

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.15631 OF 2023 (GM – RES)

BETWEEN:

MOHAMMED NOMAN AHMED ALMERI
AGED 47 YEARS
R/AT NO. 88, 3RD CROSS
AREKERE LAKSHMI LAYOUT
IIMB POST, BANNERGHATTA ROAD,
BENGALURU – 560 076.

... PETITIONER

(BY MS.RUHA LATIF, ADVOCATE)

AND:

- 1 . UNION OF INDIA
REPRESENTED BY
SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF OVERSEAS INDIA AFFAIRS
NORTH BLOCK,
NEW DELHI – 110 001.

- 2 . THE GOVERNMENT OF INDIA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI – 110 001.

3 . FOREIGNERS REGIONAL REGISTRATION OFFICER
BMTc BUS STAND, 5TH FLOOR
'A' BLOCK, TTMC BUILDING
KH ROAD, SHANTI NAGAR,
BENGALURU, KARNATAKA – 560 027.

... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE IMPUGNED ORDER PASSED BY R3 FRRO, THE REJECTION OF VISA EXTENSION APPLICATION OF THE PETITIONER WHICH IS ANNEXURE-M; DIRECTING RESPONDENTS TO CONSIDER THE APPLICATION FOR VISA EXTENSION WHICH IS ANNEXURE - L.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.12.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question cancellation/rejection of his application for extension of Visa by the 3rd respondent/Foreigners Regional Registration Officer and seeks a consequential direction by issuance of a writ in the nature of mandamus directing the respondents to consider his application for extension of Visa.

2. Facts adumbrated are as follows:

The petitioner is a citizen of Yemen, born in Yemen in 1974. In 2013 at the time when the petitioner was 39 years old comes to India to pursue a 3 year course in Master of Science and secures admission at T.John College of Nursing. The student Visa issued to the petitioner was valid from 07-08-2013 to 06-08-2014. The petitioner could not pursue his studies and his academic progression was a complete failure owing to language barrier and deteriorating health condition. On such consecutive failure, he goes back to Yemen on 28-05-2016. After about 4 months, on 14-10-2016, he comes back to India. The averment in the petition is that he comes back to India on visitation Visa to resolve the issue pertaining to his further studies and re-admission to the degree course. After coming to India, it is submitted that his health again deteriorated and he had converted visitation Visa to medical Visa. He was granted medical Visa from 10-03-2017 to 06-09-2017 for about 6 months and the medical Visa was initially a double entry Visa and a single entry Visa and again converted to double entry Visa. The last extension of Visa expired on 05-06-2023. The

petitioner then applies for extension of Visa to the 3rd respondent. During the pendency of consideration of extension, he reveals that he had married an Indian by name Shenaz Khanum and on that strength submits an application to acquire Indian citizenship as a person having married an Indian citizen as also the fact that having stayed in India for more than 7 years, his application has to merit consideration on acquisition of citizenship by registration. The application for acquisition of Indian citizenship which was made on 14-08-2021 was not considered and, therefore, the petitioner reaches this Court in Writ Petition No.15305 of 2021. The application that was filed for extension of Visa is rejected by the 3rd respondent on 15-06-2023. The rejection of extension of Visa becomes the challenge in the subject petition.

3. Heard Ms. Ruha Latif, learned counsel appearing for the petitioner and Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents.

4. The learned counsel appearing for the petitioner Ms. Ruha Latif would vehemently contend that the application of the

petitioner could not have been rejected, as in terms of Section 5(1)(c) of the Citizenship Act, 1955 (hereinafter referred to as 'the Act' for short) he is entitled to be treated as a Indian citizen on two grounds – one, he has married an Indian and the other, he is a resident of India for more than 7 years. On these two grounds the learned counsel would submit that a mandamus is to be issued to the respondents to treat the petitioner as an Indian citizen by grant of such citizenship. She would further contend that as on today the petitioner holds a valid passport of Yemen and it cannot be said that Visa cannot be extended or citizenship cannot be granted in the teeth of the Act and the Foreigners Act 1946.

5. On the other hand, the learned Deputy Solicitor General of India Sri H.Shanthi Bhushan would vehemently refute the submissions of the petitioner. He would take this Court through document by document contending that the petitioner has played fraud with the 3rd respondent. Though he is married and has three daughters in Yemen comes to India and marries an Indian citizen in 2019 only to make eligible for consideration of his citizenship in India. He has never been an inpatient in any hospital for him to get

a medical Visa. He is in fact doing the business of medical tourism and has got hundreds of people from Yemen and got them employed in most of the hospitals in the city, all without even having any right to stay in India. He has produced certain documents in sealed cover for the perusal of the Court. He would contend that the petition be dismissed and notice issued to the petitioner to leave India be permitted to be taken to its logical conclusion.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. In addition certain facts, need to be steered clear, as the pleading of the petitioner, in the petition is projected to be a, problem too simple; while it is not. The petitioner is a citizen of Republic of Yemen presently aged about 49 years and holds a passport issued by Yemen. The initial entry of the petitioner into the shores of this nation is on 25-10-2013, as a holder of double entry, student Visa.

The reason for entry to this nation is to pursue his studies in T.John College of Nursing viz., M.Sc Nursing. The petitioner studied in India upto May 2016 and during his stay he appears to have loosely pursued his studies in nursing and returns to Yemen on 28-05-2016. Therefore, his stay in India was on a student Visa valid only from 07-08-2013 to 06-08-2014.

8. The petitioner then comes back to India via Mumbai, not as a student, but in a new avatar as a medical attendant, being granted medical attendant Visa for a period of six months from 23-09-2016 to 22-03-2017. He gets it converted into a medical Visa. The medical Visa is granted to him on the score that he needs special medical treatment in India for the ailment he was suffering. Therefore, it becomes germane to notice, what are his ailments? They are (1) **Hypertension**, (2) **diabetes mellitus**, (3) **Fatty liver**. Conversion from medical attendant Visa to medical Visa happens on the score that the aforesaid common ailments are existing in the petitioner. It is to be noticed that there is no record produced by the petitioner to demonstrate that he was at any point in time an inpatient in any hospital in the city, except for a brief

period of one week, when he was so admitted on being diagnosed with Covid-19. Except that, there is no record to show that he was at any time an inpatient. But, the medical Visa is extended from time to time, all on medical certificates issued by the Trustwell Hospital, J.C. Road, Bengaluru.

9. As observed hereinabove, the Deputy Solicitor General of India Sri H. Shanthi Bhushan has placed a sealed cover for perusal of the Court. The sealed cover is noticed. The sealed cover would reveal that the petitioner is working as an agent and has brought in several Yemen nationals to India and got them employment in several places, again all on the strength of medical certificates or documents issued by Trustwell Hospital. As contended by the learned DSGI, the petitioner is *prima facie* working as an agent to get in people from Yemen, into the city in the garb of medical treatment depicting them to be patients and their attendants. They are granted attendant Visa. Apart from Trustwell hospital, the patients are shown to have been admitted in Colombia Asia hospital. One such communication from Trustwell Hospital to the High Commission of the Republic of India, Yemen reads as follows:

"TRUSTWELL
HOSPITALS
YOUR TRUST OUR CARE

Date: 30-08-2021

To

The Consulate General,
High Commission of the Republic of India
Yemen.

Subject: Request for granting Visa on priority for Medical Treatment at Trustwell Hospitals, Bangalore, India.

Your Excellency,

You must be aware that many patients from abroad are now travelling to India for treatment at our hospitals to benefit from our low cost and world class medical treatment and facilities.

We have received medical information in respect of **Mr. Abdullah Ebrahim Mohammed** bearing **Passport No.09601105**, who requires a consultation with **Dr. Deepak Haldipur – ENT Department**. The patient will be accompanied by **Mr. Faud Ebrahim Abdullah Mohammed Sulaiman** bearing **Passport No.07871187**.

Hence, the patient and the attender need to be provided priority facilitation in issuing the Visa **for a duration of 6 months**.

We request you to kindly issue the Visa as above on priority. We would be most grateful for this help.

For Trustwell Hospitals Pvt.Ltd.

Sd/-

Prashanth M.V.

Unit Head."

After all these events, the petitioner gets married to an Indian citizen. After the marriage to an Indian citizen, he submits two applications – one before the 3rd respondent for extension of medical Visa and the other for grant of citizenship under the Act. The pendency of application for citizenship becomes the challenge in Writ Petition No.15305 of 2021 and the non-grant of extension of medical Visa becomes the challenge in the subject petition. The claim of the petitioner is in terms of Section 5 of the Act which deals with citizenship by registration. It reads as follows:

"5. Citizenship by registration.—(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

- (a) *a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;*
- (b) *a person of Indian origin who is ordinarily resident in any country or place outside undivided India;*
- (c) ***a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;***
- (d) *minor children of persons who are citizens of India;*

- (e) *a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section for sub-section (1) of Section 6;*
- (f) *a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;*
- (g) *a person of full age and capacity who has been registered as an Overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.*

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

- (i) *he has resided in India throughout the period of twelve months immediately before making an application for registration; and*
- (ii) *he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.*

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.

(1-A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of Article 6 or Article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption."

(Emphasis supplied)

Section 5(1)(c) depicts that a person who has married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration could be considered for citizenship unless he is not an illegal migrant. Whether the

petitioner is entitled to be considered for citizenship is what is required to be noticed.

10. The petitioner, as observed hereinabove, comes to India initially on a student Visa for three years, goes back to Yemen on 28-05-2016. Thus ends the stay of the petitioner in the shores of the country on a student Visa. He again comes back to India on a medical attendant Visa. This time he chooses a route from Mumbai and not Bangalore. The Visa is valid for six months. It is converted to medical Visa. It is rather shocking as to how the 3rd respondent/FRRO converts medical attendant Visa to medical Visa without even looking into the documents or the ailment of the petitioner. The documents submitted for the purpose of conversion to medical Visa from medical attendant Visa, is a clinical laboratory report, of Max Pathlabs which shows the petitioner to have a high cholesterol and borderline diabetes. If these documents could become a matter for conversion from medical attendant Visa to Medical Visa, it shows that the Authorities have converted it without even looking into the documents. It is further surprising as to how and on what parameters the medical Visa is granted to the

petitioner. The medical Visa that was granted to the petitioner is extended from time to time. One such application for extension reads as follows:

"TRUSTWELL
HOSPITALS
YOUR TRUST OUR CARE

Date: 05-04-2021

To

FRRO
Shanthinagar,
Bangalore.

Sub: Requisition for Registration of Visa on medical grounds.

*This is to certify that Mohammed Noman Alameri, aged 46 years UHID No.11449, a Yemen national with passport No.(09726245) date of issue 02-04-2021, date of expiry 20.04.2027 has visited our hospital for medical evaluation. **After detailed evaluation, he has uncontrolled diabetes mellitus, fatty liver with altered liver function, previously admitted and treated here for Covid-19 infection and also has umbilical hernia. He needs surgery for umbilical hernia only after correction and treatment of above medical conditions which may take 6 months to 8 months. Hence, he requires to stay in Bangalore and come for frequent follow-up visits.***

We request you to kindly issue registration certificate and Visa extension on medical grounds.

Thanking you in anticipation.

*Sd/-
Dr. Kapil Wajpey,
Senior Consultant Physician."*

(Emphasis added)

The hospital issues a certificate that the petitioner has uncontrolled diabetes mellitus and fatty liver and was previously admitted for Covid-19 infection and has umbilical hernia. The correction and treatment would require 6 to 8 months and, therefore, he is required to stay at Bangalore. The communication to the 3rd respondent/FRRO by the hospital does not inspire confidence. The same reason is being shown for extension of medical Visa for every six months. The petitioner has never undergone admission in any hospital for surgery of umbilical hernia. Therefore, the so called surgery never took place. The only admission of the petitioner, as observed hereinabove, was as an inpatient for treatment to Covid-19 infection that too for one week.

11. Therefore, the 3rd respondent/FRRO should enquire into the nature of these certificates issued by the hospital for the asking, if there is truth in those communications. The hospitals cannot be permitted to be hand in glove with the citizens of other countries for extension of Visas that are granted in the case at hand. The FRRO also requires to set its house in order and not convert Visas for the asking without verification of documents. All the medical

certificates that are appended to the petition nowhere demonstrate that the petitioner was suffering from any illness that would require any treatment to him.

12. The petitioner is a married man from Yemen and has three 3 daughters. He has brought those daughters also into India on study Visa. That forms a subject matter of different petitions as the daughters are also denied extension of Visa. He has married another lady here (in India) in 2020, all for the purpose of coming within the ambit of Section 5(1)(c) of the Act, but, **alas** he cannot be brought in, as he is a citizen of another country, and has stayed in India for 7 years without any valid Visa, and every time his Visa has undergone a change. The petitioner has, in fact played fraud by producing documents or records which bear no truth *albeit, prima facie*. The records produced by the DSGI would reveal that a criminal case is also registered against the petitioner for fraud of Visa. With all these factors, no fault can be found with the rejection of extension of Visa to the petitioner.

13. The learned counsel for the petitioner has projected bilateral relations between Yemen and India to be kept in mind while considering the petition on its merits. Bilateral relations are apart, if they are existing, the finding of fraud cannot create any dent. The petitioner, by projecting bilateral relations cannot masquerade his activities, which are on the face of it, illegal and fraudulent. If the petitioner were to be a citizen, who is staying in India for valid reason with a valid Visa for over 7 years, and has married to an Indian citizen, his application would merit consideration. None of these things are present in the case at hand. It is the officers who have converted medical attendant Visa to medical Visa without any valid document. The FRRO should forthwith stop being quicksotic in granting extension of Visa, like in the case at hand and set its house in order. The FRRO should also look into how the hospitals are issuing communications round every corner seeking Medical Visa or Medical Attendant Visa, a *caveat*, in this exercise, care should be taken that genuine cases do not suffer.

14. For all the aforesaid facts, no fault can be found with the action of the respondents. The petition lacking in merit stands rejected.

Pending application if any, also stands disposed, as a consequence.

**Sd/-
JUDGE**

bkp
CT:MJ