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

+ **W.P.(C) 9564/2023 & CM APPL. 36607/2023**

**GABRIEL MICHAEL SCARVELLI**

.....Petitioner

Through: **Mr. Shrikant Samantara, Advocate**  
with Petitioner in person.

versus

**FOREIGNERS REGIONAL REGISTRATION OFFICE & ANR.**

.....Respondents

Through: **Mr. Asheesh Jain, CGSC with Mr.**  
**Gaurav Kumar, Ms. Vidhika Kapoor,**  
**Ms. Pooja Bhardwaj, Advocates and**  
**Mr. Keshav Sehgal, G.P. for R-1 & 2.**

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

**27.08.2024**

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1. The Petitioner, Mr. Gabriel Michael Scarvelli, a citizen of Australia, has been carrying out his business activities in India for the past 15 years. On 6<sup>th</sup> March, 2014, he arrived in India on a Business Visa bearing number VJ1828590 valid from 27<sup>th</sup> February, 2014 till 26<sup>th</sup> February, 2015. Before the expiry of his visa, he applied for an extension, on the online portal of Respondent No. 1 – the Foreigners Regional Registration Office, Delhi<sup>1</sup>.
2. Subsequently, he visited the FRRO office and was asked to furnish certain documents and approach on a later date. He submits that thereafter, whenever he approached the Respondent No. 1 for an update on his application, he was informed that they needed more time to revert back.



Despite this, since his application remained pending for more than a year, he requested the FRRO to issue an exit visa to him so as to allow him make a fresh application for Business Visa. However, the FRRO insisted upon a physical inspection of the address of the Petitioner mentioned in the application and asked him to visit the office on 28<sup>th</sup> October, 2016. As instructed, he appeared before the FRRO on the said date and was again asked to come back on 2<sup>nd</sup> November, 2016. On the said date again, he was directed to come back on 5<sup>th</sup> December, 2016.

3. On 5<sup>th</sup> December, 2016, after making the Petitioner run around for more than one year, he was orally informed that his file had been lost and he would be contacted once Respondent No. 1 was able to retrace the file. In this background, the Petitioner preferred a writ petition being W.P.(C) 1837/2023 seeking a mandamus to direct Respondent No. 1 to dispose of the pending application of the Petitioner for grant extension of visa. The said request was considered this Court on 14<sup>th</sup> February, 2023 and the writ petition was disposed of with the following directions:

*“7. Heard. It is seen from the record that the Petitioner’s visa expired on 26th February, 2015. There is an application which has been placed on record which suggests that there was an application made by the Petitioner on 27th January, 2015. However, the question as to whether the application was duly completed and submitted by the Petitioner is not clear from the copy of the application placed on record. The case of the Petitioner is that he had filed the application, however, the Respondent does not have instructions. Nevertheless, the fact remains that the Petitioner has been staying in India without a valid visa for the last 7 years.*

*8. In the overall conspectus of the case, the Court directs the Petitioner to file a fresh application for grant of extension of business visa within 2 weeks from today. The same would generate a ‘DL’ number upon being complete in all aspects. The said ‘DL’ number shall be*

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<sup>1</sup> “FRRO”



*communicated by 1d. Counsel for the Petitioner to 1d. Counsel for the Respondents. Upon the said 'DL' number being communicated, a decision on the application shall be taken within 2 months.*

*9. The Respondents shall process the application in accordance with law and give a reasoned decision to the Petitioner. All contentions of all the parties are left open.*

*10. The petition, along with all pending applications, is disposed of."*

4. As directed by the Court, on 15<sup>th</sup> February, 2023, the Petitioner filed a fresh application bearing ID No. 15022303Z731, with the FRRO for extension of his Business Visa. He also appeared for an in-person interview with all the necessary documents, however, Respondent No. 1 summarily dismissed the request of the Petitioner through e-mail dated 20<sup>th</sup> April, 2023 with the following comment:

*"visa extension service could not be granted as you failed to fulfill business criteria"*

5. Being aggrieved by the above communication, the Petitioner has once again invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking quashing of the said communication and a mandamus seeking directions to the Respondents to grant five-year extension of Business Visa to the Petitioner.

6. Mr. Shrikant Samantara, counsel for the Petitioner along with Petitioner in person, urge that he is a fashion designer of international repute who has been conducting his business activities in India for last 15 years and has strong moorings in India. It is urged that he came to India with the wealth of experience and knowledge in the fashion and textile industries and has supported the domestic workforce in India by providing them employment and livelihood. The Petitioner also asserts that he has received global recognition due to his work at international fora including the United



Nations. For the purpose of carrying out his business of designing and manufacturing clothes in India, in 2008 the Petitioner incorporated a company registered as 'TCQ Texport Pvt. Ltd', wherein he has been functioning as a Director ever since. Subsequently in 2013, the Petitioner registered another company under the name 'Cornely Machine Sales and Services Pvt. Ltd.', for the purpose of selling Cornely brand machines and associated embroidery products, where also he has been functioning as a Director. Petitioner submits that the said companies have been duly registered with all the statutory authorities, including the PAN registration as well as Income Tax Return registrations. In the above background, the Petitioner asserts that his request for extension of Business Visa ought to have been considered as per the Court's directions in order dated 14<sup>th</sup> February, 2023 passed in W.P.(C) 1837/2023.

7. On the other hand, the Respondents have filed a status report dated 29<sup>th</sup> November, 2023, asserting that the Petitioner does not meet the requirement for extension of a Business Visa since under Clause 46 of the Visa Manual, the gross sales/turnover from the business activities of the foreign national in India should not be less than INR 1 Crore per annum. Respondents submit that since the initial Business Visa bearing no. VJ1828590 was granted to the Petitioner only for conducting business through the company named Cornely Machine Sales and Services Pvt. Ltd., the turnover of the other company of the Petitioner cannot be taken into account while considering his application for extension of Business Visa. It is urged that the Petitioner cannot add the turnover of two companies to fulfil the eligibility criteria under the Visa Manual.

8. Furthermore, the stance of the Respondents is that foreign nationals



cannot claim visa extension to stay in India as a matter of right, and such grant/extension of visa, being a sovereign function, strictly falls under the domain of the respondents and they are not bound to disclose reasons for rejection/grant of a visa to a foreign national. They advise the Petitioner to depart to his country of origin and come back on a fresh Business Visa.

9. In this regard, rebutting the arguments of the Respondents, the Petitioner states that the action of declining extension of business visa, is completely misconceived and untenable in law as Clause 46 of the Visa Manual, which has relied upon by the Respondent, is inapplicable to the facts of the case. He submits that if he would have been properly guided, he could have exited to the country in time before the expiry of the visa. However, now if he was to exit the country and reapply for a Business Visa, as is being suggested by the Respondents, he is likely to face the hurdle of being backlisted.

10. In terms of the allegation that the Petitioner does not fulfil the criteria for extension of Business Visa as per Clause 46 of the Visa Manual, he asserts that at the time of applying for the Business Visa, there was no field/column available in the application form provided by Respondent No. 1 for disclosing details of more than one company of the Petitioner, as part of his application. Further, it is urged that by not considering the second company of the Petitioner, the Respondents have erred in calculating the total turnover of the business activities of the Petitioner since he holds 90 – 99.99% shareholding of his companies and as such, for all intents and purposes these two companies are an extension of the Petitioner. In any event, he argues that the intent of the Clause 46 of the Visa Manual is that



any foreigner who is on a Business Visa in India, should be able to make investments and generate turnover of INR 1 crore, which the Petitioner has evidently done if the business activities of his two companies are considered together. Nonetheless, the Petitioner submitted all the documentation including proof of doing business which alone was sufficient for the grant of the Business Visa. In such circumstances, the impugned rejection for extension of visa by the Respondents is completely unreasonable, untenable and arbitrary, and therefore, the same is liable to be set aside.

11. In terms of the maintainability of the present writ petition, the Petitioner states that as a foreign national he is entitled to invoke Article 21 of the Constitution of India to seek the relief as sought in the present application.

12. The Court has considered the aforementioned contentions but remains unsatisfied.

13. The Clause 46 of the Visa Manual, which deals with the grant of Business Visa reads as follows:

**“46 Grant of extension of stay to foreigners holding a Business visa**

*In case Business visa is granted for a period less than five years by the Indian Missions, **the same can be extended up to a maximum period of five years** subject to the gross sales/turnover from the business activities, for which the foreigner has been granted visa, is not less than Rs. 1 crore per annum (to be achieved within 2 years of setting up the business or date of initial grant of B visa, whichever is earlier) [This condition will be applicable in case of Business Visa covered under para 40 (i) above.] In other categories, visa extension shall be subject to submission of documents of proof of doing business/ consultancy. Extension of Business Visa may be granted by the FRRO/FRO concerned on year-to-year basis. **The period of extension shall not be beyond five years from the date of issue of the Business visa.**”*

*[Emphasis added]*



14. As can be seen from the plain reading of the above clause, there is an upper limit placed on the length of time for which a Business Visa of a foreign national can be granted/extended by the Indian Authorities. This limit is only of 5 years, in either category of cases – those falling under Clause 40(1) of the Visa Manual or otherwise. In the instant case, this upper limit of 5 years has already been crossed. The current Business Visa of the Petitioner bearing number VJ1828590, which is sought to be extended, was valid from 27<sup>th</sup> February, 2014 for a period of one year. Thereafter, even though the Petitioner has applied for extension, the same has not been granted. As a result, he has continued to be in India for nearly a decade without a valid extension of visa.

15. In such circumstances, the Court finds no reason to delve into the question of whether the Petitioner meets the criteria of achieving the requisite turnover for being entitled to extension of his Business Visa or the question as to whether the turnover of TCQ Texport Pvt. Ltd. was also required to be taken into consideration under Clause 46 of the Visa Manual, while considering the Petitioner's application for extension of Business Visa.

16. Although, counsel for the Petitioner argues that the Petitioner's stay beyond the stipulated 5 years is inconsequential as this question has been put to rest once the Co-ordinate bench of this Court in W.P.(C) 1837/2013 allowed the Petitioner to submit a fresh application for grant of Business Visa, however, the Court does not find such an argument to be legally or factually tenable. The said decision of the Court, allowing the Petitioner to submit the application afresh, was given after taking into account the overall facts and circumstances of the case. Nonetheless, the said order makes it



clear that the Respondents were directed to consider the fresh application in accordance with law. Therefore, after the Respondents have rendered their decision on the same, the Court at this stage cannot issue a mandamus to the Respondents to grant a Business Visa to the Petitioner when the Visa regulations do not permit grant of a Business Visa for a term beyond five years.

17. It was also be noted that the Court is not delving deep into the question of the Petitioner's grounds for overstay, as any reflection of the Court on that issue may prejudice the Petitioner in case he was to exit the country and reapply for any visa to India. All such rights and contentions of the Petitioner, as to whether his stay in India was for a legitimate reason or not, are not been commented upon.

18. The decision of this Court has been rendered purely on the basis of a plain reading of Clause 46 of the Visa Manual, which does not allow anyone to be on a Business Visa beyond a period of 5 years.

19. In light of the above, the Court finds no room for granting the reliefs sought in the present application.

20. The present writ petition is dismissed along with pending application(s).

**SANJEEV NARULA, J**

**AUGUST 27, 2024/ab**