
(2002) 08 AP CK 0008
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12890 of 2002

Tasleem Murad

APPELLANT

Vs

Government of A.P.

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Constitution of India, 1950 — Article 15, 16, 19, 21, 21A
Foreigners Act, 1946 — Section 14, 3, 3(2)

Citation : (2002) 5 ALD 307

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; Government Pleader for Home for Respondent Nos. 1 and 2 and C.V. Ramulu, SC for CG, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a citizen of Pakistan. She holds Pakistani Passport bearing No. 910815, dated 30-10-1998. She obtained VISA from the Government of India, the second respondent herein, travelled to India and arrived at Bombay on 1-3-2001. Her entry into India was marked with R.P.No. 1618/2001 with sticker No. 0226006. She was granted a residential permit by the Registration Officer for a period of ninety days. She came to Hyderabad on 2-3-2001 and married one Mohd. Azmat on 11-3-2001 at Hyderabad. She was granted a marriage certificate pursuant to Shiyinama, In view of the marriage with Mohd. Azmat, who is an Indian national, she applied to the third respondent for extension of her residential permit for a period of one year from 30-5-2001 to 29-5-2002. She alleged that she also made a similar request to the Government of India through the Commissioner of Police, Hyderabad, the third respondent herein, for extension of her VISA for a period of one year from 30-5-2001.

2. The petitioner continued her stay beyond the period of ninety days from the date of entry into India. She gave birth to a male child on 13-12-2001. In the meanwhile, her husband went to the United States of America for employment

and he was arrested by the American Police allegedly in connection with a terrorist attack on World Trade Centre (WTC), New York City, on 11-9-2001. The husband of the petitioner is in the custody of the American Police. The petitioner again submitted an application to respondents 1 and 3 for a further extension of her residential permit for a period of two years from 30-5-2002 to 29-5-2004. The first respondent issued orders bearing No. I8267/PPTs.-AI/2001-3, dated 17-6-2002, directing the petitioner to quit India immediately after service of the order. Assailing the said order, the present writ petition is filed.

3. When the matter was listed before me on 18-7-2002, I directed the learned Additional Standing Counsel for Central Government, Smt. Madhavi Devi, and the learned Government Pleader for Home to get instructions and/or to file counter-affidavits in the matter. On 30-7-2002, when the matter was listed, the learned Additional Standing Counsel for Central Government placed before me a wireless message received from the Under Secretary to the Govt. of India in the Home Department, informing that the Home Ministry is not aware of the application of the petitioner seeking extension of her VISA for a period of two years or the reasons for issuing the order to quit India given to her.

4. The first respondent as well as the third respondent have filed counter-affidavits. In the counter-affidavit filed by the Assistant Secretary to the Government on behalf of the first respondent, it is stated that the petitioner made an application on 9-4-2001 requesting to extend her VISA for a period of one year and that after causing enquiry the application was forwarded to the second respondent to accord permission, but no orders are received till now. In the meanwhile, the period during which the petitioner wanted to stay in India expired on 29-5-2002. The petitioner's husband is in the custody of U.S. Police and the allegation that her husband is innocent and unconnected with the attack on World Trade Centre at New York is not correct. The husband of the petitioner furnished false information and obtained a passport and accordingly a case in Crime No. 127 of 2001 u/s 12 of the Passports Act, 1967 and Section 420 of the Indian Penal Code, has been registered against the husband of the petitioner at Hussaini Alam Police Station. The same is under investigation. The petitioner's husband was apprehended by the American Police along with another Indian by name, Ayub Ali Khan while they were travelling in a train in Texas under suspicious circumstances and some incriminating material was reported to have been seized from their possession. Further, during the investigation in Crime No. 127 of 2001, it was revealed that the husband of the petitioner had been working in a general stores at New Jersey, U.S.A. since nine years, that he came to India in January, 2001 and married the petitioner on 11-3-2001. But he obtained passport on 30-11-1999 showing the petitioner as his spouse though the marriage was performed on 11-3-2001.

5. It is also stated in the counter-affidavit that the petitioner made another application on 25-4-2002 seeking extension of stay on long-term VISA (LTV) for a period of two years from 30-5-2002 to 29-5-2004 on the grounds that her

husband was caught by the American police consequent to the attack on WTC; that she is required to look after her aged in-laws and her child at Hyderabad. The third respondent, by a letter dated 4-5-2002, submitted his report along with other documents to the first respondent informing that her case cannot be recommended for extension of stay in India. The first respondent examined the application dated 25-4-2002 along with other material available on record including the recommendations made by the third respondent and passed orders on 17-6-2002 directing the third respondent to serve notice under Clause (c) of Sub-section (2) of Section 3 of the Foreigners Act, 1946 directing the petitioner to leave India. The quit India notice i.e., the impugned order was duly served on the petitioner.

6. At the time of preliminary hearing, learned Counsel for the petitioner, Sri S. Niranjan Reddy, made only one submission to the effect that when the petitioner's application dated 25-4-2002 seeking extension of LTV for a period of two years is pending before the Central Government, it was improper and unfair for the second respondent to pass the impugned order asking the petitioner to quit India. The contention stands rebutted by reason of the admitted fact that all the applications seeking conversion of short-term VISA (STV) to LTV and extension therefore for the first year, are to be considered by the Central Government, and where, in case of minority communities in Pakistan, especially applications for LTV for the first year should be considered and such LTVs are granted by the State Government as per various circulars issued by the Central Government delegating powers u/s 12 of the Foreigners Act, 1946. In view of this, the learned Counsel for the petitioner did not press his submission. He, however, submits that the State Government did not exercise the power vested in it under the Foreigners Act and the Foreigners Order, 1948 in a reasonable and proper manner. He would further submit that directing the petitioner to quit India on the ground that her husband was caught by the American Police allegedly in connection with the attack on WTC on 11-9-2001 and allegedly on the ground that the criminal case being Crime No. 127 of 2001 of Hussaini Alam Police Station, is under investigation, is irrational. He would urge that even if petitioner's husband is involved in a criminal case, the same cannot be a ground for denying her a right to stay in India till 29-5-2004. He would contend that the petitioner wants to seek Indian citizenship, in which event, a minimum stay of five years in India is required. If the petitioner is now asked to quit India, she would be deprived of the opportunity to seek Indian citizenship. He, therefore, prays to declare the impugned order as arbitrary and unconstitutional. The Counsel, however, does not dispute that the petitioner cannot claim Fundamental Rights under Articles 19 or 14 of the Constitution of India. He also placed reliance on the judgments of the Supreme Court in *Louis De Raedt and Others Vs. Union of India and others*, *State of Arunachal Pradesh Vs. Khudiram Chakma*, and *National Human Rights Commission Vs. State of Arunachal Pradesh and Another*, .

7. Sri M. Rama Rao, learned Government Pleader for Home, opposed the writ

petition contending as follows. Under the Foreigners Act, Foreigners Order and various circulars issued by the Central Government, a foreign national who was given permit to stay in India temporarily has to seek extension by conversion of STV into LTV for the first time from the Central Government. Thereafter, every extension beyond the period of one year has to be granted by the State Government and, therefore, whether or not her application is pending before the Central Government, is irrelevant for the State Government to exercise the power. The petitioner's application was duly considered in accordance with the procedure and a report was obtained from the Commissioner of Police, Hyderabad. The Commissioner, having regard to the involvement of the petitioner's husband in Crime No. 127 of 2001, and also having regard to the fact that he was apprehended with incriminating material in the State of Texas in the USA, and as the result of the case or his whereabouts are not known, did not recommend for extension of her stay in India. The Commissioner also requested the State Government to issue orders directing the petitioner to leave the country. The Government considered the same and passed the impugned order directing the petitioner to quit India. The Government also advised the Commissioner of Police to serve quit India notice (impugned order) on the petitioner and the same was duly served on her on 12-7-2002. Further, the petitioner has no Fundamental right to stay in Hyderabad as she came to India with a specific permit for ninety days and after expiry of the said period, she cannot be permitted to stay in India. He also submits that even if her application made on 9-4-2001 had been considered, she could not have stayed in India beyond 29-5-2002.

8. The two questions that arises for consideration are -

- (i) Whether the impugned order suffers " from any illegality or arbitrariness? and
- (ii) in a petition for judicial review, what requires to be considered is whether the second respondent gave a proper disposal to the application submitted by the petitioner seeking extension of stay in India upto 29-5-2004 and whether such disposal is in accordance with settled principles of administrative law and whether there is any infringement of petitioner's right to life and liberty?

In Re Point Nos.(i) and (ii) :

9. Part III of the Constitution of India confers Fundamental Rights on all citizens. Some of the Fundamental Rights are also conferred on persons who are not citizens. A foreign national who holds an Indian VISA and staying in India by virtue of a residential permit granted under the Foreigners Act and the Foreigners Order, is a person to be entitled to enforce Fundamental Rights under Article 21 of the Constitution. If the life and liberty of such foreign national is deprived, except in accordance with the provisions of the Foreigners Act, this Court can enforce the right of such persons. Be it noted that as held by the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu* and *Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , the action/order depriving a person of his

life and liberty must be reasonable and un-arbitrary. An administrative action giving effect to a law must also be fair, rational and reasonable before it deprives a foreign national of life and liberty. Insofar as a foreign national with a residential permit is concerned, the right under Article 21 is limited, in comparison with the right of a citizen under Article 21 of the Constitution. The Fundamental rights under Articles 15, 16 and 19, for instance, which are conferred on citizens cannot be guaranteed to a foreign national on the ground that the exercise of such rights is penumbral to exercise of right under Article 21 of the Constitution.

10. It is settled law that the Fundamental Rights are not absolute. All the rights are subject to certain restrictions, having regard to the "compelling State interests" either in the realm of welfare of the people, security of the nation or constitutional governance. Further every Fundamental Right has to be enforced and enjoyed within permissible restrictions and in the event of conflict between individual rights and societal rights, the individual right has to give way to the right of public at large. In *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , a three-Judge Bench of the apex Court dealt with this aspect of the matter and held:

.....We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said to be such to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the co-operation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every Fundamental Right under Part III of the Constitution is not absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies.

11. In *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, , while reiterating the same principles, the Supreme Court referred to the earlier decisions and reiterated that even those persons who were not citizens of India and come merely as tourists or in any other capacity are entitled to the protection of their lives in accordance with the Constitutional provisions, observed, that the primacy of the interest of the nation and security of the State must be read into every Fundamental Right. It is apt to excerpt paragraphs 35 and 36 of the said judgment, which read thus:

On this (these) principles, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to "Life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity, just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens.....They

are subject to reasonable restrictions and, therefore, in case of non-citizen also, those Rights will be available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations. Interest of the Nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes political, social and economic while terrorism has disturbed the global scenario.

Primacy of the interest of Nation and the security of State will have to be read into the Universal Declaration as also in every Article dealing with Fundamental Rights, including Article 21 of the Indian Constitution.

12. Foreign Nationals visiting India or residing in India cannot be treated as citizens (See Articles 5 - 10 of the Constitution of India). Nonetheless, by reason of the judicial interpretation of certain provisions in Part-III, a few Fundamental Rights are guaranteed to a foreigner. A reference may be made to three decisions of the Supreme Court in this context. In *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, , a Constitution Bench of the Supreme Court considered the question whether limitations imposed on the power of preventive detention of the State by Articles 21 and 22 are to be kept in mind while passing the order of preventive detention. A question arose whether the Government should follow Foreigners Act instead of Extradition Act and whether preventive detention was in good faith. It was observed:

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.

13. In *Anwar Vs. The State of J. and K.*, , an interesting question arose before the Supreme Court whether an alien has a right to move freely in India and whether such person can be detained for the purpose of deportation to his native country. The petitioner - Anwar, an alien from Pakistan was convicted and sentenced for possessing drugs. After his release, he was again arrested. Anwar sought for a writ of habeas corpus under Article 32 of the Constitution of India.

The detention was defended on the ground that his expulsion from the State of J&K is being arranged. While recognising the rights of Anwar, though he is an alien/foreigner, under Articles 20, 21 and 22 of the Constitution, the Supreme Court denied rights under Article 19 of the Constitution. It was observed:

The petitioner is not a citizen of India. He is therefore, a foreigner as defined in the Foreigners Act. Not being a citizen, he is clearly not entitled to any Fundamental Right guaranteed by Article 19 of the Constitution. He has thus, no right to remain within the territories of India. His entry into this country was also without any right and indeed he himself does not claim to have entered into India in accordance with the provisions of the Foreigners Act and the Orders made thereunder. The only rights which he can claim in the present proceedings are those contained in Articles 20 - 22.

14. In *Anwar (supra)*, the Supreme Court clearly recognised the rights of being informed of the reasons for arrest/detention and the right to life and liberty guaranteed under the Constitution. These rights are equally available to refugees as well.

15. In *Louis De Readt (supra)*, the Supreme Court laid down that the Government has absolute power to expel a foreigner and the Court should not ordinarily interfere in such matters.

16. The learned Counsel for the petitioner contends that the petitioner's application/representation dated 25-4-2002, has not been disposed of and that the impugned order does not amount to an order in relation to petitioner's representation dated 25-4-2002 wherein she sought extension of stay on LTV for a period of two years upto 29-5-2004. This submission is without any substance. I have perused the impugned order as well as the communication sent by the second respondent to the third respondent of even date requesting the Commissioner of Police, Hyderabad to serve the impugned order on the petitioner. The latter document being Memo.No. 18267/ PPTsAI/200I-2, dated 17-6-2002 refers to the letter of the Commissioner of Police, dated 4-5-2002, which was sent with reference to the petitioner's application dated 25-4-2002. Further, in the impugned order, at paragraph 3, the second respondent specifically refers to the application dated 25-4-2002 and in exercise of the powers u/s 3(2)(c) of the Foreigners Act, and acting in pursuance of the powers delegated to them by Notification No. 4/3/ 56-I/F(I), dated 19-4-1958, the petitioner was directed not to remain in India after service of the impugned order. This order gives the history of the stay of the petitioner in India and was indeed passed with reference to the application dated 25-4-2002 and in accordance with the Foreigners Act and the Foreigners Order. But for the petitioner's application dated 25-4-2002, there was no necessity or need to the State Government to issue the impugned order.

17. The learned Counsel would submit that the impugned order is violative of principles of natural justice. He placed reliance on *Khudiram Chakma (supra)* and

submits that even in a case of a foreign national, the Supreme Court directed to afford post-decisional opportunity and, therefore, the respondents ought to have given an opportunity to the petitioner. This submission is inter-related to another submission of the learned Counsel. He submits that the impugned order was passed on the ground that the petitioner's husband was caught by the American police with certain incriminating material and on the ground that he is involved in Crime No. 127 of 2001 of Hussaini Alam P.S. If an opportunity is given to the petitioner, she would be able to show that her husband was not involved in any criminal case at the U.S.A., much less connected with the attack on WTC on 11-9-2001. I have carefully considered these two submissions and I am afraid I cannot agree with any of them. That violation of principles of natural justice would render an order void, as a general principle of law cannot be accepted.

18. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court considered the question whether the High Court in exercise of power under Article 226 of the Constitution, is bound to declare an order of the Government passed in breach of principles of natural justice, as void, or whether the Court can refuse to grant relief on the ground that the facts of the case do not justify exercise of discretion to interfere or because de-facto prejudice has not been shown. After referring to its earlier judgments in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*, , the Supreme Court observed that if only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice. The Supreme Court also referred to English Law with reference to "useless formality" theory as evolved in Administrative Law, and observed as under:

.....Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the Courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala and others Vs. S.K. Sharma*, , *Rajendra Singh Vs. State of Madhya Pradesh and others*, , that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

19. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, , the Supreme Court again considered the question of "useless formality" theory, and after referring to *S.L. Kapoor Vs. Jagmohan and Others*, , *K.L. Tripathi Vs. State Bank*

of India and Others, , S.K.Sharma (supra) and Rajendra Singh (supra), summarized as under :

The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc., in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H.Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied *via media* rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

20. Thus, in the case of a foreign national, who is staying in India beyond the period during which such foreign national was permitted to stay by the Registration Officer, the principles of natural justice cannot be applied. Here it may be noticed that u/s 3 of the Foreigners Act the Central Government may make an order with respect to any particular foreigner or generally for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein. As per Sub-section (2) of Section 3 such order may provide *inter alia* that the foreigner shall not remain in India or in any prescribed area therein. Pursuant to the power conferred by Section 3, Foreigners Order, 1948 was made by the Central Government. Paragraph-7 thereof deals with restriction of sojourn in India by a foreigner. As per Clause (iii) of sub-paragraph (3) of paragraph 7 every foreigner to whom a permit is issued under sub-paragraph (1) or sub-paragraph (2) of paragraph 7, shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period and before doing so shall surrender the permit to the Registration Officer. Be it also noted that Section 14 of the Foreigners Act provides for penalties and if any person contravenes provisions of the Foreigners Act or Foreigners Order shall be punished with imprisonment for a term which may extend to five years. Therefore, there cannot be any denial that the petitioner by continuing to stay in Hyderabad and India has committed offence under the Foreigners Act. She ought to have departed from the country before the expiry of ninety days as per paragraph 7(3Xiii) of the Foreigners Order.

21. A reference may be made to Louis De Readt (supra) where two Belgians and one American challenged the orders of the Foreign Ministry refusing extension of their period of stay in India. Louis De Readt was staying in India continuously since 1937 and was engaged in Christian missionary work. A contention was

raised that many foreign Christian missionaries were allowed to stay and as Louis was working in remote place of Bihar, could not apply in time and, therefore, denial of permission was violative of Articles 5 and 19(1)(e) of the Constitution. The Supreme Court rejected the contention and ruled that the fundamental right of a foreigner for life and liberty under Article 21 of the Constitution does not include the right to reside and stay in any part of India under Article 19(1)(e), which is applicable only to the citizens of the country. The Supreme Court also laid down that the Executive has unrestricted right to expel a foreigner and that the principles of natural justice are not totally excluded even in an action for expelling a foreigner. The Supreme Court referred to earlier Constitution Bench judgment in *Hans Muller* (supra) and held:

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* (supra) that the power of the government in India to expel foreigners is absolute and unlimited and there is no provision 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. 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,

22. *Khudiram Chakma* (supra) relied on by the learned Counsel for the petitioner, in my considered opinion, is not an authority for the proposition that as and when an application of a foreign national for conversion of STV to LTV and extension of stay in India is rejected, the same should be preceded by a notice to the person concerned.

23. In *Khudiram Chakma* (supra), Chakmas were given shelter at Government camp at Ledo in the District of Dibrugarh, Assam. Later, in 1966, they were shifted to a camp at Miao in the State of Himachal Pradesh. They were allotted land by a local Raja, which was not in accordance with the relevant regulations. They developed the hill area to cultivable land. The nearby villagers objected to the Chakmas stay in the place and representations were made to shift them. It is alleged, that Chakmas started indulging in criminal and illegal activities. A committee was appointed to enquire into the matter of illegal allotment and other activities. The committee submitted a report that 788 families of Chakmas, Deori and Bhutia illegally encroached 872 hectares in Miao sub-division alone. Therefore, an order was passed on 15-2-1984 directing Chakmas to shift to the vacant land allotted at Gautampur and Maitripur. The said order was questioned

before the High Court of Guwahati claiming a declaration that they are citizens of India, that their fundamental rights have been infringed and that the impugned notice dated 15-2-1984 is illegal and arbitrary. The High Court came to a conclusion that they have no right to seek permanent abode in that area. However, on humanitarian grounds, the High Court directed the Government to give adequate compensation in the event of Chakmas being evicted from the place. Aggrieved by the judgment of the High Court, the matter was carried to the Supreme Court. It was inter alia contended for Chakmas and others. that there was no notice before calling upon the appellants to shift. The State of Arunachal Pradesh opposed the appeals contending that Chakmas are not citizens of India and, therefore, they cannot invoke Articles 14 and 19(1)(d) and (e) of the Constitution. On the question of natural justice, the State relied on the judgments in *R. v. Secretary of State for the Home Department ex parte Cheblak* (1991) 2 All ER 319, *Brind v. Secretary of State for the Home Deptt.* (1991) 1 All ER 720 (HL), *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All ER 935 (HL), *Me Innes v. Onslow Fame* (1978) 3 All ER 211, *J.R. Vohra Vs. India Export House Pvt. Ltd. and Another*, , *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , and *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, , and contended that principles of natural justice have been satisfied. It was also contended that the Chief Minister of the State is willing to hear the appellants on any representation/ group additionally at a post-decisional hearing even though they had prior opportunity of hearing. The Supreme Court held that the donation of land by Raja in favour of Chakmas was invalid and that Chakmas were not citizens of India. Reliance was placed on *Kennedy v. Mendoza-Martinez* 372 US 144 159 : 9 L Ed. 2d 644 (1963), to the effect that "citizenship is a most precious right". The apex Court also held that Chakmas encroached upon the neighbouring area by unfair means and created trouble to the local people and that principles of natural justice were satisfied as even the appellants had notice proposing to evict them. The Court then referred to *Louis De Readt* (supra) and held that acquisition of property by an alien is illegal and no discretion can be shown. It was also observed that if the acquisition of property by an alien is illegal, compensation would have been awarded. The Supreme Court clearly recorded the statement that the State will consider the case of the appellants, if any representation is made. The Court did not lay down the ratio that in every case of shifting of an alien or deportation of a foreigner, there should be post-decisional hearing.

24. In this case, the petitioner was granted a temporary permit by the Registration Officer, the third respondent herein, to remain in India for a period of ninety days upto 29-5-2001. As on today, there is no order passed under paragraph 7 of the Foreigners Order, permitting the petitioner to stay in India. So, after 29-5-2001, her stay in India must be treated as illegal. Be that as it may, the petitioner made a representation seeking to extend her VISA for a period of one year from 30-5-2001 to 29-5-2002. The same was duly forwarded

by the second respondent vide letter No. I8267/PPTs/AI-2001-I, dated 19-10-2001. No orders are passed on the same. Even if the request had been granted, the permit requested was only upto 29-5-2002. On that score, after that date, the petitioner's stay in India, especially in Hyderabad, is clearly illegal. When the petitioner was required under law to leave the country before the expiry of the period, she cannot be heard to contend that a notice is required to be given before a deportation order is served on her. Be that as it may, the petitioner again requested by a letter dated 25-4-2002 to extend her period of stay at Hyderabad for a further period of two years from 29-5-2002 to 29-5-2004. The same was considered and the impugned order was issued directing her to leave the country. In a situation of this nature, principles of natural justice have no place.

25. Learned Counsel for the petitioner contends that permission was refused till 29-5-2004 on the ground that the petitioner's husband was apprehended by the U.S. Police consequent to attack on WTC on 11-9-2001, which is not correct. He also would submit that mere fact that the petitioner's husband is involved in a criminal case registered with Hussaini Alam P.S., is no ground to reject the permission. This contention is also devoid of merits. First, the petitioner herself requested that her stay may be extended as her husband was implicated in a criminal case for his alleged involvement in the WTC attack. The impugned order was not passed on that ground. No doubt, a reference is made in paragraph 4 of the impugned order that her husband was involved in a criminal case being Crime No. 127 of 2001. The same also does not give any indication that the petitioner was asked to leave the country only on that ground. The impugned order was passed only on the ground that the period of permit had expired and, therefore, she cannot stay. That is the reasonable inference to be drawn from the impugned order. It must be remembered that the respondents are entrusted with the duty to enforce the law contained in the Foreigners Act and Foreigners Order and the discretion exercised by them cannot be said to be arbitrary, having regard to the principles of law that the executive has absolute power to expel any foreigner who is staying in India beyond the period for which he or she is permitted to stay in India.

26. The writ petition is devoid of merits and the same is accordingly dismissed. There shall be no order as to costs.