

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.2084 of 2015.

Roman Catholic Diocese of Islamabad/Rawalpindi through its Bishop R/o Bishop’s House, Church Road, Lalkurti Rawalpindi, Cantonment & another.

Vs.

Federation through Secretary Ministry of Interior, Islamabad & six (6) others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01. 24.06.2015. *Rana Abid Nazir Khan, Advocate for the petitioners.*

Through the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners assail letter dated 16.06.2015 issued by respondent No.1 whereby the visas earlier granted to three (3) Philippines Missionary Workers were cancelled.

2. Petitioner No.1 is a recognized Organization working in Pakistan for minorities (Christians) under the control of ‘POPE’ whereas petitioner No.2 is Diocesan Board of Education working for providing standard education through Missionary Schools in Pakistan since 1960 and is registered under the Societies Act, 1860, running schools in Punjab, KPK and Islamabad Capital Territory. In pursuance of arrangements between petitioner No.2 and Foreign Missions visas were issued to sisters from Religious Virgin Mary Congregation for the purpose of missionary work in Pakistan. In this behalf the arrangement/agreement was lastly renewed in June, 2014 for three (3) years and Missionary Sisters were allowed to continue their work. On 02.04.2015, request for extension of two years of missionary visas of Sisters Miraflor Aclan Bahan, Delia “Coyoca Rubio and Alizabeth Umali Seguenza was sent to Visa Section of Director

General Immigration & Passport, Islamabad and the same was granted as per request on 07.05.2015. On 17.06.2015, a letter was received from respondent No.1 whereby vide letter dated 16.06.2015, visas of above mentioned Sisters were cancelled due to the reason that the workers are involved in employment, therefore, it constitutes change in the category of visas.

3. The learned counsel for the petitioner, inter alia, submitted that only few days ago visas of above mentioned Sisters were renewed, therefore, cancellation of same is without any justification or reason. It was further contended that cancellation was based on malafide and is colourable exercise of authority & without any lawful justification; the visas have been cancelled without affording any opportunity of hearing to the concerned persons.

4. During the course of arguments, learned counsel for the petitioners was confronted with maintainability of the petition in light of the fact that instant petition has not been filed by the missionary sisters but by the petitioners who are not directly aggrieved of the impugned letter. In reply to query of the Court, learned counsel placed reliance on cases reported as **PLD 1969 SC 223**, **PLD 1976 Lahore 834**, **PLD 1974 Karachi 81**, **PLD 1993 Karachi 234** and **PLD 1988 SC 416** to substantiate his submission that in order to invoke jurisdiction under Article 199 of the Constitution the person need not have a right in the strict juristic sense but it is enough if the applicant discloses that he had a personal interest in the performance of legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or curtailment of privilege, liberty or franchise. The learned counsel further submitted that since missionary sisters came to Pakistan in pursuance of the agreement between petitioner No.2 and the missionaries from Religious Virgin Mary

Congregation, therefore, it has sufficient locus standi to institute the instant petition.

5. The power(s) to pass orders for granting permission to enter or leave the country is provided in section 3 of the Foreigners Act, 1946. The referred provision of law is reproduced below for the sake of brevity:

“3. Powers to make orders.—(1) The Federal Government may by orders make provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed Class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into Pakistan or their departure therefrom or their presence or continued therein.

2. In particular and without prejudice to the generality of the foregoing power, order made under this section may provide that the foreigner:--

(a) shall not enter (Pakistan) or shall enter (Pakistan) only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from (Pakistan) or shall depart only at such times and by such route and from such port or place and subject to departure as may be prescribed;

(c) shall not remain in (Pakistan) or in any prescribed area therein;

(d) shall remove himself to, and remain in, such area in (Pakistan) as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified;

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as maybe prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as maybe prescribed or specified;

(vi) prohibiting him from association with person of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of or as an alternative to the enforcement of any or all prescribed or specified restrictions or conditions;

(g) shall be arrested and, in the interest of the defence or the external affairs or the security of Pakistan, or any part thereof, detained or confined.

Provided that a person shall not be detained for a period longer than two months without the authority of a Board consisting of a Judge of the “Supreme Court who shall be nominated by the ‘Chief Justice of the Court and another senior officer in the service of Pakistan, who shall be nominated by the President.

(3) An order made under sub-section (2) may make provisions for such incidental and supplementary matters as may in the opinion of the [Federal Government] be expedient or necessary for giving effect to the provisions of this Act.

(4) The Provisions of sub-section (2) of section 6 of the Security of Pakistan Act, 1952 (XXXV of 1952) and those of section 6-A of that Act, shall mutatis mutandis, apply in relation to a person detained under this Act as they apply in relation to a person detained under that Act.

Leave granted to foreigners to stay in Pakistan is in the nature of concession/ privilege and cannot be termed as a right to remain in the Country. Since leave to stay in the Country by a foreigner is not as of right, therefore, enforceability cannot be sought by means of constitutional petition. In this behalf reliance is placed on case

titled “Said Mohammad Khan vs. Registration Officer, CID” (PLD 1962 West Pakistan Karachi 595). The Hon’ble Division Bench of West Pakistan High Court, Karachi observed that Government of Pakistan is not bound to give its reasons why it does not want foreigner to stay in Pakistan beyond a certain date.

Similarly, in “Jean Charles Groosen vs. The Sate of Pakistan” (PLD 1980 Peshawar 275) the Hon’ble Division Bench of Peshawar High Court held that every Sovereign State has inherent powers to restrict entry into its territory or the movements in it of any foreigner. This right of Sovereign State cannot be hampered with by any principle of natural justice or on the ground of equity as such restriction would not commensurate with the concept of sovereignty of a State. It was further observed that the Central Government enjoys unlimited powers under section 3 of the Foreigners Act, 1946 and the Foreigners Order, 1951 to prohibit or restrict entry of any particular foreigner or any prescribed class or description of foreigners, in Pakistan.

In case titled “Wang Lilly vs. Ministry of Interior, Islamabad” (1997 MLD 1594), the Hon’ble Lahore High Court observed as follows:

“9. In light of the judgments referred above the petitioner being not citizen of Pakistan is not entitled to such relief. It is absolute power of the Government to give or cancel the visa, without hearing or giving any reason and such an order cannot be held without lawful authority. The Government is fully competent to permit any body to stay or to deport any body, who is found not entitled to stay in the country. The order deporting the petitioner from Pakistan cannot be held illegal or without jurisdiction. The order dated 10-7-1996 cancelling the Visa of the petitioner falls within the jurisdiction of respondent No.2. His exercise of such jurisdiction is not colourful and mala fide.

No material has been placed on record to establish mala fides on the part of respondent No.2, as alleged in the petition. Since the petitioner has already given birth to a child during first week of September, therefore, the emergency is over and she can be safely deported to her own country.”

In case titled “Mohammad Ali & another vs. Government of Sindh” (1986 CLC 1123) the Division Bench of Hon’ble Sindh High Court held as follows:

“That under section 3 of the Foreigners Act, 1946, the Federal Government has express powers to pass order directing that a foreigner shall not remain in Pakistan or in any prescribed area therein.

It was further observed that under Article 199 of the Constitution the High Court would not enter into disputed questions of facts and the party applying for writ would be required to show clean legal right free from reasonable doubt or controversy.”

6. In light of case law mentioned above it is clear that Central Government is empowered to provide for prohibiting, regulating or restricting the entry of foreigners into Pakistan, or their departure therefrom or their continued presence therein. In this behalf the power exercised by respondent No.1 was within its authority and cannot be said to be a colourable exercise or misuse of authority.

7. With regards to the locus standi of the petitioners, the learned counsel has placed reliance on various judgements to show that in order to invoke jurisdiction of this Court under Article 199 of the Constitution there has to be some right which may not be a justiciable right, however, the Hon’ble Supreme Court of Pakistan in case titled “Dr. Imran Khattak & another vs. Ms. Sofia Waqar Khan, PSO to CJ & others” (2014 SCMR 122) held as follows:

“a High Court would exercise its extraordinary discretionary Constitutional jurisdiction where it is satisfied that, subject to the Constitution, no other adequate remedy is provided by law. It would exercise such jurisdiction under Article 199(1)(a)(i), (ii) and (c) on the application of an aggrieved person while under 199(1)(b)(i) & (ii) on the application of any person whether aggrieved or not, and not on an information or on its own knowledge. In the case of "Tariq Transport Company, Lahore v. Sargodha Bhera Bus Service and others" (PLD 1958 SC (Pak) 437), this Court held that a High Court was not competent merely on an information or on its own knowledge to commence certiorari proceedings or other proceedings of a similar nature under Article 170 of the Constitution of Islamic Republic of Pakistan, 1956. In the case of "Fazl-e-Haq, Accountant General, West Pakistan v. The State" (PLD 1960 SC (Pak) 295), this Court reiterated the view by holding that the extraordinary jurisdiction relating to a writ could only be exercised by the High Court when moved by a party whose legal rights have been denied.”

Similarly, in case titled “Hafiz Hamdullah vs. Saif Ullah Khan & others” (PLD 2007 SC 52) Apex Court held as follows:

“under Article 199(1)(a) of the Constitutional jurisdiction of the High Court can be invoked by an aggrieved person which denotes a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused him something which he was legally entitled to. It is also the requirement that the person invoking the constitutional jurisdiction under Article 199 of the Constitution has to establish that any of his legal or fundamental right guaranteed under the Constitution has been violated resulting in legal loss. It is, however, to be noted that respondent No.1 has approached High Court of Balochistan by way of a

constitutional petition wherein he had prayed for issuance of a writ of quo warranto against the appellant.”

In “N.W.F.P. Public Service Commission & others vs. Mohammad Arif & others” (2011 SCMR 848) it was held as follows:

“The right which is the foundation of an application under Article 199 of the Constitution is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justiciable' right in existence, to give jurisdiction to the High Court in the matter. Unless whatever right personal or otherwise, on which the application is based is established, no order can be issued under Art.199.”

8. The petitioners are not aggrieved persons within the meaning of the word as provided in Article 199 of the Constitution inasmuch as the missionary sisters though came to Pakistan in pursuance of the agreement between petitioner No.2 and Religious Virgin Mary Congregation but their visas have been cancelled, therefore, they are aggrieved of the impugned letter.

9. The petitioners also alleged malafide in the instant petition on the part of respondent No.1. The allegations made in the instant petition involve questions of facts which cannot be determined or adjudicated in the constitutional petition.

10. For the foregoing reasons the instant petition is without merits and is dismissed in **limine**.

(AAMER FAROOQ)
JUDGE

**Altaf Malik **