

CASE NO.:
Writ Petition (crl.) 17 of 2006

PETITIONER:
Hasan Ali Raihany

RESPONDENT:
U.O.I and Ors.

DATE OF JUDGMENT: 09/03/2006

BENCH:
B.P. Singh & Altamas Kabir

JUDGMENT:
JUDGMENT

ORDER

B.P. Singh, J.

In W.P. (Crl.) No. 17/2006:

In this Writ Petition, the petitioner prays for issuance of a writ of mandamus quashing the order cancelling the Residence Visa Permit by order dated 7th October, 2005. He has also prayed for directions to the respondent to produce the papers relating to grant of Indian citizenship to him by naturalisation. He further prays that this Court may issue a writ of certiorari quashing and setting aside the oral direction or order of deportation passed by the respondents and allow the petitioner to enter the Indian territory.

The case of the petitioner is that he was born in India to parents who were Iranian citizens. He was educated in India and thereafter intended to stay in India. He applied for grant of Indian passport on 15th July, 2003 in response where to he was required to comply with certain formalities. It appears that on the night intervening 7th/8th October, 2005, the petitioner was deported to Tehran. His grievance is that he was never informed as to why such action was taken against him. Be that as it may, he applied again to the Indian Embassy in Tehran to grant him entry visa enabling him to enter this country so that he could settle his pending matters in this country. According to the petitioner, he has been doing business in this country and, therefore, his sudden deportation has created complications for him, and it became absolutely necessary for him to come to India to settle those matters. A Single Entry Permit was issued to the petitioner by the Indian Embassy in Iran which was valid for the period from 8th November, 2005 to 8th February, 2006. On that basis, the petitioner has re-entered this country.

The petitioner states that he is being summoned to the Kurla Police Station every day and is being unnecessarily harassed. His suspicion is that he may again be deported in the same manner as was done on the last occasion without intimating him the reasons why he is sought to be deported and without giving him an opportunity of being heard.

We may observe that earlier, a Residential Permit was issued to the petitioner which has been extended from time to time and which stood extended till 3rd December, 2007. However, while deporting him, the authorities cancelled the Residential Permit.

Thus, the factual position as of today is that the petitioner has entered this country on the basis of a Single Entry Visa validity issued to him by the Indian Embassy at Tehran. It is also stated that the fact that the petitioner had been deported from this country was mentioned in the

application for grant of Entry Visa and that nothing was concealed.

The question that arises for consideration is whether the authorities intend to deport him again and if so, whether they are obliged to disclose to the petitioner the reasons for his proposed deportation.

Learned counsel for the petitioner has relied upon a decision of this Court reported in National Human Rights Commission v. State of Arunachal Pradesh and Anr., [1996] 1 SCC 742 and particularly to the principles laid down in paragraph 19 thereof and submitted that the petitioner cannot be thrown out of this country having regard to the fact that he was born in this country and lived here for many years and his application for grant of Indian citizenship is still pending. It is not as if he has entered the territory of India stealthily with any ulterior objective and, therefore, it is only proper, even though he is not an Indian citizen, that he should at least be informed of the reasons why he is sought to be deported, and his representation if any in this regard considered. The learned Additional Solicitor General has fairly brought to our notice the principles laid down by this Court in Sarbananda Sonowal v. Union of India and Anr., [2005] 5 SCC 665. This Court in para 75 of the report has observed as follows:

''Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law does not prohibit the expulsion en masse of aliens. (p. 351). Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law, and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa, etc. and not to those who have entered illegally or unlawfully.''

Having regard to the facts and circumstances of the case, particularly, having regard to the fact that the petitioner has entered this country legally upon the Single Entry Permit issued to him, it is only fair that the competent authority must inform him the reasons for his deportation. If such a decision is taken, the petitioner must be given an opportunity to submit his representation against his proposed expulsion. The competent authority may thereafter consider his representation and pass appropriate order. As observed by this Court, this procedure may be departed from for compelling reasons of national security etc. In the instant case, we have not so far noticed any fact which may provide a compelling reason for the State not to observe this procedure.

We, therefore, dispose of this writ petition with the directions to the competent authority, who we are told is the Deputy Commissioner of Police and FRRO, Mumbai, to communicate to the petitioner the reasons why he is sought to be deported from this country. The reasons disclosed must be sufficient to enable the petitioner to make an effective representation, if he wishes to do so. The petitioner shall be given two weeks' time to make a representation which shall be considered by the competent authority as soon as possible. Any order passed shall be communicated to the petitioner forthwith.

We further direct that the petitioner shall continue to report at the Kurla Police Station every day. It is stated by learned counsel appearing on his behalf that the present residential address of the petitioner is the following:

Hasan Ali Raihany,
Deeraj Apartments,

`C' Wing, Flat No. 303,
Shastri Nagar,
Santacruz (West),
Mumbai.

If there is any change of address, the petitioner will inform the Kurla Police Station of the said change. He shall continue to report to the Police Station till such time as the competent authority passes appropriate order as directed.

In case an adverse order is passed against the petitioner, it shall not be given effect for a period of seven days from the date of service of that order on the petitioner so that he may seek appropriate legal remedy, if so advised.

The writ petition is disposed of accordingly.

CrI. M.P. No. 2098/2006 in and S.L.P. (CrI.) No...../2006:

Permission to file S.L.P. is granted.

In view of the disposal of Writ Petition (CrI.) No. 17/2006, the special leave petition has become infructuous and the same is dismissed as such.