

2011 M L D 1999

[Karachi]

Before Mushir Alam, C.J. and Syed Hasan Azhar Rizvi, J

AMBAREEN K.M. THOMPSON and 2 others---Petitioners

Versus

**FEDERATION OF PAKISTAN through the Ministry of Interior, Islamabad
and 2 others---Respondents**

Constitutional Petition No.D-2720 of 2010, heard on 8th April, 2011.

Pakistan Origin Card Rules, 2002---

---R. 15---General Clauses Act (X of 1897), S. 24-A---Constitution of Pakistan, Art. 199---Constitutional petition---National Identity Card, renewal of---Non-speaking order---Petitioners were aggrieved of letter issued by authorities, whereby work permit was cancelled and authorities did not renew National Identity Card for overseas Pakistanis---Validity---Discretion vested in Authority was to be exercised judiciously and not arbitrarily---Exercise of such discretion against the subject should have been based on sound principles of justice, equity, fairness and in accordance with spirit of the provision in which it occurred and was not merely at the whims of the authority--No doubt that Government reserved to itself the discretionary power to accept or reject request of the petitioners but while rejecting the request of petitioners, Government was expected to act justly, fairly and reasonably, which the authorities did not do---High Court directed the authorities to take decision at their own after providing opportunity of hearing to petitioners---Constitutional Petition was disposed of accordingly.

Chairman, State Life Insurance Corporation v. Hamayun Irfan 2010 SCMR 1495; Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi 1998 SCMR 2268; Zain Yar Khan v. The Chief Engineer, C.R.B.C. WAPDA D.I. Khan 1998 SCMR 2419 = 1998 PLC (CS) 1484; Mehr Ali v. Noor Muhammad 2007 SCMR 1965; Government of Pakistan v. Farheen Rashid 2011 SCMR 1; Muhammad Yousuf v. Province of Sindh PLD 1976 Kar. 1219; Aziz Ahmed v. Secretary, Regional Transport Authority, Quetta PLD 1984 Quetta 106; Messrs Dadabhoy Investment (Pvt.) Limited v. Federation of Pakistan PLD 1995 Kar. 33 and Ghulam, Mohi-ud-Din v. Chief Settlement Commissioner (Pakistan) Lahore PLD 1964 SC 829 **ref.**

Haq Nawaz Talpur and Tahmasp R. Rizvi for Petitioners.

Abdul Samad for Respondent No.2.

Nazar Akbar, D.A.-G. for Official Respondents.

Date of hearing: 8th April, 2011.

ORDER

SYED HASAN AZHAR RIZVI, J.---Through this petition, the petitioner No.1 Mrs. Ambareen K. M. Thompson (Pakistan National) has impugned the letter dated 31-8-2010 issued by the Ministry of Interior, Government of Pakistan (Annexure A/1) and letter dated 4-8-2010 issued by the Prime Minister's Secretariat (Public) Board of Investment (Annexure A/2), whereby the work visa of the petitioner No.3 Justin Desmond James Main Thompson, a British National (Husband of the petitioner No. 1) was cancelled and he was directed to leave Pakistan within 15 days.

It is, inter alia, contended by the learned counsel for the petitioners that the petitioner No.3, being a Foreign National, had married the petitioner No.1, who is a Pakistani National and settled down in Pakistan with his minor son (petitioner No.2). The petitioner No.3 has also acquired a work permit for the purpose of working in this country and Government of Pakistan issued him a National Identity Card for Overseas Pakistani (NICOP), which expired on 26-2-2010. It is further contended that the petitioner No.3 applied for renewal of National Identity Card for Overseas Pakistani on payment of prescribed fee. After lapse of more than six months no response has been received; petitioner No.3 applied for work visa, which was recommended to the concerned quarters. But the respondents without assigning any reasons and/or providing an opportunity of hearing, cancelled the work visa of the petitioner No.3 and he was directed to leave Pakistan within 15 days.

In support of his case, learned counsel has referred to section 15 of the National Database and Registration Authority (Pakistan Origin Card Rules, 2002), which reads as under:--

"15. Issuance of new card on expiry of validity.---At any time before, on or after the expiry of validity period of a card and subject to fulfillment of applicable criteria, conditions and formalities for registration for and issuance of the card, the Authority may issue a new card after renewing the underlying registration therefor or registering the applicant afresh, as deemed appropriate by the Authority, and after charging the applicable fee."

In support of his contentions, learned counsel for the petitioners placed reliance upon the case of Chairman, State Life Insurance Corporation v. Hamayun Irfan (2010 SCMR 1495), Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi (1998 SCMR 2268), Zain Yar Khan v. The Chief Engineer, C.R.B.C. WAPDA D.I. Khan 1998 SCMR 2419 = 1998 PLC (CS) 1484, Mehr Ali v. Noor Muhammad (2007 SCMR 1965), Government of Pakistan v. Farheen Rashid (2011 SCMR 01), Muhammad Yousuf v. Province of Sindh (PLD 1976 Karachi 1219), Aziz Ahmed v. Secretary, Regional Transport Authority, Quetta (PLD 1984 Quetta 106), Messrs Dadabhoy Investment (Pvt.) Limited v. Federation of Pakistan (PLD 1995 Karachi 33) and Ghulam, Mohi-ud-Din v. Chief Settlement Commissioner (Pakistan) Lahore (PLD 1964 SC 829).

On the other hand, learned D.A.-G. has contended that though it is admitted position that National Identity Card for Overseas Pakistani was issued to the petitioner No.3, which was expired and he was directed to apply for work visa, which he did, The documents of the petitioner No.3 were forwarded to the Ministry of Interior, ISI, IB and other concerned quarters for opinion. He further contended that according to the visa policy, if clearance is not received from the concerned quarters within specified period of time, the Board of Investment, Prime Minister Secretariat is bound to send the recommendation for authorization to the Ministry of Interior. Here in the case of the petitioner No.3 the security agencies do not support him. Consequently, the Board of Investment, Prime Minister Secretariat sent the recommendation to the Ministry of Interior for authorization in the case of the petitioner No.3. According to the learned D.A.-G., upon an application for review of cancellation of work visa of the petitioner No.3 dated 5-10-2010, the Board of Investment, Prime Minister Secretariat sent a letter dated 13-8-2010 to the Intelligence Bureau (IB) to reconsider/review the case of the petitioner No.3 and the reply thereto is still awaited. He has further contended that the petitioner No.3 throughout did not come to the Court and he has applied for his relief through his wife (petitioner No.1), which shows his mala fide. According to the learned D.A.-G., if the petitioner No.3 is willing to keep himself in Pakistan with his spouse and do business, he should have applied for citizenship under Pakistan Citizenship Act, 1951, but he did not do anything in this regard and has been insisting for renewal of his POC, which creates doubt.

Mr. Abdul Samad, learned counsel appearing on behalf of the respondent No.2/NADRA has submitted para wise comments on behalf of the respondent No.2/NADRA, according to which, the petition is not maintainable as the case of the petitioner does not fall within the parameter of Article 199 of the Constitution. According to the learned counsel, previously the National Identity Card for Overseas Pakistani (NICOP) was issued to the petitioner No.3 being foreign national as he married with a Pakistani national lady i.e. petitioner No. 1. Learned counsel further contended that after expiry of National Identity Card for Overseas Pakistani (NICOP), the same was not renewed as a ban was imposed by the Ministry of Interior.

In support of his case, learned counsel for the respondent No.2/NADRA has placed reliance on the Rule 13 of the National Database and Registration Authority (Pakistan Origin Card Rules, 2002), which reads as under:--

"13. Power to refuse registration or issuance of card.--- Notwithstanding anything to the contrary contained in these rules, any person who is otherwise eligible for registration and issuance of a card, may be refused registration, or issuance of a card, if in the opinion of the Authority, the registration, or issuance, of a card to such person is prejudicial to the sovereignty, integrity, security or defence of Pakistan or any part thereof or to friendly relations of Pakistan with Foreign States or countries, or to the maintenance of law and order in Pakistan or any part thereof or to the public interest."

We have heard the learned counsel for the parties and perused the material available on record with their able assistance.

Prima facie, it appears that the petitioner No.3 did have a valid Pakistani Visa and National Identity Card for Overseas Pakistani (NICOP), which has not been renewed for reasons best known to the respondents, though no response has been received from the concerned security agencies in respect thereof.

On 21-12-2010 a statement at bar has been moved on behalf of the petitioners that the word National Identity Card for Overseas Pakistani (NICOP) may be corrected/rectified as Pakistan Origin Card (POC), which was taken on record.

It would be seen that firstly the petitioner No.3 being a foreign national was issued POC on 26-2-2003, which was valid upto February 26th 2010 on the basis of his marital status as he married with a Pakistani national lady i.e. petitioner No. 1. On expiry of POC he applied for renewal of the same and under the directions of the respondent No.2 a challan was also submitted, but his request was turned down by taking a plea that a ban was imposed by the Ministry of Interior. It is also an admitted position that the impugned orders referred to above have been issued without assigning any reason for refusal of work visa to the petitioner No.3. Regarding non-giving the reasons in the impugned letters for refusal of the work visa to the petitioner No.3 and from the reply of the respondent No.3 it reveals that the concerned security agency shall be the appropriate authority to explain the reason, which shows that the reasons for refusal of work visa are still awaited by the respondents.

After perusal of section 13 of the National Database and Registration Authority (Pakistan Origin Card Rules, 2002), referred to above by learned counsel for the NADRA, we are of the view that the said Section does not apply in the case of the petitioner No.3, as he has applied for renewal of his POC, which was issued to him on 26-2-2003, and valid upto February 26th 2010 and not for issuance of afresh.

Needless to emphasize here that section 24-A of the General Clauses Act, 1897 is more applicable in the instant case, which is reproduced as follows:--

"24-A. Exercise of power under enactments.--(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

- (2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially."

It is well settled principle of law that the discretion vested in the authority is to be exercised judiciously and not arbitrarily. Exercise of such discretion against the subject shall be based on sound principles of justice, equity fairness and in accordance with the spirit of the provision in which it occurs and shall not be merely at the whims of the authority.

After hearing the arguments and going through the case-law cited above, we are of the view that no doubt the Government has reserved to itself the discretionary power to accept or reject the request of the petitioner No.3, but while rejecting the request of

the petitioner No.3, the Government is expected to act justly, fairly and reasonably, which in the present case was not so.

In view of the above, we are of the considered opinion that the respondent No.2 is a competent authority to take decision on its own. Accordingly, we dispose of this Constitutional Petition with the directions to the respondent No.2 (NADRA) to give an opportunity of hearing to the petitioner No.3 and pass a speaking order within a period of 30 days from receipt of this order, while adopting all legal formalities in the light of the reports of law enforcing agencies/security agencies of Pakistan for renewal of POC to the petitioner No.3 by securing the sovereignty of Pakistan in the eyes of the world.

Office is directed to deliver a copy of this order to the respondent No.2 (NADRA) for compliance.

M.H./A-115/K

Order accordingly.