
(2012) 09 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) . No. 3063 of 2012

Mr. Rudy Medina Torres

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Constitution of India, 1950 — Article 25
Foreigners Act, 1946 — Section 3, 3(2)(C)

Citation : (2013) 1 GLD 564

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : A. Choudhury and Ms. B. Choudhury, for the Appellant; B.J. Ghosh, GA, for respondent Nos. 1, 2, 4, 5 and 6 and Mr. H. Sarma, CGSC, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. A. Choudhury, the learned Counsel appearing for the petitioner. Mr. B.J. Ghosh, the learned Government Advocate appears for the respondents 1, 2, 4, 5 & 6. The respondent No. 3 is represented by Mr. H. Sarma, the learned Central Government Counsel. The petitioner is a citizen of USA and is residing in India for last several years on a Tourist Visa granted to him. He is involved with an organization named the Pastoral Training of Asia (PTA) and in connection with his work under the PTA, the petitioner is conducting practical and biblical workshop and is training pastors in the North East Region of the Country. He recently got married to an Indian citizen on 5.1.2012 and in accordance with the Indian Visa norms, the petitioner applied for change of his visa status from Tourist to X-visa category. He aggrieved by the order dated 30.4.2012 (p.19) issued by the Sr. S.P.-cum-the Foreigners Registration Officer (FRO), Guwahati, whereby, the petitioner was directed to leave India within 15 days. This Quit India Order was passed in purported exercise of power u/s 3(2) (C) of the Foreigners" Act, 1946.

2. Assailing the Guwahati F.R.O.'s order, Mr. A. Choudhury, the learned Counsel contends that the petitioner entered India on a Tourist Visa valid upto 14.2.2021 and being a foreign national, who has entered into through a legal process, he can't arbitrarily be ordered to Quit India since a valid decision is not reached in accordance with law, under Article 13 of the International Covenant on Civil and Political Rights dated 16.12.1966 (hereinafter referred to as "the International Covenant").

3. Since Section 3 of the Foreigners' Act, is an enabling provision to regulate the entry of foreigners and such enabling power doesn't authorize the Central Government to issue a substantive order of expulsion against a foreign national, the petitioner questions the competence of the Central Government to pass the impugned expulsion order.

4. Referring to Clause 7, 11 & 11(A) of the Foreigners Act, 1946, Mr. Choudhury submits that although restriction on a foreign national's movement and activities is envisaged under the Foreigners Order, since the International Covenant is required to be followed by every signatory nation, expulsion of the foreign individual can't be ordered unless, the reason for expulsion is made known to the affected person as prescribed under Article 13 of the International Covenant. In order to project the applicability of the International Covenant, Mr. Choudhury refers to *Sarbananda Sonowal Vs. Union of India (UOI)* and *Another*, where the Apex Court has spelt out the rights of an alien in our country, under Article 13 of the International Covenant.

5. Although reasons were not reflected in the impugned expulsion order, Mr. B.J. Ghosh, the learned Government Advocate refers to the report dated 21.2.2012 of the Joint Director (respondent No. 3) of the Subsidiary Intelligence Bureau to argue that during the last 4 years, the petitioner is preaching Christianity and is frequently visiting the North Eastern States and since these activities of the petitioner are not permitted under a Tourist Visa, the expulsion of the petitioner was rightly ordered by the Union Home Ministry.

6. The Government Advocate submits that the petitioner since his arrival in India on 5.9.2007, has crossed over to Nepal (via Raniganj Check gate) once every six months on 7 or more occasions and returned to India the very next day to avoid registration with the local F.R.O. on his re-arrival. Accordingly the Counsel argues that since the petitioner has failed to report to the Registration Officer as required by Rule 6 of the Registration of Foreigners Rule 1992, mere holding of a Tourist Visa can't enable the foreigner to remain in India for such long periods without due registration under Rule 6 of the Registration of Foreigners Rule 1992.

7. Since the petitioner had visited Manipur without prior approval of the Government of India, Mr. Ghosh submits that the foreign national has infringed the visa condition(s) and he can't therefore claim a right to continue to remain in India.

8. Mr. H. Sarma, the learned Central Government Counsel submits that the

petitioner is indulging in religious activities and preaching Christianity in violation of his Tourist Visa status and accordingly the Union of Home Ministry had to order for his expulsion from the country.

9. The Government affidavit(s) shows that the impugned expulsion order was the result of the direction dated 21.2.2012 of the Joint Director (respondent No. 3) of the Subsidiary Intelligence Bureau where only it was indicated that the activities of the petitioner are not commensurate with the condition(s) of Tourist Visa and accordingly the F.R.O. was directed to issue the Quit India Notice to the petitioner, But this reason wasn't disclosed in the impugned consequential order served on the foreign national.

10. Since the petitioner's pastoral training activities is the cause for the Quit India order, it may be useful to consider whether training of pastors and propagation of religion are considered illegal activities in India. In this context, reference to the case of *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , may be useful where the Apex Court declared that Article 25 guarantees even to foreign citizens, the freedom for propagation of religion subject to reasonable restriction for public order, health and morality. Thus the Court has to proceed herein with the understanding that even a foreign national has a right to propagate religion within the bound of the regulatory measures permitted by Article 25 of the Constitution.

11. On deportation of alien national, the Supreme Court in *Sarbananda Sonowal (supra)* has made a distinction between those entering surreptitiously and those with valid Visas and declared that the International Covenant of 1966 would apply only to those who have lawfully entered India with a valid Passport and Visa. Because of Article 13, expulsion can't be ordered arbitrarily, but has to be based on a decision reached in accordance with law and other than compulsions of national security, Article 13 envisages communication of the reason and for Review of expulsion decision by considering the representation of the affected foreigner.

12. In this case, there is no dispute that the petitioner entered India with a valid USA Passport and on the strength of Tourist Visa issued by Indian authorities. In this backdrop when the procedure for expulsion of the alien is prescribed under Article 13 of the International Covenant, and in the absence of any emergent compulsion of national security, the authorities are expected to communicate the reason to the affected person.

13. While preaching of Christianity even by a foreign national may be protected under Article 25 of the Constitution, the permissible extent of activities under a Tourist Visa must however be borne in mind. A normal foreign tourist is expected to confine his activities to recreation, sightseeing, casual visits to friends or relative etc. in the country of his visit and non tourist activities may amount to misutilisation of Visa privilege. The petitioner in the present case doesn't claim that his activities in India were that of a tourist but it is frankly admitted that the

petitioner is in India with a specific purpose and that is to conduct pastoral training under the banner of the organization PTA.

14. Under Rule 6 of the Registration of Foreigners Rules, 1992, a foreigner can't remain in India even on a valid Visa for more than 180 days at a stretch and is required to periodically report every 6 months before the Registration Officer. But here it is obvious that the petitioner has arranged his one day Nepal visits in such a manner that his stay in India is broken with a 1 day exit trip to Nepal, Through this modus operandi of 1 day excursion to neighbouring Nepal and next day re-entry into India, the foreign national ensures that he can skip the requirement of reporting under Rule 6. Of course when the petitioner first entered India, he reported to the Registration Officer on his arrival under Rule 7 of the Registration Rules, but it is clear that the petitioner is avoiding to periodically report despite the prolonged stay in India for last 4 years, by ensuring that his stay at any given point of time doesn't stretch at one go, beyond 180 days.

15. Although the Central Government has taken the decision to expel the petitioner for violation of Tourist Visa conditions) because of his pastoral training activities, the petitioner was never informed about the reason for his expulsion. But Article 13 of the International Covenant permits expulsion only in pursuant to a decision reached in accordance with law and in my considered view, since the petitioner was never informed of the reason, the impugned decision can't be said to be a valid decision reached in accordance with law.

16. It must also be borne in mind that the impugned order was passed u/s 3(2) (C) of the Foreigners' Act and since Section 3 is only an enabling provisions, a substantive order can't legitimately be passed under this provision to order expulsion.

17. Furthermore, the F.R.O. while ordering expulsion didn't give any reasons and the respondents have mentioned the reasons only in their counter affidavits filed in Court. But this is impermissible because of the law declared in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, where, Justice Vivian Bose declared that "...Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself". Therefore when the impugned order was devoid of reason, the State can't be allowed to give justification for the order through affidavits filed in the Court.

18. When a procedure is laid down for expulsion of foreign nationals, the State is expected to adhere to the procedure established by law to avoid arbitrariness in their decision. A person subjected to an adverse decision has a right to know the reason for the decision and subject to compelling reasons of national security, the affected foreign national can request to have the decision reviewed by the authority. These procedure under Article 13 of the International Covenant can't

be reduced to mere formality as they provide important safeguard to prevent arbitrary action by the host nation.

19. In democracy, Rule of law is paramount and when a decision has to pass the test of fairness, the procedural as well as the substantive compliance of law is mandatory. When we find that the impugned order is devoid of any reason and the affected person face expulsion without being aware of the cause for the order, it is a clear case of infringement of the substantive legal process and considered from this aspect, the impugned order is held to be legally unsustainable.

20. If the legality of the procedural leading to issuance of the expulsion order is examined, what is seen here is that the expulsion order was not based on any independent assessment by the FRO on the permissibility of the pastoral teaching activities of the petitioner. But the FRO issued the order mechanically on orders of the Union Home Ministry as communicated on 21.2.2012 to the FRO by the Joint Director, Subsidiary Intelligence Bureau. This communication itself acknowledged that the petitioner visited Manipur in December, 2009 and August 2010, with valid Protected Area Permits (PAP) and that the Indian authorities were certainly aware of the purpose of the petitioner's multiple visits and his role as the Guwahati based coordinator of Pastoral Training of Asia organization. Furthermore although his activities in India had nothing to do with usual touristy activities, PAP was issued to the petitioner. Significantly, when the expulsion order was issued, the petitioner was awaiting a decision on his application for change of Visa status from "Tourist" to "X-Visa" category, as he got married (5.1.2012) in the meantime to an Indian lady. But all these aspects were not considered by the respondents.

21. As is already recorded earlier, the FRO couldn't have resorted to the enabling provision of Section 3 of the Foreigners Act to issue a substantive order of expulsion. Under the International Covenant on Civil and Political Rights, each signatory nation is obliged to provide under Article 12, the liberty of movement to a lawful foreign visitor and the power of expulsion is to be exercised in the manner provided under Article 13. But in this case, the test of fair, just and reasonableness is not satisfied by the procedure followed by the respondents. The petitioner should have been communicated with the reasons for expulsion and if he made a request for reconsideration, the authorities could have reconsidered their decision if the circumstances warranted reconsideration. When so many aspects of procedural safeguards were disregarded, the action in my view can't be termed as fair and lawful. Consequently the procedure leading to the impugned decision is held to be unsustainable in law.

22. However despite the above conclusion, since the activities of the petitioner in India are not that of a person visiting a foreign country on a Tourist Visa, the State authorities if so advised, are granted the liberty to proceed afresh against the petitioner, in accordance with a legally acceptable procedure. It is ordered accordingly. With the above observation, the writ petition stands allowed to the

extent indicated above without any order on cost.