



\$~85

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd July, 2024

+ **W.P.(C) 436/2023 & CM APPL. 36476/2024**

ANASTASIIA PIVTSAEVA & ANR.

.....Petitioners

Through: Mr. Tanveer Ahmad Mir, Mr. Ayush Jain, Mr. Tushar Thakur, Mr. Yashovardhan Upadhyay and Ms. Anushka Khaitan, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Satya Ranjan Swain, SPC with Mr. Rahul Kumar Sharma, G.P. and Mr. Kautilya Birat, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioners No. 1 and 2 have preferred the instant writ petition assailing the decisions dated 27th July, 2022 and 29th August, 2022 passed by Respondent No. 1, whereby the applications of the Petitioners for registration as Overseas Citizens of India¹ were closed. The Petitioners seek judicial review of these administrative actions, contending that these were made in error and have adversely affected the Petitioners' legal rights and status in India.

¹ "OCI"



2. Petitioner No. 1 and Petitioner No. 2, her minor son aged nearly 2 years are Russian nationals who are currently residing in India. Petitioner No. 1, acting as the legal guardian and mother of Petitioner No. 2, has initiated this legal action on behalf of both. The writ petition details their residential status in India, substantiated by the possession of Aadhaar Cards, which are used to establish their identity and residency within the country as per the details provided in the petition.

Facts and Contentions

3. Petitioner No. 1 got married to an Indian citizen, Late Mr. Amit Bhardwaj on 30th August, 2019, at Delhi, as per Hindu rites and customs. This marriage was registered under Section 13 of the Special Marriage Act, 1954. The couple's union was blessed with the birth of Petitioner No. 2 on 19th August, 2021. Since her marriage, Petitioner No. 1 has resided in Delhi with her husband and in-laws, fully integrating into and embracing Indian customs and traditions, thereby establishing deep familial and cultural connections within the country.

4. In recognition of these substantial and enduring ties to India, and in accordance with Section 7A of the Citizenship Act, 1955², which pertains to eligibility for Overseas Citizens of India status, Petitioner No. 1 initiated the process to secure OCI cards for herself and her son in December 2021. All the requisite documents were duly submitted through the official Government of India portal, and the necessary fees were paid. Tragically, her integration into Indian society was marked by sorrow as her husband, Mr. Amit Bhardwaj, passed away on 15th January 2022. This event underscored the urgency and significance of affirming her and her son's



legal status in India, where they have established their family life and personal ties.

5. On 27th July, 2022, Petitioner No. 1 was confronted with a setback when she received an email from Respondent No. 1, the Foreigners Regional Registration Office [*FRRO*], under the Ministry of Home Affairs. The said email communicated the closure of her application for registration as an Overseas Citizen of India, citing file reference number INDD0091AN21. The message from FRRO was succinct and provided no explanation or specific reasons for their decision, merely stating:

“Madam,

*Refer your application for registration as an Overseas Citizen of India
File Ref. No. INDD0091AN21,*

*In this connection, you are hereby intimated that your above referred
OCI application has been “CLOSED” by the competent authority”*

6. A subsequent communication on 29th August, 2022, mirrored this response in terms of the OCI application filed on behalf of the minor son, Petitioner No. 2. The message conveyed a similar lack of detail about the reasons for the closure. This second email stated:

“Sir,

*Refer your application for registration as an Overseas Citizen of India
File Ref. No. INDD00228N22.*

*In this connection, you are hereby intimated that your above referred
OCI application has been “CLOSED” by the competent authority.”*

7. Petitioner No. 1 undertook immediate steps to seek clarity and rectification from the authorities involved. On 31st August 2022, she initiated further correspondence by sending an email to Respondent No. 1,

² “Citizenship Act”



inquiring about the specific reasons for the closure of their OCI applications. Regrettably, this inquiry met with silence, as no response was forthcoming from the Respondents. Petitioner No. 1 then filed a Review application under Section 15A(1) of the Citizenship Act, seeking a re-evaluation of the unfavourable decisions. Despite a prolonged wait for a reply, with the impending expiration of both Petitioners' visas and no resolution or communication from the authorities, the instant petition was filed.

8. Petitioner No. 1 asserts that both she and her minor son squarely meet the eligibility criteria for OCI status as delineated under Sections 7A(1)(c) and (d) of the Citizenship Act. She emphasises that all required documentation, which corroborates their claims and substantiates their eligibility, was duly submitted with their applications. Respondents have erroneously given a decision on their applications without proper consideration of the statutory provisions, thus denying them the rights accorded under the Citizenship Act.

9. On the other hand, the Respondents have contested the present writ petition by relying on the narration of facts in their short affidavit, which according to them, disentitle the Petitioners for the OCI status as is being sought. The Respondents urge that while processing the Petitioners' OCI request, they noticed that Petitioner No. 1 is a foreign national, whose Indian spouse, Late Mr. Amit Bhardwaj was the subject to a Look Out Circular [**“LOC”**] bearing No. 2020432650 (Old suspect no. 204861) with the remarks “Detain and Inform originator”. This LOC was originated by the Deputy Director of the Directorate of Enforcement [**“ED”**] under ECIR/02/MZO/2018 dated 27th September 2018, pursuant to Sections 3 and 4 of the Prevention of Money Laundering Act, 2002. The Respondents



highlight that the issuance and subsistence of the LOC was a critical factor in their decision regarding the OCI applications. They contend that the legal entanglements of Mr. Bhardwaj, including the specific measures taken to secure his passport in the safe custody of the Court's Registry, underscore the serious concerns regarding compliance with the law and potential risks associated with granting OCI status under such circumstances.

10. The Respondents submit that in light of the ongoing investigation against her husband, Petitioner No. 1's application was kept 'On-Hold' on 17th December, 2021. Similarly, when the Respondents received an OCI application on behalf of Petitioner No. 2, the minor son of Petitioner No. 1 and Mr. Amit Bhardwaj, the same was also kept under process. Subsequently after the demise of Mr. Amit Bhardwaj on 15th January, 2022, on furnishing of a legally valid death certificate, Petitioner No. 1's OCI application was kept under process.

11. The Respondents have provided further context to their decision. They have disclosed that an enquiry into Petitioner No. 1's application has revealed that she had significant association with her late husband's business activities, which were under scrutiny. This revelation was compounded by the discovery of an LOC issued against her, at the behest of the Deputy Director, ED. This prompted mandatory security reporting and consultation with the originator of the LOC – ED for their input in terms of her OCI registration. The ED's response highlighted that Ms. Pivtsaeva's previous employment in a company owned by her late husband in Dubai, and her close personal and professional association with him, has raised suspicions regarding her awareness of the proceeds of crime(s). The ED's communication to Respondent No. 1 dated 23rd June, 2022, to this effect



reads as follows:

“during the course of investigation it has come to their notice that the main accused in the case Mr. Amit Bhardwaj has expired on 15.01.2022. Further, it is revealed that Ms. Anastasiia Pivtsaeva (Petitioner no. 1) w/o late Amit Bhardwaj was also an associate of the main accused late Amit Bhardwaj and was employed in the company owned and operated by late Amit Bhardwaj in Dubai prior to her marriage with late Amit Bhardwaj. Moreover, the petitioner was employed in the company - which was owned and operated by late Amit Bhardwaj in Dubai prior to her marriage with late Amit Bhardwaj. Moreover, being an associate and wife of the main accused, there is strong suspicion that she might be aware of the proceeds of crime(s) generated in the instant case.”

12. The above communication of the ED is stated to be the reason why Petitioner No. 1’s request/application, which was earlier placed ‘On-Hold’ since 17th December, 2021, was eventually rejected on 27th July, 2022. In this background, the Respondents rely upon the proviso to Section 7A(1)(d) of the Act, which reads as follows:

“7A. Registration of Overseas Citizen of India Cardholder.—(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder –

xx ... xx ... xx

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

xx ... xx ... xx”

[Emphasis supplied]



Analysis and findings

13. The fundamental reason behind the denial of OCI status to the Petitioners, as posited by the Respondents, hinges on the issuance of an LOC against Petitioner No. 1 and her suspected involvement with the business of her husband. The Respondents assert that Petitioner No. 1 fails to meet the mandatory security clearance which is a prerequisite for OCI registration. The situation of Petitioner No. 2 is complicated by the fact that both of his parents are subjects of LOCs.

14. Section 7A(1)(d) of the Citizenship Act stipulates that a marriage must be registered and sustained for a continuous period of not less than two years preceding the application — a criterion met by Petitioner No. 1. This provision also mandates prior security clearance for spouses of foreign origin. However, the application of this provision must also adhere to the principles of due process. The Court needs to scrutinize whether the decision to deny OCI status was based on a comprehensive assessment of relevant factors.

15. It is pertinent to note herein that although the original rejection letter does not indicate any reasoning for rejection/closure of the OCI application, the Respondents have issued two ‘speaking orders’, in terms of the review application filed by the Petitioners. These orders clarify the Respondent’s stance along with the specific grounds for the closure of the Petitioner’s OCI applications, which are closely linked to the ongoing investigations into allegations of money laundering against Petitioner No.1’s late husband, Mr. Amit Bhardwaj, and her potential involvement in the same. under:

**“SPEAKING ORDER IN R/O MS. ANASTASIIA PIVTSAEVA,
RUSSIAN NATIONAL AGAINST CLOSING OF HER OCI CARD”**



REGISTRATION APPLICATION FILE REF. NO. INDD0091AN21.

Whereas you, Ms. Anastasiia Pivtsaeva, Russian (Nationality-Russian) had applied for OCI card registration vide application file Ref. No. INDD0091AN21 on spouse basis. While processing of the application it was revealed that a case of Money laundering under Section 3 & 4 of Prevention of Money-Laundering Act.-2002 has been lodged vide FIR No. ECIR/02/MZ0/2018 & 27.09.2018 at Police Station DOE, Mumbai Zone-Office-II, Mumbai against your spouse Late Mr. Amit Bhardwaj. It is learned that you were an employee in his company before marriage and investigation are underway by Enforcement Directorate into the case.

2. Till the investigation is not complete and the issue of your involvement or not being involved is resolved by the investigating agency, your application for grant of OCI cannot be processed further.

3. Accordingly, you have been advised to seek required visa extension vide this office e-mail dated 27.07.2022.

FOREIGNERS REGIONAL REGISTRATION OFFICER
DELHI

**SPEAKING ORDER IN R/O Mr. RYAN BHARDWAJ (MINOR),
RUSSIAN NATIONAL AGAINST CLOSING OF HIS OCI CARD
REGISTRATION APPLICATION FILE REF. NO. INDD00228N22.**

Whereas you, Ryan Bhardwaj S/o Ms. Anastasiia Pivtsaeva (Nationality Russian) had applied for OCI card registration vide application file Ref. No. INDD00228N22. While processing of the application it was revealed that a case of Money laundering under Section 3 & 4 of Prevention of Money-Laundering Act.-2002 has been lodged vide FIR No. ECIR/02/MZ0/2018 & 27.09.2018 at Police Station DOE, Mumbai Zone Office-II, Mumbai against your father Late Mr. Amit Bhardwaj.

2. In this regard, it is stated that the investigation in the case against both of your parents are underway by the Enforcement Directorate and till the issue of their involvement or not being involved is resolved by the investigating agency, your application for grant of OCI cannot be processed further.

3. Accordingly, you were informed that your application has been closed vide this office e-mail dated 29.08.2022 on your mother's e-mail address. You are hereby advised to seek required visa extension.

FOREIGNERS REGIONAL REGISTRATION OFFICER



DELHI”

16. The order pertaining to Petitioner No. 1 highlights her previous employment in the company owned by her late spouse, which is currently under investigation by the ED for money laundering, as detailed in ECIR No. ECIR/02/MZ0/2018 dated 27th September 2018. The decision to place her OCI application on hold, stems directly from the unresolved questions regarding her involvement in these alleged criminal activities. The order stipulates that until the said investigation has concluded and there is a clear resolution to the question of her involvement, her OCI application cannot proceed further, advising her instead to seek visa extensions during this period.

17. Pertinently, during the course of the proceedings, since the Petitioners visa expiry date was approaching, they filed an application for extension of the same to Respondent No. 1. As per the governing rules, in case there is an outstanding LOC issued against a person, a No Objection Certificate [“*NOC*”] is required to be furnished by the LOC originator before the visa of such a person can be extended. In this regard, the Respondents sought inputs from ED on the extension of visa of the Petitioners. Based on these inputs, the visa for Petitioner No. 2 was extended till April 2025, however, Petitioner No. 1’s extension of visa application is still under process.

18. On being asked by the Court, regarding any update on the said visa application of Petitioner No. 1, the Respondents have handed over a copy of communication dated 11th July, 2024 exchanged between the ED and Respondents regarding the aforementioned *NOC* for visa extension of Petitioner No. 1. In the said communication, it is noticed that Assistant



Director, ED has informed the Respondents that summons has been issued to Petitioner No. 1 to appear before the ED, but Petitioner No. 1 has allegedly evaded the summons and had been hampering the investigation. It is thus pointed out that in absence of cooperation, her request for visa extension should not be considered. The Respondents thus emphasise that this alleged non-cooperation with the ongoing investigation is the reason for denial of the security clearance for grant of OCI registration of Petitioner No. 1 in terms of the proviso of Section 7A(1)(d) of the Act.

19. In this regard, counsel for the Petitioner at the outset denies the receipt of any such summons referred to in the communication dated 11th July, 2024, presented by the Respondents. He submits that, earlier when the ED had summoned Petitioner No. 1, she had duly complied and joined investigation on 7th December, 2022. However, there was no further communication from the ED after 2022. Nonetheless, to demonstrate a commitment to resolve the outstanding issues, the Counsel undertakes that Petitioner No.1 shall appear before the Assistant Director, ED, Mumbai on 12th August, 2024 at 11 am in relation to the summons as aforementioned. Furthermore, she will fully cooperate with the ongoing investigation. The above undertaking is taken on record and the Petitioner No. 1 would be bound by the same.

20. Given the commitment shown by Petitioner No. 1 to comply with the investigation, the Respondents must re-evaluate her current visa status and request for extension. This reassessment should take into account her willingness to engage with the legal processes and her presence in India for both her welfare and that of her minor son. The Respondents are directed to reassess the Petitioners' visa extension application promptly and take



appropriate action reflective of the evolving circumstances and the demonstrated compliance of Petitioner No. 1.

21. Further, in the opinion of the Court, there is no reason to keep the present writ petition pending. The reasons outlined in the speaking order for the rejection of the OCI applications of the Petitioners cannot withstand judicial scrutiny. The reasons fail to demonstrate a legally sustainable basis for such significant adverse decisions affecting the rights and status of the Petitioners. Consequently, continuing to withhold OCI status from the Petitioners is held to be unreasonable and unjust for reasons discussed in the succeeding paragraphs.

22. The argument of the Respondents is that foreigners do not have a right to stay in the country indefinitely and it is the sovereign power of the State to refuse or obstruct a foreigner from entering/staying India in the interest of national security. As such, the decisions regarding such entry/exit of persons are matters of executive policy and discretion.

23. The Court acknowledges the executive's prerogative in matters of national security. However, it must also ensure that this discretion is not exercised arbitrarily. The claims of national security must be backed by credible evidence and a transparent process, especially given the severe personal and legal implications for the individuals involved. In this regard, it is noted that generally the Courts leave the matters of national security policy to the expertise of the executive, however, the decisions taken by the State agencies, which is claimed to be in pursuance of such policies, are still amenable to the reasonable standards of fairness. Reliance in this regard is placed on the case of *Ex-Army men's Protection Services Pvt. Ltd. v. Union*



*of India*³, wherein the Supreme Court held as under:

“16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman [(2003) 1 AC 153 : (2001) 3 WLR 877 : (2002) 1 All ER 122 (HL)] : (AC p. 192C)

“... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.”

*17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. **Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.**”*

[Emphasis supplied]

24. Pertinently, even in the context of cancellation of OCI registration under Section 7D of the Citizenship Act — where such cancellation is justified on the ground of protecting the interest of the sovereignty and integrity of India — the Courts have actively engaged in reviewing whether such decisions are factually justifiable and whether the decision falls foul of the standards of fairness, arbitrariness and unreasonableness under Article 14 of the Constitution. Reliance in this regard is placed on *Ligy Abraham v. Union of India*⁴ and *Dr. Christo Thomas Philip v. Union of India*⁵.

25. As regards, Petitioner No. 1, in the opinion of the Court, the proviso

³ (2014) 5 SCC 409

⁴ W.P.(C) 10499/2016 decided on 11th September, 2017



to Section 7A(1)(d) of the Citizenship Act, does not get attracted. The only reason cited for denial of security clearance by the Respondents is that there is an ongoing case under the Prevention of Money Laundering Act, 2002 against Petitioner No. 1's late husband and it has been revealed that she was an erstwhile employee at her late husband's company. There is no basis/evidence to indicate that she is also under investigation by the ED. The ongoing investigation into her late husband's activities and her prior employment at his company — does not per se disqualify Petitioner No. 1 from OCI eligibility. There is no direct allegation or evidence of wrongdoing by Petitioner No. 1 herself that would merit such denial under the Citizenship Act. Her alleged non-cooperation with the ED, as claimed by the Respondents, needs to be substantiated with clear, actionable evidence of such non-cooperation, beyond mere accusations or procedural lapses.

26. While the Respondents have asserted that their decision to deny OCI registration is predicated on a lack of security clearance, it remains within the judicial purview to scrutinize whether such a decision-making process is supported by substantial and relevant facts that genuinely necessitate action in the interest of national security. It is crucial to note that Petitioner No. 1 has not been implicated as an accused. The case under the Prevention of Money Laundering Act was specifically registered against the late Mr. Amit Bhardwaj, and no criminal proceedings have been initiated directly against Petitioner No. 1. The ED, as the originator of the LOC, contends that Petitioner No. 1 may have relevant information in connection to the offence under investigation. They state that, *“being an associate and wife of the main accused, there is a strong suspicion that she might be aware of the*

⁵ 2019 SCC OnLine Del 6426



proceeds of crime(s) generated in the instant case.” This contention, however, is based primarily on conjecture and surmise. Mere association or familial relationship with an accused, without concrete evidence of direct involvement or complicity in the alleged crimes, does not substantiate the grounds for denying security clearance under Section 7A(1)(d) of the Citizenship Act and neither does it withstand the test of arbitrariness and reasonableness under Article 14 of the Constitution.

27. It is important to note that, while an LOC has been issued against her, there is no criminal case registered directly against her, which distinguishes her situation from those typically associated with such circulars. LOCs are primarily utilized to monitor and restrict the movements of individuals who are either absconding or whom law enforcement agencies need to maintain close surveillance on, especially at immigration checkpoints across the country. The issuance of the LOC in this case appears to be a precautionary measure by the ED to ensure Petitioner No. 1’s availability within India for investigative purposes. In fact, Petitioner No. 1 has maintained her presence in India and has shown no intent to evade the legal proceedings.

28. Another peculiar aspect which ought to be highlighted in the present case is the contradictory stand of the Respondents in terms of whether the Petitioner is to leave the country or not. On the one hand, the Petitioner No. 1 has an LOC issued against her which would prevent her from leaving the country and going abroad, and on the other hand the Respondents have not favoured the extension of her visa or the grant of OCI status, citing the pending security clearance as the reason. This situation is particularly challenging because it places Petitioner No. 1 in a precarious position where she is unable to leave the country due to the LOC, yet simultaneously, she



faces the risk of overstaying her visa due to the non-extension or renewal by the authorities. Such a scenario not only raises concerns about the reasonable exercise of executive powers but also about the potential infringement on the rights of the individual concerned.

29. Coming to the aspect of rejection of the OCI application of Petitioner No. 2, the minor son of Petitioner No. 1 and late Mr. Amit Bhardwaj, it is pertinent to note that there is no requirement of prior security clearance under Section 7A(1)(c) of the Citizenship Act which provides for OCI registration of a minor child of a citizen of India. For the sake of convenience, the relevant portion of the statute is as follows:

“7A. Registration of Overseas Citizen of India Cardholder.—

(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder –

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India;

[Emphasis supplied]

30. A bare perusal of the above provision reveals that the eligibility criteria for Petitioner No. 2 are met without ambiguity. The fact that there are ongoing investigations involving his parents does not, under the cited statute, provide a valid ground for denying him OCI status. The statutory framework does not condition the eligibility of a minor child on the legal status or background of the parents for the purposes of OCI registration. Hence, the decision to reject Petitioner No. 2’s application appears to be unsupported by the law and reflects a mis-application of the statutory provisions governing OCI eligibility.



31. Accordingly, the decisions dated 27th July, 2022 and 29th August, 2022 as well as the corresponding speaking orders dated 12th January, 2023 are hereby quashed.

32. The Respondents are directed to consider the OCI application of Petitioner No. 1 and 2 afresh, in order to take a decision thereon, in light of the observations made by this Court hereinabove, within a period of eight weeks from today.

33. In the meantime, it is made clear that the Respondents shall also consider the request of Petitioner No. 1 for extension of the visa afresh.

34. In light of the observations made hereinabove, the writ petition is allowed in the above terms.

SANJEEV NARULA, J

JULY 22, 2024

as