the daughter's application or her right for she is not before us. The petitioner today say that in the meantime the passport of petitioner No. 2's daughter expired. In the hope that her extension application would be favourably considered, despite the visa granted in favour of the petitioner being restricted and with

a specific outer limit, the petitioner No. 2 continued to reside in India.

11. The counsel for the petitioner could not point out to us any provision in any law which would enable a person like the petitioner No. 2 to reside in India even after the expiry of the tourist visa. That an application was made by her is but an incomplete version of the entire story. The petitioner No. 2 applied and in relation to that application, particulars were called for by the authorities. Now the petition itself would reveal an interesting fact. The petitioners are stated to be residing at Building No. 11A, Flat No. 204, Oshiwara Rosewood Cooperative Housing Society Limited, Jogeshwari (West), Mumbai 400 102. This is the address mentioned in the cause title of the petition and we take that they were residing there on 24th September 2019, i.e, the date of presentation of this petition. Now, when the petitioner No. 2's daughter applied for divorce by filing Petition No. A-6021 of 2012 in the Family Court at Bandra and when the decree was passed she was stated to be residing at 704, Mangeela Apartment, Versova Link Road, Near

Renaissance Club, Andheri (West), Mumbai. Naturally the undisputed fact is that the petitioner No. 2 has resided with her. When the daughter of petitioner No. 2 married the petitioner No. 1, it is stated that they moved to Apartment No. 72, Akash Ganga Building, Oshiwara, Andheri (East), Mumbai 400 063. This was the address at which the communication at Exhibit "D", page 27 dated 21st December 2017 was despatched. Now, it is stated that even that was not the place where the parties resided for the packet has come back. Once the packet came back enquiries revealed that from the Mangeela Apartment the place of residence shifted to another place/ premises and that is stated to be in Oshiwara. Now, this Akash Ganga Building is one place where they stated to have resided but there is a document at page 31 of the paper-book which shows that the petitioner No. 2, Ruzanna has resided at 103, Aditi Apartments, Apna Ghar 'A' Wing, Lokhandwala Andheri (West) Mumbai 400 053. This was stated to be 2012 and before that. In 2019 itself there are two address changes discerned from the record. The claim is that the petitioner No. 2 has resided in India with her daughter from 2010 but she goes on changing addresses and claims

to have informed the authorities about the same, then, definitely there would have been a communication or an acknowledgement of the authorities acknowledging the receipt of any communication or letter or application in prescribed format to note the changed addresses. There is nothing like that even referred in the petition nor on the record. If this is how the petitioner No. 2 has continued to reside in Mumbai, then the stand of the authorities that she stays with her daughter on a tourist visa but continues even after the expiry of the same is correct. Naturally a X visa being a tourist visa would denote that one is a tourist and visitor to India. On such a visa or such a category of visa one cannot reside indefinitely or as a dependent, and without any extension in the period prescribed in the issued document. The petitioner No.2 has never sought any other visa other than tourist visa.

12. To our mind, therefore, neither there is any illegality nor perversity in the impugned communication. In fact, Mr Vyas says that the petitioner No. 2 was informed even on 2nd October 2018 by a communication that the petitioner No. 2 will have to go back the

country where she is a citizen, namely, Armenia, come back on a new X-2 visa with her daughter, subject to the objections, if any to her arrival in such a manner. The petitioner does not abide by this stipulation the the petitioner No. 2 does not abide by the law either. She does not also dispute that there is a power to issue such Leave India Notice flowing from the law itself. The Leave India Notice, copy of which is at Exhibit "A", reads as under:

"No. 18/FRRO/SBII/FSC/2019
F.R.R.O. & Addl. Commissioner of Police,
S.B.II, C.I.C., Mumbai – 400 001

Date : 08/08/2019

LEAVE INDIA NOTICE

Where as you, Mrs. Ruzanna Petrosyan, a Armina National (DOB: 20/08/1948) holding Passport No. AK0629135 (i/o-01/10/2010, v/t-01/10/2020, i/a-Yerevan) have entered India on 31/10/2010, through CSI Airport, Mumbai on the strength of multiple entry "Entry" Visa No. AL999577 (i/o- 13/10/2010, v/t- 13/01/2012, i/a/- Army-Armenia-Yerevan) which was extended till 15/01/2018 provisionally as the case was under consideration with MHA New Delhi.

You were informed to approach this office to pay necessary visa fees in order to issue Exit Permit, granted by

Ministry of Home Affairs vide ID no. MH0201477416, dated 01/10/2018. However, you did not turn up to the office to pay the fees and continued to stay in the country illegally.

Your act amounts to violation of provisions laid down in Section 14 of the Foreigners Act 1946.

You are, therefore, directed to LEAVE INDIA within 07 days after the receipt of this notice. Failure to comply with the above directions will render you liable for prosecution and forcible deportation under relevant provisions of law.

F.R.R.O.
Mumbai.

To,
Mrs. Ruzanna Petrosyan,
Armenia nationa,
Passport No. AK0629135,
("Entry" visa No. AL999577)"

13. A perusal of the same itself reveals that there is no factual dispute in this case. The petitioner No. 2 entered India on 31st October 2010 on the strength of a multiple entry tourist visa. It was extended till 15th January 2018 provisionally as the case was under consideration with the Ministry of Home Affairs, New Delhi. A bare perusal of Exhibit "A" would show that the petitioner No.2 was informed to approach the office of FRRO and pay necessary visa

fees in order to issue exit permit granted by the Ministry of Home Affairs dated 1st October 2018. She did not turn up to pay the fees and continued to stay in India illegally. That is impermissible in terms of Section 14 of the Foreigners Act 1946.

14. By the Foreigners Order 1948 which is an Order issued in terms of Section 3 of the Foreigners Act 1946, the power to grant or refuse permission to enter India is conferred in terms of paragraph 3. That paragraph 3 reads thus:

“3. Power to grant or refuse permission to enter India.— (1) No foreigner shall enter India —

(a) otherwise than at such port or other place of entry on the borders of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf, either for foreigners generally or for any specified class or description of foreigners; or

(b) without the leave of the civil authority having jurisdiction at such port or place.

(2) Leave to enter shall be refused if the civil authority is satisfied that, —

(a) the foreigner is not in possession of a valid

passport or visa for India or has not been exempted from the possession of a passport or visa;

(b) he is a person of unsound mind or a mentally defective person;

(c) he is suffering from a loathsome or infectious disease in consequence of which, in the opinion of the medical officer of the port or the place of entry, as the case may be, the entry of the foreigner is likely to prejudice public health;

(d) he has been sentenced in a foreign country for an extradition offence within the meaning of the Indian Extradition Act, 1903 (15 of 1903);

(e) his entry is prohibited either under an order issued by a competent authority or under the specific orders of the Central Government.

(3) The civil authority may attach such conditions as it thinks fit to the grant of leave to enter and such conditions may be varied in such manner or cancelled as the Central Government deems fit.

(4) (a) Notwithstanding anything contained in subparagraphs (1) to (3) or in the Indian Passport Act, 1920 (34 of 1920), or in the rules made thereunder, a civil authority may, in the interests of public safety, prohibit the entry of any foreigner into India.

(b) Whenever the civil authority issues an order under clause (a), it shall report the matter forthwith to the Central Government, which may cancel or modify the order in such manner as it thinks fit.

(5) Where leave to enter is refused to a foreigner, he may be detained at some place approved by the Civil authority and may, if he has come by sea, be placed temporarily on shore for the purpose, and whilst he is so detained a foreigner shall be deemed to be a legal custody and not to have entered India.”

15. A perusal of the same would reveal that there are specific powers conferred in larger public interest regarding foreigners not being allowed to reside in the country beyond the specified limit and to enable the authorities to direct them to leave India should they overstay.

16. In these circumstances, and when there is a power to direct a departure from India, what the authorities are requesting in this case is that the petitioner No. 2 must go back to her country of origin or of which she is a citizen and re-apply for issuance of a particular class of visa to re-enter India. It is not disputed by the petitioners that without such visa there is no question of the petitioner No. 2

entering India. If she cannot enter India without a visa, naturally she cannot overstay in India beyond the term prescribed or stipulated in the earlier visa, now expired.

17. This is a clear case of a person not being directed to leave India illegally or arbitrarily and, therefore, in writ jurisdiction we cannot interfere and assist the petitioner No. 2. The writ petition is, therefore, devoid of merits and is dismissed.

18. Needless to clarify that the application of the daughter of the petitioner No. 2 is her independent application and that should be decided strictly in accordance with law and on its own merits by the authorities.

19. While disposing of the petition, we place on record a copy of the communication from the Ministry of Home Affairs, New Delhi dated 2nd October 2018 tendered by Mr Vyas.

20. At this stage, Mr Yadav says that the petitioner No. 2 be permitted to reside in India for four weeks. This request is made

after the order dismissing the writ petition is pronounced. Mr Yadav also says that the petitioners desire to challenge this order in a higher Court. On both counts, we find the request to be entirely lacking bona fides. The petitioner No. 2 having already overstayed by more than 18 months, cannot be allowed to reside in India after the dismissal of the writ petition as that would make a complete mockery of the Foreigners Act 1946 and the Order issued thereunder. The request is, therefore, refused.

(S. C. Dharmadhikari, J)

(G. S. Patel, J)