

(2019) 11 DEL CK 0176

In the Delhi High Court

Case No : Criminal Writ Petition No. 3144 Of 2019

Godwin Odinkpo Ogugua

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Citation : (2019) 11 DEL CK 0176

Hon'ble Judges : Manmohan, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : R.A. Worso Zimik, Virender P.S. Charak, Anshuman, Shubra Parashar, Shreyas Jain

Final Decision : Dismissed

Judgement

Manmohan, J

CRL.M.A. 39948/2019

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(CRL) 3144/2019 & CRL.M.A. 39947/2019

1. Present writ of habeas corpus has been filed by the petitioner, a Nigerian national, seeking an order to restrain the respondents from deporting him and to release him.

2. The facts as mentioned in the writ petition are that on 14th June, 2017 the petitioner first came to India on a medical visa. Learned counsel for petitioner states that the petitioner was in the process of applying for his visa extension which he could not renew due to financial crunch caused by long term medication. He further states that if the petitioner is deported at this stage, it would result in separating him from his Indian live-in partner whom he was planning to marry very soon.

3. The petitioner was taken into custody by respondent No. 2 and since 23rd October, 2019 has been kept in the Foreigners Deportation Camp (Seva Sedan, Lampur, Delhi).

4. Learned counsel for petitioner submits that the respondents neither issued a speaking order directing his detention at the deportation camp nor produced him before any Court or issued any show cause notice asking him as to why he should not be deported. He also submits that a coordinate Bench of this Court in a similar matter being *Kalivi Awomi & Anr. vs. Union of India & Anr.*, W.P.(Crl.) 2626/2019 vide order dated 01st October, 2019 has directed the Foreigners Regional Registration Officer (FRRO), Delhi, to conduct proceedings denovo under the Foreigners Act, 1946, in accordance with law. The relevant portion of the said order is reproduced hereinbelow:-

"Learned counsel appearing on behalf of the Union of India, on instructions, states that since the order dated 17th July, 2019, is not a speaking order, they seek leave to recall the same with liberty to pass an appropriate speaking order, in accordance with law, after affording an opportunity of being heard to Mr. Precious Oluchi Agholor, holder of passport No.A10414075, issued by the Federal Republic of Nigeria.

In view of the foregoing, the impugned order dated 17th July, 2019, is recalled whilst reserving liberty to the Foreigners Regional Registration Officer, Delhi, to conduct proceedings denovo under the Foreigners Act, 1946, in accordance with law, against Mr. Precious Oluchi Agholor and pass a speaking order, after affording the latter an adequate opportunity of being heard."

5. Though, no tenure or expiry date of the petitioner's visa has been mentioned, yet admittedly petitioner's visa is no longer valid.

6. Neither any prayer for grant of extension of visa has been made nor can be granted in the present proceedings. Accordingly, upon expiry of visa by efflux of time petitioner has no legal right to stay in India.

7. This Court is further of the view that the order dated 01st October, 2019 passed in *Kalivi Awomi* (supra) lays down no general principle of law as it is based on a concession made by the learned counsel for the Union of India. The said order does not stipulate that a foreigner whose visa has expired and who has not even applied for extension of the same is entitled to stay in India as a matter of right.

8. Consequently, the present writ petition being bereft of merits is dismissed.