

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

WP No. 27474 of 2024

(MASTER XXXXXXXXXXXXX L S/O SMT. LOVENESS CHINYAMA W/O SHRI RAHUL RAJ PIPPAL
(MINOR) THROUGH HIS AND OTHERS Vs UNION OF INDIA AND OTHERS)

Dated : 13-09-2024

Shri Ankur Mody - learned counsel for the petitioner.

Shri Praveen Niwaskar - Deputy Solicitor General for the respondents/Union of India.

Shri Jitesh Sharma - learned Govt. Advocate for the State.

The present petition under Article 226 of the Constitution of India is preferred seeking following reliefs:-

(A) To decide the pending application for grant of extension of time(Annexure P/6) of Exit Permit, until the date of getting Passport and VISA in favour of petitioner No.1.

(B) That in case, any adverse order is passed to the interest of the petitioner no. 2, the same may not be acted upon by the respondents for a period of 30 days thereafter from the date of receiving of order, to enable the petitioner no. 2 to take recourse to an appropriate remedy under the law.

(C) to permit the petitioner No.2 for applying for grant of the status of Overseas Citizen of India (OCI) by relaxing the stipulation as mentioned under proviso to Section 7A(1)(d) of The Citizenship Act and in terms of 7A(3) of The Citizenship Act.

D. The issue any other writ, order or direction as this Hon'ble Court deems fit.

2. Subject matter in brief is that the petitioner No.2 is a citizen of Zambia and is staying in India since 2019 on student viza and was pursuing Nursing Course from ITM, University, Gwalior and had married to one Indian national Rahul Raj Pippal resident of District Morena on 11.02.2024, petitioner in writ petition No.27462/2024.

3. Prior to the marriage petitioner No.2 was blessed with a boy i.e. petitioner No.1, Master XXXXXXXXXXXXXXXX, who is at present aged about one year. The earlier viza of petitioner No.2 was for the period of 04 years and was valid till 30.06.2023. Thereafter it was extended till 14.09.2024. On 08.09.2024 the petitioner No.2 applied for extension of the exist viza, which is pending before the authorities and the reason shown for extention of Viza therein is "new born case".

4. One fact is also evident from the writ petition No.27462/2024 that one Rahul Raj Pippal, who is alleging him to be husband of petitioner No.2 and father of petitioner No.1, had moved an application before Registrar (Death and Marriage Registration) Gwalior for issuance of marriage certificate regarding the marriage consummated/contracted with petitioner No.2 on 11.02.2024, which is also pending consideration before the Authorities and direction therein has been sought for taking decision on the application for grant of marriage certificate.

5. In the light of aforesaid facts, as an interim measure, a prayer has been made by the counsel for the petitioner that till the application for issuance of passport and viza to her son i.e. petitioner No.1 is decided and granted, her deportation in lieu of the viza being expiring on 14.09.2024 be kept in abeyance.

6. Learned counsel for the petitioner in view of the aforesaid fact had contended that though the application for issuance of marriage certificate is pending before registering authority since February, 2004 but till date no action has been taken on the said application and neither the application has been allowed nor it has been rejected, which had compelled the husband of petitioner No.2 to move writ petition No.27462/2024 for issuance of directions to marriage registering authorities to take appropriate decision and register marriage and issue certificate so that petitioner No.2 may apply for issuance of OCI i.e. Overseas

Citizen of India Card for extending her stay in India, which is the bare minimum requirement for issuance of said Card for an overseas married person.

7. It was further contended that out of the wedlock a son has been born though prior to contracting the marriage but still the fact remains that minor son of petitioner No.2, who is an Indian citizen and is only aged about one year would be left stranded without her mother for a long period, if interim relief is not provided to the petitioner No.2. It was further argued that the action on the part of respondents would amount to disintegration of a family and would compel the minor child to live without his mother. Thus, in the interest of justice the interim relief, was prayed be granted at-least for a period of two months or till further order of this Court.

8. *Per contra*, Shri Praveen Newaskar, learned Deputy Solicitor General for the Union of India on advance copy and on instructions submitted that till date there is no information about marriage of petitioner No.2, who is a Zambian national, available with the Union of India. Since she had entered the Indian boundries on student viza and was given extension of viza for a period of one year in the year 2023, had waited till last moment and just to get extension of the viza by way of sympathy had moved the application on 08.09.2024, which doesn't reflects her bonafides and only goes to show that somehow she wants to stay in India but since deportation order has already been issued against petitioner No.2, no relief as claimed can be granted.

9. It was further argued that even otherwise, since petitioner No.2 is not an Indian citizen, therefore, she cannot take advantage of violation of any fundamental rights under the Constitution of India, which are envisaged only for the purposes of safeguarding the fundamental rights of Indian citizens and as on

date she is not an Indian citizen, the petition at her behest is not maintainable. On this count, it was submitted that the relief as prayed by the petitioner No.2 cannot be granted.

10. Shri Jitesh Sharma, learned Govt. Advocate for the State on instructions with regard to writ petition No.27462/2024 has submitted that only on 09.09.2024 the application preferred by the husband of petitioner no.2 herein has been registered and thereafter as a procedure a notice to general public is required to be issued for a period of 30 days, which is to be done by the petitioner of W.P. No.27462/2024, who had been informed, therefore, at present any issuance of any directions to the marriage registering authority is not required.

11. After hearing the rival contentions and perusing the record, this Court *prima facie* finds that the order of deportation to the petitioner No.2 was a natural corollary of the expiry of the viza granted in favour of petitioner No.2 on 14.09.2024 and, therefore, it cannot be said that the issuance of such an order is bad in law but the fact remains that the application for registration of marriage of petitioner No.2 and the petitioner in writ petition No.27462/2024 is allegedly pending before the Registrar of Marriage, Gwalior, though the date herein is disputed by the either side, which would be the bare minimum requirement for applying for the OCI Card by petitioner No.2 to be further eligible for staying in India.

12. Further, from the record, it is also evident that the passport application of petitioner No.1 is also pending before the competent authority and until the passport of petitioner No.1 is not issued, he would not be able for accompany her mother in case she has to go back to Zambia, as admittedly the boy is only aged 01 year and is an Indian citizen by birth.

13. It is not the case of the respondents that the petitioner No.2 is of some

criminal background or she is from such a country, which may make her stay in India vulnerable, thus, in such eventuality, this Court at this stage without going into the aspect of whether the petition is maintainable at the instance of petitioner No.2, as an interim measure, directs the respondents not to deport the petitioner No.2 for next two months from today.

14. Meanwhile, the respondents are directed to file their response to the petitions.

List this case **in the week commencing 04th November, 2024**

Certified copy as per rules.

(MILIND RAMESH PHADKE)
JUDGE