

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3953 OF 2023

Shivam Sunil Punjya ...Petitioner
Versus
Union of India through the Secretary ...Respondent

Ms Drishti Khurana, i/b Zen Jurist, for the Petitioner.
Mr Rui Rodrigues, with Smita Thakur, for Respondent No. 1-UoI.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 17th February 2023

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1. We allowed production when Ms Khurana mentioned the matter yesterday, saying that the Petitioner had, abruptly and for no stated reason, and without notice or hearing, been confronted with an exit order requiring him to leave India on 18th February 2023.

2. Today, on hearing Ms Khurana, we find that the Petition is without substance.

3. The Petitioner is a US citizen. He is a person of Indian origin. He has a tourist visa. This was valid for a limited time. Paragraph 9 of the Petition expressly accepts that the Petitioner was in violation of his visa condition, i.e., that he previously did not leave the country before the expiry of that visa. He overstayed and remained

in India beyond the time permitted by his tourist visa by about 18 days. He claims that this was a 'minor' infraction.

4. It is not for a foreigner to decide what constitutes a 'minor' infraction and what constitutes a 'major infraction'. No foreigner gains that right only by claiming to be of Indian origin. There is no such thing as a minor or major infraction of a visa condition. There is either an infraction or there is compliance. Any person anywhere in violation of an entry and stay visa condition is liable to deportation from that country. That is why visas have prescribed validity periods.

5. If a person is of Indian origin then all the more we expect that person to adhere completely to the laws, rules and regulations of this country. We view with extreme displeasure such attempts by foreigners to claim higher rights. Nobody has given the Petitioner authority to decide which visa condition he will follow and which he will breach by calling it 'minor'. It is worse that the Petitioner arrogates to himself the authority to decide what to follow, what to call minor, what to transgress because he is 'of Indian origin'. Being of Indian origin is not an exemption from obeying the law. We cannot help wondering if, in his chosen country of citizenship, the United States of America, such an argument by an Indian citizen would be countenanced for a second.

6. The Petitioner says that he applied for an extension or a re-entry permit and was then faced with exit demand that he leave by 18th February 2023. Rightly so.

7. The submission is that the Petitioner should have been given notice, a hearing and so on. That may have had substance had the Petitioner not been in violation of a visa condition and had an action been proposed against him despite compliance. We do not see how a person who violates a clear visa condition can claim such legal entitlements (apart from conferring on himself some dubious authority to decide the quality of the admitted violation). If there is a requirement that the Petitioner must leave the country, then he must leave the country. That alone will establish his bona fides and his willingness to abide by all visa conditions.

8. Once he has left India, the Petitioner may apply for a fresh visa or for re-entry.

9. Mr Rodrigues states on instructions that if the Petitioner complies with the requirement of exiting by 18th February 2023, any application he makes for re-entry or a fresh visa will be considered on its merits, all contentions being kept open on both sides. We accept that statement. It provides the necessary balance.

10. Beyond accepting that statement, we decline to interfere. The Writ Petition is rejected. For this one time, we impose no costs.

(Neela Gokhale, J)

(G. S. Patel, J)