

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8009 OF 2021**

Nataliya Yesaulenko through her Power of Attorney Andrew Fernandes ...Petitioner
Versus
Union of India & Ors ...Respondents

**Mr KT Thomas, with T Sidhiqui, Biju C & Mayank Mishra, for the
Petitioner.**
Mr Rui A Rodrigues, with DP Singh, for Respondent No.1.

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 15th February 2022**

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1. Heard. Affidavits have been filed to the stage of Rejoinder.
2. The Petitioner is a foreign national. She is a citizen of Ukraine. This Petition is filed through her Mumbai-based constituted attorney, one Andrew Fernandes, an Indian citizen. The Petition seeks a Mandamus to direct the Union of India through the Ministry of Home Affairs and the Bureau of Immigration through the FRRO or Foreigners Regional Registration Office to grant the Petitioner a five-year visa and to remove all restrictions against the Petitioner.

3. The Petitioner arrived in India first on 7th July 2013 on a tourist visa. In November 2013, her visa was converted to an entry category 'X' spouse visa with one year validity since she had by then married an Indian citizen. From 2014 until November 2017, according to the Petitioner her visa had been extended regularly but for periods of only three to six months and on payment of the necessary fees. In November 2017 the Petitioner was granted a three-month extension against payment of fees and this continued from December 2018 to December 2019.

4. It seems that in 2014 or 2015, i.e. very shortly after marriage, relations between the Petitioner and her husband were strained. There were some domestic violence proceedings filed before the 24th Metropolitan Magistrate's Court at Borivali. Some orders were passed then. The Petitioner's husband filed a Petition for divorce in July 2017. This was ultimately dismissed for want of prosecution. The result, as Mr Thomas points out, is that the Petitioner's marriage to her estranged husband has not been dissolved.

5. Between November 2017 and 2019, the Petitioner applied for an OCI card. This was denied to her. She continued to get extensions of her visa. In 2019, the Petitioner filed Writ Petition No. 3054 of 2019 on which there came to be made an order on 28th January 2020. A copy of that order is at page 48 at Exhibit "F". This sets out the very many prayers that the Petitioner had made. Ultimately, it was disposed of with a consent order and without a consideration on merits. On 3rd February 2020, the Petitioner submitted her applications to the 2nd Respondent. According to her, her application was rejected. The Petitioner had a valid visa until

15th June 2020. She returned for a visit to the Ukraine in February 2020. When she came back to India she was stopped at immigration and deported from India under paragraph 6(1) of the Foreigners Order.

6. The Petitioner says that since her marriage is subsisting, and notwithstanding that there is an estrangement, she must be allowed to enter the country. She also says that she requires the visa and rights of entry into this country to seek a validation of her rights under the applicable marriage law.

7. The Affidavit in Reply on behalf of the Respondents from page 93 is sworn by one Rajesh Kumar Pandey, the Assistant Central Intelligence Officer-I for ACIO-I in the FRRO. He first points out that the power of attorney annexed to the Petition has been executed outside this country and does not conform to the authentication requirements and therefore this Court ought not to take any cognizance of this Petition. There may be substance in this but we will proceed to the facts in any case. He points out that the Registration of Foreigners Act 1939 and the corresponding Rules of 1992 mandate that some categories of foreigners whose intended stay in India is more than a specified period must have themselves registered with the FRRO. The Petitioner's initial entry into India on tourist visa is not disputed. He points out that within two months of an entry on a tourist visa, the Petitioner married an Indian citizen. This resulted into her visa category being changed to the X category.

8. About the fact that there were differences between the Petitioner and her husband and that repeated extensions were granted to the Petitioner there is no dispute. Mr Pandey points out that the Petitioner always declined to pay visa fees and demanded longer extensions and a long term visa. Two letters were issued to her to approach the FRRO for a provisional visa. This was on 7th September 2019 and 26th September 2019. The response from the Ministry of Home Affairs was that since her marital status was then unclear, she was granted an extension of her X category for six months subject to the usual conditions and fees. In paragraph 11 Mr Pandey says that the Petitioner habitually visits the office of the FRRO and other Government offices and is often abusive and threatening. She had not even informed the authorities of a changed address and this is in violation of Rules 6 and 7 of the 1992 Rules.

9. Paragraph 12 then asserts that the Petitioner stayed in a leave and license premises by claiming to be a consular officer. Paragraph 14 says inquiries conducted by the Foreigners Surveillance Cell, an internal cell in FRRO, and secret inquiries revealed that the Petitioner married an Indian solely with an intention to work in India and the marriage is one of convenience.

10. More importantly, it has been pointed out that while on a foreigner-spouse visa, the Petitioner worked in India as a hostess in Ballroom Academy, did modelling and also worked in a Hindi movie. The length of her appearance in that movie is immaterial. She is shown from the documents annexed to the Reply to have had a contract with those in charge of that movie. There is then an allegation in paragraph 16 that the Petitioner visited the offices of

some marine surveyors and that she was believed to be employed with this company. A director of that company is a US citizen and it is he who gave an undertaking during her application for visa extension (rather than her husband). The Affidavit then goes on to speak about secret inquiries and intelligence gathered showing adverse material including various violations. The Affidavit asserts that she is a repeat violator of Indian visa rules and regulations and is kept under the black list Grade B according to revised guidelines.

11. The Affidavit in Rejoinder from page 218 is filed by the constituted attorney. We find it very peculiar that this person or constituted attorney claims to have personal knowledge of matters that could only be to the specific knowledge of the Petitioner especially in matters that related to the Petitioner's personal life. Yet the Affidavit does not say that any part of it is on instructions obtained from the Petitioner. It does not say that the Petitioner has been shown a copy of the Affidavit in Reply or that instructions have been received by the constituted attorney from that Petitioner. This is important because from paragraph 4 onwards assertion are made in regard to the marriage of the Petitioner. These are matters specially within the knowledge of the Petitioner and the constituted attorney can have no personal knowledge of what the marriage was and even less about the quality of that marriage.

12. To say then that in paragraph 8 that the Petitioner is ready to explain her situation, to baldly deny that she violated Rules and then to complain of domestic violence serves no purpose whatsoever.

13. What we are assessing in this Writ Petition is an administrative or an executive action. This is a case that seeks judicial review. We are not concerned with the decision but the decision making process. It has not been found to be faulty and it not been shown to be faulty. The Petitioner, clearly, has no litigation pending in India even regarding her marriage. She is not required for her complaint, at least not at this stage in the Section 498A, 34 IPC proceedings that she has filed. The Petitioner's husband's divorce petition has been dismissed and therefore there is no pending litigation against the Petitioner by her husband.

14. There is no specific denial of the repeated violations of the visa terms and conditions.

15. We see absolutely no substance in the Petition. The Petition is rejected. We make no order of costs.

16. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)