

(1998) 08 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 24135 of 1998

Tahir Husain Ansari and another	Vs	APPELLANT
U.P. Rajya and others		RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1999) 1 AWC 378

Hon'ble Judges : R.K. Mahajan, J;B.K. Roy, J

Bench : Division Bench

Advocate : Daya Shanker Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Binod Kumar Roy and R.K. Mahajan, JJ.—The prayer of the two petitioners who claim themselves to be husband and wife respectively, is substantially to issue a writ in the nature of mandamus commanding the respondents to allow petitioner No. 1, who is a Pakistani National, to stay in India till an indefinite period. A further prayer has been made to command respondent No. 3, the Union of India through Home Secretary. Ministry of Home Affairs, New Delhi to issue a Long Term Visa (L.T.V.).

2. It appears that the claim of the petitioners is to this effect--petitioner No. 1 was born in India in 1947 but migrated to Pakistan, became a Pakistani citizen and has been residing in Pakistan along with his uncle Sanadat Hussain Ansari. He was granted passport on 19.2.96 by Pakistan ; He was issued Visa on 2.6.97 for 3 months to visit India. He has married petitioner No. 2, an Indian citizen, on 26-1.1992. He has a step-daughter Kumari Meena, a daughter Mukkadatssa and a son Suhail. He has fixed marriage of Meena in Altgarh. He does not want to return to Pakistan or else his wife, children and home all will be spoiled. He is a patient of Blood Pressure and remains ill; He filled Form B for grant of L.T.V. as per the Rule or one year for the first time for the reason that he has married petitioner No. 2 on 26.1.1992. The petitioners have not brought on the record

the order by which the prayer made by petitioner No. 1 in Form B has been rejected by the Government of India--respondent No. 3 so that we could know the precise reasons for rejection of his prayer.

The Submissions :

3. Mr. Daya Shanker Misra, learned counsel appearing on behalf of petitioners, with reference to the statements made in paragraph 9 of this writ petition and copy of the Visa Form B (Annexure-4) contended that since Visa of petitioner No. 1 will expire on 18.2.2001, the authorities cannot deport petitioner No. 1 to Pakistan unless the said Visa is cancelled. He also placed strong reliance on the Passport of the petitioner No.1. He lastly contended that the attitude of the authorities is also discriminatory, who have failed to consider the recommendations of the U. P. Police. By non-grant of Visa, the fundamental right of the petitioner No. 2 guaranteed under Article 21 of the Constitution of India has been breached.

4. Mrs. Poonam Srivastava, learned standing counsel appearing for respondent No, 3, contended that there is no substance in the arguments of Mr. Misra and this writ petition be dismissed in limine specially when the petitioners have not brought on the record copy of the order rejecting the prayer of the petitioner No. 1 and assailing its validity with a prayer to quash the same by grant of a writ of certiorari.

5. Mr. H. R. Misra, learned standing counsel appearing on behalf of respondent Nos. 1 and 2. following the submissions of Mrs. Srivastava contended that there must have been some good reasons for not granting permission to continue petitioner No. 1 in India.

Our Findings :

6. Admittedly petitioner No. 1 is a Pakistani citizen and no longer an Indian citizen who has not come to support the statements made in this writ petition as true to his knowledge or based on the information derived from the record. The affidavit accompanying this writ petition has been sworn by petitioner No. 2 his alleged wife. It is also interesting to note that as per the entries in Form B, which was filled on 9.10.1997. the petitioner No. 1 married petitioner No. 2 on 26.1.1992 whereas the Government of Pakistan had issued Passport to him on 19.2.1996 and the Visa to visit India was granted on 2.6.1997 and he visited India on 7.6.1997 which expired on 3.9.1997. It further appears that presently the petitioner No. 1 is aged 52 years and petitioner No. 2 is aged 45 years. It has not been explained as to how petitioner No. 1 came to India in 1992, i.e. to say, 5 years earlier with or without any passport and visa so that the alleged marriage was performed between petitioner No. 1 then aged 40 years at Firozabad with petitioner No. 2 then aged 25 years (vide the Nikahnama).

7. As per the statements made in paragraph 9 of this writ petition, on which strong reliance has been placed by Mr. Misra, petitioner No. 1 was granted

passport. Long Term Visa on the basis of which he came to India on 7.6.1997 and that his passport is valid till 18.2.2001. Annexure-4, which is Form B, shows that passport No. B-837491 was granted by the Assistant Director Immigration. Passport, Karachi on 19.2.1996 which is valid upto 18.2.2001. It is thus clear that the passport, on which much emphasis was given by Mr. Misra, was granted by the Government of Pakistan and not by the Government of India. There appears to be a clear misapprehension in the minds of the petitioners that since the Government of Pakistan has granted passport to petitioner No. 1, which is valid upto 18.2.2001, he has a right to remain in India till that date. This thinking also stands belied from the entries made against Item Nos. 13 and 14 of Form B which clearly show that 3rd September, 1997 was the date of expiry of the authorised period of residence of petitioner No. 1 in India and that he requested grant of L.T.V. as per the rule or one year. Thus, the contention of Mr. Misra that petitioner No. 1 is entitled to stay in India till 18.2.2001 is apparently not correct.

8. Mr. Misra's contention that the authorities have adopted a discriminatory attitude in not granting L.T.V. to petitioner No. 1 inasmuch as to some persons they have granted L.T.V. to stay in India is also devoid of substance. Annexure-8 is a document merely recommending to the effect that the petitioner No. 1 on account of his illness is not in a position to go to Pakistan leaving his wife and children in India.

Annexure-9 shows that a Pakistani National Mrs. Parveen Sultana desired to stay in India on the ground that her husband is an Indian citizen and, therefore, she be permitted to reside in India and that a request was made to produce documents to show that her husband is an Indian citizen. This being a converse case is thus of no help to the petitioners.

Annexure-10 shows that on 16.10.1990 a Pakistani National Mrs. Fareeda Parveen wife of Parvej Alam was permitted by the Government of India to reside on year to year basis and was granted "Nuri" also for 3 months. Annexure-11 shows no objection of the Government of India to another Pak National Mrs. Sahjad Begam for her stay of one year. These documents are thus, of no help to the petitioner No. 1.

Accordingly, it is not possible for us to uphold the charge of discrimination. The petitioner No. 2 cannot claim breach of her Fundamental Right guaranteed under Article 21 by marrying a Pakistani National and that too without clarifying as to how she married him at Firozabad in India when there is nothing on the record to show that Petitioner No. 1 came to India after grant of passport by the Government of Pakistan and Visa by the Government of India.

9. We are not an appellate authority so as to appreciate the recommendations of the local police or the State Government. No ground has been taken that the recommendations made in favour of petitioner No. 1 were not considered by the Union Government.

10. All grounds having failed, coupled with the fact that no copy of the order of the Government of India rejecting the request of the petitioners having been appended, this writ petition is dismissed.

11. The office is directed to handover a copy of this order within one week each to Mrs. Srivastava and H. R. Misra for its communication to the appropriate authority.