



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 24TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 11952 OF 2024 (GM-PASS)

BETWEEN:

SRI SAGAD KAREEM ISMAEL
AGED ABOUT 33 YEARS
RESIDING AT ALWAZIRIA
Q301 ST21 HB/1
BAGHDAD, IRAQ 00964
REPRESENTED BY HIS SPA HOLDER
SRI MUNTADHER AHMED
S/O AHMED ABDUL HASAN
AGED ABOUT 22 YEARS
RESIDING AT NO.226
10TH B MAIN, DODDABANASWADI
BENGALURU NORTH
BENGALURU – 560 043.

...PETITIONER

(BY SRI APPU KUMAR, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, DELHI-1
REPRESENTED BY SECRETARY.
2. MINISTRY OF EXTERNAL AFFAIRS
IMMIGRATION DEPARTMENT
GOVT. OF INDIA
NEW DELHI - 01
REPRESENTED BY SECRETARY.





3. FOREIGNERS REGIONAL
REGISTRATION OFFICE
5TH FLOOR, 'A' BLOCK
TTMC BMTC BUS STAND BUILDING
K.H.ROAD, SHANTHINAGAR
BENGALURU – 560 027
REPRESENTED BY
REGISTRATION OFFICER.

4. THE EMBASSY OF INDIA
22 STREET NO.16
DISTRICT 609, AL MANSOUR
BAGHDAD IRAQ
BY ITS SECRETARY.

...RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT TO CONSIDER THE VISA APPLICATION OF THE PETITIONER DTD 22.02.2024 A COPY OF WHICH IS PRODUCED AT ANNEX-C EXPEDITIOUSLY AND AT ANY RATE WITHIN THE TIME TO BE STIPULATED BY THIS HONBLE COURT TO MEET THE ENDS OF JUSTICE.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is a citizen of Baghdad, Iraq. It appears that the petitioner had come to India on a medical Visa by submitting necessary documents to the Embassy of India in Baghdad. The background to the submission of the said



application was that his medical investigations that he underwent in Basra Health Department had detected three small cerebral lesions while he underwent MRI of brain. This led him for a consultation of the Doctor at Aster CMI Hospital at Bangalore which had opined that he would require medical management, further treatment and investigation. It was the opinion of the hospital that treatment would be necessary for three months which would be extendable depending upon his condition. This was based upon the report sent by the Hospital at Basra to the Aster CMI Hospital, Bangalore. The petitioner applies for a medical Visa for his entry into India on 22-02-2024. Visa application was sent by electronic mail. The petitioner then requested to consider the Visa application so submitted by way of mail which was not acceded to by the third respondent/Foreigners Regional Registration Office. The petitioner was directed to contact the Indian Mission abroad regarding Visa queries of foreigners. It is then the petitioner again submits a reminder with further request that he be given medical Visa on account of his problem. The petitioner was directed to approach the Indian Embassy by way of a reply to the said request made by the petitioner. Then, the petitioner



executes a Special Power of Attorney ('SPA' for short) in favour of a person who has presented the subject petition as the petitioner was not able to come over to India. The prayer that is sought for in the petition by the SPA holder is for a mandamus directing the respondents to consider the Visa application dated 22-02-2024 and grant him an entry for his treatment into the country.

2. The learned counsel appearing for the petitioner submits that the petitioner is forced to represent himself through the SPA holder as he is not able to travel to India on account no Visa being granted on consideration of his application. It is his submission that both the petitioner and the SPA holder have passports of their respective countries and they are in subsistence. He would further submit that the petitioner has no other go but to take treatment for his illness since the doctor at Aster, CMI Hospital on examining the report of the petitioner has opined that the treatment initially for three months should be taken which may be extended. He seeks a mandamus to the respondents to consider his request for grant of Visa.



3. Per contra, Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents would vehemently refute the submissions to contend that the petitioner, an Iraqi national first visited India in the year 2012 on a student Visa, to study B-Pharma in two colleges in Bangalore. He is said to have completed that course in 2017 and departed India in 2017 after overstaying for 11 months. Since he has overstayed, his name has been placed in the blacklist with retention till 22.05.2019. He has again attempted to travel to India on 03.11.2017 on medical attendant Visa. He was refused entry. He had approached this Court in W.P.No.7696 of 2020. That petition is still pending in the stage of office objection. It is his submission that all is not well; that the intention of the petitioner, a citizen of Iraq is to enter into this country time and again on medical attendant Visa or medical Visa for *bona fide* purpose. Since the name of the petitioner is in the blacklist, no Visa can be granted to him particularly on an application made by his SPA holder for the purpose. It is his submission that under the Powers of Attorney Act, 1882 ('the Act' for short) a foreigner cannot be represented before this Court through the subject petition for



grant of Visa or passport as the case would be. It is his further submission that all these factors are deliberately suppressed in the petition.

4. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

5. The afore-narrated reason for filing the subject petition is what is averred in the petition. The petition projects for the first time the petitioner has applied for medical Visa to come to India - Aster CMI Hospital, Bangalore. The reason projected is that he has three small cerebral lesions in the brain which came to light on a MRI being performed on him. The opinion of the doctor is that treatment would be required for a period of three months initially. The Aster CMI Hospital, Bangalore communicates to the Consulate Indian High Commission at Iraq for grant of a medical Visa. The communication reads as follows:

"
To
The Visa Consulate,
High Commission of India

Date:22/02/2024



Republic of Iraq

Sub:VISA Invitation Letter for Medical Treatment Aster CMI

Your Excellency,

Greetings from Aster CMI Hospital-Bangalore (India).

*This is to bring to your notice that a patient named **Mr.Sagad Kareem Ismael** would like to come to our hospital for treatment under **Dr. K V S Reddy, Sr.Consultant - Internal Medicine**, we have received the Patient's reports, patient will require medical management and further treatment based on the investigation.*

*The patient needs to stay here minimum period of 3 months and may have to extend their visa based on **his** recovery status, it is important to have an attendant with the patient for medical concern and decision making on patient behalf, so kindly request you to issue the medical visa at the earliest.*

Please find the details of the passport:

*Patient Name: Mr. Sagad Kareem Ismael
Passport Number: B10182391*

*Ananth Nag
Aster CMI Hospital
T: +91 8043420100"*

The communication sought the petitioner's entry into India for a minimum period of three months and also sought extension based on his recovery status. It also communicated that it is important to have an attendant with the patient for the medical concern. All this was based upon the MRI that was



conducted to the Brain. The result of the MRI in Bagdad Iraq is as follows:

"Brain MRI (Native and contrast study)

Evidence of multiple (three small cerebral lesions, the largest measures 1,7cm seen at LT parietal lobe, surrounded by abnormal signal intensity hemorrhagic area

*Show peripheral (marginal) enhancement in post contrast study...
Metastasis? to be correlated with clinical and lab investigation.*

Normal ventricular system and CSF cisternas

Normal sellar and para sellar region

Normal midbrain, brain stem and medulla oblangta

Normal both cerebello-pontine angles, no mass or area of abnormal enhancement

Normal post fossa centents

No bony losion"

Since the request of the petitioner to come to India is not acceded to, he approaches the Indian Embassy at Bagdad by submitting a mail. When none of these were acceded to by the respondents, he executes a SPA in favour of the person, a resident of Bangalore who has represented the petitioner



before this Court. The SPA is executed at Bagdad. Before considering the issue whether the petitioner could have executed a SPA sitting at Bagdad to seek a mandamus before this court for grant of a Visa, I deem it appropriate to take a little walk in history of the petitioner, as projected by the learned Deputy Solicitor General of India Sri H.Shanthi Bhushan.

6. On instructions and receipt of information, the learned Deputy Solicitor General of India has produced certain documents which would divulge that the petitioner first visited India in 2012 on a student Visa to study B-Pharmacy course from two institutions – Acharya College of Pharmacy and B.M. Reddy College of Pharmacy. He stays here for more than 5 years, departs India on 17.07.2017 on the strength of an exit permit issued on him as he was overstaying for 11 months. Due to his overstay of 11 months without rhyme or reason, his name was placed in the blacklist and was prohibited from entering India till 22.05.2019. Despite this, the petitioner attempts to travel to India on the strength of a medical attendant Visa, a different kind of Visa that permits a person to



be an attendant to a holder or a medical Visa. His entry was refused into the shores of this nation as his name was in the retention list till 22.05.2019. Challenging this action, Writ Petition comes to be filed in W.P.No.7696 of 2020 in which office objections are still to be complied with despite passage of four years. The matter is pending before this Court. He again secures a medical Visa during COVID-19 pandemic, enters India on that Visa on 02.12.2019, stays in India up to 18.12.2021 on the said medical Visa, departs India when an exit permit was again forced to be issued on the petitioner.

7. The documents further reveal that when the exit permit was being processed, it was noticed that the petitioner removes the Visa sticker for medical attendant Visa from pages 14 and 15 in his current passport and communication to him being refused due to blacklisting. The documents further reveal that the name of the petitioner in the earlier passport and applications for grant of Visa was Sajjad Kareem Ismael. The medical Visa application comes to be rejected on the score that he was blacklisted. The petitioner secures a new passport. In the new passport the name of the petitioner is changed from



Sajjad Kareem Ismael to Sagad Kareem Ismael. All these maze of falsities that are projected by the Union of India and suppression of these materials by the petitioner would undoubtedly lead to dismissal of the petition with imposition of exemplary costs. Since the petitioner is represented by another person who would not be aware of these factors, this Court is holding its hands on imposition of exemplary costs. The petitioner has projected a person who is a *bona fide* patient and wants to enter India somehow or the other.

8. The petitioner entered India on two occasions and on both the occasions on medical Visa and medical attendant Visa, initially on a student Visa. Since he is placed in blacklist for overstaying and he has been deported on issuance of exit permit, no relief of the kind that is prayed can be granted to the petitioner. Here it is appropriate to observe that the Foreign Regional Registration Officer of FRRO should cautiously deal with such applications as the petitioner has been granted medical Visa not once but twice when he has overstayed for more than two years and should not also blindly look into an opinion from the hospital and grant such Visas as *bona fides* of



the petitioner or the persons like the petitioners are always a suspect.

9. The other issue is whether a foreign national can execute a SPA sitting elsewhere in the globe for the purpose of filing a writ petition invoking Article 226 of the Constitution of India. The power of attorney is admittedly executed invoking the powers of attorney Act, 1882 (the 'Act' for short). The Act nowhere permits a foreign national to sit somewhere in the globe, execute a power of attorney invoking the Act and seek to get entertainment of a petition or a case before any courts in India. The petitioner is wanting to do what the Act does not permit him to do. If it were to be such grave medical emergency as is sought to be projected, it would have been a circumstance altogether a different. In the considered view of the Court the projection is ***pseudo***. The petitioner's projection is not for the first time, but it is for the third time. Lesion in the brain appears to have increased every time or even the reason for illness. Such power of attorneys which are executed by foreign nationals invoking the Act cannot be recognized, and



is sans countenance. Finding no merit in the petition, the petition stands rejected.

**Sd/-
JUDGE**

KG
List No.: 1 Sl No.: 100