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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5944/2019**

DEVENDER KUMAR Petitioner
Through: Mr Zubair Hashmi, Advocate.

versus

UNION OF INDIA Respondent
Through: Mr Rajesh Kumar Gogna, CGSC with
Mr Pradeep Kumar Jha, Advocates
for UOI with Mr Abhimanyu, SI,
FRRO.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.05.2019**

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent to delete and remove the name of the petitioner's wife (Ms Mokhigul Melibaeva), who is an Uzbekistan National, from the blacklist. The name of the petitioner's wife was put on the blacklist as she had overstayed the term of her visa on her last visit to India.
2. The petitioner, essentially, seeks that his wife be permitted to visit India for the treatment of her minor child (a daughter, aged about 11 years), who has already been granted a medical visa.
3. The petitioner states that he is married to one Ms Mokhigul Melibaeva, Uzbekistan National, who holds passport bearing no. AB7865942. She had arrived in India on a tourist visa on 11.11.2017, which was valid till 09.01.2018.
4. It is stated that during her stay in India she came in contact with the petitioner and they decided to get married. It is stated that their marriage was solemnized on 11.12.2017.

5. The petitioner states that after their marriage, Ms Mokhigul Melibaeva continued to stay in India despite the expiry of her visa. It is contended on behalf of the petitioner that the same was a *bona fide* mistake and under a misconception that Ms Melibaeva could continue to stay in India on account of her being married to the petitioner. Subsequently, the petitioner left India after obtaining an exist visa from the concerned FRRO.

6. It is stated that Ms Mokhigul Melibaeva was earlier married; but was divorced from her first husband. It is stated that she has two minor children from her first marriage, who are currently in Uzbekistan. Further, her elder child (a daughter aged 11 years) is ailing and requires treatment at Fortis Hospital.

7. The said child has been granted a medical visa for a period of two months. Ms Mokhigul Melibaeva's second child (a son, aged 9 years) has also been granted a tourist visa. The petitioner's wife had applied for visa as an attendant to her daughter. However, the same has been denied on account of her being placed on the blacklist.

8. This Court had considered the aforesaid matter on 27.05.2019 and had observed that it is plainly not feasible for two minor children to come to India without being accompanied of their mother. This is particularly so, since the daughter is visiting India for availing medical treatment and thus it would also be essential for the mother to accompany her.

9. In the aforesaid circumstances, this Court had observed that it would be apposite for the respondent to grant a visa to Ms Mokhigul Melibaeva on a co-terminus basis with a medical visa granted to her child on an undertaking that she would leave the country on expiry of the said visa.

10. Ms Gogna had sought time to take instructions. He now states that

FRRO has clearly stated that it will not review the status of Ms Mokhigul Melibaeva till 09.09.2019, when the petitioner's name would in the normal course be removed from the blacklist.

11. It is apparent from the above that this case presents certain mitigating circumstances. Issuing a medical visa to an 11-year-old child while declining the visa to the concerned parent is futile and serves no purpose. The courts, in several decisions, have emphasised the importance of having a humanitarian approach. Although the state has an unfettered discretion in the matter of granting visas to foreign citizens, certain humane considerations must influence its decision.

12. In view of the above, this Court directs the respondent to forthwith issue a visa to the petitioner's wife (Ms Mokhigul Melibaeva). The respondent shall ensure that the visa be provided to Ms Mokhigul Melibaeva on her submitting an undertaking at the Indian Embassy that she would leave this country on expiry of her visa, unless it is otherwise extended by the concerned authorities, along with her children on the expiry of the term of the visa (as may also be extended) issued to her minor children.

13. It will also be open for the petitioner's wife (Ms Mokhigul Melibaeva) to make an application for a further visa of an appropriate category. Needless to state that the same would be considered in accordance with law.

14. The petition is disposed of in the aforesaid terms.

15. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

MAY 30, 2019/MK