

04.05.2026
Court No.25
D/L No.3
S. Gayen

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 4769 of 2026
with
CAN 1 of 2026

Joseph Patrick Gallagher
Versus
Union of India & Ors.

Mr. Kallol Basu
Mr. Arunab Das
Mr. Dyutimoy Paul
Ms. Gulafshan Farheen
Mr. Rehan Ansari
Ms. Syed Romana Sultan

...for the Petitioner

Mr. Sukumar Bhattacharya
Mr. Arijit Majumdar
Ms. Shreyashi Sarkar

...for the Union of India

Ms. Jhuma Chakraborty
Ms. Rupsha Chakraborty

...for the State

1. The petitioner has filed the present writ application challenging the order passed by the authorities wherein entry of the petitioner in India is refused on January 30, 2026.
2. Learned counsel appearing for the petitioner submits that initially the petitioner entered India on November 1, 2016 on a valid multiple entry Tourist Visa issued for a period of ten years which is valid from October 4, 2016 to October 3, 2026. The petitioner submits that on February 14, 2017, the petitioner has obtained

Student Visa which was valid up till February 12, 2021. Thereafter, the petitioner has obtained Visa under X(-2) and the said Visa continued up till February 11, 2023. Thereafter, the petitioner has obtained Medical Visa (MED-2) which was valid till August 12, 2025. On August 7, 2025 the petitioner proceeded to Bangladesh and he returned to India on the very same day. On January 30, 2026, the petitioner again went to Bangladesh and on the same day when the petitioner returned to India, the Immigration Authorities have refused entry of the petitioner in India.

3. Learned counsel for the petitioner submits that the petitioner is having the valid Visa up to October 03, 2026 but without assigning any reason and without any opportunity of hearing to the petitioner, the Immigration Authorities have refused the petitioner to enter in India on January 30, 2026.
4. During the pendency of the case, the security guard of the complex where the petitioner resides has received a communication dated November 6, 2025 issued by the Superintendent of Police, DIB, Krishnanagar by which the service of Leave India Notice issued against the petitioner was required to be served by the Officer-in-Charge, Nabadwip Police Station to the petitioner. In the said notice, an email dated February 25, 2026 was also enclosed in which the FRO, KPD, Nadia requested

the in-charge Nabadwip P.S. to once again serve notice to the petitioner.

5. The petitioner submits that the said notice was never served to the petitioner and no opportunity of hearing was given to the petitioner but the respondent authorities illegally and arbitrarily refused the entry of the petitioner in India in spite of having knowledge that the petitioner is having valid visa till October 03, 2026.
6. Learned counsel for the petitioner has relied upon the judgment in the case of **Kamil Siedczyuski vs. Union of India & Anr.** reported in **2020 SCC OnLine Cal 670** and submits that similar question was came up for hearing before the Coordinate Bench of this Court and this Court held that the discretion as conferred by by Section 3 of the 1946 Act on the Central Government, cannot be unfettered and arbitrary, unless so spelt out explicitly in the section itself. He further submits that the powers given to the government, the necessity of disclosing the reasons for curtailing the valuable rights already accrued in favour of the petitioner cannot be dispensed with. In a democracy like India, the rights of any authority cannot be totally arbitrary and unrestricted. The fundamental rights enshrined in the Constitution of India govern not only the Indian citizens but foreigners as well, as long as they are on Indian soil.

7. *Per contra*, learned counsel appearing for the Union of India submits that the petitioner has violated the terms and conditions of the visa granted to the petitioner. The notice to leave India was attempted to serve upon the petitioner at the last residence address but the same could not be served. The authorities found that the petitioner left India and when he was returning in India, the authorities have refused the petitioner to enter in India on January 30, 2026 due to violation of the terms and conditions of Visa issued to the petitioner.
8. The learned counsel for the respondent authorities have filed report and submits that the petitioner is a foreign national having his citizenship of the United States of America, holder of USA passport being No. 515092283. He came in India in the year 2016 on a long-term Tourist Visa on which continuous stay was restricted to 180 days. In order to stay continuously, he obtained a Student Visa (S-5) which was extended till August 12, 2023. Further he got his visa converted to Medical Attended Visa (MED-2) and sought extension on the basis of medical condition of his wife with an intention to prolong his stay in India without adhering to visa norms. He submits that during the stay in India on the strength of (S-5) in the year 2019 the petitioner and his wife purchased an apartment at Jayanta Dham, Mayapur, District- Nadia, West Bengal.

He further submits that (S-5) visa can be used only for studies and not for establishment of residence. He further submits that the petitioner converted his (X-2) visa into (MED-2) visa as an attendant to his wife Patricia Mary Gallagher, who is also an US national on (Med-1) visa. In compliance to Rule 16 of the Immigration and Foreigners Rules, 2025, the ISKON authorities raised compliant to the respondent No.5 regarding the petitioner's involvement in visa violations. It is further submitted that during enquiry on the complaint received from the ISKON authorities, the wife of the petitioner also informed that the petitioner is neither staying with her nor taking due care of her medical treatment and she is not aware about the activities or whereabouts of the petitioner from last one year.

9. Learned counsel appearing for the Union submits that since the Medical Attendant Visa being (Med-2) is granted to take care of principal medical visa holder but the petitioner has violated the said visa without taking care of his wife as an attendant. Considering the above fact, the authorities have taken a decision on November 04, 2025 to issue notice upon the petitioner to leave India. The notice was sent to the petitioner through the Superintendant of Police, DIB, Krishnanagar but the same was not served as the petitioner was not available at the address. He submits

that the petitioner has violated the terms of visa and the authorities after considering the same have passed an order for leave India against the petitioner and when the petitioner tried to re-enter India on January 30, 2026, the authorities have refused to enter in India.

10. Learned counsel appearing for the Union of India has relied upon the judgment in the case of ***Joshua Sadagursky vs. Union of India & Ors.*** reported in ***2019 SCC OnLine Bom 1831*** and submits that the Hon'ble Division Bench of the Bombay High Court held that a non-citizen, who is in violation of his visa conditions, he may be either removed or may be prohibited or prevented from re-entering the country. He further submits that in the present case also the petitioner has violated the provisions of the visa granted to the petitioner and when the authorities tried to serve notice upon the petitioner at the registered address of the petitioner, the petitioner was not available at the address and the when the petitioner tried to re-enter in India on January 30, 2026, the authorities have refused the petitioner to re-enter in India. He further submits that at the time of issuance of the notice and when the entry of the petitioner was refused, the petitioner was not in India and already violated the terms and conditions of the visa and thus

the petitioner is not entitled to get any opportunity of hearing.

11. Heard the learned counsel for the respective parties and perused the materials on record. This Court finds that there is no dispute that the petitioner has obtained visa on October 4, 2016 which is valid up to October 3, 2026. The petitioner was remained in India up till February 11, 2022 on Student Visa. Subsequently the visa granted to the petitioner was converted to (MED-2) Visa which was extended till August 12, 2025. It is the specific case of the authorities that the medical visa (MED-2) was granted to the petitioner only on the condition that the petitioner will take care of his wife who is under medical treatment but when the authorities have received complaint from the ESKON authorities and the authorities have inquired about the complaint received against the petitioner, the wife of the petitioner has informed the authorities that for the last one year the petitioner is not taking care of his wife though he has obtained medical visa only for the purpose of taking care of his wife as medical attendant. It further reveals that the petitioner was not with his wife for the last one year and accordingly the authorities have taken a decision for issuance the notice upon the petitioner to leave India on November 4, 2025. The Superintendent of Police, DIB has

forwarded the same to the Officer-in-Charge, Nabadwip Police Station for service of the same to the petitioner. The report reveals that the notice could not be served upon the petitioner as the petitioner was not at the address which was provided by the petitioner to the authorities at the time of obtaining visa but the authorities found that on January 30, 2026 the petitioner left India to Bangladesh and on the very same day the petitioner returned in India but the authorities have refused entry of the petitioner in India.

12. Now only question raised by the petitioner in the present case that the opportunity has not given to the petitioner before issuance of leave India notice. This Court finds that it is the specific case of the authorities that the leave India notice issued by the authorities through the Superintendant of Police, DIB, Krishnanagar and the Superintendant of Police tried to serve the notice to the petitioner through the Officer-in-Charge, Nabadwip Police Station but the same could not be served as the petitioner was not available at the said address. The petitioner failed to produce any documents to show that from November 4, 2025 till January 30, 2026 the petitioner was at the address but the police has submitted a false report. The petitioner has not challenged with regard to Leave India Notice. The petitioner has only challenged with regard to

refusal of the petitioner to enter India on January 30, 2026. The petitioner being the foreign national who entered India with the valid visa and was enjoying the visa in different category from time to time and lastly he has obtained the visa as (MED-2) being the attendant of his wife who is getting treatment but the wife has categorically stated during the enquiry that he has never attended his wife and for the last one year and his whereabouts is not known to the wife. Thus the petitioner cannot take the plea of opportunity of hearing as the petitioner was not in India or at the address provided to the authorities.

13. The State has also filed report dated April 3, 2026 wherein it is categorically mentioned that Leave India Notice was forwarded to the in-charge, Nabadwip P.S. to serve upon petitioner but no such person was available within the jurisdiction of Nabadwip P.S.
14. The judgment relied upon by the petitioner in the case of **Kamil Siedczynski** (supra), in the said case it is held that the fundamental rights enshrined in the Constitution of India govern not only the Indian citizens but foreigners as well, as long as they are on Indian soil but the in the present case when the authorities tried to serve notice to the petitioner, the petitioner was not found at the address. On January 30, 2026 it was found that the petitioner was entering in India from Bangladesh, thus, the petitioner was not

in Indian soil. In view of the above, the judgment relied by the petitioner is distinguishable from the fact of the present case.

15. The judgment relied upon by the Union of India in the case of **Joshua Sadagursky** (supra), in the said case the Hon'ble Division Bench of the Bombay High Court has categorically held that if the authorities find that there is a non-citizen, who is in violation of his visa conditions, he may be either removed or may be prohibited or prevented from re-entering the country. In the present case also the petitioner was not found at the registered address and during enquiry, it was found that the petitioner has violated the conditions of VISA and accordingly the leave India notice was issued but notice could not served upon the petitioner. Thus the judgment relied upon by the Union of India is squarely applicable in the present case.

16. The petitioner further relied upon the judgment in the case of **Hasan Ali Raihany vs. Union of India & Ors.** reported in **(2006) 3 SCC 705** and submits that in the said case also the petitioner entered this country legally upon the single entry permit issued to him, it is only fair that the competent authority must inform him the reasons for his deportation. In the present case there is no question of deportation. In the present case, the petitioner is having the valid visa but the petitioner has violated the terms and conditions of the

visa and the authorities have passed an order to leave India. Thus the judgment relied upon by the petitioner is distinguishable from the facts of the present case.

17. Considering the above, this Court did not find any merit in the present writ petitioner.

18. Accordingly, **WPA 4769 of 2026** is **dismissed** and the connected application being **CAN 1 of 2026** also stands **dismissed**.

19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

20. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Krishna Rao, J.)