

(1994) 07 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 295 of 1994

Fred Howard Haering

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 04-07-1994

Acts Referred:

Foreigners Act, 1946 — Section 3(2)

Citation : AIR 1996 HP 27 : (1995) 1 ShimLC 238

Hon'ble Judges : V. Ratnam, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Ranjan Lakhanpal and Rajiv Sharma, for the Appellant; Indar Singh, General and P.A. Sharma, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ petition, the petitioner has prayed for the issue of a writ of certiorari to quash the order dated 28-4-1994 (Annexure P-3), passed by the second respondent herein, directing the petitioner to leave this country within seven days from that date, failing which he shall be prosecuted u/s 14 of the Foreigners Act, 1946.

2. Briefly stated, the case of the petitioner, as could be gathered from the writ petition, is as follows: On 2-5-1993, the petitioner entered India, via Indira Gandhi Airport, New Delhi, as a representative of ThTec Industries, P.O. California, The petitioner is said to have reported himself before the Station House Officer (S.H.O.), Dalhousie, to register himself and the petitioner claims that on being informed by the Station House Officer that he had no registration forms to register the petitioner, an application on plain paper was made and this was accepted by the S.H.O., who also assured him that he would forward the same to the authorities concerned and do the needful. The petitioner further claims that he checked up with the S.H.O. whether anything further required to be done to get himself registered and on receiving a reply from the S.H.O. in the negative, the petitioner went about pursuing his business interests and went

around India. The further case of the petitioner is that before going over to India, he had taken a number of references from his friends in the United States of America and one such reference was that of the family of Mr. Simranjit Singh Mann and the petitioner also visited the house of Mr. Mann at Dalhousie, as he did not know that it was an offence to meet his family and had he known that, he would not have committed that mistake, especially when none of the authorities cared to inform him that he should not visit Mr. Mann's house. The petitioner stated that after visiting this country and also spending huge amounts in furtherance of business interests, as a representative of ThTec Industries, he had acquired business agreements and relationships with various concerns and that the Visa of the petitioner was to expire on 15-4-1994. With a view to get the Visa extended, the petitioner claims that, he visited the Foreigner's Registration Office (F.R.O.), Lok Nayak Bhawan, New Delhi, on 8-4-1994, when the petitioner was directed to approach the office, where he had originally registered himself as a foreigner, and apply for extension of visa there. According to the petitioner, he went to Dalhousie and produced himself before the S.H.O. on the afternoon of 14-4-1994, when he was asked to go to Chamba to make an application for extension of visa at that place. According to the petitioner, he went to Chamba and presented himself before Mr. Rana, the Superintendent of Police, at his residence on the morning of 15-4-1994, when Mr. Rana is stated to have directed the petitioner to approach him on the morning of 16-4-1994 in his office, as 15-4-1994 was a holiday in Chamba. The petitioner stated that he acted accordingly and after arriving at the headquarters of the Superintendent of Police, the officials dealt with the petitioner's application and several hours were spent and at the end of the day, it was decided that the petitioner should remain in Iravati Hotel, Chamba, for the duration of the little time that was left to settle his application. The petitioner further stated that his passport was impounded by the police and after 15-4-1994, he was forced to remain at Chamba by the police, as his case would be decided soon, but on the evening of 23-4-1994, he was informed that his application will be decided by the Home Ministry, Government of India, New Delhi. However, according to the petitioner, he was detained by the police and two constables accompanied the petitioner to Delhi and produced him before the Home Ministry's Office at Loknayak Bhawan, New Delhi, on 25-4-1994, where he was obliged to wait for a long time and eventually, he was informed that his case would be decided by the authorities at Shimla and the petitioner was brought back to Shimla on the morning of 27-4-1994. The petitioner claims that he was produced before the Home Secretary, Himachal Pradesh, at 10.30 a.m. when he presented his case for extension of visa in writing on 24-4-1994 (Annexure P-2) and that the Home Secretary did not give any answer, but directed the constables, in whose custody the petitioner was, to produce him before the third respondent (a mistake for the second respondent) on 28-4-1994. On that day, according to the petitioner, the third respondent (again a mistake for second respondent) handed over an order to the petitioner, wherein it had been ordered that the petitioner should leave the country within seven days of the date of the order (Annexure P-3). Stating that

the State Administration was maltreating him and preparing to deport him because of his meeting with Mr. Simranjit Singh Mann and that the expenses incurred by him ,and the time spent by him would all be wasted, if he is forced to leave India at this juncture and further that he had not been afforded an opportunity to explain his case at all, the petitioner put forward the plea that the impugned order was passed owing to some misunderstanding on the part of the concerned officials and that if an opportunity had been given to him, he would have been able to explain his case and satisfy the officials concerned. Claiming that the petitioner was never given an opportunity of being heard before the order impugned in the writ petition was passed and that before passing an order u/s 3(2)(c) of the Foreigners Act, 1946 (Act 31 of 1946) (hereinafter referred to as "the Act"), a notice has to be issued, the petitioner characterised that order as one passed without observing the principles of natural justice. Further, the petitioner also stated that the Company of the petitioner was lured to send the petitioner to India and invest huge Amounts to develop its business and that the impugned order was passed arbitrarily. On the aforesaid grounds, the petitioner prayed that the order dated 28-4-1994 should be quashed.

3. In the reply filed by respondents Nos. 1 and 2, they stated that though the petitioner entered India on 2-5-1993, he had not met the S.H.O. at Dalhousie and he also did not present any application for registration. While accepting that the petitioner met Shri K. S. Rana, Superintendent of Police, Chamba, at his residence on the afternoon on 15-4-1994 and that he was advised to meet him in his office the next day, respondents Nos. 1 and 2 denied that the petitioner met the S.H.O. Dalhousie on 14-4-1994 and also the filing of any application for registration at the police station at Dalhousie. According to respondents Nos. 1 and 2, the petitioner did not present any application for extension of visa on 8-4-1994, nor did he present any application to F.R.R.O., Delhi. This, according to them, was also confirmed by the communication received from the Government of India (Annexure R-I). While accepting the visit of the petitioner to the office of the Superintendent of Police, Chamba (F.R.O.), on 16-4-1994 and his staying in H.P.T.D.C. Hotel Iravati at Chamba,-fropi 15-4-1994 to 18-4-1994, respondents Nos. 1 and 2 stated that thereafter, the petitioner stayed with his friends and made only verbal requests for extension of visa and no application was ever presented to the Superintendent of Police, Chamba. The further case of respondents Nos. 1 and 2 was that as the petitioner did not register himself with the F.R.O., Chamba, or any other F.R.O. in India, his case was referred to the higher authorities and the petitioner was never detained or harassed by the police and he was always at liberty to move anywhere and he stayed at Chandigarh, Delhi and Shimla with his friends, as he was not forced to stay or not to stay, at any place or residence. According to respondents Nos. 1 and 2, as per the directions of the authorities in the Ministry of Home Affairs, the petitioner visited the office of the Secretary Home, Government of Himachal Pradesh, Shimla, on 27 -4-1994 and in the meanwhile the Additional Director General of Police, Criminal Investigation Department, was directed to take immediate action

as directed by the Ministry of Home Affairs and accordingly, orders were passed on 28-4-1994, after examining the case of the petitioner and application of mind and the order impugned in the writ petition was passed after careful examination of the case and in the best interests of the security of the State. The impugned order was claimed by respondents 1 and 2 to be not violative of Article 14 of the Constitution of India. Maintaining that the impugned order is legal and had also been passed in accordance with the provisions of the Act and the Registration of Foreigners Rules, 1939 (hereinafter referred to as "the Rules") and stating that the visa of the petitioner had expired on 15-4-1994, respondents Nos. 1 and 2 stated that the petitioner had no right to stay in India after the expiry of the visa and the order impugned in the writ petition was not liable to be questioned by the petitioner on any ground.

4. The third respondent in its reply stated that the petitioner, a U. S. National, holding passport No.Z5196617 valid up to March, 1995, and bearing B category visa No. B-4782/93 valid up to 14-4-1994, approached the Superintendent of Police, Chamba, for extension of visa and on an examination of his travel documents, it was found that he had entered India on 2-5-1993 via Indira Gandhi Airport, New Delhi, but he did not get himself registered with any F.R.O. as was required under Rule 6(2) of the Rules and he had also failed to apply for an extension of the visa within the stipulated time. According to the third respondent, that necessitated the matter being referred to the F. R. R. O., New Delhi, by the Superintendent of Police, Charaba, who, in turn referred the case to the Government of India and by order No. 25022/134/94 F-II dated 25-4-1994, the Government of India directed that the petitioner be deported out of India and this was also endorsed by the Government of Himachal Pradesh. The petitioner had grossly violated the terms and conditions of his visa as well as the provisions of the Rules according to the third respondent. The claim of the petitioner that he visited the Office of the F. R. R. O., Loknayak Bhawan, New Delhi, on 8-4-1994 was characterised as factually incorrect, as that office is located in Bans Bhawan near Tilak bridge, next to Income Tax Office, New Delhi and it was stated the Foreigners Division of the Ministry of Home Affairs alone is located at Lok Nayak Bhawan. Affirming that the Ministry of Home Affairs had not received any application from the petitioner on 8-4-1994 for extension of his stay, which had also been confirmed by the F. R. R. O., New Delhi by letter No. 2606/For (So-I) dated 5-5-1994, it was pointed out that as a general policy, such requests from individuals directly were not entertained, but they had to be routed through the concerned Superintendent of Police / F. R. O., with whom the foreigner had been registered and as the petitioner was not registered at all with any F. R. O., there was no question of granting him any extension at all. Accepting that two constables from the office of the Superintendent of Police/ F. R. O., Chamba, approached the office of the F. R. R. O., New Delhi on 25-4-1994 with a letter addressed to that, office, requesting for the deportation of the petitioner from Chamba district due to his not registering with any F. R. O., it was stated that in the interest of the security of the State, they were directed by the office of the F.

R. R. O., New Delhi, to go over to the Ministry and the Ministry issued instructions to the State Government under intimation to the Superintendent of Police/F.R.O., Chamba on 25-4-1994, to deport the petitioner under the powers delegated to the State Government and the second respondent ultimately issued the communication on 28-4-1994 to the petitioner that he should leave India within seven days. Referring to Rule 6(2) of the Rules, the third respondent stated that foreigners coming to India on a visa and intending to stay in India for a period of more than 180 days are required to register themselves with the concerned F. R. O. and the petitioner had failed to get himself registered and had violated the provisions of the Rules and he had been given adequate notice of seven days u/s 3(2)(c) of the Act, for infringement of the Rules. The Act, according to the third respondent, conferred absolute powers and unfettered discretion to expel foreigners from India and the complaint of the petitioner that principles of natural justice had been infringed or that the impugned order had been passed arbitrarily, violating Article 14 of the Constitution of India, was without substance. Reiterating that the case of the petitioner had been thoroughly examined before the order impugned in the writ petition (Annexure P. 3) was passed, the third respondent also prayed for the dismissal of the writ petition.

5. In the rejoinder to the reply of respondents 1 and 2, filed by the petitioner, he denied that he never met the S. H. O. Dalhousie and that he never presented any application for registration. The petitioner also denied that he never presented an application for registration at the police station at Delhousie or with the Superintendent of Police, Chamba. Claiming that he presented himself before the F. R. R. O., Delhi on 8-4-1994, for renewal of his visa, the petitioner stated that this can be ascertained by perusing the entry in the registers at the office of the F. R. R. O., Lok Nayak Bhawan, New Delhi. The petitioner also stated that the several orders on the basis of which the deportation order finally came to be passed, had not been made available to him to enable him to represent against them and that he had been condemned even without being heard: The order impugned in the writ petition was also characterised as one passed in a mechanical manner without any application of mind. Further, the petitioner claimed that the application of the petitioner for renewal of his visa remained to be disposed of and it should be deemed that the visa of the petitioner stood renewed. Referring to his production on 25-4-1994 before the Under Secretary, Ministry of Home Affairs, along with his counsel, the petitioner stated that they were made to wait there and when the counsel approached the Deputy Secretary (Home), he was informed that the presence of a lawyer was not required for deciding the renewal application and she refused to decide the petitioner's application for renewal. In the rejoinder filed to the reply of the third respondent, the petitioner stated that on 8-4-1994, he visited the office of the F. R. R. O. and also presented his application for extension of visa (photocopy Annexure P. 4) and that the fact about the visit of the petitioner to F. R. R. O., Lok Nayak Bhawan, New Delhi, can be checked up by the entry in the register of Lok Nayak

Bhawan. Referring to the production of the petitioner before the third respondent on 25-4-1994, the petitioner stated that he was asked to come after 2 p.m. by which time the under Secretary, Ministry of Home Affairs, had not returned to his office and later, counsel for the petitioner approached the Deputy Secretary and requested her to decide the application for extension of visa and he was informed that the presence of a lawyer was not required for deciding the application and that it would be decided as and when it was convenient. With reference to the ground of internal security as one of the reasons for passing the order of deportation, the petitioner stated that he was being victimized for the only reason that he met Mr. Simranjit Singh Mann at Dalhousie by visiting his house and that he would not have done, had he been informed about it. Claiming that he had spent thousands of dollars in his business pursuits in India and almost a year studying the business climate of the region, the petitioner stated that all this would be wasted, if he were to be deported at this juncture and the order impugned in the writ petition had been passed without observing the principles of natural justice, resulting in the whole career of the petitioner being ruined by the order of deportation remaining as a stigma. The petitioner reiterated that he presented himself before the S. H. O. Dalhousie and made a written application for registration, but that he was informed that registration forms were not available and the petitioner had done all that could be done in the circumstances. Ultimately, the petitioner prayed that the order of deportation should be quashed.

6. Learned counsel for the petitioner, while challenging the deportation order (Annexure P. 3) contended that the order impugned had been passed without considering the application put in by the petitioner for extension of stay and that the petitioner ought to have been afforded an opportunity of being heard. It was also submitted that the security of the State, as a reason given in the reply of the third respondent, was not set out in the order of deportation and this would also show that the impugned order lacked in bona fides. Strong reliance in support of contentions so advanced was placed upon the decision reported in *P. Mohammad Khan v. State of Andhra Pradesh* (1978) 2 AnWR 408 . On the other hand, learned Advocate General appearing on behalf of respondents 1. and 2 pointed out that the petitioner, admittedly a foreigner, had not registered himself under Rule 6 (1)(b) read with Rule 6(2)(b) of the Rules and there was also no application-whatever put in by the petitioner seeking an extension of his stay and under those circumstances, having regard to the expiry of the visa on 14-4-1994, the petitioner cannot be permitted overstay in this country. It was also further submitted that inasmuch as the petitioner had not filed any application for extension of visa, there was no question whatever of affording any opportunity to him or even giving him a hearing and the petitioner cannot, therefore, complain of violation of the principles of natural justice. Reference was also made to the instructions issued by the Ministry of Home Affairs, Government of India, in its circular No. 168 dated 18-8-1993 regarding the manner and time within which applications for extension of the visa should be made and it was pointed out that the petitioner had not submitted any application for extension of

visa and a fortiori the petitioner cannot be permitted to stay any longer in this country. Learned Advocate General also pointed out that if the petitioner had some facts and other materials, which he had wanted the authorities to consider, he should at least have referred to them in the writ petition and placed them before the Court, so that the court can ascertain whether the petitioner deserves to be given a hearing or not and in the absence of such facts and materials, there was no need whatever to give the petitioner any hearing or any opportunity at all. Characterising the right of the Government of India to deport a foreigner as absolute and unfettered, learned Advocate General drew attention to the decisions reported in *Louis De Raedt and Others Vs. Union of India and others*, ; *Schmidt v. Secretary of State*, (1969) 1 A11ER 904 (908) and *A.H. Magermans Vs. S.K. Ghose and Others*, Learned Central Govt. Standing Counsel also submitted that the petitioner had failed to get himself registered anywhere in India in accordance with the Rules and had also not filed any application for extension of his visa and there was, therefore, no question of the order of deportation suffering from violation of principles of natural justice or any other infirmity, as claimed by the petitioner. Counsel also pointed out that the claim of the petitioner that he approached the S. H. O. at Dalhousie cannot be accepted, in view of the notification of the Home Department dated 14-2-1994 appointing the Superintendents of Police, in several Districts, including Chamba as Registration Officers, for the respective Districts, under Rule 3(1) of the Rules. Counsel also disputed that any application as per Annexure P. 4 to the rejoinder of the petitioner, with reference to the reply of the third respondent was filed. It was also pointed out that some form had been filled up by the petitioner and attached as Annexure P-4 along with the rejoinder to the reply of the third respondent and that cannot at all be regarded as one properly made in time and in" the prescribed form and, therefore, the authorities were not called upon to consider any application for extending the stay, at the instance of the petitioner. Counsel also submitted that the deportation order has been passed validly and rightly on the grounds stated therein and that no exception could be taken to the order so passed.

7. Before proceeding to consider the contentions thus advanced, it would be appropriate to refer to a few facts not in controversy. That the petitioner is a U.S. national and a foreigner, for purposes of the Act and the Rules and he arrived in India on 15-4-1993 on a B-category visa No. B-4782/93 valid up to 14-4-1994, are not in dispute. That even by the visa so granted to the petitioner, he had been clearly and without any doubt informed that registration was required, if his continuous stay exceeded 180 days is also not in dispute. That the visa so granted in favour of the petitioner had expired on 14-4-1994 is also beyond controversy. However, there are two aspects regarding which a controversy had been raised. They are, (1) the registration of the petitioner as a foreigner in accordance with the provisions of the Act and the Rules; and (2) the making of an application by the petitioner seeking an extension of the visa. These aspects will be examined later, after briefly referring to the broad basis upon which

foreigners are allowed to enter or remain in this country. No foreigner has any right, as such, to enter or remain in this country, as he likes and his entry into and stay in this country, are regulated by the provisions of the Act and Rules, for a variety of reasons. A visa issued to a foreigner is in the nature of a limited leave to enter this country or stay there, for a duration controlled and limited by the terms of the visa issued. Such leave to enter or remain in this country, has several restraints imposed by the provisions of the Act and also the Rules. Such leave also carries with it certain responsibilities and obligations and certain discipline and the machinery by which such leave to enter or remain is regulated, in the larger interests of the country cannot be lightly tampered with, particularly by fostering anything that would destroy that machinery. The fences of restraints, responsibilities and obligations with reference to leave to enter or remain in this country, granted to foreigners cannot be allowed to be broken and no foreigner can claim that he is entitled to stay in this country as long as he likes. Thus, the limited leave to enter or remain is hedged in by restraints, obligations and responsibilities, on the part of the foreigner entering into or staying in this country. Under Rule 3 of the Rules, the Central Government has been empowered to appoint Registration Officers, for purposes of the Rules, for such areas as it thinks fit. Rule 3(2) permits a Registration Officer, with the approval of the Central Government, to authorise in writing any authority to perform any or all of his functions, under the Rules. By notification dated 14-2-1974 of the Home Department, the Inspector General of Police, Himachal Pradesh, has been appointed as the Registration Officer for the whole of Himachal Pradesh and the Superintendents of Police, Shimla, Kinnaur, Sirmour, Bilaspur, Una, Solan, Hamirpur, Mandi, Kullu. Kangra, Lahaul and Spiti and Chamba Districts have been likewise appointed as Registration Officers for their respective Districts. Under Rule 6(1)(b) of the Rules, a foreigner entering India, on a visa valid for stay in India for a period of more than ninety days, should present the registration report to such Registration Officer as may be specified in this behalf by the Registration Officer of the port or other place of arrival. Rule 6(2)(b) of the Rules provides that in the case of a foreigner referred to earlier, the registration report shall be presented within seven days of his arrival in India. Under Rule 6(3) of the Rules, every foreigner, presenting a registration report, besides furnishing the Registration Officer such information as may be in his possession to satisfy him with reference to the accuracy of the particulars given, is also required to sign the registration report and shall thereupon be entitled to receive from the said officer a Certificate of Registration in Part III of Form A or Part II of Form D. The proviso to Rule 6(3) enables the issue of temporary certificate in Form B under certain circumstances. Under Rule 9 of the Rules, every registered foreigner is obliged to produce or cause to be produced, his Certificate of Registration within twenty four hours of demand being made of him by any Registration Officer, any Magistrate or any Police Officer, though a discretion is given to the concerned officer to extend the time. Provision is made under Rule 15 of the Rules to surrender the Certificate of Registration on departure. Under Rule 17 of the Rules, in the event of loss or destruction of the

Certificate of Registration, the foreigner is enabled to obtain a duplicate copy of the Registration Certificate. From the foregoing Rules, it is clear that certain obligations and responsibilities are cast on foreigners entering this country and they are expected to conform to and obey the requirements of the Act and the Rules. These Rules are intended only as fences of restraint, while granting the foreigner limited leave to enter into or remain in this country. In this connection, it becomes necessary now to consider whether the petitioner had registered himself at all on arrival in this country within seven days as per the Rules. While the petitioner claims that he approached the S. H. O. at Dalhousie for registration and that as on registration forms were available, a plain paper application was made to register himself in accordance with the rules referred to earlier, in the light of the notification dated 14-2-1974, referred to earlier, it is seen that the Registration Officer, in respect of Chamba District, is the Superintendent of Police, Chamba District and none else. Plainly, therefore, it was the duty of the petitioner to have approached that Registration Officer to get himself registered, instead of approaching the S. H. O. of Dalhousie, as is now put forward by the petitioner. When the object of registering a foreigner, on arrival in this country, in accordance with the Rules, is to keep track of the place of his stay, his movements and his activities, the petitioner should have, in the ordinary course, got himself registered, as provided under the Rules, with the appropriate Registration Officer. Instead, the petitioner claims to have approached the S. H. O. of Dalhousie, who was not the Registration Officer at all and anything done or stated to have been done by him, will not be in accordance with the requirements of the Rules relating to the registration of foreigners under the Rules. In this case, it has to be pointed out that there is absolutely not a scrap of paper to show that the petitioner approached the S. H. O., Dalhousie, for purposes of getting himself registered or got himself registered. Even on the footing that the prescribed forms were not available with the Registration Officer, to make out which again there is nothing on record, nothing prevented the obtaining of a temporary certificate at least or some other certificate, to show that the petitioner had discharged his obligation under the rules in the matter of his registration as a foreigner. There is absolutely no material whatever to establish that there had been any attempted registration even on the part of the petitioner, in accordance with the registration of foreigners, under the Rules. On the contrary, even from the contents of Annexure P-2 addressed by the petitioner to none in particular, it is seen that he had accepted that the official registration office is at Chamba and the unofficial registration was invalid. In view of this, it has to be taken that the petitioner, as a person, who had been granted limited leave to enter and remain, has not discharged his obligation and responsibility to register himself within seven days of his arrival in India, as contemplated under Rule 6(1)(b) read with Rule 6(2)(b). This grave omission on the part of the petitioner assumes greater significance, in view of the very terms of the visa granted to the petitioner, which clearly required him to get himself registered, if his continuous stay in this country exceeded 180 days. Thus, on a consideration of the undisputed facts, the relevant Rules and the absence of any material or

record placed by the petitioner to show that he had registered himself, it is clear that the petitioner, admittedly a foreigner, with a limited leave to enter or remain, had not registered himself in accordance with the provisions of the Act and the Rules.

8. The next question that arises for consideration is, whether the petitioner had Submitted any application for extension of his stay in this country, before the expiry of the period of the visa, earlier granted to him. Even as regards this, it is seen that the petitioner has not been able to produce before Court, any reliable or acceptable material to show that he had made such an application. It would be appropriate at this stage to make a reference to Circular No. 168 dated 18-8-1993 issued by the Ministry of Home Affairs, Government of India, New Delhi. That Circular is to the effect that in order to prevent the late forwarding of applications for grant of extension of stay by State Governments and to ensure that a foreigner is not allowed to overstay, by reason of receipt of applications belatedly, the State Governments should ensure that applications for grant of stay should be referred to the Ministry of Home Affairs at least one month before the expiry of the validity of visa, along with the specific recommendations of the State Government. Further, the Circular has also very clearly stated that applications received beyond a period of one month from the date of authorised visa, will not be entertained by the Ministry. By this Circular, an obligation was cast on the petitioner to submit an application for extension of visa at least a month before the expiry of the period, for which visa had been granted. In order to do so, a form of application had been prescribed, which was also produced before Court. In that form, particulars under 17 heads are required to be furnished. However, in this case, the petitioner claims that he had made an application as per Annexure P-4 dated 9-4-1994 to the rejoinder, filed to the reply of the third respondent. Therefrom, it is seen that it had been addressed to the Under Secretary (Foreigners), Ministry of Home Affairs, New Delhi and the petitioner had given particulars under nine heads, as stated therein. With reference to this application, it is seen from Annexure R-I to the reply of respondents Nos. 1 and 2, that the Under Secretary to the Government of India, Ministry of Home Affairs, had addressed a letter on 6th of May 1994, to the effect that the Ministry of Home Affairs had not received any application from the petitioner for extension of stay, on 8-4-1994 and that the F. R. R. O. Delhi, had also confirmed that they had not received any application for extension of stay from the petitioner either on 8-4-1994 or on any subsequent day. Likewise, in the letter dated 5-5-1994 addressed by the F. R. R. O. New Delhi, to the Under Secretary, Ministry of Home Affairs and marked as Annexure to the reply of the third respondent, it has been stated that the petitioner had not submitted any application for extension of stay in India, in that office on 8-4-1994 or on any subsequent date, as per the records of that office. Thus, from the two communications referred to earlier, it is obvious that the F. R. R. O., New Delhi and Ministry of Home Affairs had not received either on 8-4-1994 or on any other subsequent date, any application from the petitioner seeking an extension of his

visa. Annexure P. 4 to the rejoinder filed by the petitioner to the reply of the third respondent, does not contain anything whatever to show that it was on the prescribed form or had been presented before the concerned authority and there is nothing to show that the concerned authority had received this application. Under those circumstances, no reliance can be placed upon Annexure P. 4 to the rejoinder to the reply of the third respondent. Likewise, Annexure P-5 also does not advance the case of the petitioner to show that he had filed any application for extension of his stay. All that could be gathered therefrom is that one S. Ranjan visited the Under Secretary, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi, at about 2.10 p.m. on 25-4-1994 on private purpose. There is nothing in this to connect the petitioner with any application of his for extension of stay in India, made on 8-4-1994. No reliance could, therefore, be placed upon Annexures P. 4 and P. 5. Annexure P. 2 dated 24-4-1994 was after the expiry of the visa and had been addressed to none in particular. It contains a complaint of mishandling by bureaucrats, while accepting the invalidity of the so-called unofficial registration of the petitioner as a foreigner at Dalhousie, as the official registration office is at Chamba. After referring to the inconvenience caused to the petitioner, his spending of lot of time and money and his efforts to present himself before the authorities prior to the expiry of the visa, the petitioner sought a review of his case and sought extension of the visa for one year. This, cannot be regarded, in our view, as an application for extension of visa in accordance with the Circular referred to earlier, for, the visa had expired by then and the communication had also not been in the prescribed form and addressed to the concerned authorities. Therefore, the petitioner cannot take advantage of Annexure P. 2 also to contend that an application for extension of visa had been made requiring consideration by the concerned authorities.

9. Though learned counsel for the petitioner relied upon the opening part of Annexure P. 3 to contend that the very purpose of the petitioner in approaching the Superintendent of Police, Chamba, was for extension of visa and that would indicate that an application had already been made, it is difficult to accept this contention for, even according to the petitioner himself, he met the Superintendent of Police, Chamba, only on 16-4-1994 in his office, by which time, the visa already granted had expired. In any event, as stated earlier, there is absolutely no reliable or acceptable material on record to show that any application was made by the petitioner seeking an extension of his stay in India, to the concerned authorities and in time and also in the prescribed manner. In its absence, the authorities were under no obligation whatever to consider it, or even give an opportunity to the petitioner either by way of a hearing or otherwise and that in turn had led to the expiry of the visa on 14-4-1994, disentitling the petitioner to continue to stay in this country thereafter. It is thus seen in this case that the petitioner had failed to get himself registered and had also failed to apply for extension of his stay in this country to the concerned authorities in due time and that had led to the passing of the order impugned in this writ petition. These are the two reasons which have been given in the order

impugned in the writ petition. The mere circumstance that in the reply of the third respondent, in paragraph 5, it had also been stated that "in the interest of security of State, the petitioner had been deported" would not clothe the order with any infirmity so as to justify its being quashed as prayed for by the petitioner. From the order, it is clearly seen that apart from the two grounds set out earlier, no other ground has been mentioned and it is well settled that apart from the grounds set out or stated in the impugned order, it will not be open to the authorities to supplement the same by giving other grounds, not found in the order. The mention of the security of the State, in the reply of the third respondent, as justifying the passing of an order for deportation against the petitioner is, therefore, of no consequence. On a careful consideration of the facts and circumstances of this case, it is clearly established that the passing of the order of deportation of the petitioner on the two grounds set out therein is fully justified and does not suffer from any infirmity or irregularity.

10. That leaves for consideration the decisions relied on by counsel for both sides. In *P. Mohammad Khan v. State of Andhra Pradesh* (1978) 2 AnWR 408 (supra), relied on by counsel for the petitioner, the deportation order was passed on the footing that Mohammad Khan was a foreigner, as defined in the Act. In the course of the proceedings under Article 226 of the Constitution of India, he claimed to be a citizen of India and not a foreigner, and it was in that context the Court pointed out that the authorities acting under Sec. 3(2)(c) of the Act, had not considered the jurisdictional prerequisite whether Mohammad Khan was a foreigner or not and that a duty was cast upon the authorities to decide whether he should not be permitted to stay in India because he happened to be a foreigner and as that was not done, it was held that there was an irregularity in the matter of fair play in action, constituting a violation of the principles of natural justice. It is thus seen that there was a dispute whether Mohammad Khan was a foreigner or not and that had been decided on an assumption that he was a foreigner, without giving him an opportunity to establish that he was not and in that situation, the Court pointed out that an opportunity should have been given to him to be heard in order to establish that he was not subjected to the provisions of the Foreigners Act at all. Such is not the situation in this case where, admittedly, the petitioner is a foreigner and there is no question, therefore, of any other opportunity whatever being given to him on that score. Earlier, it had been pointed out how there was a failure on the part of the petitioner to register himself and also to apply in time and in the manner prescribed, for extension of his stay in this country. There was thus really nothing, on which the petitioner was required to be heard. There is, therefore, no question of violation of the principles of natural justice, on the facts and circumstances of this case. It may also be pointed out that when counsel for the petitioner was asked to state the materials with reference to which the petitioner wanted to have a hearing, counsel was unable to draw our attention to any such material, which either required or even would justify, the giving of a hearing or an opportunity to the petitioner and the petitioner cannot, therefore, complain of

violation of the principles of natural justice. The decision in P. Mohammad Khan's case (1978) 2 AnWR 408 (supra) strongly relied upon by the learned counsel for the petitioner, does not in any way advance the case of the petitioner. On the other hand, it would be useful to refer to the decision of the Supreme Court reported in Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others, Dealing with the status and rights of foreigners in India and highlighting the distinction between "extradition" and "expulsion" and the powers of the Government of India to expel foreigners, in the context of considering the validity of an order of detention passed by the West Bengal Government under the provisions of the Preventive Detention Act, 1950, the Supreme Court observed at page 374 as follows:

"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.""

Again at page 375, the Supreme Court observed as follows :

"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. 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".

The Supreme Court, again observed at page 375, as follows;

"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 this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel....."

(Italics ours).

Applying the aforesaid principles, particularly with reference to the unfettered right of the Government of India to expel, if follows, on the facts of this case, that the petitioner was rightly directed to be deported on the ground set out in the order impugned in the writ petition.

11. In *A.H. Magermans Vs. S.K. Ghose and Others*, the petitioner questioned the correctness of an order directing him not to remain in India and a contention was put forward that the impugned order was quasi-judicial in nature and there was violation of the principles of natural justice. In repelling this contention, the Court pointed out at page 562 that if the complaint was that an opportunity was not given to make representations against the proposed order, the petitioner should have set out in his petition sufficient facts to enable the respondents to deal with them, but that not having been done, the petitioner cannot be allowed to raise the question of violation of principles of natural justice. In addition, it was also pointed out at page 563 that there is nothing in the *Foreigners Act* or the Rules which required that in making an order under Sec. 3(2)(c) of the Act, the Central or the State Governments, should follow a judicial approach and that there is nothing in the Act to suggest that the Central Government must proceed judicially and no procedure has been laid down by the Act to be followed by the Central Government before making an order, which should be regarded as only an executive or administrative order and even on the footing that the order impugned was in the nature of a quasi-judicial one, it cannot be held that there had been a violation of the principles of natural justice on the materials made available and taken into consideration. In this case also, on the basis of the materials made available and in view of the inability of the petitioner to place before the Court materials, which according to him would deserve consideration and be relevant, the case of the petitioner that there has been violation of principles of natural justice, cannot be accepted.

12. In *Schmidt v. Secretary of State* (1969) I All ER 904 (*supra*), Lord Denning, while considering the propriety of not granting extension of stay to certain alien students for continuing their studies, stated that, "he (a foreign/alien) has no right to enter this country except by leave; and, if he is given leave to come for a limited period, he has no right to stay for a day longer than the permitted time ... and once his time has

expired, he has to go". On the facts found earlier, viz., that there was no registration and no application for extension of the stay by the petitioner and also the expiry of the visa on 14-4-1994, the petitioner was obliged to leave this country and the order passed to that effect, by the second respondent, cannot, therefore, be taken exception to.

13. Again in *Louis De Raedt and Others Vs. Union of India and others*, the Supreme Court while dealing with an argument that fundamental rights, particularly under Article 21 of the Constitution of India to the foreigners, are also available, observed as follows (Para 13 of AIR):--

"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(I)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provisions in the Constitution fettering 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."

(Italics ours)

The petitioner has not succeeded in placing before Court any relevant material in support of his claim for either registration or extension of visa or even a hearing and the petitioner, cannot, therefore, be permitted to complain of lack of opportunity, to place materials in support of his case or even a hearing.

14. A faint attempt was made by the learned Counsel for the petitioner to contend that the deportation order would operate as a stigma and that his efforts for developing business in this country, in terms of money as well as time, would all be wasted. It is needless to say that the deportation of a person for overstaying in this country, cannot be regarded as a stigma. Indeed, as pointed out by the Supreme Court in *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, there is no idea of punishment involved in deporting a foreign national for his overstay and that cannot be pressed into service as a ground for quashing the order impugned in the writ petition. Likewise, the argument that money and time spent in this country by the petitioner would all be wasted, does not carry any conviction, for, whatever be the efforts of the petitioner, he cannot be allowed to breakdown the fences of restraint imposed on him as a foreigner, while he had been granted limited leave to enter into or remain in this country, under the guise of fostering or furthering business relationships. The petitioner cannot, therefore, be permitted to complain of the futility of his efforts for developing business relationship, as a justification for quashing the order of deportation passed on grounds found to be valid. No other point was urged. The writ petition is dismissed with costs of the respondents. Counsel fee for respondents 1 and 2 Rs. 3,000/- (one set) and counsel fee for the third respondent Rs. 3,000/-.