

Union of India vs.savitha Kumar

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Court : Delhi

Decided On : Aug-28-2019

Appellant : Union of India

Respondent : Savitha Kumar

Advocate for Pet/Ap. : Mr. Jasmeet Singh

Judgement :

§~5 * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

28. 08.2019 LPA2192019 & CM APPL.14636/2019 UNION OF INDIA Appellant/original respondent in W.P.(C) 8455/2018 Through: Mr. Jasmeet Singh, CGSC versus SAVITHA KUMAR Through: Respondent/original petitioner in W.P.(C) 8455/2018 CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE C.HARI SHANKAR JUDGMENT D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Letters Patent Appeal has been preferred by the original respondent in W.P.(C) 8455/2018. Though the notice was issued and served upon the respondent, but nobody has appeared in this appeal.

2. We have heard the counsel for the appellant who has submitted that the original petitioner, who is respondent in this appeal, is an Overseas Citizen of India as defined under Section 2 (ee) of The Citizenship Act, 1955 (hereinafter referred to as the Act). It is further submitted by the counsel for appellant (original respondent) that his entry in India was prohibited/blacklisted and hence, the writ

petition was preferred by the respondent. During the pendency of the writ petition, the blacklisting order LPA2192019 Page 1 of 5 was withdrawn and hence the grievance, ventilated in the writ petition, has been brought to an end. The learned Single Judge has observed in the interim order dated 21st August, 2018 in W.P.(C) 8455/2018 in paras 4 and 5 as under: 4. It is seen that there are number of cases that are instituted in this Court on account of foreigners/OCI card holders not being permitted entry into India on their arrival. One of the disturbing feature is that none of the said persons - foreign citizens/OCI card holders - have any prior intimation that they are black listed and their entry in India would not be permitted notwithstanding that they have a valid visa. They discover that they are not allowed entry into the country only on their arrival at the airport in India. Whilst there may be good reason for the respondents to deny certain foreigners entry into India, the practice of not informing them of such decision in advance, cannot be countenanced. This is not only unreasonable but militates against our value of fairness that is engrafted in the Constitution of India. This practice must be deprecated.

5. The Secretary, Ministry of External Affairs is directed to ensure that necessary directions are issued to all the officers, who are authorised to issue black listing orders to inform such persons (foreigners/OCI card holders, who have been issued a prior visa) that they have been black listed and their entry into this country would be denied. The Secretary, Ministry of External Affairs shall file an affidavit confirming compliance of this order, within a period of four weeks from today. It is further submitted by the counsel for appellant that no order, under Section 7D of the Act, 1955, cancelling the registration as Overseas Citizen of India cardholder, was ever passed by this appellant and therefore, in the writ petition, there was no challenge by the original petitioner for any order under Section 7D of the Act, 1955 and hence, the observations in paras 4 and 5 of the order dated 21st August, 2018 in W.P.(C) 8455/2018 was not LPA2192019 Page 2 of 5 warranted at all. Even otherwise also, there is no need to give intimation to Overseas Citizen of India cardholders in case of cancellation, for variety of reasons stated in Section 7D of the Act, 1955. All such orders under Section 7D are in the interest of the sovereignty and integrity of India. Sometimes prior intimation is not possible because of various developments in the facts and

circumstances of each case. No hard and fast rule can be framed for prior intimation because there is no such statutory requirement. Union of India has the power, jurisdiction and authority to protect the sovereignty and integrity of India and what is done for the sovereignty and integrity of India is not required to be intimated to the concerned person. Such a decision can be made known to the parties when they arrive at a seaport or airport or by any other route in India and hence, observations made by the learned Single Judge in paras 4 and 5 of the order dated 21st August, 2018 in W.P.(C) 8455/2018, so far as they affect the powers of this appellant - Union of India, may be deleted, especially for cancellation of registration of Overseas Citizen of India cardholders.

4. Counsel for the appellant - Union of India, further submitted that blacklisting is as per provision mentioned in visa manual. In view of the aforesaid provisions and looking into The Foreigners Act, 1946, to be read with the provisions of The Citizenship Act, 1955, especially Section 7D, and also looking into the provisions of visa manual, there is no provision of prior intimation of blacklisting nor there is a provision of prior intimation of cancellation of the registration as an Overseas Citizen of India cardholder. Therefore, in the facts and circumstances of the present case, there was no prior intimation to the original petitioner about the order passed under Section 7D of The Citizenship Act, 1955 as it was not warranted under the said Act. For ready reference, Section 7D of The Citizenship Act, 1955 LPA2192019 Page 3 of 5 reads as under: [7D. Cancellation of registration as Overseas Citizen of India Cardholder.-The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that- (a) the registration as an Overseas Citizen of India was obtained by means of fraud, false representation or the concealment of any material fact; or the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution of India, as by law established; or the Overseas Citizen of India has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or the Overseas Citizen of India has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or it is necessary

so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A, - (i) has been dissolved by a competent court of law or otherwise; or (ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.]. (b) (c) (d) (e) (f) In these circumstances, the observations in paras 4 and 5 of the 5. interim order dated 21st August, 2018 in W.P.(C) 8455/2018 were not warranted and we make it clear that there is no need of any prior intimation LPA2192019 Page 4 of 5 in case of blacklisting by Union of India, which is done for protecting the integrity and sovereignty and safety of India. Similarly, there is no need of prior intimation when the Union of India passes any order under Section 7D of The Citizenship Act, 1955, especially for the reasons mentioned in Section 7D of The Citizenship Act, 1955, more particularly for protecting the integrity and sovereignty of India. To this extent, the order passed by the learned Single Judge dated 21st August, 2018 in W.P.(C) 8455/2018 is hereby modified.

6. With this observation, this appeal is hereby allowed and disposed of. CM APPL.38138/2019 (Stay) 7. In view of the order passed in LPA2192019, this application stands disposed of. AUGUST28 2019 ns CHIEF JUSTICE C.HARI SHANKAR, J LPA2192019 Page 5 of 5

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