
(2001) 02 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11131 of 1998

Taukir Husain

APPELLANT

Vs

Central Government and Others

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Foreigners Act, 1946 — Section 14

Citation : (2001) 02 AHC CK 0086

Hon'ble Judges : Binod Kumar Roy, J and D.R.Chaudhary, J

Final Decision : Dismissed

Judgement

1. The petitioner has come up with following prayers:

?(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents, their agents and employees to desist from deporting the petitioner outside India to any other country.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents, their agents and employees to immediately set the petitioner at liberty.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents, their agents and employees not to prosecute the petitioner under Section 14 of the Foreigners Act, and punish him under the said section.

(iv) Issue any other writ, order or direction as this Hon"ble Court may deem fit and proper.?

2. He asserts as under :This is his first writ petition; he was born of Indian parents on 111965 at 74Nai Bas, Shamli Road, District Muzaffar Nagar; initially he was admitted in Jain School, Muzaffar Nagar by his father but subsequently shifted to Basic Purvi Pathshala, Nagar Kshetra, Muzaffar Nagar, situated nearby his residential house in which he remained from 1671973 to 3061976 and passed

IVth class as would appear from the School Leaving Certificate (Annexure1); thereafter he was admitted in Class VIth of D. A.V Inter College, Muzaffar Nagar from where he passed VIth class in IInd division in 197677, as would appear from the marksheet issued by the said College (Annexure2); in 197879, while he was in class VIIth, he participated in the sport organised by the said institution and was awarded a certificate of merit, as would appear from the certificate dated 1031979 issued by the Convenor and the Principal of the Institution respectively (copy appended as Annexures 3 and 4); on account of domestic and financial problems his father withdrew him from D.A.V. Inter College, Muzaffar Nagar, after he passed VIIIth class and asked him to assist in his business of electrical goods in shop situated at Ansari Road, Muzaffar Nagar; on attaining the age of maturity his name was also entered in the Electoral Roll of Vidhan Sabha 1993 (Annexure5); with regard to ancestral property owned by his father, lot of litigations are going on amongst the members of the family; it appears that with a view to harass his father someone of his enemies, in collusion with the members of Local Intelligence Unit, got a false report lodged at the Police Station Kotwali, Muzaffar Nagar on the basis of which Case Crime No. 538 of 1994 under Section 14 of Foreigners Act was registered (copy appended as Annexure6) and he was arrested by the members of the Local Intelligence Unit on 2171994 and thereafter taken to the Police Station Kotwali, Muzaffar Nagar, where he was kept in lock up for the whole night; the Station Officer, Kotwali took up his passport (copy Annexure6) issued by the Central Government from its Bareilly Office and thereafter challaned and sent to jail; his passport was not returned after obtaining of which he had applied to Pakistan High Commission, New Delhi for Visa in the prescribed form but his prayer was rejected; his prayer for grant of bail was rejected and thereafter he moved this Court in Civil Misc. Writ Petition No. 25936 of 1994 in which this Court was pleased to pass an order while issuing notice that until further orders his deportation shall remain stayed; the said writ petition is still pending.

3. In the counteraffidavit, a copy of which was served on the petitioner on 2841999, to which no rejoinder has been filed, it has been stated inter alia that the petitioner had filed Writ Petition Nos. 23922/94 and 25936/94 earlier and his statement that this writ petition is first writ petition is incorrect; that in Crime Case No. 538/94 final report has been submitted and it has ended, in Crime Case No. 331/89, under Section 14 of the Foreigners Act he was imposed 20 days imprisonment and Rs. 500/ as fine and was deported to Pakistan vide Government Order No. 2496K/8V1232/89 dated 3081989, he entered this country pursuant to Pakistani Passport No. A571823 dated 2311995 and came to Muzaffar Nagar on 531998, according to which his date of birth is 1931968 and place of birth Khairpur, Pakistan, as stated by him in his application filed for grant of Visa in the Indian Embassy situated at Pakistan and the submissions made are contrary, untrue, misleading and baseless; he has been illegally residing from 1989 to 1994 which is apparent from the First Information Report dated 2171994, PS. Kotwali, Muzaffar Nagar giving rise to registration of Case Crime

No. 538/94; his claim that he has electrical shop at Ansari Road, Muzaffar Nagar and presently running the same are totally incorrect though earlier his father was doing electrical works in the shop in question, which is not in existence; the allegation of collusion etc. and institution of case is incorrect whereas before this in the year 1989 also Case Crime No. 331/89, under Section 14 of the Foreigners Act was registered in Police Station, Sadar Bazar, District Saharanpur and he was also convicted by the Court he was arrested in front of house of his father on 21/7/1994 he is not entitled to any relief and the writ petition, being devoid of force and baseless, is not maintainable and be dismissed.

4. Sri M. Dixit, learned counsel for the petitioner, contended that since the petitioner is an Indian citizen he is being attempted to be deported illegally and consequently this writ petition is fit to be allowed.

5. Sri Sabhajit Yadav, learned Standing Counsel appearing on behalf of Respondent Nos. 2 and 3, with reference to the statements made in their counteraffidavit which has been sworn by the Superintendent of Police, Muzaffar Nagar, contended that in view of the fact that the statements made in the counter affidavit are also supported by the relevant documents, it is crystal clear that the petitioner is a Pakistani National and not an Indian citizen who on his Pakistani Passport and Visa issued by Indian High Commission at Pakistan has been visiting our country illegally and consequently this writ petition is fit to be dismissed.

6. His earlier writ petition according to him in which stay has been granted is still pending. Unfortunately most of the relevant facts asserted by the petitioner have been stated that as they appear from the documents appended by him. The facts stated in the counteraffidavit speak for themselves which are also supported by the relevant documents to which no rejoinder affidavit has been filed by the petitioner.

7. We are thus, inclined to accept the statements made therein as correct and refuse to rely on the statements made in the writ petition.

8. Accordingly, we are of the view that the petitioner is not entitled to the reliefs claimed from this Court. This writ petition is, thus, dismissed but having regard to the peculiar facts and circumstances we make no order as to cost.

9. The office is directed to hand over a copy of this order to Sri Sabhajit Yadav, learned Standing Counsel within two weeks for its intimation to the authority concerned. Petition dismissed.