

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO.38048 OF 2021

IN

WRIT PETITION (CIVIL) NO.793 OF 2017

MOHAMMAD SALIMULLAH AND ANR.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

O R D E R

1. Pending disposal of their main writ petition praying for the issue of an appropriate writ directing the respondents to provide basic human amenities to the members of the Rohingya Community, who have taken refuge in India, the petitioners who claim to have registered themselves as refugees with the United Nations High Commission for refugees, have come up with the present interlocutory application seeking **(i)** the release of the detained Rohingya refugees; and **(ii)** a direction to the Union of India not to deport the Rohingya refugees who have been detained in the sub-jail in Jammu.

2. We have heard Sh. Prashant Bhushan, learned counsel and Sh. Colin Gonsalves, learned senior counsel appearing for the applicants/writ petitioners, Sh. Tushar Mehta, learned Solicitor General appearing for the

Union of India, Sh. Harish Salve, learned senior counsel appearing for the Union Territory of Jammu & Kashmir, Sh. Vikas Singh and Sh. Mahesh Jethmalani, learned senior counsel appearing for persons who seek to implead/intervene in the matter.

3. Sh. Chandra Uday Singh, learned senior counsel representing the Special Rapporteur appointed by the United Nations Human Rights Council also attempted to make submissions, but serious objections were raised to his intervention.

4. According to the petitioners, both of them are Rohingya refugees from Myanmar and they are housed in a refugee's camp. They claim to have fled Myanmar in December-2011 when ethnic violence broke out.

5. It appears that persons similarly placed like the petitioners are housed in refugee camps in New Delhi, Haryana, Allahabad, Jammu and various other places in India.

6. On 8.08.2017 the Ministry of Home Affairs, Government of India issued a letter to the Chief Secretaries of all the State Governments/UT Administrations, advising them to sensitize all the law enforcement and intelligence agencies for taking prompt steps and initiating deportation processes. It is this circular which prompted the petitioners to approach this Court with the above writ petition.

7. According to the petitioners, new circumstances have now arisen, as revealed by newspaper reports appearing in the first/second week of March,

2021, to the effect that about 150-170 Rohingya refugees detained in a sub-jail in Jammu face deportation back to Myanmar. The reports that appeared in The Wire, The Hindu, The Indian Express and The Guardian are relied upon to show that there are more than about 6500 Rohingyas in Jammu and that they have been illegally detained and jailed in a sub-jail now converted into a holding centre.

8. The contention of the petitioners is **(i)** that the principle of non-refoulement is part of the right guaranteed under Article 21 of the Constitution; **(ii)** that the rights guaranteed under Articles 14 and 21 are available even to non-citizens; and **(iii)** that though India is not a signatory to the United Nations Convention on the Status of Refugees 1951, it is a party to the Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights, 1966 and the Convention on the Rights of the Child 1992 and that therefore non-refoulement is a binding obligation. The petitioners also contend that India is a signatory to the Protection of All Persons against Enforced Disappearances, Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.

9. Heavy reliance is placed upon a recent Judgment of International Court of Justice in ***The Gambia vs. Myanmar*** dated 23.01.2020 to show that even the International Court has taken note of the genocide of Rohingyas in Myanmar and that the lives of these refugees are in serious

danger, if they are deported. According to the petitioners, Rohingyas were persecuted in Myanmar even when an elected Government was in power and that now the elected Government has been over thrown by a military coup and that therefore the danger is imminent.

10. The Union of India has filed a reply contending *inter alia* **(i)** that a similar application in I.A. No.142725 of 2018 challenging the deportation of Rohingyas from the State of Assam was dismissed by this Court on 4.10.2018; **(ii)** that persons for whose protection against deportation, the present application has been filed, are foreigners within the meaning of Section 2(a) of the Foreigners Act, 1946; **(iii)** that India is not a signatory either to the United Nations Convention on the Status of Refugees 1951 or to the Protocol of the year 1967; **(iv)** that the principle of non- refoulement is applicable only to “*contracting States*”; **(v)** that since India has open/porous land borders with many countries, there is a continuous threat of influx of illegal immigrants; **(vi)** that such influx has posed serious national security ramifications; **(vii)** that there is organized and well-orchestrated influx of illegal immigrants through various agents and touts for monetary considerations; **(viii)** that Section 3 of the Foreigners Act empowers the Central Government to issue orders for prohibiting, regulating or restricting the entries of foreigners into India or their departure therefrom; **(ix)** that though the rights guaranteed under Articles 14 and 21 may be available to

non-citizens, the fundamental right to reside and settle in this country guaranteed under Article 19(1)(e) is available only to the citizens; **(x)** that the right of the Government to expel a foreigner is unlimited and absolute; and **(xi)** that intelligence agencies have raised serious concerns about the threat to the internal security of the country.

11. It is also contended on behalf of the Union of India that the decision of the International Court of Justice has no relevance to the present application and that the Union of India generally follows the procedure of notifying the Government of the country of origin of the foreigners and order their deportation only when confirmed by the Government of the country of origin that the persons concerned are citizens/nationals of that country and that they are entitled to come back.

12. We have carefully considered the rival contentions. There is no denial of the fact that India is not a signatory to the Refugee Convention. Therefore, serious objections are raised, whether Article 51(c) of the Constitution can be pressed into service, unless India is a party to or ratified a convention. But there is no doubt that the National Courts can draw inspiration from International Conventions/Treaties, so long as they are not in conflict with the municipal law. Regarding the contention raised on behalf of the petitioners about the present state of affairs in Myanmar, we have to state that we cannot comment upon something happening in another country.

13. It is also true that the rights guaranteed under Articles 14 and 21 are available to all persons who may or may not be citizens. But the right not to be deported, is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e).

14. Two serious allegations have been made in reply of the Union of India. They relate to **(i)** the threat to internal security of the country; and **(ii)** the agents and touts providing a safe passage into India for illegal immigrants, due to the porous nature of the landed borders. Moreover, this court has already dismissed I.A.No. 142725 of 2018 filed for similar relief, in respect of those detained in Assam.

15. Therefore, it is not possible to grant the interim relief prayed for. However, it is made clear that the Rohingyas in Jammu, on whose behalf the present application is filed, shall not be deported unless the procedure prescribed for such deportation is followed. Interlocutory Application is disposed of accordingly.

.....CJI
(S.A. BOBDE)

.....J.
(A.S. BOPANNA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi
April 08, 2021