



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19th September, 2024
Pronounced on: 12th November, 2024

+ **W.P.(C) 7755/2023, CM APPL. 29927/2023, CM APPL. 39707/2023, CM APPL. 25799/2024 & CM APPL. 29633/2024**

KHALID JAHANGIR QAZI THROUGH HIS POWER OF

ATTORNEY HOLDER MS FARIDA SIDDIQIPetitioner

Through: Mr. Parag P. Tripathi, Senior Advocate with Mr. Apoorv P. Tripathi, Ms. Anjali Kaushik, Ms. Arushi Mishra and Mr. Apaan Mittal, Advocates.

versus

UNION OF INDIA THROUGH SECRETARY & ORS.

.....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC, Mr. Farman Ali, SPC, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Vinay Yadav, Ms. Usha Jamwal, Mr. Shubham Sharma, Mr. Arnav Mittal and Mr. Vikramaditya Singh, Advocates for UOI.

+ **W.P.(C) 8873/2024**

KHALID JAHANGIR QAZI THROUGH HIS POWER OF

ATTORNEY HOLDER MS FARIDA SIDDIQIPetitioner

Through: Mr. Parag P. Tripathi, Senior Advocate with Mr. Apoorv P. Tripathi, Ms. Anjali Kaushik, Ms. Arushi Mishra and Mr. Apaan Mittal, Advocates.

versus



UNION OF INDIA THROUGH SECRETARY MINISTRY OF
HOME AFFAIRS & ANR.

.....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC, Mr. Farman Ali, SPC, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Vinay Yadav, Ms. Usha Jamwal, Mr. Shubham Sharma, Mr. Arnav Mittal and Mr. Vikramaditya Singh, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. Mr. Khalid Jahangir Qazi, a national of United States of America holding the status of an Overseas Citizen of India,¹ has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking entry to India. He challenges the legality of two restrictive measures imposed upon him – order dated 12th May, 2023 issued by the Consulate General of India, New York,² cancelling his OCI card under the Citizenship Act, 1955,³ and the Citizenship Rules, 2009; and a subsequent blacklisting order issued by the Ministry of Home Affairs, under the Foreigners Act, 1946,⁴ restraining his entry into India. The underlying basis of these actions, as asserted by the Respondents, is the Petitioner's alleged involvement in activities deemed to be prejudicial to the interests of India. The Petitioner, however, contends that the orders not only infringe upon his

¹ "OCI"

² "the Consulate General"

³ "the Citizenship Act"



rights guaranteed to him through his OCI status but also contravene the principles of natural justice and due process. This Court is thus, called upon to examine the legality of these orders within the framework of the Citizenship Act and the Foreigners Act, as well as the extent of protections afforded to OCI cardholders in circumstances involving allegations of anti-national activities.

2. In the instant connected matters, W.P.(C) 7755/2023 impugns the order cancelling Petitioner's OCI card. Subsequently, when the Petitioner learned that he had been blacklisted, he preferred W.P.(C) 8873/2024 impugning the blacklisting order. Given the intertwined facts and overlapping grounds presented in both petitions, it is deemed appropriate to address them collectively in a common order.

CONTROVERSY IN BRIEF

3. Petitioner, a senior citizen aged around 80 years, is presently residing in New York, United States of America and working as a Clinical Professor of Medicine at the Jacob School of Medicine and Biomedical Sciences, University at Buffalo. After completion of his studies from Government Medical College, Srinagar, Kashmir, the Petitioner migrated to the United States in the 1970s where he has since resided with his wife, children and grandchildren.

4. The Petitioner was registered as an OCI in 2018 and he regularly visited Srinagar, Kashmir to meet his family comprising of two elder sisters aged around 81 and 80 years and a younger sister aged around 74 years, who are all Indian citizens. Unfortunately, his younger brother passed away in

⁴ "the Foreigners Act"



January, 2023. The Petitioner claims that his sisters suffer from various medical conditions, including hypertension and respiratory issues, and rely on him for medical advice and care. To support his family, the Petitioner travelled regularly to India from 2017 to 2019, and again between 2021 and 2022.

5. Following a hiatus in 2022 due to health issues, the Petitioner recovered and planned a visit to India to reconnect with his family in Srinagar and address family matters that remained unresolved after the passing of his younger brother in January, 2023.

6. On 14th June, 2022, a show cause notice was issued to the Petitioner alleging his involvement in “anti-India activities” and calling upon him to furnish an explanation within 15 days as to why his OCI card ought not be cancelled. The Petitioner received the notice on 22nd June, 2022 and submitted a response on 2nd July, 2022, refuting all allegations and asserting that his views were solely in the best interests of the nation. He also called upon the Consulate General to disclose any material substantiating the allegations levelled against him and sought an opportunity for a personal hearing to present his case.

7. Upon due consideration of the Petitioner’s response, the Consulate General, by order dated 12th May, 2023, issued the impugned order thereby cancelling the Petitioner’s OCI card in accordance with Section 7D(e) of the Citizenship Act. The Petitioner was required to surrender his OCI card within 15 days, as stipulated under Rule 35(1) of the Citizenship Rules. Failure to comply would ensue cancellation under Rule 35(2) of the said Rules.



8. Aggrieved by this cancellation order, the Petitioner filed the present writ petition W.P.(C) 7755/2023 and by way of an interim order dated 30th May, 2023, this Court directed that the impugned order of 12th May, 2023, shall not be given effect pending final adjudication of the writ.

9. Subsequently on 2nd August, 2023, when the Petitioner arrived in New Delhi, he was denied entry at immigration, with only a vague reference to unspecified 'administrative reasons.' The following day, the Petitioner filed an application CM APPL. 39707/2023 in W.P.(C) 7755/2023, seeking stay on his deportation. By order dated 3rd August, 2023, this Court permitted the Petitioner to enter India by virtue of the stay on the order dated 12th May, 2023. In compliance with this direction, the Petitioner entered New Delhi on 4th August, 2023, and subsequently departed on 20th October, 2023.

10. Thereafter, on 20th March, 2024, Petitioner issued a letter to Respondents indicating his intent to visit India tentatively from the latter half of June until the end of September. In this communication, he sought assurances that his entry would be unimpeded, and requested a copy of the alleged blacklisting order referenced by the Respondents before this Court on 3rd August, 2023. This was followed up by reminder letter dated 22nd April, 2024, however, no response was forthcoming from the Respondents.

11. Consequently, Petitioner filed CM APPL. 25799/2024 in W.P.(C) 7755/2023 seeking directions to permit his entry into India from 23rd June, 2024, until 12th September, 2024, based on his OCI status. On 2nd May, 2024, notice was issued on this application. In compliance with the Court's directions, the Respondents filed a reply on 27th May, 2024, stating that the Petitioner had been blacklisted by the Bureau of Immigration due to alleged



involvement in pro-Kashmiri separatist activities and anti-India propaganda. Later, during proceedings held on 10th June, 2024, the Respondents submitted that their reply should be treated as the official blacklisting order.

12. Subsequently, Petitioner instituted another writ petition bearing No. W.P.(C) 8873/2024, for setting aside the blacklisting order which was intimated through the Respondents' reply to CM APPL. 25799/2024 in W.P.(C) 7755/2023.

13. In this background, Petitioner has now invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking to secure his lawful entry into the country by virtue of his OCI card and to set aside the impugned blacklisting order issued against him.

PETITIONER'S CONTENTIONS

14. Mr. Parag P. Tripathi, Senior Counsel for the Petitioner, while firmly refuting all allegations of involvement in anti-India activities, has advanced the following submissions to contest the impugned orders:

Grounds for challenging order dated 12th May, 2023 cancelling Petitioner's OCI card

14.1. It is contended that the impugned order dated 12th May, 2023 is manifestly irrational, unreasonable, and arbitrary, standing in violation of the principles of natural justice and Articles 14 and 21 of the Constitution of India. The show cause notice, which preceded this order, conspicuously failed to disclose any foundational facts or material justifying the cancellation of the Petitioner's OCI card. It merely levels a vague accusation, asserting that the Petitioner is allegedly involved in anti-India activities which have the effect of jeopardizing the sovereignty and integrity



of India. Despite repeated requests for specific details of these grave allegations, no response has been forthcoming, which only underscores the baseless and untenable nature of the allegations and ultimately formed the basis of the impugned order.

14.2. Thus, the Petitioner has never been afforded an opportunity to refute or respond to the case constructed against him by the Consulate General, and he continues to remain entirely unaware of the facts and grounds upon which the accusations of indulging in anti-India activities or pro-Pakistan propaganda have been made. Issuing a show cause notice that clearly sets forth the foundation of the case, along with a reasoned order, is integral to safeguarding the principles of natural justice. This glaring lack of transparency constitutes a serious violation of these principles. In this regard, reliance is placed on *Ramesh Ganeriwal v. Union of India and Anr.*⁵ and *Gorkha Securities Services v. Govt. of NCT of Delhi & Ors.*⁶

14.3. Despite the Petitioner's explicit request for a personal hearing in response to the show cause notice, no such opportunity was afforded. The Citizenship (Amendment) Act, 2019, which amended Section 7D of the Citizenship Act, 1955, unequivocally entitles the Petitioner to a hearing prior to the issuance of any adverse orders of cancellation. Even if this mandate were not expressly read into the provision, the principles of natural justice would inherently apply to any order effecting the cancellation of the Petitioner's OCI card. Moreover, the statement of objects and reasons accompanying the Citizenship (Amendment) Act, 2019 further reinforces

⁵ 2017:DHC:4571; W.P.(C) 3652/2017

⁶ 2014 (5) ADR 856



the Petitioner's statutory right to be heard before to any such cancellation.

14.4. The impugned order effectively strips the Petitioner of valuable rights and imposes penal consequences through the cancellation of his OCI card. This card serves as a lifelong, multiple-entry visa, and enables the Petitioner to visit India for any purpose without the requirement of registering with the Foreigners' Regional Registration Office. Given the severity of this cancellation, strict adherence to Articles 14 and 21 of the Constitution of India, is not merely desirable but imperative.

Grounds for challenging the purported blacklisting order dated 27th May, 2024

14.5. It is contended that the impugned blacklisting order is *prima facie* arbitrary, irrational and contrary to the fundamental rights of the Petitioner under Articles 14, 19 and 21, which is evident from the fact that in spite of communications dated 20th March, 2024 and 22nd April, 2024 issued by the Petitioner, a copy of the said order has not been provided to him, till date. In order to deny the Petitioner of an opportunity to assail the order, Respondents have now taken a disingenuous stand that the reply to the CM APPL. 25799/2024 be deemed to be the blacklisting order.

14.6. The blacklisting order, purportedly issued under Section 3 of the Foreigners Act, carries significant civil and penal consequences for those affected. Therefore, the principles of natural justice must be read into Section 3, as has been observed in *Mohammad Javed v. Union of India*,⁷ *Hasan Ali Raihany v. Union of India*⁸ and *Satinder Pal Singh v. Union of*

⁷ 2019 SCC Online Del 8741

⁸ (2006) 3 SCC 705



India.⁹

14.7. There are no guidelines outlining the procedure for exercising power under Section 3 of the Foreigners Act that are available to the public. It is still not clear if the person who executed the reply affidavit filed by Respondents to CM APPL. 25799/2024 in W.P.(C) 7755/2023 is authorised to pass the order of blacklisting under Section 3 of the Foreigners Act.

14.8. The principles of natural justice demand that before a blacklisting order is issued, a show cause notice must be served to the Petitioner, clearly outlining the grounds on which the proposed order is based thus, enabling the Petitioner to respond adequately. This entails providing the Petitioner with an opportunity to file a reply to the show cause notice and to appear for a personal hearing, either in person or through a representative. It is only after the Petitioner's reply and oral submissions have been duly considered that an order under Section 3 of the Foreigners Act can be passed. Additionally, a copy of the final order must be provided to the Petitioner, allowing him to seek appropriate legal recourse. In the instant case, none of these fundamental requirements were observed by the Respondents. The Petitioner was entirely unaware of the existence of such an order until 3rd August 2023. On this basis alone, the blacklisting order should be set aside.

14.9. The Respondents' argument that the Petitioner is barred from entering India by virtue of the blacklisting order is in direct defiance of, and an attempt to overreach, the orders passed by this Court on 30th May, 2023 and 3rd August, 2023 in W.P.(C) 7755/2023. By imposing the same penalty through another statute, and that too in violation of the principles of natural

⁹ 2023 SCC Online Del 7612



justice, the Respondents are transparently attempting to achieve indirectly what they cannot accomplish directly—curbing the Petitioner’s rights under the Citizenship Act by invoking the provisions of the Foreigners Act. The Respondents’ reliance on the blacklisting order is therefore, a clear violation of both the Citizenship Act and the rights conferred upon the Petitioner under it.

14.10. It is submitted that when two similar statutes provide for different procedures for the same act—one that upholds the principles of natural justice and another that permits their circumvention—it inaccurately permits the state authorities to arbitrarily choose between the two statutes. This is fortified by Section 16 of the Foreigners Act which clarifies that the said Act shall be in addition to and not in derogation of any other law for the time being in force. Therefore, penalizing the Petitioner under two distinct statutes for the same actions would violate Article 20 of the Constitution of India. This principle is supported by the precedent set in *State of West Bengal v. Anwar Ali Sarkar*.¹⁰

14.11. Regarding the assertion in the blacklisting order that all documents and information related to the Petitioner’s blacklisting are deemed confidential for the sake of India’s security and sovereignty, and consequently cannot be disclosed— this contention directly contradicts the Supreme Court’s rulings in *Madhyamam Broadcasting Limited v. Union of India & Ors.*¹¹ There has been no explanation as to why these documents are considered confidential under the pretext of national security and

¹⁰ (1952) 1 SCC 1

¹¹ 2023 SCC Online SC 366



sovereignty. Therefore, in such circumstances, the blacklisting order is liable to be set aside.

CONTENTIONS OF RESPONDENTS

15. *Per contra*, Mr. Chetan Sharma, Additional Solicitor General, strongly defends the impugned orders and makes the following submissions:

Contentions to defend the cancellation of Petitioner's OCI card

15.1. As regards the decision of cancellation of OCI card is concerned, it is urged that before filing the petition, Petitioner ought to have availed alternate remedy of revision and review provided under Sections 15 and 15A of the Citizenship Act. These provisions grant the Petitioner a procedural avenue to contest the cancellation order under Section 7D, thereby offering an adequate remedy prior to the filing of the present petitions.

15.2. It is well-settled in international law that each sovereign nation retains the absolute right to deny entry to individuals it deems undesirable. Moreover, the right to free movement guaranteed under Article 19 of the Constitution of India is confined strictly to Indian citizens, with no equivalent entitlement extended to foreign nationals. Thus, OCI cardholders, being foreign nationals, are not vested with the rights guaranteed by Article 19 of the Constitution. In support of this position, reliance is placed on the judgments of the Supreme Court in *Hans Mullter of Nurenburg v. Superintendent Presidency Jain, and others*,¹² and *Louis De Raedt v. Union of India*.¹³

15.3. The decision to cancel the Petitioner's OCI card was made following

¹² AIR 1955 SC 367

¹³ AIR 1991 SC 1886



a detailed assessment of his actions, informed by reports and intelligence inputs from the security agencies of the Ministry of External Affairs, which suggest that the Petitioner has engaged in activities inimical to India's sovereignty and integrity. These activities, however, remain classified as "secret for the security of India" and, for reasons of national security, cannot be disclosed to the Petitioner.

15.4. Furthermore, prior to the passing of the impugned order, a show cause notice dated 14th June, 2022, was duly issued, requiring the Petitioner to demonstrate why his OCI card should not be revoked. The Petitioner's response, dated 2nd July, 2022, was carefully considered before rendering the cancellation order under Section 7D(e) of the Citizenship Act. Consequently, the Respondents have observed the principles of natural justice and Article 21 of the Constitution of India.

Contentions to support the purported backlisting order dated 27th May, 2024

15.5. It is contended that Petitioner has been blacklisted by Bureau of Immigration at the instance of security agency, with the instructions: "*Prevent subject from entering India and inform Originator.*" This directive arises from findings implicating the Petitioner's participation in activities supporting pro-Kashmir separatism and propagating anti-India lobbying. The Respondents have thereby been apprised of adverse intelligence regarding the Petitioner, which, owing to its classified nature, has been shared with this Court under sealed cover. Were such reasons disclosed, a blacklisted individual could potentially evade detection and adjust their activities accordingly. Additionally, in cases implicating national security, strict adherence to principles of natural justice, including the right to a full



hearing, may be curtailed. This view is supported by decisions in *Union of India v. Savitha Kumar*,¹⁴ *Sublime Software Limited v. Union of India*¹⁵ and *Ex-Armymen's Protection Services Private Limited v. Union of India*.¹⁶

15.6. Blacklisting decisions are rooted in various executive and administrative considerations inherent to sovereign governance, taken on the satisfaction that certain actions of the Petitioner are undesirable and prejudicial to India's security. It is clarified that this blacklisting order has been executed pursuant to powers conferred under Section 3 of the Foreigners Act, indicating legislative intent to vest the Central Government with discretion regarding "foreigners" or specific classes thereof. As OCI cardholders continue to retain foreign nationality, holding passports of foreign nations, they fall under the purview of the Foreigners Act, which only affords certain rights conferred under the Citizenship Act. Moreover, Explanation (1) to the notification dated 4th March, 2021, expressly confirms that for its purposes, an OCI cardholder is a foreign national holding a foreign passport, without citizenship rights in India. Accordingly, foreign nationals, including OCI cardholders, cannot claim access to visa services from the Central Government as an absolute right, and the State retains sovereign discretion to blacklist them from entry where adverse activities are alleged. Precedents in *Hans Muller of Nurenberg* and *Louis de Raedt* reaffirm that Section 3 of the Foreigners Act grants an unfettered discretion to exclude foreigners from Indian territory.

¹⁴ LPA 219/2019, decided on 28th August, 2019

¹⁵ 2024:DHC:4987

¹⁶ (2014) 5 SCC 409



15.7. In light of these considerations, the present writ petitions are unsustainable, as the Petitioner, by virtue of his status as an OCI cardholder, does not hold any enforceable rights under Articles 14 or 21 of the Constitution of India.

REJOINDER SUBMISSIONS

16. In the rejoinder submissions it was contended that the Foreigners Act ought not to have been invoked by the Respondents for issuing a blacklisting order against the Petitioner. The legislative history behind the concept of an Overseas Cardholder of India makes it amply clear that an OCI cardholder is much closer to a citizen than he is to a foreigner. Additionally, a non-citizen also enjoys fundamental rights under Articles 14, 20, 21, 22, 25, 27, 28 and 31 of the Constitution of India and Article 17 and 23 of the International Covenant on Civil and Political Rights. These provisions recognize the right of an individual to be with his family. Article 21 of the Constitution of India includes the right to travel to India and interact with their family members. Moreover, the decisions in *Hans Mullter of Nurenburg* and *Louis De Raedt* cited by the Respondents in support of their contention that principles of natural justice do not apply to an order passed under Section 3 of the Foreigners Act, and therefore, are inapplicable to the present case.

17. The Respondents' argument is fundamentally flawed and if they were to be accepted, there would be two independent remedies for cancelling a visa targeting the same action on same grounds and can be utilised one after the other or simultaneously, namely, blacklisting and cancellation of an OCI card. This would create a situation where principles of natural justice would apply to the latter, but not to the former leading to an anomalous situation.



18. Overseas Citizens of India are a special class of persons with special rights akin to a ‘dual citizen’. Blacklisting an Overseas Citizen without having followed the provisions of the Citizenship Act i.e. without a ‘reasonable opportunity of hearing’ would practically deprive him of his special status and rights. Treating two classes of persons- OCIs and non-OCI foreigners alike is a violation of Article 14 of the Constitution of India as “unequal cannot be treated equally.”

ANALYSIS AND FINDINGS

19. In the present case, we are faced with a situation where the Petitioner, an American citizen holding an OCI card issued under the Citizenship Act, has been restricted from entering into the country on account of cancellation of his OCI card under Section 7D of the Citizenship Act and an order of blacklisting under Section 3 of the Foreigners Act.

20. The Petitioner contends that the Foreigners Act, which primarily governs ordinary foreign nationals, should not apply to OCI cardholders, who occupy a unique position under the Citizenship Act. He relies upon the rights and privileges conferred on OCI cardholders through Sections 7A, 7B, 7C and 7D, introduced *via* the Citizenship (Amendment) Act, 2003. These provisions afford OCI cardholders privileges distinguishing their rights from those of Indian citizens. *Per contra*, Respondents argue that, despite the privileges granted under the Citizenship Act, OCI cardholders remain foreign nationals and thus, fall within the purview of the Foreigners Act, especially when matters of national security arise. They emphasise that the Foreigners Act, enacted prior to these amendments, governs the entry, presence, and departure of foreign nationals, providing the Central



Government with broad regulatory authority under Section 3 of the said Act. This authority, the Respondents argue, extends to OCI cardholders as despite their special status, they continue to remain foreign nationals.

21. Thus, the issue before us is whether the legal recognition of OCI status under the Citizenship Act exempts OCI cardholders from the provisions of the Foreigners Act or whether both statutory frameworks operate concurrently and if so, how the protections in the Citizenship Act should apply when enforcing the Foreigners Act. To address this, we proceed to a detailed analysis of the legislative history of the statute as well as the relevant statutory provisions.

The Legislative History of the Statutes

22. In addressing the question of whether the provisions of the Foreigners Act apply to an OCI cardholder, it is necessary to examine the legislative history and the purpose and object of the Foreigners Act, 1946, as well as the framework surrounding the amendments to the Citizenship Act, 1955, which introduced the concept of OCI cardholders.

23. The Foreigners Act, 1946 was enacted by the Imperial Legislative Council, the legislature of British India, and came into effect on 23rd November, 1946. The first law regulating foreigners, in what was then British India, was the Foreigners Act, 1864, which allowed for the expulsion, apprehension, and detention of foreigners pending their removal, and imposed a ban on their re-entry into India after expulsion. The powers under this Act, however, were found to be ineffective and inadequate both during the normal times and during an emergency. The onset of World War-II led to the introduction of the Foreigners Ordinance, 1939. The Ordinance



was subsequently replaced by the Foreigners Act, 1940 which was to expire on 30th September, 1946. Finally, in order to bring a more permanent legislation, the Foreigners Act, 1946 was thereafter enacted.¹⁷ Section 3 of the Foreigners Act, 1946 grants wide discretion to the government to impose restrictions as deemed necessary, including orders affecting specific individuals, classes, or categories of foreigners.

24. The Foreigners Act provided a general framework for dealing with foreigners, it did not specifically address the issue of citizenship. The partition of India resulted in an unprecedented population shift, with millions of individuals migrating across newly established borders. This historical event highlighted the need for a distinct and comprehensive statute to determine citizenship status. In response, the Citizenship Act, 1955, was enacted on 30th December, 1955, defining criteria for citizenship and providing a legal basis for determining who would be regarded as an Indian citizen.

25. With the growth of the Indian diaspora worldwide, the Government of India introduced the Person of Indian Origin (PIO) Card Scheme in March, 1999. This scheme aimed to strengthen the connection between India and Indians living abroad by offering certain privileges to people of Indian origin up to the fourth generation, excluding citizens of Pakistan, Bangladesh, and other specified countries. Valid for a period of 15 years, the PIO card granted holders the ability to travel, reside, and work in India with certain limitations, such as a maximum stay of 180 days without additional registration requirements.

¹⁷ Statement of Objects and Reasons, Gazette of India, Part V, page 361.



26. Thereafter, in response to increasing calls from the Indian diaspora for dual citizenship, the Central Government established a High-Level Committee chaired by Dr. L.M. Singhvi, to make recommendations on the aspect of dual citizenship.¹⁸ Tasked with exploring the viability and implications of dual citizenship, the Committee undertook extensive deliberations and, in 2002, issued a report recommending that dual citizenship be offered to Persons of Indian Origin (PIOs) or Non-Resident Indians (NRIs) who were nationals of certain countries. The Committee's report suggested that dual citizenship could be facilitated by making suitable amendments to the Citizenship Act, 1955.¹⁹

27. In view of the report of the High-Level Committee, to meet the persistent demands for dual citizenship, the scheme of Overseas Citizen of India was introduced by the Citizenship (Amendment) Act, 2003 effective from 3rd December, 2004. The Statement of Objects and Reasons accompanying the Bill highlights the Government's commitment to maintaining a strong connection with the Indian diaspora. This statement, informed by the High-Level Committee on Indian Diaspora's recommendations, noted:

"Subsequently, the High-Level Committee on Indian Diaspora constituted by the Central Government, inter alia, recommended the amendment of this Act to provide for the grant of dual citizenship to persons of Indian origin belonging to certain specified countries. The Central Government has accordingly decided to make provisions for the grant of dual citizenship."

28. Therefore, the OCI scheme introduced significant advantages over the

¹⁸ Government of India, 'Report of the High Level Committee on the Indian Diaspora', Paragraph 36.51,

¹⁹ Government of India, Report of the High Level Committee on the Indian Diaspora



earlier PIO scheme, establishing a more comprehensive and enduring connection for PIOs to India. Key differences in status between PIOs under the former scheme and OCIs under the new provisions include:

- a) **Visa-free travel:** PIOs had a 15-year multiple-entry visa, while OCI card holders enjoy lifelong visa-free travel to India.
- b) **Registration requirements:** PIOs had to register with local police authorities for stays exceeding 180 days, while OCI card holders are exempt from this requirement.
- c) **Right to become a citizen:** An OCI gets a specific right to become an Indian Citizen as per Section 5(1)(g) of the Citizenship Act, 1955, which right is not available to a PIO holder.

29. Further, the Citizenship (Amendment) Act, 2015 replaced the existing Sections 7A, 7B, 7C, and 7D with updated provisions which came into effect on 6th January, 2015. Under this amendment, the OCI and PIO schemes were merged to streamline benefits for the Indian diaspora. Pertinently, the Minister of State in the Ministry of Home Affairs while introducing the Citizenship (Amendment) Bill of 2015, made the following statement:

“Today, Indian diaspora is the second largest in the world, next to the Chinese diaspora. The remittance which we receive from this diaspora is the highest and it is 70 billion dollar, as hon. Member Ratna De has mentioned. You can imagine how much it means to the growth and wealth of this nation.

This is a step towards giving and fulfilling the dreams which were set up Atal Bihari Vajpayee in 1999 that we will give all kind of status to the people having Indian Origin and here, I would like to mention that we may not be giving them a complete status of citizenship but it is very close to giving the citizenship status excepting they do not have the right of political, they do not have right to hold any official position and they can acquire properties excepting large areas of plantation and agriculture land which has a reason which I would not like to dwell in



*detail here.”*²⁰

30. Having examined the legislative history of the Citizenship Act and the Foreigners Act, we now proceed to analyse the relevant provisions under each statute and how they relate to the case at hand.

Whether the provisions of Foreigners Act apply to an OCI card holder?

31. Section 3 of the Foreigners Act serves as an enabling provision vesting authority on the government to issue orders regarding foreign nationals, allowing for wide discretion in imposing restrictions on foreigners. Under this provision, the government can issue orders prohibiting, regulating, or restricting entry into India, continued presence within the country, or departure from Indian territory. The provision reads as follows:

“3. Power to make orders.—(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein. (2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India or in any prescribed areas therein;

[(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such

²⁰ Statutory Resolution regarding Disapproval of Citizenship (Amendment) Ordinance, 2015 and Citizenship (Amendment) Bill, 2015, Lok Sabha Debates, 2nd March, 2015.



removal;]

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified— (i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

[(g) shall be arrested and detained or confined;] and may make provision 4 [for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

[(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) 5 [or clause (f)] of sub-section (2).]

[3A. Power to exempt citizens of Commonwealth Countries and other persons from application of Act in certain cases.—(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to—

(a) the citizens of any such Commonwealth Country as may be so



specified; or

(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.]”

32. The scope of Section 3, as detailed in its sub-sections, provide the Central Government with broad, specific powers to issue orders in the interest of national security, public safety, or administrative considerations that either generally apply to all foreigners or specific individuals or categories of foreigners. For instance, the government may determine entry points, impose conditions upon arrival, restrict movement within prescribed areas, or require furnishing proof of his identity with specified authorities. Additional measures include restrictions on associations, activities, and possessions, with further authority to detain or confine individuals, where deemed necessary. These powers reflect the legislative intent behind the Foreigners Act—to safeguard India’s sovereignty by exercising control over the entry and activities of foreigners. Furthermore, Section 3A of the Foreigners Act allows the government to exempt specific categories of foreign nationals, including citizens of Commonwealth countries, from the application of certain provisions under specified conditions. This broad regulatory scope empowers the Central Government to address potential risks and threats posed by foreign nationals, including OCI cardholders, whose legal status under this Act is that of a ‘foreigner’.

33. Under the Citizenship Act, 1955, Section 2(1)(ee) defines an “Overseas Citizen of India Cardholder” as “*a person registered as an Overseas Citizen of India Cardholder by the Central Government under*



section 7A.” Section 7A of the Citizenship Act provides a detailed registration process for OCIs, specifying eligibility for those who are of Indian origin but acquired foreign citizenship while excluding individuals with links to certain countries like Pakistan and Bangladesh. Section 7B lists rights for OCI cardholders, albeit with limitations on certain fundamental rights reserved exclusively for Indian citizens, such as eligibility for public office and political representation. Section 7C addresses the renunciation of OCI status, while Section 7D governs the cancellation of OCI registration, detailing conditions under which an OCI card may be cancelled, especially concerning national security or criminal convictions. Section 7A stipulates that OCI registration is available to individuals who satisfy specific eligibility criteria, particularly those having origin in India who have since acquired foreign nationality. The introduction of OCI status was intended to facilitate ties with India for the diaspora without conferring Indian citizenship, thereby distinguishing OCI cardholders from Indian citizens.

34. Section 2(a) of the Foreigners Act, explicitly defines a “foreigner” as *“a person who is not a citizen of India.”* This broad, inclusive definition leaves no ambiguity regarding the scope of the Act, as it encompasses any non-Indian citizen. The OCI cardholders are not Indian citizens but retain the citizenship of another country; they are clearly “foreigners” under the Foreigners Act. The status of an OCI cardholder does not alter the nationality of the individual, who, despite having origins in India, legally holds the nationality of a foreign country. Thus, since a foreigner is defined as a “non-citizen,” the Foreigners Act applies to all individuals in India who do not hold Indian citizenship, including OCI cardholders.



35. Thus, while OCI cardholders are granted certain privileges under the Citizenship Act, yet they remain foreign nationals within the scope of the Foreigners Act. This subjects them to the regulatory framework of the Act, enabling the Central Government to exercise authority over their entry, stay, and departure. Consequently, the Petitioner, as a citizen of the United States of America registered as an OCI, is can also be subject to the provisions of Foreigners Act.

36. Furthermore, Section 16 of the Foreigners Act strengthens the Court's view regarding applicability of the Act:

“16. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939 (16 of 1939), the Indian Passport Act, 1920 (34 of 1920), and of any other enactment for the time being in force.”

37. Section 16 of the Foreigners Act clarifies that the provisions of the said Act are “in addition to, and not in derogation of” other laws concerning foreign nationals, including the Registration of Foreigners Act, 1939, and the Indian Passport Act, 1920. Therefore, Foreigners Act is supplementary to other laws and are not intended to replace or override them. Thus, the statute applies along with any other legislation affecting non-citizens, including provisions concerning OCI status under the Citizenship Act. The phrase “any other enactment for the time being in force” indicates that the Foreigners Act continues to apply, even though specific provisions of the Citizenship Act, such as those governing OCI cardholders, apply to certain categories of foreigners.

38. It is true that the provisions under the Citizenship Act, 1955, recognizing the status of an Overseas Citizen of India, were incorporated



after the Foreigners Act was enacted. On this premise, the Petitioner seeks to contend that the Citizenship Act is precluded from the ambit of “any other enactment” as referenced in Section 16 of the Foreigners Act. The Petitioner argues that since Section 16 does not explicitly mention the Citizenship Act, 1955, its provisions should not apply in conjunction with the Foreigners Act. However, this reasoning overlooks the legislative intent embodied in the phrase “for the time being in force.” Judicial interpretations confirm that this phrase has a flexible application, extending to laws enacted both before and after the statute containing the said phrase. In *Forum for People’s Collective Efforts (FPCE) & Anr. v. The State of West Bengal*,²¹ the Supreme Court, after examining several decisions on the legal issue observed that the phrase “for the time being” is to be interpreted the general sense, and it refers to indefinite stages of facts which will arise in future, and which may vary from time to time. Thus, in the present context the phrase “for the time being in force” is not temporally limited to laws existing at the time the Foreigners Act was enacted but rather extends to any relevant legislation enacted thereafter, including the Citizenship Act, 1955. This interpretation harmonises Foreigners Act with subsequent legal developments, upholding its purpose alongside new statutes that deal with foreign nationals and their rights in India.

39. The Legislature’s choice of language in Section 16 reflects a deliberate intention to integrate subsequent laws, including the Citizenship Act, into the Foreigners Act’s framework, thus preserving the government’s

²¹ (2021) 8 SCC 599. See also, *Union Territory of Chandigarh v. Rajesh Kumar Basandhi*, (2003) 11 SCC 549



authority over all foreign nationals, irrespective of their special status. This inclusive wording of Section 16 ensures that the Foreigners Act operates in tandem with the Citizenship Act, preserving the government's authority to regulate foreign nationals, regardless of their status under the Citizenship Act. Hence, the expression of Section 16 supports the conclusion that the Foreigners Act applies to OCI cardholders.

40. It must also be emphasised that in the present case, the Citizenship Act—enacted after the Foreigners Act—did not expressly repeal or override the Foreigners Act. It is a well-established principle of statutory interpretation that the Legislature is presumed to be aware of all existing laws when enacting new legislation. The Courts use the *presumption of legislative awareness* to interpret new laws in the context of pre-existing legal frameworks. This suggests that if the Legislature intends to alter, override, or repeal an existing statute, it will do so explicitly. In the absence of such express clause, Courts would interpret new laws in harmony with existing ones to avoid conflict and preserve legislative intent.²²

41. Further, the doctrine of *implied repeal* also complements this presumption by discouraging the interpretation of a new statute as repealing an earlier one unless there is a direct and irreconcilable conflict. In ***Harshad S. Mehta v. State of Maharashtra***²³ the Court held that repeal by implication is disfavoured and should only be applied when it is impossible to reconcile the provisions of both statutes. This implies that Parliament, fully aware of the Foreigners Act's broad application, did not intend to

²² *Municipal Corporation of Delhi v. Shiv Shanker*, (1971) 1 SCC 442.

²³ 2001 (8) SCC 257



exempt OCI cardholders from its application. If the Legislature had intended OCI cardholders to be regulated solely under the Citizenship Act, it would likely have amended the Foreigners Act to remove them from the statutory definition of “foreigners.” This principle supports the interpretation that the Citizenship Act, which recognizes the status of OCI cardholders, does not override or impliedly repeal the Foreigners Act. Rather, lack of explicit exclusion of OCI cardholders from the Foreigners Act suggests that the Legislature intended for both statutes to operate in tandem.

42. In fact, there can be many situations where the two statutes can exist concurrently. There may be exceptional situations, such as a public health crisis or other urgent national concerns, where the government may see the need to impose temporary restrictions on foreigners broadly, including OCI cardholders, could necessitate action under the Foreigners Act. For instance, during the COVID-19 pandemic, entry restrictions under Section 3 of the Foreigners Act were imposed across various categories of foreigners, including OCI cardholders, due to the urgency of the situation and its applicability to all non-citizens without discrimination. In such cases, where the restriction does not arise from any specific grounds warranting cancellation of OCI status under Section 7D but rather from a broader need for public safety, invoking the Foreigners Act would remain appropriate and lawful.

43. Taking into account the principles discussed, and the legal framework existing under both the Citizenship Act and the Foreigners Act, we move the next key question: whether actions taken under the Foreigners Act can override the procedural safeguards provided under the Citizenship Act for



OCI cardholders, or if the two statutes must be harmonized to ensure that OCI-specific rights are preserved while still allowing the state to exercise its sovereign functions for national security. This entails understanding the effect of the status of OCI card holder and its legal implication.

What are the legal implications and limitations associated with the status of an OCI cardholder?

44. The status of an OCI cardholder indeed is distinct from that of an ordinary foreign national. This is evident from the rights and privileges conferred to OCI cardholders through notification dated 4th March, 2021, issued by the Ministry of Home Affairs in exercise of their power under Section 7B(1) of the Citizenship Act. The said notification reads as under:

“S.O. 1050(E).— In exercise of the powers conferred by sub-section (1) of section 7B of the Citizenship Act, 1955 (57 of 1955) and in supersession of the notification of the Government of India in the Ministry of Home Affairs published in the Official Gazette vide number S.O. 542(E), dated the 11th April, 2005 and the notifications of the Government of India in the erstwhile Ministry of Overseas Indian Affairs published in the Official Gazette vide numbers S.O. 12(E), dated the 5th January, 2007 and S.O. 36(E), dated the 5th January, 2009, except as respect things done or omitted to be done before such supersession, the Central Government hereby specifies the following rights to which an Overseas Citizen of India Cardholder (hereinafter referred to as the OCI cardholder) shall be entitled, with effect from the date of publication of this notification in the Official Gazette, namely:—

(1) grant of multiple entry lifelong visa for visiting India for any purpose: Provided that for undertaking the following activities, the OCI cardholder shall be required to obtain a special permission or a Special Permit, as the case may be, from the competent authority or the Foreigners Regional Registration Officer or the Indian Mission concerned, namely:-

- (i) to undertake research;*
- (ii) to undertake any Missionary or Tabligh or Mountaineering or Journalistic activities;*
- (iii) to undertake internship in any foreign Diplomatic Missions or*



foreign Government organisations in India or to take up employment in any foreign Diplomatic Missions in India;

iv) to visit any place which falls within the Protected or Restricted or prohibited areas as notified by the Central Government or competent authority;

(2) exemption from registration with the Foreigners Regional Registration Officer or Foreigners Registration Officer for any length of stay in India:

Provided that the OCI cardholders who are normally resident in India shall intimate the jurisdictional Foreigners Regional Registration Officer or the Foreigners Registration Officer by email whenever there is a change in permanent residential address and in their occupation;

(3) parity with Indian nationals in the matter of,-

(i) tariffs in air fares in domestic sectors in India; and

(ii) entry fees to be charged for visiting national parks, wildlife sanctuaries, the national monuments, historical sites and museums in India;

(4) parity with Non-Resident Indians in the matter of,-

(i) inter-country adoption of Indian children subject to the compliance of the procedure as laid down by the competent authority for such adoption;

(ii) appearing for the all India entrance tests such as National Eligibility cum Entrance Test, Joint Entrance Examination (Mains), Joint Entrance Examination (Advanced) or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any supernumerary seat:

Provided that the OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens;

(iii) purchase or sale of immovable properties other than agricultural land or farm house or plantation property; and

iv) pursuing the following professions in India as per the provisions contained in the applicable relevant statutes or Acts as the case may be, namely:-

(a) doctors, dentists, nurses and pharmacists;

(b) advocates;

(c) architects;

(d) chartered accountants;

(5) in respect of all other economic, financial and educational fields not specified in this notification or the rights and privileges not covered by the notifications made by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 (42 of 1999), the OCI cardholder shall have the same rights and privileges as a



foreigner.

Explanation.— For the purposes of this notification,—

- (1) *The OCI Cardholder (including a PIO cardholder) is a foreign national holding passport of a foreign country and is not a citizen of India.*
- (2) *“Non-Resident Indian” shall have the same meaning as assigned to it in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 made by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 (42 of 1999) and who fulfils the “Non-Resident Indian” status as per the Income Tax Act, 1961 (43 of 1961).”*

45. The concept of Overseas Citizens of India was established under the Citizenship Act to address matters of Indian citizenship, rather than the regulation of foreign nationals in general. By contrast, laws such as the Foreigners Act serve to regulate foreigners and their rights within India, without addressing issues of citizenship or quasi-citizenship status. The Petitioner highlights that the term “OCI” itself includes the phrase “Citizen of India,” suggesting that the status was intended to confer a closer connection to Indian nationality than that of ordinary foreigners. To support this position, the Petitioner points to the eligibility criteria detailed in Section 7A of the Citizenship Act, which reads to the following effect:

“7A. Registration of Overseas Citizenship of India cardholder – (1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

- (a) any person of full age and capacity, —*
 - (i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or*
 - (ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or*
 - (iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or*
 - (iv) who is a child or a grandchild or a great grandchild of such a*



citizen; or (b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

.....

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.”

46. Therefore, while technically, OCI cardholders are classified as foreigners under Indian law, yet, their status positions them in a unique middle ground—not entirely akin to foreign nationals nor equivalent to Indian citizens. India does not allow dual citizenship, however, OCI cardholders benefit from privileges that elevate them above ordinary foreign nationals, aligning them, in many respects, more closely with Indian citizens. Although OCI cardholders are not entitled to certain rights which are conferred on the citizens of India, as provided in Section 7B(2) of the Citizenship Act, nonetheless, they are granted certain valuable rights including unrestricted entry, residency rights, and work privileges.

47. The Supreme Court has noticed the special status of OCI cardholders and aptly termed it as a “midway” right in ***Anushka Rengunthwar v. Union of India***,²⁴ recognizing that OCI cardholders represent a bridge between Indian citizens and foreign nationals. Pertinently, Section 7D of the Citizenship Act, 1955, mandates a right to a hearing before adverse actions,

²⁴ (2023) 11 SCC 209



such as the cancellation of OCI privileges. This procedural safeguard acknowledges the unique legal position occupied by OCI cardholders—though not fully integrated citizens, they are afforded protection not accorded to other foreigners.

Examining the Scope and Applicability of Section 7D of the Citizenship Act, 1955 and the Validity of Grounds for Blacklisting an OCI Cardholder

48. Having established that OCI cardholders form a distinct class under the Citizenship Act, 1955, recognized through specific amendments, we now turn to the question of whether the blacklisting of an OCI cardholder should adhere to the procedural and substantive safeguards outlined in Section 7D of the Citizenship Act.

49. Section 7D of the Citizenship Act, as amended by the Citizenship (Amendment) Act, 2019, introduced a significant procedural safeguard by embedding the principles of natural justice into the cancellation process for OCI cardholders. Effective from 10th January, 2020, this amendment added a crucial proviso to Section 7D, mandating that no order to cancel OCI registration shall be issued without first granting the cardholder a reasonable opportunity to be heard. This right to a fair hearing embodies the principles of natural justice, a concept has been long recognized by the Courts. In this context, the right to a “reasonable opportunity of being heard” does more than merely allow a cardholder to state their case; it mandates a level of transparency and specificity in the grounds for cancellation. The government is required to provide clear reasons for the proposed action so that the OCI cardholder can respond meaningfully, safeguarding the procedural fairness that natural justice principles intend to protect.



50. Furthermore, Section 7D begins with the mandate that the Central Government must be “satisfied” that the grounds for cancellation are justified. The term “satisfied” emphasizes that a high standard of decisional fairness is expected, where the reasons for cancellation are explicit, allowing the cardholder a genuine opportunity to engage with the basis for the action. Therefore, for any cancellation order to withstand judicial scrutiny, it must not only be grounded in specific, reasonable grounds but must also reflect a process that meets both substantive and procedural reasonableness.

51. Consequently, the 2019 amendment’s requirement of a “reasonable opportunity of being heard,” when read along with the requirement of “satisfaction,” manifests that an order to cancel OCI registration must transparently reflect both the grounds for cancellation and a fair decision-making process. This combination of principles ensures that any adverse action taken under Section 7D must meet the test of reasonableness and fairness. Therefore, the government’s decision for cancellation should be clear, justified, and procedurally sound and apposite.

Reconciling the Citizenship Act and Foreigners Act: Need for Harmonious Construction

52. The Citizenship Act, particularly Section 7D affords a right to be heard before cancellation of OCI status. In contrast, under Section 3(2) of the Foreigners Act does not mandate these procedural protections, allowing for broad discretion in matters of national security or public order. Although this does not present a direct conflict, certain areas do create a need for a balanced interpretation to ensure coherence and avoid incompatibility.

53. Since Legislature has enacted two statutes covering related issues, it is



presumed that both are meant to coexist. Such an interpretation is necessary as both statutes address grounds like national security and public interest as ground for restricting OCI cardholders to enter the country. While the Citizenship Act provides a comprehensive regulatory framework applicable to OCI cardholders, the Foreigners Act may still apply in situations where a broader public interest requires uniform treatment of all foreign nationals. As per our analysis, it emerges that while Foreigners Act applies to OCI cardholders, the Citizenship Act confers on them a unique status with distinct rights and procedural protections. Considering this, a harmonious interpretation is necessary to enable the operation of both statutes alongside each other, upholding the legislative intent of each legislation.²⁵ Therefore, where the grounds for blacklisting an OCI cardholder mirror those for cancellation under Section 7D of the Citizenship Act, the procedural safeguards under Section 7D should be extended to the blacklisting process. This means that even when invoking Section 3 of the Foreigners Act, the government should observe procedural fairness by allowing the OCI cardholder an opportunity to respond when the grounds for blacklisting are one of the grounds mentioned under Section 7D. This interpretation is in consonance with the legislative intent, and the object and reasons behind the amendment of Citizenship Act, which recognizes OCI cardholders and grants them rights that set them apart from ordinary foreigners.

54. If this safeguard is not applied, we would run the risk undermining the very purpose of the OCI scheme, as it would enable authorities to bypass the specific protections and privileges granted to OCI cardholders by

²⁵ *Commissioner of Income Tax v. Hindustan Bulk Carrier* (2003) 3 SCC 57



indiscriminately invoking the Foreigners Act. Such an approach would conflict with the doctrine of non-retrogression—principle of *progressive realization of rights* and by discouraging any regressive measures that undermine established rights—effectively weakening the OCI framework by treating cardholders as ordinary foreigners. Allowing the state to circumvent the safeguards embedded in the OCI scheme would erode the privileges the Legislature intended for OCI cardholders, undermining both the purpose and object of the status of OCI cardholders under the Citizenship Act, 1955, and rendering their protections redundant. The result would be that an OCI cardholder, though technically retaining their registration, would effectively be prevented from exercising the rights afforded by that status. The long-term visa rights conferred under the OCI scheme would, in effect, be nullified without due process, denying the cardholder of the intended benefits.

The Impugned Orders

55. In the present case, the grounds for blacklisting and OCI cancellation coincide—such as allegations of anti-national activity. On perusal of the show cause notice issued to the Petitioner, which ultimately led to the cancellation order under challenge in W.P.(C) 7753/2024, it becomes evident that the notice falls short of the threshold required to withstand judicial scrutiny. The notice and the final order of cancellation are procedurally deficient under the principles of natural justice embedded within Section 7D of the Citizenship Act. The impugned show cause notice as well as the final order of cancellation are extracted below:

“SHOW CAUSE NOTICE



WHEREAS, application (F. No, GBRL03180210) of Mr. Khalid Jahangir Qazi, US national (PP No. 452123754) had been acknowledged by the Consulate General of India, New York, USA for grant of registration as an 'OCI Cardholder on 13th March, 2018..

AND WHEREAS, such registration as OCI cardholder was granted to Mr. Khalid Jahangir Qazi by the Consulate General of India, New York, USA on 04th April. 2018 and OCI Card bearing No. A3020927 was issued to him. · AND WHEREAS, It has been brought to the notice of the Government of India that Mr. Khalid Jahangir Qazi is involved in anti-India activities which are not in the interests of the sovereignty and integrity of India, the security of India and in the interest of the general public.

AND WHEREAS, after consideration of the facts and circumstances in the matter, the Central Government is of the provisional opinion that the registration as OCI cardholder granted to Mr. Khalid Jahangir Qazi is liable to be cancelled under Section 7D (e) of The Citizenship Act, 1955 in the interests of the general public, which states as follows:-

"7D The Central Government may, by order, cancel the registration granted under sub-section-(1) of Section 7A. If it is satisfied that:-

(e) it is necessary so to do in the interests 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;

"Provided that no order under this section shall be passed unless the Overseas Citizen of India Card holder has been given a reasonable opportunity of being heard,"

NOW THEREFORE, under Section 7D (e) of The Citizenship Act, 1955, the Central Government hereby notifies to Mr. Khalid Jahangir Qazi to show cause as to why his OCI card should not be cancelled. He may submit his reply with supporting documents, if any, before the Consular General of India, New York, USA within 15 days from the date of receipt of the Notice. In case, Jahangir Qazi does not submit his version within the stipulated time, it will be presumed that he has nothing to say in the matter and appropriate legal action under The Citizenship Act, 1955 shall be taken by the competent authority without any further notice."



NYCG/OCI/415/16/2022
Government of India
Ministry of External Affairs

Dated: 12.05.2023

ORDER

WHEREAS, application (F. No. USAN015BEN18) of Mr. Khalid Jahangir Qazi, US national (PP No. 452123754) had been acknowledged by the Consulate General of India, New York, USA for grant of registration as an OCI Cardholder on 13th March, 2018.

AND WHEREAS, such registration as OCI cardholder was granted to Mr. Khalid Jahangir Qazi by the Consulate General of India, New York, USA on 04/04/2018 and OCI Card bearing No. A3020927 was issued to him.

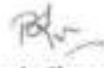
AND WHEREAS, it had been brought to the notice of the Government of India that Mr. Khalid Jahangir Qazi is involved in anti-India/pro-Pakistan activities/propaganda which are inimical to the interests of the sovereignty and integrity of India, the security of India and to the interests of the general public.

AND WHEREAS, after consideration of the facts and circumstances in the matter, the Government of India through the CGI New York, USA has served Show Cause Notice dated 14th June, 2022 to Mr. Khalid Jahangir Qazi giving him a reasonable opportunity to be heard in terms of Section 7D of the Citizenship Act, 1955 before passing the OCI cancellation order.

AND WHEREAS, Mr. Khalid Jahangir Qazi's reply dated 02.07.2021 to the Show Cause Notice dated 14.06.2022 has been examined in this Ministry and found to be bereft of plausible explanation. Thus reply being unsatisfactory, the Government of India, therefore, is satisfied that it is necessary and expedient to cancel Mr. Khalid Jahangir Qazi's OCI card under section 7D (e) of the citizenship Act, 1955.

NOW THEREFORE, in exercise of powers conferred under the sections 7D (e) of the Citizenship Act, 1955, the Government of India through the CGI, New York, USA hereby cancels the registration as OCI Cardholder granted to Mr. Khalid Jahangir Qazi with immediate effect.

Accordingly, in terms of rule 35(1) of the Citizenship Rules, 2009, Mr. Khalid Jahangir Qazi is hereby directed to deliver the OCI card bearing number A3020927 to the undersigned in the Consulate General of India, New York, USA within 15 days from the date of receipt of this order, failing which it shall be treated as cancelled under Rule 35(2) of the Citizenship Rules, 2009 after expiry of 15 days from the date of receipt of this order.


(Bijender Kumar)
Consul (CPV)
12th May, 2023
email: cons.newyork@mea.gov.in

To,
Mr. Khalid Jahangir Qazi
139 Ranwood DR
Amherst
New York 14008

Copy for information: Director (Citizenship), Foreigners Division, Ministry of Home Affairs, MDCNS, New Delhi.

56. The afore-noted notice vaguely asserts that the Petitioner's actions are "anti-India" and adverse to "the sovereignty and integrity of India," without any specific details or evidence supporting these claims. Such broad allegations lack the specificity necessary to afford the Petitioner an adequate opportunity to be heard, thus, contravening the procedural safeguards explicitly embedded in the proviso to Section 7D of the Citizenship Act. The



provision requires the government to be “satisfied” of the need for cancellation and to convey these reasons clearly so that the cardholder can respond appropriately. Without specific facts and grounds, the Petitioner was denied an adequate opportunity to respond substantively to the reasons underlying the proposed cancellation. This lack of clarity deprived the Petitioner of a fair chance to present an effective defence, a crucial component of procedural fairness and principles of nature justice. Consequently, this Court finds that the cancellation order cannot withstand judicial scrutiny and is liable to be set aside. To remedy this deficiency, the Respondents must issue a fresh show cause notice that clearly specifies the grounds for the proposed cancellation, allowing the Petitioner an informed opportunity to respond. As discussed above, an order of cancellation under Section 7D must be procedurally fair, meeting the standards of transparency and reasonableness. In this case, the vague nature of the allegations and absence of specific grounds in the show cause notice fall short of this threshold, rendering it violative of the statute and the principles of natural justice.

57. The purported blacklisting order issued under Section 3 of the Foreigners Act reads to the following effect:

“It is respectfully submitted that the Petitioner has been blacklisted by the Bureau of Immigration [“BOI”] at the behest of Security Agency with the action’ Prevent subject from entering India and inform Originator’ since the Petitioner, a U.S. National, has been found to be involved in pro-Kashmiri separatist activities and anti-India propaganda/lobbying.”

58. The afore-noted order is without reasons or any prior show-cause notice. The Court observes that unlike the Citizenship Act, Section 3 of the Foreigners Act does not expressly require a hearing or procedural safeguards



similar to those mandated under the proviso to Section 7D of the Citizenship Act. However, if the Respondents were permitted to invoke Section 3 to blacklist an OCI cardholder on grounds identical to those for OCI cancellation under Section 7D, without adhering to the procedural safeguards mandated by the Citizenship Act, it would create a serious conflict within the legal framework. If this safeguard is not read in to the statute, the government could arbitrarily apply dual remedies, targeting the same actions on identical grounds through both a blacklisting order under Section 3 of the Foreigners Act and a cancellation order under Section 7D(e) of the Citizenship Act.

59. It is important to emphasize that, in this case, the facts reveal that Union has resorted to blacklisting on grounds identical to those relied upon to cancel the Petitioner's OCI status. These grounds were *prima facie* found unsustainable resulting in an interim stay. Further, it must be highlighted that no formal blacklisting order was issued against the Petitioner. Instead, the affidavit filed in response to CM APPL. 25799/2024 in W.P.(C) 7755/2023 was treated as a blacklisting order, as indicated in this Court's order dated 3rd July, 2024, in W.P.(C) 8873/2024. Nevertheless, this affidavit merely reiterates the same grounds that were used as the basis for cancelling the Petitioner's OCI cardholder status. The Court cannot overlook that a mere affidavit, lacking the force of a formal order, was relied upon to deny fundamental privileges under OCI status. To proceed on such tenuous grounds, without proper procedural fairness, would set a concerning precedent, one that risks eroding the unique rights granted under the Citizenship Act. In view of this, and recognizing the essential need for



adherence to the principles of natural justice in blacklisting OCI cardholders, the reasons outlined in the affidavit dated 27th May, 2024, are deemed unsustainable.

60. In light of the foregoing analysis, the broader constitutional questions regarding the invocation of Articles 14 and 21 of the Constitution are rendered moot in this context. Since the statutory framework itself provides a basis for resolving the matter, further scrutiny of alleged violation of constitutional rights is found unnecessary. Accordingly, the Court refrains from examining the constitutional claims raised by the Petitioner or expressing any opinion on them at this stage.

61. For the foregoing reasons, the Court hereby sets aside both the show cause notice dated 14th June, 2022 and the consequent order dated 12th May, 2023 cancelling the Petitioner's OCI card registration, as well as the purported blacklisting order dated 27th May, 2024. While the setting aside of these orders technically allows the Petitioner to re-enter the country, the underlying concerns relating to national security and public interest remain significant. Moreover, there can be no doubt that authority to grant or deny entry into the country is a sovereign function and prerogative of the state.

62. Thus, striking a balance between individual rights and national security is essential. Before allowing the Petitioner to enter the country, the Respondents are directed to issue a fresh notice that clearly specifies the grounds for any intended restrictions or cancellations. This notice should provide the Petitioner with sufficient details to understand the basis of the proposed action and to respond accordingly. The Petitioner shall be given a reasonable opportunity to submit a reply within a specified timeframe, after



which the government must carefully consider this representation and issue a reasoned decision, under both the statutes, which shall be conveyed to the Petitioner. This process should be completed within six weeks from today.

63. The Respondents shall take fresh decision keeping in mind the legislative intent behind the protections afforded to OCI cardholders and the findings of the Court rendered hereinabove.

64. It must be clarified that while this Court has perused the contents of the sealed cover outlining the grounds for blacklisting the Petitioner, given the nature of the directions issued above, the Court does not feel the need to comment upon the validity of reasons cited therein. All rights and contentions of the parties to this effect are reserved.

65. With the above directions, the present petitions, along with pending application(s), if any, are disposed of.

SANJEEV NARULA, J

NOVEMBER 12, 2024

d.negi/ ab