

(2023) 01 GUJ CK 0082

In the Gujarat High Court

Case No : R/Special Civil Application No. 26810 Of 2022

Dhanraj Rajendra Patel

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 19(1)(e), 21, 22(1), 26, 226
Foreigners Act, 1946 — Section 3, 3(2)(b), 3(6)
Extradition Act, 1962 — Section 3(1)

Citation : (2023) 01 GUJ CK 0082

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : IH Syed, Aftabhusen Ansari, Devang Vyas, Chirayu A Mehta, Harshal N Pandya

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Respective learned advocates waives service of notice of Rule for and on behalf of the respective respondents.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, who is a USA citizen and a passport holder of that country, has sought a direction to quash and set aside the communication / notice dated 27.12.2022 by the Bureau of Immigration, India, under para 6 of the Foreign Order, 1948, by which, he has been refused entry into India.

3. The facts in brief are as under:

* It is the case of the petitioner that he is a citizen of the United States of America albeit having his roots in India. That he was born in Karamsad, Anand and after completing his schooling upto 7th standard from a school in Karamsad, he left for USA at the age of 17 and obtained a US citizenship. He is at present working there.

* In the year 2015, the petitioner was charged with sexual offence against a minor under Section 22 of the United State Codes 212b(c)(1). According to the petitioner, being unaware of the procedure of trial, he pleaded guilty. He was under probation and performed community service of 100 hours which he successfully completed on 14.01.2021. He was successfully discharged on 1.4.2021.

* On becoming a US citizen, the petitioner's Indian Passport was revoked and the petitioner was issued a USA passport. On being covered as a sex offender the petitioner had to surrender his existing US passport and was issued a fresh US passport with the endorsement that he is convicted of a sex offence against a minor. This was done by the US State Department by a communication dated 23.05.2022.

* In March, 2022 i.e. on 01.03.2022, the petitioner entered India and entered into a marriage at Anand, which was performed in Arya Samaj. As the petitioner seeks to come to India for celebrating his marriage on 7.1.2023, the petitioner booked and boarded a flight on 25.12.2022 from New York to Dubai and from Dubai to Ahmedabad with a scheduled return ticket of 20.1.2023 from Ahmedabad. This was on the basis of the petitioner having been issued an Electronic Travel Authorization (E-Visa) on 7.12.2022 valid upto 6.1.2023.

* It is the case of the petitioner that by the impugned communication dated 27.12.2022, the petitioner was stopped at Ahmedabad Airport and was deported to Dubai and the E-Visa issued has been cancelled. Hence, the petition.

4. Mr. I.H. Syed, learned Senior Counsel assisted by Mr. Aftabhusen Ansari, learned advocate for the petitioner made the following submission:

a. The E-Visa that was issued to the petitioner on 7.12.2022 and was valid upto 6.1.2023 was cancelled without giving an opportunity of hearing the petitioner.

b. Inviting the Court's attention to the communication dated 27.12.2022, Mr. Syed would submit that the same was issued under para 6 of the Foreigners Order, 1948. Reading para 6 of the Foreigners Order, 1948 together with para 3 of the order, he would submit that the power to refuse permission to enter India can be issued if, amongst other things, the Civil authority is satisfied that the foreigner has been sentenced in a foreign country for an extradition offence within the meaning of the Indian Extradition Act, 1903.

c. According to Mr. Syed, the Indian Extradition Act, 1903 has been revoked and the Indian Extradition Act of 1962 is in place. As per the Act of 1962, it is a law relating to the extradition of fugitive criminals. A "fugitive criminal" is defined to mean a person accused or convicted of an extradition offence. "Extradition Offence" is also defined to mean an offence provided for in the extradition treaty with the State. It also means when it is in relation to a State other than a treaty state the offence has to be one punishable with imprisonment for a term which shall not be less than one year under the laws of India. The petitioner though

convicted of a sex offence has undergone only 100 hours of community service and therefore is not one such convict. Even as per the Extradition Treaty between the two countries i.e. USA and India an extraditable offence means an offence if it is punishable including imprisonment for a period of more than one year, which is not the case here. The petitioner also has not committed any political offences or such offences envisaged under Article 4 of the treaty to warrant his deportation.

d. Mr. Syed would submit that cancellation of an E-Visa without offering an opportunity of hearing is bad and in support of this submission, Mr. Syed relied upon the following decisions:

* R.I. Jebaraj v. Union of India reported in 2009 SCC OnLine, Mad., 160.

Mr. Syed would rely on para 19 of the decision to submit that the petitioner was entitled to an opportunity of hearing. He also pressed into service para 21 and 22 of the said decision.

* Mohamaad Salimullah and another v. Union of India reported in 2021 SCC OnLine SC 296. Paragraph No.13 thereof was relied upon to submit that the right not to be deported is ancillary to the right to reside and settle in any part of the territory of India.

* Kamil Siedczynski v. Union of India reported in 2020 SCC OnLine, Cal.,670, decision of the Calcutta High Court held that though Article 19 confers rights on a citizen of India, right to life and liberty under Article 21 cannot be curtailed.

5. Mr. Devang Vyas, learned Additional Solicitor General assisted by Mr. Chirayu Mehta, learned advocate for the respondents made the following submissions:

* Mr. Vyas would submit that it is a total misconception for the petitioner to bring in the concept of extradition, provisions of the Indian Extradition Act, 1962 or such issues when it was a plain and simple case of deportation by an Airline in compliance of para 6 of the Foreigners Order, 1948.

* Mr. Vyas would submit, reading paragraphs

3 and 6 of the Foreigners Order, 1948 that, para 6, in light of para 3, authorizes the Aircraft or the Airline authorities to deny permission to any persons travelling by the Aircraft to land at any port. The communication is therefore issued to the Airline to deny such person permission to land and therefore has no nexus with the object of or any relation with para 3(d) dealing with extradition, extraditable offences, fugitive criminals etc.

* Mr. Vyas further submit that under Section 3 of the Foreigners Act, 1946, the Central Government may by order may make provisions for prohibiting, regulating or restricting their entry. Orders have been issued in accordance with this provisions. Mr. Vyas would tender one such confidential communication, being an office memorandum dated 30.3.2021 which provides for revised guidelines for blacklisting of foreign nationals. This includes such foreigners

convicted of rape or foreigners who are found to be morally depraved.

* Mr. Vyas would further submit that the petitioner booked a flight on 25.12.2022 and before he could enter India on 27.12.2022, the Airline was asked to deport him while it did and at present, the petitioner is in Dubai. Merely because he could on an earlier occasion on 1.3.2022 enter India is no ground to support the confirmed right to visit India. The endorsement on the passport of his conviction was made on 23.05.2022 based on which the US authorities informed the Indian authorities of the petitioner's travel plans and a look out notice informing the FRRO Ahmedabad advising India that a registered sex offender intends to visit India. In light of this information, the E-Visa which is only a stop gap visa valid for 30 days until a regular visa is applied, was cancelled on 29.12.2022 without the petitioner, entering into India. The country is within its rights to say that it would not want a foreigner to enter its shores if so convicted.

* Mr. Vyas would submit that reliance placed by Mr. Syed on the decision of the Division Bench of the Bombay High Court in the case of Suneet Sudhish Talpade v. Union of India (Writ Petition (L) No.16392 of 2021) dated 12.9.2022 was in an exceptional case as observed by the High Court itself when the petitioner wanted to meet his aged parents 93 year old father and 88 year old mother. No such exceptional case existed in the present. The petitioner was already married. He wanted to visit India to celebrate his marriage, hold a social function, which was not so important.

* In support of his submission, Mr. Vyas would rely on a decision of this Court in the case of Akil Valibhai Piplodwala (Lokhandwala) v. District Superintendent of Police, Panchmahal at Godhra, SCA No.13566/2022 dated 18.07.2022 which had held that no rights much less fundamental rights were violated. Moreover, a person sitting in Dubai cannot invoke Article 21 to submit that his life and liberty in India is endangered.

* As far as the decisions cited by Mr. Syed, Mr. Vyas would submit that in the case of Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and others reported in AIR 1933 SC, 367 and in the case of Louis De Raedt v. Union of India reported in 1991(3) SCC, 554, the Court has held that a foreigner has no right to be heard.

He would read the relevant paragraphs of the judgments.

* In rejoinder Mr. Syed would submit that the law, as observed in the case of R.I. Jebaraj (Supra) cannot be made applicable in post covenant cases.

6. Having considered the submissions made by the learned advocates for the respective parties, what needs consideration is whether cancellation of the E-Visa of the petitioner is just and proper and consequentially should the petitioner be permitted to enter the shores of India for performing this marriage on 7.1.2023.

7. A reiteration of facts may be necessary.

8. It is undisputed that the petitioner is a US citizen, hence a foreigner.

9. The petitioner is a US passport holder. Admittedly, an endorsement is made on his US passport post 23.5.2022 which reads thus:

"The bearer was convicted of a sex offence against a minor, and is covered sex offender pursuant to 22 United States Code Section 212b(c)(1)."

10. The argument of the learned counsel of the petitioner that the fact that the petitioner has entered India on 1.3.2022 and therefore denial of this permission henceforth is misconceived. As on 1.3.2022, the petitioner had a passport without the endorsement as aforesaid. On 23.05.2022, the United States Department of State, Washington D.C. through the Bureau of Consular Affairs, Passport Services, Office of Adjudication informed the petitioner that the earlier passport would stand revoked. Travel to India therefore on a passport prior to the issue of a fresh passport with the endorsement, cannot be a comparable instance.

11. To the submission of the Senior Counsel on the aspect of the communication dated 27.12.2022 in the context of paragraph No.6 of Foreigners Order, 1948 is concerned, reading the Foreigners Order, 1948 indicates that it is issued in exercise of powers conferred by Section 3 of the Foreigners Act, 1946. The Foreigners Act is an Act to provide for the exercise by the Central Government of certain powers in respect of entry of foreigners into India, their presence therein and their departures therefrom.

12. Section 3 gives powers to the Central Government by order to make provisions either generally or with respect to all foreigners or a particular foreigner which provides that a foreigner shall not enter India.

13. Section 3 of the Act reads as under:

"3. Power to grant or refuse permission to enter India :

(1) No foreigner shall enter India: -

(a) otherwise than at such port or other place of entry on border of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf, either for foreigners generally or for any specified class or description of foreigners; or

(b) without the leave of the civil authority having jurisdiction at such port or place.

(2) Leave to enter shall be refused if the civil authority satisfied that: -

(a) the foreigner is not in possession of a valid passport or visa for India or has not been exempted from the possession of a passport or visa;

(b) he is a person of unsound mind or mentally defective person;

(c) he is suffering from a loathsome or infectious disease in consequence or which, in the opinion of the medical officer of the port or the place of entry, as the case may be, the entry of the foreigner is likely to prejudice public health;

(d) he has been sentenced in a foreign country for an extradition offence within the meaning of the Indian Extradition Act, 1903 (XV of 1903)

(e) his entry is prohibited either under an order issued by a competent authority or under the specific orders of the Central Government.”

14. The Foreigners Order, 1948 is one amongst such many orders. Reading of the order would indicate that it deals with powers of authorities at ports or such other places of entry on the border of India and empowers such authority to grant or refuse permission to enter India. Para 3(2) provides that leave to enter shall be refused if the authority is satisfied that any of the disqualifications prescribed thereunder exist i.e. those under 3(2)(a) to (e), Para 3(2) of the Foreigners Order, 1948 reads as under:

(2) Leave to enter shall be refused if the civil authority satisfied that: -

(a) the foreigner is not in possession of a valid passport or visa for India or has not been exempted from the possession of a passport or visa;

(b) he is a person of unsound mind or mentally defective person;

(c) he is suffering from a loathsome or infectious disease in consequence or which, in the opinion of the medical officer of the port or the place of entry, as the case may be, the entry of the foreigner is likely to prejudice public health;

(d) he has been sentenced in a foreign country for an extradition offence within the meaning of the Indian Extradition Act, 1903 (XV of 1903)

(e) his entry is prohibited either under an order issued by a competent authority or under the specific orders of the Central Government.”

Clause (d) which is pressed into service by the learned Senior Counsel for the petitioner that one who is sentenced for an extradition offences cannot be permitted to enter. What is pressed into service is that in absence of the Act of 1903, the applicable Act of 1962 provides that only a fugitive criminal who commits extraditable offences under a treaty can be prevented whereas the petitioner has not committed such an offence.

15. This submission of the learned Senior Counsel for the petitioner is misconceived. The law of extradition and the Foreigners Act are different Acts. As per the laws of extradition the purpose is to handover persons who are alleged to have committed certain offences on the territories or who have already been convicted of those offences by their Courts are to be handed over to them in custody for prosecution or punishment.

16. The Foreigners Act on the other hand confers a power to expel a foreigner. It will be fruitful to reproduce paragraph Nos.33 to 43 of the judgment in the case

of Hans Muller of Nurenburg (Supra) which answer the question and based on which the entire bogey of the concept of "extraditable offences" and "fugitive criminals" at the hand of the petitioner is misconceived.

"33. The second point raises a question of wider import touching the status and rights of foreigners in India, and the question we have to determine is whether there is any law in India vesting the executive government with power to expel a foreigner from this land as opposed to extraditing him.

34. Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India, among them, the right "to move freely throughout the territory of India" and "to reside and settle in any part of India", subject only to laws that impose reasonable restrictions on the exercise of those rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land. This is conferred by article 21 which is in the following terms:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

35. Entries 9, 10) 17, 18 and 19 in the Union List confer wide powers on the Centre to make laws about among other things, admission into and expulsion from India, about extradition and aliens and about preventive detention connected with foreign affairs. Therefore, the right to make laws about the extradition of aliens and about their expulsion from the land is expressly conferred; also, it is to be observed that extradition and expulsion are contained in separate, entries indicating that though they may overlap in certain aspects, they are different and distinct subjects. And that brings us to the Foreigners Act which deals, among other things, with expulsion, and the Extradition Act which regulates extradition.

36. The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.

37. The law of extradition is quite different. Because of treaty obligations it confers a right on certain countries (not all) to ask that persons who are alleged to have committed certain specified offences in their territories, or who have already been convicted of those offences by their courts, be handed over to them in custody for prosecution or punishment. But despite that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.

38. There are important differences between the two Acts. In the first place, the Extradition Act applies to everybody, citizen and foreigner alike, and to every class of foreigner, that is to say, even to foreigners who are not nationals of the

country asking for extradition. But, as has been seen, because of article 19 no citizen can be expelled (as opposed to extradition) in the absence of a specific law to that effect; and there is none; also, the kind of law touching expulsion (as opposed to extradition) that could be made in the case of a citizen would have to be restricted in scope.

That is not the case where a foreigner is concerned because article 19 does not apply. But a citizen who has committed certain kinds of offences abroad can be extradited if the formalities prescribed by the Extradition Act are observed. A foreigner has no such right and he can be expelled without any formality beyond the making of an order by the Central Government. But if he is extradited instead of being expelled, then the formalities of the Extradition Act must be complied with. The importance of the distinction will be realised from what follows; and that applies to citizen and foreigner alike.

39. The Extradition Act is really a special branch of the law of Criminal Procedure. It deals with criminals and those accused of certain crimes. The Foreigners Act is not directly concerned with criminals or crime though the fact that a foreigner has committed offences, or is suspected of that, may be a good ground for regarding him as undesirable. Therefore, under the Extradition Act warrants or a summons must be issued; there must be a magisterial enquiry and when there is an arrest it is penal in character; and-and this is the most important distinction of all-when the person to be extradited leaves India he does not leave the country a free man. The police in India hand him over to the police of the requisitioning State and he remains in custody throughout.

40. In the case of expulsion, no idea of punishment is involved, at any rate, in theory, and if a man is prepared to leave voluntarily he can ordinarily go as and when he pleases. But the right is not his. Under the Indian law, the matter is left to the unfettered discretion of the Union Government and that Government can prescribe the route and the port or place of departure and can place him on a particular ship or plane. (See sections 3(2) (b) and 6 of the Foreigners Act). Whether the Captain of a foreign ship or plane can be compelled to take a passenger he does not want or to follow a particular route is a matter that does not arise and we express no opinion on it. But assuming that he is willing to do so, the right of the Government to make the order vis- a-vis the man expelled is absolute.

41. This may not be the law in all countries. Oppenheim, for example, says that in England, until December 1919, the British Government had "no power to expel even the most dangerous alien without the recommendation of a court, or without an Act of Parliament making provision for 'such expulsion, except during war or on an occasion of imminent national danger or great emergency'". (Oppenheim's International Law, Vol. 1, 7th edition, page 631).

But that is immaterial, for the law in each country is different and we are concerned with the law as it obtains in our land. Here the matter of expulsion has

to be viewed from three points of view: (1) does the Constitution permit the making of such a law? (2) does it place any limits on such laws? and (3) is there in fact any law on this topic in India and if so, what does it enact? We have already examined the law making power in this behalf and its scope, and as to the third question the law on this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel. But there is this distinction. If the order is one of expulsion, as opposed to extradition, then the person expelled leaves India a free man.

It is true he may be apprehended the moment he leaves, by some other power and consequently, in some cases this would be small consolation to him, but in most cases the distinction is substantial, for the right of a foreign power to arrest except in its own territory and on its own boats is not unlimited. But however that may be, so far as India is concerned, there must be an order of release if he is in preventive custody and though he may be conducted to the frontier under detention he must be permitted to leave a free man and cannot be handed over under arrest.

42. In a case of extradition, he does not leave a free man. He remains under arrest throughout and is merely handed over by one set of police to the next. But in that event, the formalities of the Extradition Act must be complied with. There must be a magisterial enquiry with a regular hearing and the person sought to be extradited must be afforded the right to submit a written statement to the Central Government and to ask, if he so chooses, for political asylum; also he has the right to defend himself and the right to consult, and to be defended by, a legal practitioner of his choice. (Article 22(1) Of course, he can also make a representation against an order of expulsion and ask for political asylum apart from any Act but those are not matters of right as under the Extradition Act.

43. Our conclusion is that the Foreigners Act is not governed by the provisions of the Extradition Act. The two are distinct and neither impinges on the other. Even if there is a requisition and a good case for extradition, Government is not bound to accede to the request. It is given an unfettered right to refuse. Section 3(1) of the Extradition Act says-"the Central Government may, if it thinks fit". Therefore, if it chooses not to comply with the request, the person against whom the request is made cannot insist that it should. The right is not his; and the fact that a request has been made does not fetter the discretion of Government to choose the less cumbrous procedure of the Foreigners Act when a foreigner is concerned, provided always, that in that event the person concerned leaves India a free man. If no choice had been left to the Government, the position would have been different but as Government is given the right to choose, no question of want of good faith can arise merely because it exercises the right of choice which the law confers. This line of attack on the good faith of Government falls to the ground."

17. What is therefore evident is that there is, in the matter of expulsion an unfettered discretion of the Central Government to do so.

18. The Foreigners Order, 1948 therefore only authorizes the authority to deport a foreigner who lands in India and it is in light of this context that the order dated 27.12.2022 has to be read. The communication is addressed to the Airline to deport the petitioner in light of any of the contingencies as prescribed in para 3. The purpose of extradition not being a relevant consideration in these facts the purpose of his entry being restricted or prohibited is because of an order of the competent authority or under the specific orders of the Central Government. The communication of 27.12.2022 is a consequential order. From the material placed before this Court, what is evident is that the Criminal Fraud Investigation Overseas Criminal Investigation Unit, Consulate General of the United States of America had informed the FRRO, Ahmedabad office that the petitioner was a registered sex offender, that hence the US Law Enforcement Authority were to be notified of any travel outside United States. An advisory therefore was issued to the Indian Authorities. Pursuant thereto the Indian Authorities took action to prevent the petitioner from entering India. The petitioner, accordingly after traveling from the U.S. to Ahmedabad via Dubai was put back on a flight to Dubai without being permitted to enter India and his E-Visa was cancelled on 29.12.2022. Having not at all entered the territorial limits of the country on 27.12.2022, it cannot be a valid argument on behalf of the petitioner to contend that he had an accrued right or had to be "extradited." Even the E-Visa stipulates that unless an application for a regular Visa was applied for within thirty days, the E-Visa would have no validity. Therefore, that itself gave no right to the petitioner to enter for celebrating his marriage. The petitioner had already married on 1.3.2022 and the purpose of his visit of not as exceptional as the one in the facts before the Bombay High Court.

19. As having read Section 3 of the Foreigners Act, 1946 which empowers the Central Government to make provisions that may prevent a foreigner to enter India, in the course of arguments, the learned ASG for the Union of India Mr. Vyas has produced an Office Memorandum dated 30.3.2021 providing for revised guidelines for blacklisting of foreign nationals which inter alia provide that Foreigners who are convicted of charges of rape etc. or foreigners who are found to be morally depraved can be placed in the Black List. Facts on hand indicate that petitioner had been convicted as sex offender and therefore can safely be a foreigner morally depraved and therefore under the powers vested with the Central Government his entry can be prohibited even under para 3(e) of the Foreigners Order, 1948 when read in context of the revised guidelines.

20. Now coming to address the issue of the order being bad on the anvil of it being in violation of principles of natural justice and depriving the petitioner of his fundamental rights under Article 14, 19 and 21 are concerned, what is necessary to see is the judgments cited across the Bar by the respective Senior Counsels.

21. The decisions cited by the learned counsel for the petitioner were to press into service the concept of opportunity of hearing in the case and absence of it

rendering the cancellation violating principles of natural justice.

22. In the case of R.I. Jebaraj (Supra), the Madras High Court did opine that post covenant period did prescribe the right of the person to an opportunity of hearing as set out in paras 19 to 21 of the Madras High Court Judgment in the case of R.I. Jebaraj (Supra) which read as under:

"19. In Sarbananda Sonowal VS Union of India and another reported in(2005) 5 Supreme Court Cases 665, after elaborately dealing with the various provisions and after making a specific reference to United Nations International Covenant on Civil and Political Rights,1966, the Hon'ble Supreme Court has held that in respect of an alien who is lawfully in India under a valid passport and visa, he is entitled to have an opportunity to represent before an order of expulsion is passed. The Hon'ble Supreme Court has held in paragraph 75 as follows:-

"75.....Like the power to refuse admission this is regarded as an incident of the State's Territorial sovereignty. International law does not prohibit the expulsion en masse of aliens. (p.351).

Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa, etc., and not to those who have entered illegally or unlawfully. Similar view has been expressed in Oppenheim's International Law (Ninth Edn. 1992 in paras 400,401 and 413).

The author has said that the reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy, competent to exclude aliens from the whole or any part of its territory. In para 413 it is said that the right of States to expel aliens is generally recognised. It matters not whether the alien is only on a temporary visit, or has settled down for professional business or any other purposes in its territory, having established his domicile there. A belligerent may consider it convenient to expel all hostile nationals residing or temporarily staying within its territory, although such a measure may be very harsh on individual aliens, it is generally accepted that such expulsion is justifiable. Having regard to Article 13 of the International Covenant on Civil and Political Rights, 1966, an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law."

20. In the above judgment, the Honble Supreme Court has obviated doubt, if any, and has held in clear terms that after the advent of the International Covenant on Civil and Political Rights, 1966, any order of expulsion of a foreigner from India who has a valid passport and visa could be passed only after affording sufficient

opportunity to him except in exceptional cases where security of the nation would be put to perils imminently if such an order of expulsion is not passed forthwith without notice.

21. In *Hasan Ali Aihany VS Union of India and others* reported in (2006) 2 Supreme Court Cases (Cri) 33, while dealing with an identical question, a Division Bench of the Hon'ble Supreme Court has taken a similar view. In paragraph 8 of the judgment, the Hon'ble Supreme Court has held as follows:

"8. Having regard to the facts and circumstances of the case, particularly, having regard to the fact that the petitioner has 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. If such a decision is taken, the petitioner must be given an opportunity to submit his representation against his proposed expulsion. The competent authority

may thereafter, consider his representation and pass appropriate order. As observed by this Court, this procedure may be departed from for compelling reasons of national security, etc. In the instant case, we have not so far noticed any fact which may provide a compelling reason for the State not to observe this procedure."

23. What needs to be appreciated is that these decisions need not be seen in isolation and have to be applied to the facts of each case. In the present case, admittedly, the petitioner has been convicted as a sex offender and the endorsement is so made on his passport too. In the exercise of a statutory power flowing from the provisions of Section 3 of the Foreigners Act, 1946, guidelines have been issued that foreigners who are morally depraved are not permitted to enter the territorial limits of India. The country is within its rights to prescribe norms valid to prevent such people from setting foot on the Indian soil. The petitioner, before he could so enter was deported by the agency i.e. the Airline to Dubai under paragraph No.6 of the Foreigners Order, 1948. This was a mode of execution of the order by virtue of the authority vested in it under para 3 of the Foreigners Act, 1946 in discharge of its country's obligation under the guidelines. It is in light of these undisputed facts that paragraph No.13 of the case of *Louis De Raedt* (Supra) needs to be reproduced.

"13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental right under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta* and Ors, [1955] 1 SCR 1284 that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution lettering this discretion. It was pointed out that the legal position on this aspect is not uniform

in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.”

24. A Coordinate Bench of this Court in the case of Akil Valibhai Piplodwala (Supra) held as under:

“13. The present writ petition has been filed under Articles 14, 19, 21 and 26 of the Constitution of India. Since, the petitioner has not challenged the order dated 12.07.2022 passed by the Principal District Judge, Panchmahals at Godhra passed in Regular Civil Appeal No.20 of 2012, the present writ petition challenging the impugned order dated 14.07.2022 passed by the respondent authorities itself is misconceived since the impugned order is premised on the order passed in Regular Civil Appeal No.20 of 2012, which has been allowed by the order dated 12.07.2022.

14. At this stage, it would be apposite to refer to the observations made by the Supreme Court of India in the case of Louis De Raedt (supra). The relevant paragraph reads thus :-

“13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental right under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors, [1955] 1 SCR 1284 that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution lettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.”

15. The Apex Court has enunciated that the fundamental right of the foreigner is confined to Article 21 of the Constitution of India for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)

(e), which is applicable only to the citizens of this country.

16. In the case of Hans Muller of Nuremburg (supra), the Apex Court has observed that the power of Government in India to expel foreigner is absolute and unlimited and there is no provision in the Constitution, fettering this discretion. It is further observed that so far as the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned, has to be given an opportunity of place his case. In the present case, unquestionably, the petitioner has not challenged the aforesaid order by filing an appeal and since the impugned order dated 14.07.2022 is premised on the said order dated 12.07.2022 passed in the Regular Civil Appeal, the petitioner cannot contend that he has right to be heard before passing the order since such right would get diluted in view of the order passed by the Court of Principal District Judge, Panchmahals at Godhara."

25. Therefore, what is evident is that being an American Passport Holder, the petitioner cannot invoke Articles 14 and 19 of the Constitution of India on facts admittedly the petitioner is deplaned and is in Dubai. The petition has been filed and affirmed by the petitioner's father. Life and liberty of a person not on the shore of India, cannot be invoked on his behalf when the individual himself is not in India.

26. For all the aforesaid reasons, the petition deserves to be dismissed and accordingly, it is dismissed with no order as to costs. Rule is discharged.