

Court No. - 39

Case :- WRIT - C No. - 35732 of 2023

Petitioner :- Elizabeth Cahill

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Raghav Dev Garg, Sr. Advocate

Counsel for Respondent :- A.S.G.I., C.S.C., Sanjay Kumar Om

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Anurag Khanna, learned Senior Advocate assisted by Sri Raghav Dev Garg, learned counsel for the petitioner, Sri S.P. Singh, learned Standing Counsel and Sri Sanjay Kumar Om, learned counsel for Union of India.

2. The present writ petition has been pressed seeking the following relief:

i Issue writ, order of direction in the nature of certiorari quashing the impugned order dated 13.03.2023 issued by the respondent no.2 herein, i.e. Foreigners Regional Registration Officer, Lucknow whereby while exercising powers under section 3 (2)(c) of the Foreigners Act, 1946, the petitioner, who is a Brazilian national, was directed to depart from India immediately.

ii Issue writ, order of direction in the nature of mandamus directing the respondents herein, specifically the respondent no.1 to process the application of the petitioner seeking citizenship by naturalization under Section 6 of the Citizenship Act, 1955, which is pending since 03.11.2022, in an expeditious manner and in the interregnum, the respondents be restrained from taking coercive steps apropos the stay of the petitioner in India.

iii Issue writ, order of direction in the nature of mandamus directing the respondent no.2 to grant extension of the honorary employment visa, applied through application dated 10.04.2022 (corrected on 19.05.2022).

3. By the communication dated 13.3.2023, the petitioner's visa extension application was rejected. The Foreigners Regional Registration Officer, Lucknow informed the petitioner that under section 3 (2) (c) of the Foreigners Act, 1946 (hereinafter referred

to as the Act), the petitioner shall not remain in India and that she shall depart, immediately.

4. At the fresh stage, twin claims were raised by the petitioner. (1) as to extension of visa and (2) as to grant of citizenship, through naturalization.

5. In view of the primary objection raised by learned counsel for Union of India, employment Visa could not be granted to the petitioner beyond a period of ten years. That period has come to an end on 22.3.2022. Therefore, she could not continue her stay.

6. Accordingly, instructions were called. Those instructions reiterated the earlier stand.

7. On her part, the petitioner has relied on the pendency of her applications moved, both with respect to Visa extension and for grant of citizenship. Referring to the preliminary objection filed earlier, it has been informed that web portal of the respondents still discloses that both the applications are pending consideration.

8. Today, upon further written instructions received (copy retained on record), learned ASGI would assert, in view of the Leave India Notice issued to the petitioner, her application for grant of extension of Visa stands rejected, on deemed basis.

9. At the same time, by means of para (iii) of the written instructions relied by learned ASGI, it has been stated as below:

“iii) As per the guideline of Foreigners Division, Ministry of Home Affairs, it is the responsibility of State Government to forward the application to Ministry of Home Affairs within 30 days. However, in this case, 30 days time limit has not been exhausted as the application is pending at the end of Govt. of UP since 10.11.2023 only. Further as per the aforementioned guidelines “No correspondence would be made directly with the applicant. However, a copy of the correspondence through the State Govts./UT Administration would be marked to the applicant.” (copy enclosed)

10. Clearly, a dual stand has been raised by the Union. On one

hand, the authorities of Union of India are hesitant in considering on merits the application made by the petitioner for extension of employment visa and citizenship through naturalization and on the other hand they do recognize the pendency of such applications by making such disclosure on their web portal also in view of the stand taken in the written instructions, as noted above.

11. The applications are pending and it is also the further case of the respondents that the applications have been forwarded with a negative note by the District Magistrate, Prayagraj. At present, the same is pending with the State Government since 10.11.2023. Thus, it is difficult to not recognize the pendency of the twin claims made by the petitioner before the competent authority.

12. Undisputedly, both the applications filed by the petitioner for extension of her employment Visa and also for grant of citizenship are pending with the respondents. The jurisdiction to deal with those applications vests with those authorities. Therefore, the negative report made by the District Magistrate may not be decisive of the claim made by the petitioner. The authorities vested with the jurisdiction to decide the claim existing and the claim made being pending before them, we cannot shut out the case of the petitioner merely on the basis of the negative report submitted by the District Magistrate, at this stage.

13. In view of that pendency of the claim made by the petitioner, we do not propose to enter into the merits of the same as may infringe upon the independent exercise of jurisdiction by respondent no.2. Accordingly, without making any observations as to merits, the writ petition is disposed of with direction upon respondent no.2 to decide the petitioner's claim for grant of extension of employment Visa. At the same time, the proper authority may consider the claim for grant of citizenship strictly in

accordance with law, as expeditiously as possible, preferably within a period of two months from today.

14. Till disposal of the petitioner's application, whichever is earlier, no coercive measure be taken against the petitioner subject to compliance of reasonable terms.

Order Date :- 5.12.2023

Madhurima

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)