

Mr. Craig Maxwell Sterry, British National Vs Ministry of Home Affairs, Union of India (UOI) and Others

Court: Bombay High Court (Goa Bench)

Date of Decision: Sept. 11, 2009

Acts Referred: Citizenship Act, 1955 â€” Section 15A, 5, 5(1), 6A(2), 7A

Citizenship Rules, 2009 â€” Rule 7, 9

Constitution of India, 1950 â€” Article 14, 15, 16, 19, 19(1)

Criminal Procedure Code, 1973 (CrPC) â€” Section 491

Foreigners Act, 1946 â€” Section 2, 3, 3(2), 7

Passports (Entry into India) Act, 1920 â€” Section 6

Passports (Entry into India) Rules, 1950 â€” Rule 3, 6

Passports Act, 1967 â€” Section 23, 3

Preventive Detention Act, 1950 â€” Section 3(1)

Hon'ble Judges: U.D. Salvi, J; S.B. Deshmukh, J

Bench: Division Bench

Advocate: Arun Bras de Sa, for the Appellant; C.A. Ferreira, Asst. Solicitor General for Respondent No. 1 and W. Coutinho, Government Advocate for Respondents No. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Deshmukh, J.

We have heard learned Counsel for the petitioner, learned Asst. Solicitor General for respondent No. 1 and learned

Govt. Advocate for respondents No. 2 and 3 at length. In view of the order of the Hon"ble Supreme Court in *Petition (s)* for Special Leave to

Appeal (Civil) No(s). 21059/2009 and by consent of the parties, we are considering this petition for final disposal at the admission stage.

2. Rule. Rule Notice waived by respective learned Advocates for the respective respondents.

3. Learned Govt. Advocate presented a copy of the communication/order dated 10.8.2009. Learned Advocate for the petitioner, on instructions

from the petitioner, who is present in the Court, submitted that this copy of the order has been served to the petitioner on August 20, 2009 at

17.00 hours. Statement made by learned Advocate for the petitioner is accepted. Taken on record. Copy of the order which is presented by

learned Govt. Advocate is marked "X" for identification and taken on record.

4. Resume of some relevant facts would suffice to appreciate the contentions and submissions on behalf of the parties. The petitioner is a British

National, presently residing at House No. 46, Quitala, Aldona, Bardez Taluka, State of Goa. The petitioner states in his petition that he is married

to an Indian National, Mrs. Ujjwala Balasaheb Raut and from the wedlock, they have a daughter Kum. Khasa, aged 3 years. After the marriage of

the petitioner, according to the petitioner, on October 11, 2006, the petitioner was issued a PIO Card (Person of Indian Origin Card) bearing No.

P 0320764. This card was issued to the petitioner, according to the contentions raised by the petitioner in para 3, by the Vice Consul, Consulate

of India, New York, USA in terms of Notification No. 26011/4/98-F.I dated 19.8.02. According to the petitioner, this card has been issued by

the Ministry of Home Affairs, Union of India. It is further stated in para 6 that on August 10, 2009, respondent No. 3 (Superintendent of Police

and Foreigners Registration Officer, State of Goa, Panaji, Goa) addressed a letter to the petitioner. A copy of this letter is Annexure "C" of the

petition. By this letter, the petitioner has been informed that his PIO Card No. P 0320764 had been cancelled by the Government of India,

Ministry of Home Affairs, Union of India, New Delhi. The petitioner was informed to hand over the said PIO Card to respondent No. 2 for

onward submission to the Under Secretary, Government of Goa, Home Department (F & CD). In para 7, a categorical statement is made by the

petitioner that on the same day i.e. on August 10, 2009, the petitioner handed over his PIO Card bearing No. P 0320764 to respondent No. 3. In

para 23 of the petition, it has been further alleged by the petitioner that nothing was informed or communicated to the petitioner about

cancelling/revoking of the PIO Card. Communication of the respondent bearing No. 25022/65/09.F II dated 21.7.09 has been perceived by the

petitioner when he received respondent No. 2's communication/notice dated 10.8.09.

5. On behalf of respondent No. 1, an affidavit is sworn in by one Mr. Ashok Kumar, son of late Shri K.L. Chadha, Under Secretary to the

Government of India, Ministry of Home Affairs, is filed (page 25). In para 2 of this affidavit in reply, it has been stated that the petitioner who is a

foreign national, has no locus standi to file the petition and there is no violation of any fundamental right, available to the petitioner as a foreign

national. In para 3, it has been stated that the PIO Card was issued to the petitioner by the Vice Consul, Consulate of India, New York, USA in

terms of the Notification No. 26011/4/98-F.I dated 19.8.02. Copy of the Notification is Annexure "R1". In para 4, a categorical statement is

made that the PIO Card scheme is framed under executive powers of the Union of India. In para 5, it has been pleaded that there is no right

conferred upon the person who has been granted PIO Card to hold the said card indefinitely. In para 9, it has been pleaded that the decision of the

Central Government in cancelling the PIO Card of the petitioner is a pure executive act based on relevant material, which cannot be disclosed in

public interest, to the petitioner.

6. On behalf of the petitioner, it has been argued that though the petitioner is a foreign national, he can still resort to Articles 14 and 21 of the

Constitution of India. The petitioner is not an illegal immigrant. The petitioner's entry in the country (India) is valid. The petitioner is a PIO Card

holder. Our attention is also drawn by the learned Advocate for the petitioner to Articles 15, 16, 19 and 21 of the Constitution. It is also submitted

on behalf of the petitioner that the pleadings raised by the petitioner in para 19 of the petition have not been controverted in the reply affidavit filed

on behalf of respondent No. 1.

7. In this petition, in view of the pleadings, material on record and submissions of the learned Counsel for the parties, we are called upon to

determine as to whether a foreign national can seek enforcement of right under Articles 14, 19 and 21 of the Constitution of India and extent of

such right ?

8. Advocate for the petitioner relied on a Judgment of the Hon'ble Supreme Court in the matter of The Chairman, Railway Board and Others Vs.

Mrs. Chandrima Das and Others, . Advocate for the petitioner refers to para 35 of the Judgment in Railway Board. (supra).

9. On behalf of respondent No. 1, reliance has been placed on a Constitution Bench Judgment of the Hon'ble Supreme Court in the matter of

Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others, . Our attention is also drawn to the Judgment of the learned

Division Bench of Calcutta High Court, in the matter of Abdul Halim Mia Vs. The Sub-divisional Officer and Others, . Learned ASG also referred

to the Judgment of the Hon'ble Supreme Court in the matter of Louis De Raedt and Others Vs. Union of India and others, .

10. It is apposite, at this stage, to refer to a Judgment of the Hon'ble Supreme Court in the matter of Bank of India and Anr. v. K. Mohandas

and Ors. reported in 2009 (4) Supreme 538, wherein the Hon'ble Supreme Court has considered the value of the precedent. Hon'ble

Supreme Court has held that cases are only an authority for what it actually decides. The Courts should not place reliance on the decision, without

discussing as to how factual situation fits with the fact situation of the decision.

11. Hans Muller's case, is a Judgment of Constitution Bench of the Hon'ble Supreme Court. The Judgment of the Court was delivered by

His Lordship, Bose, J. There the petitioner Hans Muller who was not a citizen of India and who was said to be a West German subject, arrested

by the Calcutta Police, was placed under preventive detention. The said order was passed by the West Bengal Government u/s 3(1), Preventive

Detention Act, 1950. His detention was "with a view to making arrangements for his expulsion from India". The petitioner, after his arrest, wrote to

the Consul General of West German at Calcutta and conveyed his arrest, with a request for oral interview which was granted. The petitioner had

also wrote to the West Bengal Government, asking to pass an order for immediate repatriation from India and necessary arrangement for

transmission out of India. On October 9, 1954, Calcutta Police handed the petitioner's passport over to the West German Consul at the

Consul's request. At that time, the passport had on it a number of visas, including an Indian, all of which had on them the condition "while the

passport is valid". The West German on receipt of the passport, made the following entry on it: "Valid only for the return voyage to the Federal

Republic of German until 8.1.55". It was the grievance of the petitioner that this invalidated all the other visas and as according to this fresh entry,

the passport ceased to be valid after 8.1.1955, as now has no passport. Then there is reference of some exchange of communication amongst

West German Government to the West Bengal Government. A contention was raised that the West Bengal Government had no power to deport

the petitioner and it was only with the Central Government. Since until 20th October, no fresh order was passed by the Central Government, the

petitioner in that case applied to the High Court of Calcutta for a writ in the nature of habeas corpus u/s 491 of the Criminal Procedure Code. The

High Court decided against the petitioner all the grounds raised and dismissed the petition on December 10, 1954. That is how the petition under

Article 32 of the Constitution was before the Supreme Court. The Hon'ble Supreme Court in para 33 of the Judgment has considered the right

of foreigners in India. The Hon'ble Supreme Court observed that the Court was required to determine whether there was any law in India

vesting executive Government with power to expel a foreigner from this land as opposed to extraditing him. Articles 19 and 21 were considered by

the Hon'ble Supreme Court in para 34 and it has been held that the Constitution confers certain fundamental right of freedom on the citizens of

India. Among them, the right "to move freely through out the territory of India" and "to reside and settled in any part of India", subject, only to the

laws that impose reasonable restrictions on the exercise of those rights, in the nature of the general public or protection of the interest of any

scheduled tribe". No corresponding rights are given to a foreigner. All that is guaranteed to them is the protection to life and liberty in accordance

with the laws of the land. In these terms, the Hon'ble Supreme Court has considered and interpreted Article 21. In clear terms, the Hon'ble

Supreme Court, in para 36, laid down that the Foreigners Act confers the power to expel foreigners from India. Such power vests with the Central

Government with absolute and unfettered discretion and as there is no provision fettering this discretion in the Constitution, unrestricted right to

expel remains. The Hon'ble Supreme Court also considered the provisions of Preventive Detention Act on the background and on the facts

obtaining in that case, with which we have no concern in the case on hand.

12. Our attention was also drawn to the Judgment of Louis De Raedt (supra). There, the facts were that the petitioners therein undisputedly were

foreign nationals, staying in India since pre independence on the basis of foreign passports and residential permits, issued by the Government of

India and renewed from time to time. They claimed to be Christian Missionaries. They had challenged an order u/s 3(2) of the Foreigners Act,

thereby their prayer for further extension of the period of their stay in India, was rejected and they were asked to leave the country. There the

Court has considered the provisions of Foreigners Act, and Citizenship Act. In that case also the Constitution Bench Judgment of the Supreme

Court in case of Hans Muller was referred, considered and had been followed. There in that case, para 13 is important. There the Hon'ble

Supreme Court reiterated that the foreigners also enjoy some fundamental rights under the Constitution of this country. However, in the facts of

that case, the Court held that that was not of much help to them. The Court observed that a 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. For this proposition, the statement of law laid down by the

Constitution Bench in Hans Muller's case was referred to and followed. From another angle, this para 13 of the Judgment in the case of Louis

De Raedt is material, significant and important in the case on hand. In this para 13, it has been observed by the Hon'ble Supreme Court that

"So far 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...."

13. The Judgment relied upon by the Advocate for the respondent No. 1 is in the case of Abdul Halim Mia v. The Sub-divisional Officer, Katwa

and Ors. (supra), There the Court has considered Section 5 of Citizenship Act, 1955, read with Rule 7 of the Citizenship Rules, 1956. Factually,

in that case, the Sub-Divisional Officer, Katwa who had summarily rejected the appellant's application for registration of his name as an Indian

citizen u/s 5(1)(a) of the Citizenship Act, 1955, was under challenge. There the Court has considered the contention of the appellant and held that

the competent authority i.e. the Collector, before registering the application as a citizen, must satisfy himself on those points and for that purpose,

he may make inquiries. He may act on his own personal knowledge. He may inform himself in such manner as he thinks fit. He is not required to

follow the procedure prescribed by the Act and the rules and to do no more. The Court was of the opinion that neither the Act nor the Rules

required him to make an inquiry in case he rejects the application u/s (1)(a). In so many words, the Court observed that the Collector has ample

power to refuse the certificate of citizenship u/s 5. He is no way bound to register the application as a citizen even though all the conditions

mentioned in Rule 9 are fulfilled. The order passed by the Collector or the decision taken by him is final, not liable to be questioned in any Court.

The executive order of the Collector is not amenable to a writ of certiorari. The foreigner has no right to become a citizen of this country.

14. The Judgment of the Hon'ble Supreme Court in Railway Board's case has been considered by us. Factually, in the case of Railway

Board, a foreign national lady was a victim of gang rape. Chandrima Das (Mrs.), a lady Advocate had filed a writ petition in Calcutta High Court

for damages, payable to the victim of gang rape, a foreign national lady (Bangladeshi). The High Court had granted the compensation of Rs.10.00

laks. The aggrieved Railway Board was in appeal before the Hon'ble Supreme Court. With the assistance of the learned Counsel for the

petitioner, we have perused para 32 of the Judgment, wherein the Hon'ble Supreme Court has considered the meaning of the word "life",

occurring in Article 21. There the Hon'ble Supreme Court held that meaning of the word "life" cannot be narrowed down. According to the

tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen

of this country. We have also considered paras 34 and 35 of the Judgment. In our view, there the Hon'ble Supreme Court was considering the

facts obtaining in that case, a gang rape on a foreign national (Bangladeshi lady) and in that context word "life" occurring in Article 21 was

interpreted with a word person". We are of the considered view that this Judgment of the Railway Board, in the facts and circumstances of the

present case, does not help the petitioner herein. In the case on hand, life of the petitioner is not threatened. There is no apprehension to his life.

There is no allegation of house arrest of the petitioner. There is no other allegation made by the petitioner against the respondents in relation to

threat to the life of the petitioner.

15. The Judgment of the Supreme Court in that of Hasan Ali Raihany Vs. Union of India (UOI) and Others, , is also relied upon by the Advocate

for the petitioner. We have gone through the Judgment in its entirety. Factually, the petitioner there had sought a writ of mandamus of quashing the

order cancelling resident visa permit by order dated 7.10.05 and had also sought some prayers which are referred to by the Hon'ble Supreme

Court in para (1) of the report. Para 2 of the report is important. It is clear from para 2 of the report. The petitioner in that case claimed that he

was born in India, educated in India, had intended to stay in India and had applied for grant of Indian passport on 15.7.2003 in response he was

required to comply with certain formalities. He had further alleged that he had been deported to Tehran on the night intervening 7th October,

2005/8th October, 2005. A single entry permit was issued to the petitioner by Indian Embassy in Iran, which was valid for the period from

8.11.05 to 8.2.2006 and that is how the petitioner had reentered the country. Most important fact alleged by the petitioner in that case was that he

was being summoned to Kurla Police station every day and was, unnecessarily, being harassed. It was his suspicion that he would be again

deported in the same manner. There, the Hon'ble Supreme Court, in para 6 has considered the question whether the authorities intended to

deport him again, and if so, whether they are obliged to disclose to petitioner the reasons for his proposed deportation. The ratio of the Judgment

in the case of Hasan Ali Raihany (supra) needs to be understood on the background facts. In our view, this Judgment also does not help the

present petitioner.

16. We have considered Articles 14 and 19. Along with the Judgments of the Hon'ble Supreme Court, referred to in the foregoing paragraphs of

this Judgment, we may refer to one more Judgment of the Hon'ble Supreme Court in the matter of State of Arunachal Pradesh Vs. Khudiram

Chakma, . There on the background facts, the Hon'ble Supreme Court was considering a provision laid down u/s 6-A(2) of the Citizenship Act,

1955. There the Hon'ble Supreme Court has also considered Section 3 of the Foreigners Act, 1946 and Clause 9 of the Foreigners Order, 1948.

What is important and significant is that in the matter of State of Arunachal Pradesh (supra), the Hon'ble Supreme Court has also considered the

availability of Article 19(1)(d) and (e) of the Constitution. This Article have been considered by the Hon'ble Supreme Court with Article 21 of the

Constitution. Para 75 of the report is important. There the Hon'ble Supreme Court has laid down statement of law that 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. Further, it has been held by

the Hon"ble Supreme Court that as such Articles 19(1)(d) and (e) are unavailable to foreigners, because those rights are conferred only on the

citizens. Certainly, the machinery of Article 14 cannot be invoked to obtain that fundamental right. Rights under Articles 19(1)(d) and (e) are

expressly withheld from foreigners. We have already considered availability of Article 21 pertaining to life and liberty, in relation to the pleadings,

submissions and material on record in the foregoing paras of this Judgment.

17. The Notification pertaining to the PIO Card Scheme is on record (page 18). It is mentioned that this scheme may be called the scheme for

issuance of Person of Indian Origin Card (PIO) Scheme, 2002. It has been further said under Clause 1(ii) that this Scheme of 2002 shall come into

force with effect from 15.9.2002. "Person of Indian Origin" is defined under Clause 2(b), as a foreign citizen (not being a citizen of Pakistan,

Bangladesh and other countries as may be specified by the Central Government from time to time) if, (i) he/she at any time held an Indian Passport;

or (ii) he/she or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India as defined in the

Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the

aforesaid countries (as referred to in (2)(b)] above; or (iii) he/she is a spouse of a citizen of India or a person of Indian origin covered under (i) or

(ii) above. With the assistance of the Advocates appearing for the parties, we have seen the entire scheme, facilities, which are extended to the

PIO Card holder, definition of the PIO Card, etc. Clause 11 is pertaining to the cancellation of PIO Card. The relevant Sub-clause (e) is

reproduced herein below:

It is not conducive (according to learned ASG, this word should have been "conducive") to the public interest that the person should continue to

hold a PIO Card. No reasons shall be assigned for cancellation of the Card.

In this clause, words appearing as "public interest" are employed. In this scheme of 2002, definitions have been given in Clause 2. However,

definition of expression "public interest" is not given. In the absence of such a definition in this scheme and for interpretation of this Clause 11(e),

we refer to the Black's Law Dictionary. The expression "public interest" defines as something in which the public, the community at large, has

some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere

curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in

affairs of local, state or national government. This Clause 11(e) gives total unfettered power to the Central Government to decide what is not

conducive to the public interest. In other words, continuation of the status of a person as PIO Card holder, can be disrupted, and cancelled by the

Central Government. In view of this Clause 11(e), the Central Government shall not assign reasons for cancellation of the Card. The expression

"public interest" in our opinion, do have multidimensional facets having ramifications over the social, economical interest etc., of the nation as a

whole. Such public interest, in the changing time, needs to be taken into account by the Central Government.

18. Advocates for the Petitioner and the learned ASG have invited our attention to Section 7A of the Citizenship Act, 1955. In the facts and

circumstances, we are not dealing with the case of registration of overseas citizens of India. However, Advocate for the petitioner points out

Section 15-A i.e. Review. His submission is that a person aggrieved by any order made by the Central Government has been made available

remedy of review u/s 15A of the Citizenship Act, 1955. In our opinion, we are not dealing with any order passed by the Central Government or

the competent authority under the provisions of Citizenship Act, 1955. The learned ASG submitted that Section 3 of the Passport Act provides

that no person shall deport or attempt to deport from India, unless he holds in this behalf a valid passport or travel documents. Section 23 of the

Passport Act, 1967 is also pointed out to us. We have also considered the Passport (Entry into India) Act, 1920 and more specifically Section 6

i.e. Rule making powers of the Central Government. We have considered the Passport (Entry into India) Rules, 1950 and more specifically Rules

3 and 6.

19. The Foreigners Act, 1946 defines "Foreigner" meaning thereby a person who is not a citizen of India u/s 2(a) of the Act. Section 7 has been

pointed out to us from the Foreigners Order 1948.

20. Indisputably, the petitioner is a PIO Card holder. In view of the scheme of 2002, in our opinion, and having considered the Judgments of the

Hon'ble Supreme Court i.e. the Constitution Bench Judgment and Louis De Raedt, in our view, the petitioner is not entitled for right or

protection under Article 19(d) and (e). We are also not convinced with the submission of the Advocate for the petitioner that the petitioner is

discriminated by the respondents. In our view, there is no threat, hindrance to the life of the petitioner. The facilities which were extended to the

petitioner being PIO Card holder were/are for the limited period i.e. so long the petitioner is validly holding the PIO Card. The petitioner while

applying and more specifically on obtaining the PIO Card was fully aware of the fact that it is a sort of concession granted to him in view of the

Scheme of 2002. Clause 11(e) is important. It has been provided that the respondents are not under obligation to furnish or assign reasons for

cancellation of the Card.

21. Our attention has also been invited to the order passed by the Under Secretary (Home-I) marked "X" dated 10.8.2009. The letter of the

Ministry of Home Affairs (Foreigners Division), Government of India, has been referred to. Even though there is no prayer for quashing and setting

aside the letter of the Ministry of Home Affairs, we have considered the grievances of the petitioner threadbare and at length.

22. Learned ASG, on our inquiry, submitted that the Notification of 2002 scheme has been issued under Article 73 of the Constitution of India. In

our opinion, it is an executive action taken by the Central Government, which is empowered to do so. The petitioner does not hold constitutional

right and/or statutory right which can be said to be the foundation to approach this Court seeking the reliefs prayed for by the petitioner

23. In our view, the submission of the petitioner in para 19 of the petition and non-denial thereof by respondent No. 1 will have to be considered

on the background fact that the allegations are made against Mrs. Ujjwala Raut who, according to the petitioner, married to him somewhere in

2004. The said Mrs. Ujjwala Raut, for the reasons best known to the petitioner, has not been joined in this writ petition. In other words, there is

no opportunity to said person Mrs. Ujjwala Raut to controvert her alleged connivance with the respondents. On this background, it is not possible

for us to countenance the submission made by the Advocate for the petitioner.

24. We have considered Article 73 of the Constitution, providing extent of executive power of the Union. From the scheme of Article 73, it

appears that the executive power of the Union will extend over whole of the territory of India with respect to the matters enumerated in Lists I and

III of the Seventh Schedule, however, subject to two explanations engrafted in the proviso to Clause (1) and in clause.

25. In our view, the petition deserves to be dismissed and, we, accordingly, dismiss the petition, however, without any order as to costs. Rule

discharged. Learned Counsel appearing for the petitioner seeks suspension of this order for two weeks for enabling the petitioner to approach the

Hon"ble Supreme Court. We have heard the learned ASG, who opposes the prayer. We have noticed that the Hon"ble Supreme Court had

stayed the communication of the Superintendent of Police and FRO, Panaji, Goa by order dated 25.08.2009 till the disposal of this Writ petition.

It was directed to be disposed of on or before 14.09.2009. In this view of the matter, we suspend operation of this order for two weeks, from

today. Certified copy expedited at the request of the Counsel on behalf of the petitioner.