

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 29TH DAY OF JULY 2020 / 7TH SRAVANA,
1942

WP(C).No.13263 OF 2020(G)

PETITIONER/S:

JOHNNY PAUL PIERCE
AGED 74 YEARS
(U.S.CITIZEN), S/O. PAUL PATRICK PIERCE,
RESIDENT AT 1061 OLD MILL CIRCLE,
ROSEVILLE, CA 95747, UNITED STATES OF
AMERICA, PRESENTLY STAYING AT 4/415K, VILLA
NO.3, SHEEJI DWARAKA, KANDANADU P. O.,
ERNAKULAM DIST., PIN - 682 305.

BY ADVS.
SRI.S.SAJU
SRI.A.V.SAJAN
SMT.NEELANJANA NAIR

RESPONDENT/S:

- 1 THE UNION OF INDIA
REP. BY ITS SECRETARY TO THE GOVERNMENT,
MINISTRY OF HOME AFFAIRS, GOVERNMENT OF
INDIA, NORTH BLOCK, NEW DELHI, PIN - 110
001.
- 2 THE COMMISSIONER OF IMMIGRATION
BUREAU OF IMMIGRATION, MINISTRY OF HOME
AFFAIRS, EAST BLOCK - VIII, LEVEL-V, SECTOR
- 1, R.K. PURAM, NEW DELHI, PIN - 110 066.
- 3 FOREIGNERS REGISTRATION OFFICER
OFFICE OF THE FOREIGNERS REGIONAL
REGISTRATION OFFICE, (FRRO), 2ND FLOOR,
AIRLINES BUILDING, CIAL NEDUMBASSERY,
COCHIN AIR PORT P. O., ERNAKULAM, PIN - 683
111.

R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.07.2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP (C) .No.13263 OF 2020

2

JUDGMENT

Mr.Johnny Paul Pierce's love for India may be heartening, but his yearning to stay back is the *carte blanche* of the Government of India.

2. Mr.Johnny Paul Pierce – the petitioner, an American National, came to India, on a tourist visa, on 26.2.2020. The visa is valid till 26.1.2025. All of a sudden, the Country went into a lockdown due to the COVID - 19 pandemic and the petitioner has got stranded. For the last three months, the petitioner is remaining idle and helpless. His desire to explore the Country has been affected. If it were not for the pandemic, he would have gone back to the United States of America, converted his tourist visa to a business visa, and then returned to India.

3. The petitioner laments that the policy guidelines issued by the Government of India in respect of e-visa, with multiple entries, although has a validity of five years, he is permitted to stay only up to

WP (C) .No.13263 OF 2020

180 days in one visit. So, he has ³ to leave India on or before 24.8.2020, though his visa is valid till 26.1.2025. Without leaving India, he cannot apply for the conversion of his tourist visa to a business visa.

4. During this pandemic period, if the petitioner is deported, he is at high risk. He sees business prospects in Kochi and would desire to continue here for a further period of six months. He has sent Ext.P-3 email to the respondents 2 and 3, inter-alia, stating that there are more than one lakh deaths in the United States of America due to the novel coronavirus compared to only 20 deaths in Kerala. At the age of 74, he feels safer to remain in Kerala than in the United States of America. He is suffering from various ailments and has sought the help of Doctors in Kochi. He has received a tailor-made reply from the 2nd respondent, who has not adverted to any of his requests. In the present scenario, he seeks humanitarian interference by this Court because he has not been able to complete his purpose of stay in

WP (C) .No.13263 OF 2020

India. Hence his visa may ⁴ be extended for a further period of six months, permitting him to apply for conversion of his tourist visa to a business visa without leaving the Country.

5. Sri.Saju.S.Nair, the learned counsel appearing for the petitioner, submitted that a lenient view may be taken in the matter because the petitioner is 74 years old, and he is suffering from various ailments. As the petitioner has a valid visa till 26.1.2025, there is no legal impediment in him staying back in the Country beyond 180 days from the date of his arrival. The 2nd respondent has not considered Ext.P3 representation but has sent a stereotyped reply.

6. Sri.Suvin Menon, the learned Central Government Standing Counsel, appearing for the respondents argued that the Government of India, Ministry of Home Affairs, Foreigners Division, by Office Memorandum dated 5.5.2020, has considered the problem relating to foreign nationals stranded in India

WP (C) .No.13263 OF 2020

due to the pandemic, and decided as follows:⁵

“Regular Visa e-visa or stay stipulation, of such foreign nationals whose visas have expired or would be expiring during the period from 01.02.2020 (Mid-night) till the date on which prohibition on international air travel of passengers from India is lifted by the Government of India, would be extended on 'GRATIS' basis on submission of online application by the foreigners. Such extensions would be granted for a period upto 30 days from the date of lifting of prohibition on international air travel of passengers from India without levy of overstay penalty. Exit to such foreign nationals, if so requested by them, will also be granted on the same lines.”

7. A foreign national does not have the right to reside and settle in India, as enshrined under Article 19(1)(e) of the Constitution of India, held the Honourable Supreme Court in ***Louis De Raedt v. Union of India and Others*** [(1991) 3 SCC 554].

8. The Honourable Supreme Court in ***State of***

WP (C) .No.13263 OF 2020

⁶

Arunachal Pradesh v. Khudiram Chakma [(1994)

Supp. (1) SCC 615] has held that Article 19 (1) (d) and (e) are unavailable to foreigner nationals because these rights are conferred only on citizens. The machinery of Article 14 also cannot be invoked by foreign nationals. Rights under Articles 19(1) (d) and (e) are expressly withheld to foreigner nationals.

9. The Constitution Bench of the Honourable Supreme Court in ***Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta*** [AIR 1955 SC 367] has held that the power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion.

10. In view of the categorical declaration of law by the Honourable Supreme Court, the plea of the petitioner to permit him to stay back in India cannot be accepted, as it falls within the purview of the guidelines and the discretion of the Government of

WP (C) .No.13263 OF 2020

India. The petitioner cannot be heard that the ⁷ guidelines/policies/regulations formulated by the Government of India, that an American national though has been granted a visa having validity of five years has to leave India within 180 days, is irrational or unreasonable. The petitioner does not have a case that there is an infraction of Article 21 of the Constitution of India. Therefore, the plea of the petitioner that he may be permitted to stay for a further period of six months and his visa may be converted from tourist visa to a business visa without leaving the Country, cannot be entertained by this Court. Grant and extension of visas to foreign nationals fall exclusively within the domain of the Government of India, to ensure the sovereignty and the national security of the Country, which stands at the highest pedestal. The scope of judicial review in such matters is minimal.

11. The petitioner, who has come to India on a tourist visa, was well aware of the conditions in the

WP (C) .No.13263 OF 2020

8
visa before he left his Country. Thus, it is too late in the day for him to raise a grievance on the visa conditions. Nevertheless, because of the unforeseen situation caused due to the COVID-19 pandemic, and the promulgation of the Office Memorandum dated 5.5.2020 and also the non-resumption of regular international flights, I deem it appropriate, without expressing anything on the merits of the issue, to direct the 2nd respondent to consider Ext.P-3 representation submitted by the petitioner, strictly in accordance with the guidelines/regulations/policies of the Government of India, and dispose of the same as expeditiously as possible, at any rate, within a period of two weeks from the date of receipt of a copy of this judgment.

ma/29.07.2020

C.S.DIAS, JUDGE

WP (C) .No.13263 OF 2020

APPENDIX OF WP (C) 13263/2020

PETITIONER'S/S EXHIBITS:

- | | |
|------------|---|
| EXHIBIT P1 | TRUE COPY OF THE RELEVANT PAGE OF
THE U.S.PASSPORT NO.573021834 OF THE
PETITIONER. |
| EXHIBIT P2 | THE TRUE COPY OF THE TOURIST VISA
POSSESSED BY THE PETITIONER DATED
28.01.2020 VALID TILL 26.01.2025. |
| EXHIBIT P3 | TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE PETITIONER THROUGH
EMAIL BEFORE THE 2ND AND 3RD
RESPONDENT DATED 24.06.2020. |
| EXHIBIT P4 | TRUE COPY OF THE EMAIL REPLY
RECEIVED BY THE PETITIONER ON
25.06.2020 FROM THE 2ND RESPONDENT,
IN RESPONSE TO EXT. P3
REPRESENTATION. |

APPENDIX OF WP(C) 14171/2020

PETITIONER'S/S EXHIBITS:

- | | |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF THE CERTIFICATE OF MARRIAGE OF THE 1ST AND 2ND PETITIONERS ISSUED BY THE COUNTRY OF LOS ANGELES 29.07.2016 |
| EXHIBIT P2 | TRUE COPY OF THE RELEVANT PAGES OF PASSPORT OF THE 1ST PETITIONER BEARING NO.AAF741922 AND BUSINESS VISA PAGE BEARING NO.90165FDEJ VALID TILL 15.07.2020 |
| EXHIBIT P3 | TRUE COPY OF EXIT PERMIT ISSUED BY THE 4TH RESPONDENT ,FOREIGNERS REGISTRATION OFFICE (FRRO) THIRUVANANTHAPURAM TO THE 1ST PETITIONER DATED 29.06.2020 |
| EXHIBIT P4 | TRUE COPY OF THE RELEVANT PAGES OF PASSPORT BEARING NO.488584131 AND TOURIST VISA PAGE OF THE 2ND PETITIONER |
| EXHIBIT P5 | TRUE COPY OF EXIT PERMIT ISSUED BY THE 4TH RESPONDENT, FOREIGNERS REGISTRATION OFFICE (FRRO), THIRUVANANTHAPURAM TO THE 2ND PETITIONER DATED 25.06.2020 |
| EXHIBIT P6 | TRUE COPY OF THE RELEVANT PAGES OF PASSPORT BEARING NO.595798227 AND TOURIST VISA PAGE OF THE 3RD PETITIONER |
| EXHIBIT P7 | TRUE COPY OF EXIST PERMIT ISSUED BY THE 4TH RESPONDENT, FOREIGNERS REGISTRATION OFFICE (FRRO), THIRUVANATHAPURAM, TO THE 3RD PETITIONER DATED 25.06.2020 |
| EXHIBIT P8 | TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER THROUGH EMAIL BEFORE THE 2ND AND 4TH RESPONDENT DATED 30.06.2020 |
| EXHIBIT P9 | THE TRUE COPY OF THE REPLY RECEIVED BY THE PETITIONER ON 01.07.2020 IN RESPONDENT TO EXT-P8 REPRESENTATION |

