

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 1127/2022

Khalid Ahmed Ghilan Amran, S/o Shri Ahmed Ghilan Amran, R/o
At Present 3/5, Nagar Nigam Colony, Amer Road, Jaipur.

----Appellant

Versus

1. The State Of Rajasthan, Through Its Addl. Chief Secretary, Department Of Higher And Technical Education, State Government Of Rajasthan, Secretariat, Jaipur.
2. The Union Of India, Through Its Foreigner Regional Registration Officer, East Block-B, Level-Ii, Sec. 1, R.k. Puram, New Delhi 110066.
3. The Foreigners Registration Office, Jaipur City, Through Its Zone Officer, Jalebi Chowk, Jda Market, Near City Palace, Jaipur-302002.

----Respondents

For Appellant(s)	:	Mr. S.P. Mathur with Mr. M.K. Dhakad
For Respondent(s)	:	Mr. R.D. Rastogi, Additional Solicitor General assisted by Mr. C.S. Sinha & Mr. Devesh Yadav

**HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL
HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA**

Judgment

RESERVED ON :: 21/10/2022
PRONOUNCED ON :: 03/02/2023

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE):

1. The petitioner-appellant who is a foreign national has preferred this intra-court appeal against the judgment and order dated 18.10.2022 passed by the learned Single Judge dismissing S.B. Civil Writ Petition No.17905/2019-Khalid Ahmed Ghilan Amran Vs. The State of Rajasthan & Ors..

2. The petitioner is a national of Yaman country. He got admission in M.Tech (Upstream) Course in Petroleum Engineering in the National Institute of Medical Sciences University, Jaipur (in short, 'NIMS') in the year 2013. He passed out the said course in the year 2016. Thereafter, he got himself registered in NIMS as a research student for Ph.D. in Chemical Engineering in the year 2016 itself.

3. The petitioner-appellant learnt that the M.Tech.(Upstream) Course in Petroleum Engineering and that of Ph.D. in Chemical Engineering to which he took admission were not the approved Courses as per the Schedule-II of the NIMS Act. In the above situation, the petitioner-appellant wanted to switch over in some other University for which NOC was not issued by the NIMS.

4. The petitioner-appellant, therefore, preferred S.B. Civil Writ Petition No.6128/2019 before this Court for a direction upon the NIMS to issue NOC to him for the change of institution.

5. Since the VISA of the petitioner was expiring on 11.04.2019 and no interim protection was granted to him in the writ petition, the petitioner-appellant preferred D.B. Civil Special Appeal (Writ) No.630/2019 which was disposed of vide order dated 12.04.2019 with the direction to the NIMS University to issue *bona fide* certificate to the petitioner-appellant and the Foreigners Regional Registration Officer (FRRO) was directed to extend the stay of the petitioner-appellant in India for at least 10 days with the further direction to the Union of India to take decision with regard to issuance of VISA to the petitioner-appellant upon verification of the necessary material.

6. It appears that after the aforesaid D.B. order the FRRO extended his VISA for one year from 12.04.2019 to 11.04.2020. This extension was granted as the petitioner-appellant had submitted that he has pursuing Ph.D. from Vivekanand Global University, Jaipur for which an admission letter was issued to him on 07.10.2019.

7. In view of the fact that necessary certificate was issued by the NIMS and the petitioner-appellant had got admission in another University, he withdrew his Writ Petition No.6128/2019.

8. Even though the research VISA granted to the petitioner-appellant was up to 11.04.2020, the FRRO, Delhi vide order dated 03.09.2019 on the basis of some adverse report received, canceled the said VISA granted to the petitioner-appellant on the ground that he was not pursuing his research studies for which purpose the VISA was granted and as such, was directed apply online for exit permit. The information regarding the VISA cancellation was communicated to the petitioner-appellant vide letter dated 04.09.2019 with a request to apply online for exit VISA. The above orders dated 03.09.2019 and 04.09.2019 were challenged by the petitioner-appellant by filing the present writ petition giving rise to this appeal.

9. The learned Single Judge by the impugned judgment and order dated 18.10.2022 dismissed the writ petition holding that the petitioner-appellant has no right to stay indefinitely in India. He was granted VISA initially as a student and then for research purposes. The student VISA in accordance with the VISA Manual could not be beyond the period of 5-1/2 years and the research

VISA beyond period of 3 years and as such, petitioner-appellant is not entitled to overstay beyond the above periods. Moreover, since he is not pursuing any research course or Ph.D as his admission even to Vivekanand Global University, Jaipur had been cancelled, he has no right to remain in the country.

10. The basic submission of the learned counsel for the petitioner-appellant is that the petitioner-appellant had come to India for studies and that he wanted to pursue Ph.D. in Chemical Engineering, for which purpose he first took admission in NIMS University and, thereafter, in Vivekanand Global University, Jaipur. The admission was granted to him on 07.10.2019 and, therefore, he is entitled to pursue his research work and for that purpose he is entitled to three years VISA. The research VISA of the petitioner-appellant was extended by FRRO from 12.04.2019 to 11.04.2020 and it could not have been cancelled unilaterally vide the impugned order dated 03.09.2019 without any opportunity of hearing to the petitioner-appellant.

11. In defence Mr. R.D. Rastogi, learned Additional Solicitor General of India submits that the petitioner-appellant has no right to remain in India on the expiry of his VISA when he is not attending any research work. The Division Bench of this Court had only permitted to grant 10 days more to him to stay in the country on the expiry of the VISA on 11.04.2019. The purpose was to allow the petitioner-appellant sufficient time to packup and arrange for leaving the country as research VISA could not have been extended for one year and the extension that has been granted was on the false pretext that he is pursuing Ph.D. even

though he had no admission and his admission if any, had already been cancelled.

12. There is no dispute to the fact that the petitioner-appellant was granted student VISA for pursuing the course in Petroleum Engineering in the year 2013. The said student VISA could not have been extended beyond the period of 5-1/2 years as stipulated in the VISA Manual. Subsequently, the petitioner-appellant was granted research VISA which expired on 11.04.2019. On the directions of the Court, petitioner-appellant was allowed to overstay 10 days and the FRRO was directed to take decision for extension of research VISA. Consequently, the FRRO extended the research VISA of the petitioner-appellant from 12.04.2019 to 11.04.2020 which has been cancelled by the impugned order dated 03/04.09.2019. The research VISA was granted to the petitioner-appellant on 16.06.2016 and as per the VISA Manual could not remain in force beyond a period of three years i.e. 15.06.2019.

13. In the above circumstances, the extension of the research VISA from 12.04.2019 to 11.04.2020 was patently in contravention of the Rules. It was obtained by concealing that the period of research VISA was expiring on 22.04.2019 and by misleading that the petitioner-appellant has obtained admission in Ph.D. in Vivekanand Global University, Jaipur, whereas on the date of extension of the research VISA he was not having any admission.

14. Vivekanand Global University, Jaipur had informed the FRRO, Jaipur that the petitioner-appellant was provisionally admitted in

the Ph.D. course on his statement that he had a valid VISA till 11.04.2020. However, his VISA was cancelled on 03.09.2019, which fact was concealed in obtaining admission on 07.10.2019. Accordingly, his admission to the Ph.D. course was also cancelled on 25.11.2019 by the Vivekanand Global University, Jaipur. In other words, the petitioner-appellant got himself enrolled for the Ph.D. course in Vivekanand Global University, Jaipur on 07.10.2019 on the basis of the incorrect information that his VISA is valid till 11.04.2020 though his VISA stood cancelled on 03/04.09.2019. Moreover, the aforesaid admission also stood cancelled on 25.11.2019 and as such, since then petitioner-appellant is not a student of any course in any institution. The VISA granted to him was for the purpose of study first as a student and then as a researcher. Therefore, he cannot be permitted to stay in India without pursuing any course of study/research.

15. The Larger Bench of the Supreme Court in the case of **Hans Muller of Nurenburg Vs. Superintendent, Presidency Jail, Calcutta & Ors.: AIR 1955 SC 367**, in determining whether there is any law in India vesting the executive Government with power to expel a foreigner from this land as opposed to extraditing him, held that Foreigners Act, 1946 confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion in this regard. There is no provision fettering the said discretion in the Constitution and unrestricted right to expel foreigner.

16. In **Louis De Raedt Vs. Union of India, reported in (1991) 3 SCC 554**, it has again been reiterated that the Government has unrestricted right to expel a foreigner and that opportunity of hearing in such matters is not a hard and fast rule and where opportunity of hearing would not result in the change of opinion, non affording of opportunity of hearing could not vitiate the order.

17. It is trite to mention that opportunity of hearing is not an empty formality or a ritual to be performed and if despite notice or opportunity of hearing the outcome is clear and is not likely to change, it would not affect the decision.

18. In the case at hand, the petitioner-appellant had not only overstayed the prescribed limit of the student and the research VISA, but is also not undergoing any studies, much less as a researcher in Ph.D. He first obtained the admission to Ph.D. clandestinely and secondly, the admission stood cancelled. Therefore, in the above circumstances cancellation of his research VISA and the direction to apply for exit VISA cannot be faulted with.

19. As on date the research VISA granted to the petitioner-appellant for the period 12.04.2019 to 11.04.2020 has also come to an end. It has not been extended and the petitioner-appellant is overstaying in the country without any permission/license. Therefore, his stay after 11.04.2020 is patently illegal. The granting of the impugned orders would not serve any purpose at this juncture.

20. Before parting we would be failing in our duty if we do not mention certain case law as cited from the side of the petitioner-appellant for which we have no hesitation to say that they are of no avail.

21. The petitioner-appellant cited **Issac Isanga Musumba & Ors. Vs. State of Maharashtra & Ors, reported in (2014) 15 SCC 357**, to contend that the word 'person' used in Article 21 is wide enough to cover foreign nationals as well.

22. There are no two opinions on the said aspect, but nothing turns out on its basis in the present case.

23. The other authority cited is that of **State of Bihar & Ors. Vs. Subhash Singh, AIR 1997 SCC 1390**, which provides for judicial review of administration again as essential part of Rule of Law.

24. Again there is no quarrel on the above aspect. The Writ Court has not refused to exercise the power of judicial review in the instant case.

25. The decision in the case of **I.J.Rao Asstt. Collector of Customs & Ors. Vs. Bibhuti Bhushan Bagh & Anr, reported in (1989) 3 SCC 202**, which lays down that where right of a person was adversely affected by an order passed by the authorities, he is entitled to pre-decisional notice or even to post-decisional hearing, depending upon the facts of the case, is also of no avail in view of the fact that the right of hearing cannot be permitted to be exercised in a vacuum and where the result despite hearing would be the same, as taken before providing opportunity.

26. The facts of the case speaks for itself and as such, the petitioner-appellant who has no legal right to overstay, is liable to deported forthwith.

27. In the aforesaid facts and circumstances, we are of the opinion that the learned Single Judge has not erred in dismissing the writ petition.

28. The appeal is devoid of merit and is accordingly dismissed.

(MANINDRA MOHAN SHRIVASTAVA),J

(PANKAJ MITHAL),CJ