

(2013) 11 MAD CK 0100

In the Madras High Court

Case No : Writ Appeal No. 651 of 2012 and M.P. No. 1 of 2012

The State

APPELLANT

Vs

G. Karunairaj

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) 1 CTC 113 : (2014) 2 LW 55 : (2014) 1 LW(Cri) 316 : (2014) 1 MLJ(Cri) 1 : (2014) WritLR 209

Hon'ble Judges : R.K. Agrawal, C.J;M. Sathyanarayanan, J

Bench : Division Bench

Advocate : A.L. Somayaji A.G. Assisted by Mr. T.N. Rajagopalan, Special Government Pleader, for the Appellant; M. Sreedhar for M. Sreedhar Associates, for the Respondent

Final Decision : Allowed

Judgement

1. The official respondents in W.P. No. 27221/2011, are the appellants and aggrieved by the final order dated 29.2.2012, made in the said writ petition, by and under which, G.O.Rt. No. 3749, issued by the first appellant herein, dated 9.11.2011, u/s 3(2)(e) of the Foreigners Act, 1946 (Central Act 31 of 1946) read with the Notification of the Government of India, Ministry of Home Affairs, No. 4/3/56 (1) F-1, dated 19.4.1958, for regulating the presence of the respondent herein, with a further direction to reside in the Special Camp for Foreigners, came to be quashed. The facts briefly stated and necessary for the disposal of this writ appeal, are as follows:

2(i) The respondent herein filed the above said writ petition praying for the issuance of a writ of certiorarified mandamus to quash the above said Government Order dated 9.11.2011, stating among other things, that he is an Indian Citizen and further, that on 21.8.2011, came to Chennai with his wife viz. Jayanthi, and three children viz. Shyamala aged about 19 years (female), Tika Devan aged about 6 years (boy) and Bumiputeri aged about 5 years (girl), for the purpose of shopping in connection with his younger daughter's ear-boring

ceremony and were staying in Hotel Aravind Residency at Ekathuthangal, Chennai and during midnight hours on that date, a team of Police Officials headed by the Inspector of Police Mr. Chandrasekar, attached to the City Crime Branch, Coimbatore City, had banged his hotel room and they informed him they were from City Crime Branch at Coimbatore City and they asked him to speak to the Commissioner of Police viz. Mr. Sylendrababu, I.P.S., over phone and thereafter, the writ petitioner and his family members were tortured and his wife as well as his elder daughter were molested and sexually assaulted and thereafter, all of them were taken in two cars to Coimbatore and on the way to Coimbatore also, the policemen sitting near his wife and his elder daughter, had abused them.

2(ii) It is further averred by the writ petitioner that on reaching Coimbatore, he was taken to the room of the Commissioner of Police, wherein, the said official personally made some enquiry and subsequently, his house in Andhra Pradesh, was searched and his laptops, cellphones, wallets, credit cards, debit cards, costly watches, jewellery weighing about 250 sovereigns, PAN card, driving licence and other valuable items were seized and they also effected the arrest of the writ petitioner and his wife. According to the writ petitioner, he last saw his children on 23.8.2010.

2(iii) It is further stated by the writ petitioner that he was arrested in Crime No. 55/2010 registered by the City Crime Branch of Coimbatore City Police, for the alleged commission of the offence u/s 420 IPC, and thereafter, arrested pursuant to the Prisoner Transfer (P.T.) Warrant in Crime Nos. 83, 77 and 38/2010 registered by the above said Unit, and also in connection with Crime No. 609/2004 registered by Cheyyur Police Station, and he was remanded to judicial custody and was lodged at Puzhal Central Prison at Chennai and according to him, all the cases were foisted at the instance of the then Commissioner of Police for the reason that he might expose the nexus between the top I.P.S. Officials and the Drug Mafia operating in India and the writ petitioner in this regard, sent number of representations to the higher officials and he has also given his statement u/s 164 of Cr.P.C. before the Court of Judicial Magistrate at Uthiramerur, confessing the role and involvement of the I.P.S. Officers in Tamil Nadu and their nexus with international mafia dealing with drugs and diamonds, and he had also proof showing their involvement.

2(iv) It is further averred by the writ petitioner that he filed an application for bail in one of the crime numbers in CrI. O.P. No. 29774/2010 and during the course of the hearing, the Additional Public Prosecutor represented that the petitioner is not an Indian Citizen, but a Malaysian National, and he entered India with bogus documents. It is the claim of the writ petitioner that he is in possession of driving licence and voters' identity card issued by the concerned authorities of this country, and therefore, the claim made in that regard, is absolutely false and baseless.

2(v) It is further stated by the writ petitioner that he was granted bail in all the

cases and was released from Puzhal Central Prison on 8.9.2011, and when he came out, he was arrested by Hosur Hudco Police in connection with Crime No. 251/2009, and no intimation was given with regard to his arrest, to his relatives and in that case also, he was enlarged on bail on 12.9.2011, and he furnished sureties on 14.9.2011; but, the bail bond was not dispatched and therefore, he filed CrI. O.P. No. 25708/2011 for a direction directing the concerned Magistrate to dispatch the bail bond and it was belatedly dispatched and on 8.11.2011, he was ultimately released from Puzhal Central Prison and when he came outside, a few persons had pushed him in a police jeep and at that time, he saw his daughter and counsel waiting outside the prison gate and the concerned persons, who were stated to be the police personnel, attached to "Q" Branch, informed him that some top police officials in the rank of Additional Director General of Police, wanted to meet him and speak to him and he refused and the daughter of the petitioner in that regard, has also sent a telegram to the Secretary to Government, Home Department and the petitioner on being illegally taken, was subjected to physical torture and he has been illegally detained till 12.11.2011, and on the evening hours on that date, he was served with the Government Order dated 9.9.2011, stating that he is going to be detained at Special Camp for Foreigners at Chengalpattu.

2(vi) It is the specific case of the writ petitioner that he is having a PAN card and driving licence and is also operating Savings Bank Account in India for the past 10 years and therefore, the claim of the official respondents/appellants that he is facing number of criminal cases in Malaysia and clandestinely entered India without any valid documents is only false and without any reasons.

2(vii) The writ petitioner also raised a legal issue that u/s 9 of the Citizenship Act, only the Central Government is competent to deal with the citizenship issue and the State Government lacks any power to decide the same. The writ petitioner also relies upon Section 14 of the Extradition Act, 1962, which states that a fugitive criminal may be apprehended in India under the endorsed warrant or a provisional warrant and unless and until he is declared as a fugitive criminal, he cannot be arrested by the State Police without the endorsed warrant issued by the Government of India, or the provisional warrant issued by the Magistrate from any Commonwealth country. The writ petitioner also raised a plea that the said Government Order infringes Articles 14, 19 and 21 of the Constitution of India and therefore, filed the writ petition praying for the quashment of the said order.

2(viii) The first appellant herein/first respondent in the writ petition, filed its counter denying the averments in the affidavit filed in support of the writ petition, and would state that the Coimbatore City Crime Branch Police has registered Crime Nos. 38, 55, 77 and 83/2010 respectively against the writ petitioner, alleging cheating and other allied offences and all cases have been registered on complaints given by the aggrieved innocent and reliable persons, who were cheated by the writ petitioner, and the said cases after investigation,

have culminated in charge sheets, which had been taken on file by the jurisdictional Magistrate Courts.

2(ix) It is further stated by the first appellant/first respondent in the writ petition, that during the course of investigation in CCB Crime No. 55/2010, the Investigating Officer had obtained the fingerprints of the writ petitioner after obtaining necessary orders from the Court of Judicial Magistrate No. VII, Coimbatore and forwarded the same to the NCB/INTERPOL Malaysia, Royal Malaysian Police, Kuala Lumpur and the said authority had compared the fingerprints of Michael, son of Soosai, with the fingerprints forwarded by the Coimbatore City Crime Branch Police, and they sent a report stating that the writ petitioner's fingerprints tallied with that of Malaysian fugitive offender Michael @ Soosai and further stated that the writ petitioner is a Malaysian Citizen and his Malaysian Citizen Identity Card Number is 630308-07-5073 and his passport number is A11314136, and on 15.4.2011, the Commissioner of Police, Coimbatore City, received a copy of the letter from the Consulate General of Malaysia enclosing the death certificate of Michael Soosai, bearing the above said Malaysian National Identity Card Number and Passport Number, stating that the factum of the death certificate is genuine; but, the contents therein, are based on wrong information given by one Kumeresan, who is also a Malaysian National, and for the said mischief, a case was registered and the concerned persons were arrested and lodged in prison in Malaysia.

2(x) It is further stated by the first appellant/first respondent in the writ petition, that the writ petitioner is having many alias names viz. Dr. G.K. Raj @ Karunahraj @ G.K. Rajasekaran @ Dharmadevan @ Michael Raj @ Michael Soosai, son of Gnanamuthu and he is involved in the following cases in India:

- (i) Coimbatore CCB Cr. No. 38//2010 u/s. 420 IPC.
- (ii) Coimbatore CCB Cr. No. 55/2010 u/s. 420 IPC.
- (iii) Coimbatore CCB Cr. No. 77/2010 u/s. 420 IPC.
- (iv) Coimbatore CCB Cr. No. 83/2010 u/s. 420 IPC @ 120(B), 420 and 109 IPC.
- (v) Cheyyur PS (Kancheepuram district) Cr. No. 609/2004 u/s. 147, 148, 364, 417, 302, 201, 120(B) IPC r/w 149 IPC.
- (vi) Chennai Airport PS Cr. No. 284/2004 u/s. 365 and 420 IPC.
- (vii) Krishnagiri District HUDCO PS Cr. No. 251/2009 u/s. 420 IPC.
- (viii) Karnataka Mangalore South PS Cr. No. 09/2008 u/s. 406 and 420 IPC.
- (ix) Karnataka Uduppi PS Cr. No. 19/2008 u/s. 406, 420 r/w 34 IPC.

2(xi) It is further stated by the first appellant/first respondent in the writ petition, that the writ petitioner was released on bail from the Central Prison, Puzhal, on 8.11.2011, and in order to restrict his movements in the State till the disposal of the above said cases including a murder case, registered against him,

a proposal was sent to the Government by the Inspector General of Police, Intelligence (Internal Security), Chennai on 8.11.2011, and the first appellant after due application of mind to the materials placed before him, has passed the Government Order dated 9.11.2011, to lodge the writ petitioner at the Special Camp for Foreigners at Chengalpattu in exercise of the powers conferred u/s 3(2) (e) of the Foreigners Act, 1946 read with the Notification of the Government of India, Ministry of Home Affairs, No. 4/3/56 (1) F-1, dated 19.4.1958, and it was served on him on 11.11.2011, through the Inspector of Police, In-charge Chengalpattu Special Camp. The first appellant/first respondent in the writ petition, specifically denied that prior to that, the writ petitioner has been illegally detained for a period of four days.

2(xii) The first respondent also relies upon the decisions rendered by this Court in *Kalavathy V. State of Tamil Nadu*, reported in (1995) 2 LW (CrL.) 690, which has been confirmed by the Hon'ble Supreme Court of India in SLP (CrL.) No. 369/1996 *Chinnapillai V. State of Tamil Nadu* and another and the common order dated 14.11.2003, made in HCP No. 1038/2003 etc., batch, and further stated that the said Kalavathy's case (cited supra) has been confirmed by a Full Bench of this Court reported in *Sree Latha Vs. The Secretary to Government, Public (SC) Department, Government of Tamil Nadu, The District Collector and The Inspector of Police, C.C.B. Thousand Lights* .

2(xiii) It is the specific stand of the first appellant/first respondent in the writ petition, that stay in the Special Camp for Foreigners cannot be considered as a detention or confinement as envisaged u/s 3(2)(g) of the Foreigners Act and they prayed for dismissal of the writ petition.

2(xiv) During the course of hearing of the writ petition, a complaint was made by the learned Counsel appearing for the writ petitioner, as to the writ petitioner's abuse in the Special Camp and the learned Single Judge has also directed the jurisdictional Chief Judicial Magistrate to submit a report in this regard and the report has indicated that the writ petitioner was assaulted in the Special Camp.

2(xv) The learned Single Judge, on taking into consideration the factual and legal aspects, held that immediately on the writ petitioner's release on bail from the Puzhal Central Prison, within a period of 24 hours, he has been detained and lodged at Special Camp for Foreigners at Chengalpattu and if an opportunity had been given to him, he would have proved that he is an Indian National and not a foreigner and by virtue of Para 2 of the Foreigners (Exemption) Order, 1957, the provisions of the Act would not apply to him as he is alleged to be a citizen of India, which is a Commonwealth Country; however, the said opportunity has not been provided to him before passing the impugned Government Order. The learned Single Judge further found that though many allegations are levelled against the writ petitioner that he has forged and fabricated documents as well as PAN card, driving licence, etc., in the impugned Government Order, there is not even a finding that the documents relied on by the petitioner, are forged and fabricated and it was also found by the learned Single Judge that the impugned

Government Order came to be passed within 24 hours from the time of his release from the Prison and it was not possible for the Government to scan all the records within a short span of time and pass such an order. The learned Single Judge also found that the petitioner was detained in the Special Camp and after two days only, he has been served with the impugned Government Order and it shows that there was some anxiety on the part of the official respondents not to allow the writ petitioner to enjoy the freedom, which was granted to him on 8.11.2011, on account of orders granting bail, and insofar as the complaint given by the writ petitioner alleging torture while he was at Special Camp for Foreigners at Chengalpattu, the learned Single Judge found that there is something more than what meets the eye and citing the above said reasons, has allowed the writ petition and quashed the impugned Government Order and consequently, directed the official respondents to allow the writ petitioner to move out of the Special Camp. The learned Single Judge also directed the first appellant/first respondent in the writ petition to look into the complaints made by the writ petitioner, in order to avoid an impression that serious allegations against the higher officials would get wiped under the carpet.

2(xvi) The official respondents, aggrieved by the final order dated 29.2.2012, in allowing the writ petition, had filed this writ appeal.

2. Mr. A.L. Somayaji, learned Advocate General, appearing for the appellants/official respondents in the writ petition, made the following submissions:

(a) The impugned order passed in the writ petition, has not taken into consideration the fact that against the writ petitioner, 9 cases have been registered including a murder case in Cheyyur Police Station (Kancheepuram District) Crime No. 609/2004, and apart from the said cases, as per the details furnished by the Malaysian Government, he is also involved in six cases and he also through his friend, managed to get a death certificate in Malaysia as if he is no more, and the said fraud was found out and the concerned person, who managed to get the said certificate, has also been detained and lodged at Prison in Malaysia.

(b) The purport of Section 3(2)(e) of the Foreigners Act is to regulate the movement of the writ petitioner in India and it cannot be termed as a detention or confinement and the State Government taking into consideration the fact that the writ petitioner is also involved in fabrication of documents such as driving licence and PAN card, and further fact that he is also involved in seven cases registered in the State, took a conscious decision to restrict his movements so as to enable him to face the trial and accordingly, passed the impugned Government Order and the said factual aspect has been completely overlooked by the learned Single Judge while allowing the writ petition.

(c) The reasons assigned by the learned Single Judge that a pre-decision hearing should have been given to the writ petitioner to prove the fact that he is an Indian National is contrary to the provisions of the Foreigners Act and other allied

Acts for the reason that the relevant statute does not provide for any pre-decision hearing and the burden lies heavily on the writ petitioner to prove that he is not a foreigner and there are overwhelming materials available for the first appellant herein to arrive at a decision to restrict his movements and accordingly, the impugned Government Order came to be passed.

(d) The learned Single Judge has failed to take into consideration the fact that though the writ petitioner has made serious allegations against the then Commissioner of Police as well as the Inspector of Police of Central Crime Branch and having found that the impugned Government Order has not been challenged on the ground of mala fide, still proceeded to give a direction directing the first appellant herein to look into the complaints made by the writ petitioner, and the said approach on the face of it, is unsustainable.

3. The learned Advocate General took this Court to the provisions of Foreigners Act, 1946 (Central Act 31/1946) and Rules framed thereunder, and also the various typed-set of documents and also referred to the following decisions:

(i) Sree Latha Vs. The Secretary to Government, Public (SC) Department, Government of Tamil Nadu, The District Collector and The Inspector of Police, C.C.B. Thousand Lights ;

(ii) R.I. Jebaraj Vs. Union of India (UOI) and The Bureau of Immigration, and

(iii) Reza Abdullatif Saboonchi and Smt. Simeen Reza Saboonchi Alias Simeen Bulur Mahdi Abadi Vs. The State of Maharashtra and Union of India, .

4. Per contra, Mr. M. Sreedhar, the learned Counsel appearing for the respondent/writ petitioner, has vehemently contended that the writ petitioner is in possession of overwhelming documents such as driving licence and PAN card, to show that he is an Indian National having permanent residence in this country, and before passing the impugned Government Order, he has not been provided with any opportunity whatsoever, to prove that he is an Indian National and the said aspect has been rightly taken into consideration by the learned Single Judge while allowing the writ petition.

5. It is the further submission of the learned Counsel appearing for the writ petitioner, that the question as to whether the writ petitioner is an Indian Citizen or not has to be decided in accordance with Section 5 of the Citizenship Act, 1955 (Central Act 57/1955) and the Tribunal constituted under the said provision, is competent to decide about the citizenship of the writ petitioner and in the absence of any adjudication by the Tribunal, it cannot be said that the petitioner is a foreigner/Malaysian Citizen.

6. It is the further submission of the learned Counsel appearing for the writ petitioner, that INTERPOL Notice cannot be taken as an arrest warrant and it is merely advisory in nature and the arrest and detention of the writ petitioner is purported to be in execution of the Red Corner Notice issued at the instance of the Government of Malaysia, and therefore, the detention of the writ petitioner in

the Special Camp at Chengalpattu was ex-facie illegal.

7. It is also contended by the learned Counsel appearing for the writ petitioner, that immediately after his enlargement on bail and coming out of Central Prison, Puzhal, he was illegally detained for about two days and thereafter, was served with the impugned Government Order and prior to that, the teenaged daughter of the writ petitioner as well as his wife were molested and sexually abused and the representations sent in that regard, failed to receive any action or response from the concerned authorities, to whom, they were sent, and even while he was detained in the Special Camp, he has been physically assaulted, which led to the submission of the representation, based on which, this Court has called for the report from the jurisdictional C.J.M. and having found that the averments made in the complaint, are true, has directed the concerned official to look into the same and take appropriate action and he would further contend that the said points have been taken into consideration by the learned Single Judge and the writ petition was rightly allowed and hence, prays for dismissal of the writ appeal.

8. The learned Counsel appearing for the respondent/writ petitioner, placed reliance upon the following judgments:

- (i) Bhavesh Jayanti Lakhani Vs. State of Maharashtra and Others, and
- (ii) Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, .

9. This Court has carefully considered the submissions made by the learned Advocate General appearing for the appellants, and the learned Counsel appearing for the respondent, and also perused the materials available on record, in the form of typed-set of documents, and the decisions relied on by the learned Advocate General as well as by the learned Counsel appearing for the respondent.

10. The Foreigners Act, 1946 (Central Act 31/1946) came to be passed to enable the Central Government to exercise certain powers in respect of the entry of foreigners into India, their presence and their departure and it was amended by the Amendment Act 42 of 1962, wherein, powers were also conferred to arrest and detain and confine the persons and the nationals of all such countries under the Act.

11. It is relevant to extract the following provisions of the Foreigners Act, 1946:

Section 2(a): "foreigner" means a person who is not a citizen of India.

Section 3: Power to make orders:- (1) The Central Government, by Order, make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India, or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner-

(a) shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein;

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal, the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified-

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(g) shall be arrested and detained or confined, and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be

expedient or necessary for giving effect to this Act. (3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) or clause (f) of sub-section (2).

Section 9: Burden of Proof:- If in any case not falling u/s 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

12. Rule 11 of the Foreigners Order, 1948, reads as follows:

11. Power to impose restrictions on movements, etc.- The civil authority may, by order in writing, direct that any foreigner shall comply with such conditions as may be specified in the order in respect of-

- (1) his place of residence;
- (2) his movements;
- (3) his association with any person or class of persons specified in the order; and
- (4) his possession of such articles as may be specified in the order.

13. In Masud Khan Vs. State of Uttar Pradesh, , the petitioner viz. Masud Khan, prayed for his release on the ground that he, an Indian Citizen, has been illegally arrested and confined to jail in terms of Foreigners (Internment) Order, 1962. The Hon"ble Supreme Court of India has considered the scope of Section 9 of the Foreigners Act and by placing reliance upon its earlier judgments reported in Union of India (UOI) Vs. Ghaus Mohammad, and Fateh Mohd Vs. Delhi Administration, , held that the burden lies on the petitioner to establish that he is a citizen of India in the manner claimed by him, and therefore, he is not a foreigner, and the petitioner in that case, has failed to establish the said fact.

14. In Louis De Raedt and Others Vs. Union of India and others, , the petitioners, who are foreign nationals, made a challenge to the order rejecting their prayer for further extension of their stay in India. According to one of the petitioners therein, since he was staying in the country from 1937, i.e., for a period of more than five years immediately preceding the commencement of the Constitution, he must be held to have acquired Indian citizenship, and it is relevant to extract paragraph No. 13 of the said judgment as follows:

13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. 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 of

Nurenburg Vs. Superintendent, Presidency Jail, Calcutta and Others, 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.

15. According to the above said decision, as per the law prevalent in this country, the executive Government has unrestricted right to expel a foreigner and so far as 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. The crux of the decision is that there cannot be any hard and fast rule as to the opportunity to the person concerned before passing the order of expulsion.

16. In Bhanwaroo Khan and Others Vs. Union of India (UOI) and Others, , the national status of the appellants u/s 9(2) of the Citizenship Act, 1955, was put to challenge and according to the appellants, they are the residents in the State of Rajasthan and they left India after partition of the country and became citizens of Pakistan and after obtaining passports from Pakistan and visas, they entered India and they also reported their arrival to the jurisdictional police and instead of returning to Pakistan, they kept themselves underground and during 1984, a Pakistani national was arrested and being afraid of arrest, they applied to the State Government for registration of Indian Citizenship and it was rejected and they made a challenge and the persons similarly placed like that of the appellants, made a challenge before the High Court of Rajasthan, which ended in dismissal, and the appellants had directly invoked the jurisdiction of the Hon'ble Supreme Court of India to declare that they are citizens of India. During the course of arguments, reliance was placed upon Section 9(2) of the Citizenship Act and it provides that if any question arises as to whether, when or how any citizen of India has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf. It was further contended that the appellants/writ petitioners had stayed long enough in the country and they also enrolled in the voters' list and on that ground also, they are entitled to get citizenship. The Hon'ble Supreme Court of India on the facts, found that the appellants as well as the writ petitioners illegally stayed in India and therefore,

the reasons assigned by the High Court of Rajasthan for rejecting their claim, did not warrant interference and further held that long stay in the country and enrollment in the voters' list would not confer any right on an alien to continue to stay in the country.

17. As per the above said decisions, the burden lies heavily on a person, who claims that he is not a foreigner, but an Indian Citizen, and if any person claims that he is an Indian Citizen, he has to invoke Section 5(1) of the Citizenship Act, 1955, by filing an application to register him as a citizen of India.

18. It has been further laid down in the above said decision, that long stay in the country and obtaining of voters' identity card will not confer the concerned person any right to get himself declared as a citizen of this country.

19. A perusal of the typed-set of documents filed in support of this writ appeal, would disclose that the NCB/INTERPOL Malaysia, Royal Malaysia Police, Kuala Lumpur, has written a letter dated 31.8.2010, to Mr. Selvarajan, Deputy Superintendent of Police, Coimbatore City Police, Central Crime Branch, South India, requesting him to provide the fingerprints of Michael Soosai a fugitive of INTERPOL Red Notice Control No. A-1747/10-2005. In response to the same, the said official after obtaining permission from the jurisdictional Magistrate, has got the fingerprints of the said person and forwarded the same to the Malaysian police. The NCB/INTERPOL Malaysia, Royal Malaysia Police, after getting the finger prints, has written a letter dated 2.9.2010, to Mr. Ajay Kumar Yadav, Deputy Director, Central Bureau of Investigation, New Delhi, and it is relevant to extract the same hereunder:

Dear Sirs,-

Michael s/o Soosai A Fugitive of Interpol Red Notice Control No. A-1747/10-2005

Kindly refer to your letter dated 31st August 2010 regarding the above matter.

2. Search based on the fingerprint provided with out National Registration Department shows that subject is known as Michael s/o Soosai, holder of Malaysian Identity Card Number: 630308-07-5073.

3. Check made with our Criminal Registry shows that subject is wanted as mentioned in our Red Notice Control No: A-1747/10-2005.

4. Grateful if you could kindly forward us the outcome of case involving the above fugitive and sentence meted for our further necessary action.

5. We sincerely thank you for all the assistance rendered on a very short period in this case and we assure you of our close cooperation at all times.

Warmest Regards.

(Gan Tack Guan) Supt

Assistant Director NCB/Interpol

for: Inspector General Police

for: Inspector General of Police

Royal Malaysia Police

Malaysia Secretariat

20. The Royal Malaysia Police has also written a letter dated 6.9.2010, to Mr. Selvarajan, Assistant Commissioner of Police, Central Crime Branch, Coimbatore City, stating about the criminal records of Michael, S/o. Soosai, who is having Malaysian Identity Card No. 630308-07-5073 and it is extracted below:

2.1 Report No: Jalan Bandar. 4803/2000

Section: 420 Penal Code

Offences: Cheating

Status: Wanted

2.2. Report No: Jalan Bandar. 28845/2000

Section: 379 Penal Code

Offences: Theft

Status: Wanted

2.3. Report No: Section 11: 527/2001

Section: 467 Penal Code

Offences: Forgery

Status: Wanted

2.4. Report No: SG. WAY. 1589/2001

Section: 420 Penal Code

Offences: Cheating

Status: Wanted

2.5. Report No: Puchong. 5169/2003

Section: 506 Penal Code

Offences: Criminal Intimidation

Status: Wanted

2.6. Report No: Puchong. 13761/2003

Section: 506 Penal Code

Offences: Criminal Intimidation

Status: Wanted

4. Thank you for your kind cooperation and obliged if you could kindly update us if any new development on of the case involving the above fugitive.

Warmest Regards.

(Gan Tack Guan) Supt

Assistant Director NCB/Interpol

for: Inspector General Police

for: Inspector General of Police

Royal Malaysia Police

Malaysia Secretariat

21. It is the claim of the writ petitioner that he has been issued with a PAN card by the Income Tax Authorities and on that ground also, he is an Indian citizen.

22. The Government of India, Ministry of Finance (Department of Revenue), Bhopal, has addressed a letter dated 29.2.2012, to the Chief Commissioner of Income Tax, Coimbatore, in response to the letter sent by the Central Crime Branch, with a copy marked to the Inspector of Police, City Crime Branch, Coimbatore and it is stated as follows:

I have been directed to refer to your office letter C. No. 1453/Misc.(Genl.)/ICCIT/CBE./2011-12 dated 20.01.2012 forwarding therewith a letter dated 17.12.2011 received from the Inspector of Police, City Crime Branch, Coimbatore City, Coimbatore along with its enclosures for physical verification of pan (AIHPG8505H) and to intimate that the pan AIHPG8505H has been got marked as fake in the date base on the basis of material on record. The copy of verification report as obtained from the concerned AO i.e. ITO 3(1), Bhopal is enclosed herewith.

Yours faithfully,

Encl: As above.

Sd/-

(D. Pugazhendhi) Asstt. Director (Systems), For Commissioner of Income Tax(CO) Bhopal

23. The Office of the Income Tax Officer-3(1), Bhopal, has addressed a letter dated 22.2.2012, stating that Michael Soosai @ Rajasekaran @ Karunaraj @ G.K. Raj @ Dharmadevan @ Sivaraj @ Michael Raj @ Dr. G. Rajasingam, aged about 47 years, S/o. Gnanamuthu @ Soosai, who claims to have been residing in 403, Ansal Lake View, Syamala Hills, Bhopal, did not reside in the above said address and there was no information about him and from the computer data also, he

has not filed any return on the Permanent Account Number and therefore, requested the Commissioner of Income Tax (CO) to facilitate the cancellation of PAN Card of the above named person.

24. The learned Single Judge in the impugned order, mainly proceeded on the footing that immediately, on the writ petitioner's enlargement on bail, within 24 hours, the impugned Government Order came to be passed against him and he has not been afforded with any opportunity to prove that he is an Indian citizen. In the considered opinion of this Court, the said reasoning assigned in the impugned order, is unsustainable for the reason that except the driving licence and the PAN card, coupled with the Savings Bank Account, the writ petitioner has not furnished any documents in the typed-set of documents, to substantiate his claim that he is a citizen of India. u/s 5(1) of the Citizenship Act, 1955, the person, who seeks citizenship by registration, has to submit an application.

25. u/s 9 of the Foreigners Act, 1946, regarding the question as to whether a person is a foreigner or not, the burden lies upon the said person to prove that he is an Indian citizen and only in the event of deportation, the principles of natural justice are required to be complied with.

26. Insofar as providing the writ petitioner with an opportunity of hearing before arriving at a decision that he is not an Indian national, the said procedure is to be complied with only in the event of deportation on the ground that he is not a citizen of India. In the case on hand, the stage of deportation has not reached and therefore, providing of opportunity to the writ petitioner to establish as to whether he is an Indian citizen or not does not arise at all and the said material aspect has not been taken into consideration in the impugned order allowing the writ petition.

27. The scope of Section 3(2)(e) and 3(2)(g) of the Foreigners Act, 1946, came up for consideration before a Full Bench of this Court reported in *Sree Latha Vs. The Secretary to Government, Public (SC) Department, Government of Tamil Nadu, The District Collector and The Inspector of Police, C.C.B. Thousand Lights* . In *Kalavathy V. State of Tamil Nadu* ((1995) 2 LW (CRL.) 690 (2)), it has been held that the order regarding confinement in the Special Camp, would not amount to an order of preventive detention, whereas in the decision reported in *Yogeswari Vs. The State of Tamil Nadu*, , it has been held that such an order would amount to confinement. In view of the conflicting decisions rendered by two Division Benches, it was referred to the Larger Bench.

28. The Full Bench of this Court in the above cited decision, held as follows:

12. Section 3(1) of the Foreigners Act is by very nature of things is a general power conferred on the Central Government to make provisions by way of order. In other words, it is an enabling provision empowering the Central Government to make orders. Such orders can be made either generally or with respect to all foreigners or even with respect to any particular foreigner or any prescribed class or description of foreigner. Such orders can contain provisions prohibiting,

regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein. Section 3(2) is without prejudice to the generality of the power contained u/s 3(1). Clause (e) envisages inter alia that by such order conditions may be prescribed or specified requiring the foreigner to reside in a particular place or imposing any restrictions on his movements.

13. A careful reading of Section 3 makes it clear that it gives power to the Central Government to frame subordinate legislation in the shape of statutory orders which could be general or particular in nature and may be in respect of foreigners or in respect of any individual foreigner. Clause (g) envisages that the order made u/s 3 may provide that the foreigner shall be arrested and detained or confined. It is not in dispute that power u/s 3(2)(a) to (f) has been delegated whereas power u/s 3(2)(g) which was included by amendment later on has not been subsequently delegated.

14. The main question is therefore whether the order passed by the State Government directing the husband of the petitioner to remain within the Special Camp amounts to an order of detention or confinement as envisaged in Section 3(2)(g) of the Act. In this context, the submission of the learned counsel for the petitioner to the effect that the provisions contained in Section 3(2), particularly Section 3(2)(e) can be said to be impliedly repealed by the provisions contained in the National Security Act, is required to be considered at the threshold.

....

16. A perusal of the aforesaid provision makes it clear that such order of detention can be passed with a view to regulating the continued presence of a foreigner in India or with a view to making arrangements for his expulsion from India. The Central Government or the State Government, as the case may be, is required to come to the conclusion that is necessary to do so. The specific power envisaged u/s 3(2)(e) appears to cover many other facets rather than detention of a foreigner. Under sub-clause (i) of Section 3(2)(e), a condition can be imposed requiring the foreigner to reside in a particular place. Under (ii) restriction can be imposed on his movement. The other sub clauses in Section 3(2)(e) refer to various other aspects which are distinct from the aspect of detention of such foreigner. Therefore, it cannot be said that Section 3(2) of the National Security Act which contemplates detention of a foreigner with a view to regulate his continued presence in India or with a view to making arrangements for his expulsion from India cannot be said to be in any way inconsistent with the provisions contained in Section 3(2)(e) of the Foreigners Act. If at all there is any inconsistency, it can be said that the provisions contained in Section 3(2)(g) relating to arrest and detention of a foreigner can be said to be covered by the provisions contained in the National Security Act. However, the contention in this case is not that Section 3(2)(g) should be held to be impliedly repealed by the National Security Act. The specific contention is to the effect that the provisions contained in Section 3(2)(e) of the Foreigners Act shall be deemed to have been

repealed by the provisions contained in the National Security Act. This later contention, according to in our opinion, is not acceptable. Since there is no specific contention relating to Section 3(2)(g), it is not necessary to express any final opinion on this aspect.

29. Therefore, the Full Bench held that Kalavathy's case reported in (1995) 2 LW (CRL.) 690 (2), has been correctly decided. As per the ratio laid down in the above cited decision, an order directing a person to stay in a Special Camp with a restriction cannot be construed as a detention or confinement as envisaged u/s 3(2)(g) of the Foreigners Act.

30. In R.I. Jebaraj Vs. Union of India (UOI) and The Bureau of Immigration, , a person, who was born in India, later, acquired citizenship of France and also obtained French Passport and at the time of his visit to India, he abused Hindu Gods, toured pictures of Hindu Gods and also trampled upon them and later burnt them and in this regard, a criminal case was registered against him. Therefore, the Bureau of Immigration has issued ban banning future entry of the said person and that was put to challenge by filing a writ petition. A Single Bench of this Court after considering the various decisions u/s 3 of the Foreigners Act, held that there is no provision in the Foreigners Act, which provides for an opportunity to a foreigner before any order is passed against him by the Central Government u/s 3 of the said Act, and further held that only in the event of an order of expulsion of a foreigner from Indian soil, the principles of natural justice should have been adhered to and as held by the Hon"ble Supreme Court of India in the decision reported in Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others, , for passing an order either regulating or banning the entry of any foreigner into India, it is the absolute and unfettered discretion of the Central Government and it is unlimited and unrestricted and the sovereign power of the Central Government in that regard, is absolute.

(emphasis supplied).

31. Therefore, as per the above said decision, only in the event of expulsion of a foreigner from this country, an opportunity of hearing should be afforded to him.

32. In Reza Abdullatif Saboonchi and Smt. Simeen Reza Saboonchi Alias Simeen Bulur Mahdi Abadi Vs. The State of Maharashtra and Union of India, , rendered by a Division Bench of the Bombay High Court, the facts of the case would disclose that the petitioners, who are holders of Iran National Passports, were involved in a criminal case and apprehending that they may go underground and evade facing the trial, the competent authority passed the restriction order directing both the petitioners to refrain from moving the limits of South Mumbai and it was challenged. One of the questions that arose, was whether the restriction on the movement of the petitioners/Iran Nationals imposed by the competent authority, in exercise of powers under Para 11(2) of the Foreigners Orders, 1948, can be said to be just and proper. The Division Bench of the Bombay High Court has considered Hans Muller's case (cited supra), and Louis

De Raedt's case (cited supra) and the decision of the Division Bench of the Delhi High Court reported in ILR (2004) II Del. 16 (Levi Onyemarankeya Anyanwu V. Union of India and Another) and held as follows:

16. That takes us to the challenge to the movement restriction order passed by the Competent Authority dated 7th June, 2012. It is noticed that the petitioners are foreigners. It is indisputable fact that the Competent Authority has ample power to impose restriction on movements by virtue of Para 11(2) of the Foreigners Order, 1948. This legal position is no more res integra. The Apex Court in the case of Hans Muller of Nurenburg (supra) as also in the case of Louis De Raedi (supra), has unmistakably held that Foreigners Act bestows absolute power with the Central Government and there is unfettered discretion vested in the Authority. The circumstances pressed into service by the petitioners that they were born, brought up, educated, married and are well settled in Mumbai, will be of no avail, as they continue to be foreigners, permitted to stay in India on conditions specified in the Visa restriction and including the provisions of Foreigners Act. It would be useful to advert to the exposition of the Single Judge of this Court in the case of Bhawalkhan Zelanikhan Vs. B.C. Shah, , which has dealt with similar challenge.

....

19. As regards the grievance of no hearing afforded to the petitioners, that has been justly refuted by the learned A.S.G. relying on the decision of the Division Bench of our High Court in the case of Satish Nambiar Vs. Union of India (UOI), . Indeed, in that case, the Court was considering the provisions of the Citizenship Act. However, the underlying principle would answer the argument under consideration. The Court held that it is a general principle of law that satisfaction of the authority of such proceedings has to be subjective satisfaction and would be open to a narrow judicial review. Administrative action can be questioned on the ground of illegality, irrationality and procedural impropriety of a superior and has prejudicial consequences, as stated by the Supreme Court in the case of Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, . In the present case, no rule or regulation has been brought to our notice, which makes it mandatory for the Authority to grant pre-decisional hearing. The Court noted that the provisions of Citizenship Act, which it was considering, gave wide powers to the Authority. Further, the Authority is not expected to pass reasoned orders, much less, detail reasons, when reliance is placed on reports of the Security Agency. The Authority is not required to hold an inquiry by associating the person against whom restriction order is proposed to be passed.

33. As per the above said decision, the satisfaction of the authority on such proceedings, has to be subjective satisfaction and would be open to a narrow judicial review.

34. Though it is the vehement submission of the learned Counsel appearing for the writ petitioner, that the Red Corner Notice by itself cannot be the basis of

arrest or transfer of an Indian National to a foreign jurisdiction and reliance was placed upon Bhavesh Jayanti Lakhani Vs. State of Maharashtra and Others, , the facts of the above cited case would disclose that the order directing the appellant to be kept in the Special Camp for Foreigners is not pursuant to the Red Corner Notice issued by the Interpol at the instance of the Government of U.S.A.

35. It is the stand of the first appellant/first respondent in its counter affidavit, that the writ petitioner is involved in seven cases registered by various police authorities in this State and four cases had also culminated in charge sheets and one case has also ended in conviction u/s 420 of IPC and two cases have been registered by Karnataka Police. It is also stated in paragraph No. 14 of the counter affidavit, that the writ petitioner was released on bail on 8.11.2011, and in order to restrict his movement in the State till the disposal of the cases, the proposal was forwarded to keep him in the Special Camp for Foreigners and based on the materials placed before him, the first appellant has passed the impugned Government Order.

36. The decision relied on by the learned Counsel appearing for the respondent/writ petitioner and reported in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, , has no application to the case on hand for the reason that the writ petitioner/respondent herein is not detained/confined, but only his movement is restricted in terms of the impugned Government Order passed u/s 3(2)(e) of the Foreigners Act.

37. The learned Single Judge in paragraph No. 12 of the order in the writ petition, has held that the Government of Tamil Nadu itself is competent to pass an order u/s 3(2) of the Act and proceeded on the footing that within 24 hours from the time of his release on bail, the impugned Government Order came to be passed and also expressed a doubt whether it was possible for the Government to scan all the records within a short span of time considering the pace with which the machinery normally moves and made a comment that the first respondent/first appellant herein appears to have passed the impugned Government Order in haste.

38. Simply because within 24 hours, the Government has passed the impugned Government Order, it cannot be said that it has been passed in haste. The learned Single Judge has given a finding that the State Government is competent to pass orders u/s 3(2) of the Foreigners Act; but, the said provision has not prescribed any specific time limit as to the consideration of the materials placed before the concerned authority in order to pass an order u/s 3(2) of the Act. As already held above, only in the event of expulsion of a foreigner from this country, an opportunity of hearing is to be afforded and in the case on hand, the writ petitioner is not arrested pursuant to the Red Corner Notice issued by the Interpol at the instance of the Government of Malaysia and since he is facing trial in number of cases, the State Government thought it fit to keep him in the Special Camp for Foreigners and as per the Full Bench decision reported in Sree Latha's case (cited supra), it does not amount to detention.

39. There are prima facie materials available in the typed-set of documents filed in this writ appeal, which would disclose that the fingerprints collected from the writ petitioner after obtaining the orders from the jurisdictional Magistrate, were sent to the concerned Police Authority in Malaysia, who has also confirmed the fact that the writ petitioner is a fugitive criminal facing number of criminal cases of cheating and allied offences in Malaysia, and therefore, it cannot be said that the impugned Government Order came to be passed without due application of mind to the materials placed before the authority.

40. Though the writ petitioner has chosen to make allegations against the then Commissioner of Police and the Investigation Officer, those persons have not been arrayed as respondents in the writ appeal and the learned Single Judge in paragraph No. 5 of the impugned order, observed that the writ petitioner has spared himself of the necessity to go into the allegations by not challenging the impugned order on the ground of mala fides and also not impleading that Officer as a party to the writ petition. Therefore, this Court is not inclined to go into the truth and veracity of the allegations levelled against the concerned Officials with regard to the molestation and harassment of the writ petitioner's wife and elder daughter. It is trite law that the mala fides have to be alleged and strictly proved and in the case on hand, the writ petitioner has not chosen to array the concerned persons as respondents and therefore, the question of going into the allegations levelled against them, does not arise at all for consideration.

41. Pendency of the writ petition, the writ petitioner made complaints that he has been subjected to physical abuse at the Special Camp and the learned Single Judge has also directed the first appellant/first respondent to look into the complaints and therefore, it cannot be said that the grievances expressed by the writ petitioner in that regard, has not been properly considered.

42. This Court, on a careful scrutiny of the entire materials placed before it, and upon consideration of the factual and legal positions, is of the view that the reasons assigned by the learned Single Judge for quashing the impugned Government Order, are unsustainable on facts and in law and is of the opinion that the opportunity of personal hearing need not be afforded before passing an order directing the writ petitioner to stay in a Special Camp.

43. The opportunity of personal hearing would come into play only in the event of expulsion of a foreigner from this country and in the case on hand, no such order of expulsion came to be passed against the writ petitioner.

44. In the light of the Full Bench decision reported in *Sree Latha Vs. The Secretary to Government, Public (SC) Department, Government of Tamil Nadu, The District Collector and The Inspector of Police, C.C.B. Thousand Lights*, this Court is of the considered opinion that the impugned order allowing the writ petition, is liable to be set aside.

45. In the result, this writ appeal is allowed and the impugned order dated 29.2.2012, made in W.P. No. 27221/2011, is set aside and consequently, W.P. No.

27221/2011 is dismissed. No costs. Consequently, connected MP is closed. However, as observed by the learned Single Judge in paragraph No. 41 of the order, the first respondent, de-hors the dismissal of the writ petition, shall look into the complaints made by the writ petitioner with regard to the alleged physical abuse/torture suffered by him in the Special Camp at Chengalpattu, and pass orders as expeditiously as possible.