

Ashok Swain vs Union Of India & Ors. on 28 March, 2025

Author: Sachin Datta

Bench: Sachin Datta

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on:

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W.P.(C) 11928/2023

ASHOK SWAIN

Through:

Mr. Aadil Singh
Mr. Gurveer Lally, Mr.
Dubey and Mr. Sachin
Advocates.

versus

UNION OF INDIA & ORS.

Through:

Ms. Shiva Lakshmi, CG
with Mr. Govind Sharm
for UOI.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

Factual Background and Submissions of Respective Counsel

1. The present petition has been filed by the petitioner assailing the order dated 30.07.2023 passed by the respondent no.3/Second Secretary (Consular), Embassy of India, Stockholm, whereby, the petitioner's registration as Overseas Citizenship of India ('OCI') Cardholder has been sought to be cancelled.

2. It is the case of the petitioner that the said order is a non-speaking order, devoid of any reason to exercise the powers under Section 7-D(e) of the Citizenship Act, 1955, and as such cannot withstand the scrutiny of law. It is further averred in the petition that even though the petitioner has been ostensibly blacklisted for anti-India activities and/or spreading detrimental propaganda through his writings and speeches in various public forums, the impugned order is bereft of any specific details as regard thereto.

3. It is emphasized in the petition that the petitioner is a renowned scholar and has been serving as the Professor and Head of Department of the Peace and Conflict Research, Uppsala University, Sweden. It is stated that the petitioner became the first UNESCO Chair of Uppsala University, since his appointment in 2017 as the Chair on International Water Cooperation. Furthermore, the petitioner had been granted citizenship by the Government of Sweden in 2006.

4. It is averred that in his writings/tweets, the petitioner has analyzed and criticized certain policies of the Government, however, mere critique of the policies of the Government shall not tantamount to anti-India activities under Section 7-D(e) of the Citizenship Act, 1955.

5. A notice dated 06.11.2020 came to be initially issued by First Secretary (Consular), Embassy of India to Sweden & Latvia (respondent no.3) which required the petitioner to show cause as to why his registration as an OCI Cardholder be not cancelled on the ground of having indulged in "inflammatory speeches and anti-India activities". The petitioner was asked to submit his version of the facts with supporting documents, if any, to the Indian Mission at Stockholm within 21 days from the date of receipt of this notice. Pursuant thereto, a reply to the said show cause notice was sent by the petitioner on 25.11.2020, inter alia, stating as under :-

"Thus, it will be only possible for me to reply to the Show Cause Notice if you can kindly provide me the specific speech and alleged activity which you allege to be "Inflammatory speeches" and "anti-India activities", along with the documents/ evidence complained of.

Otherwise, as a continuation of the above-humble submission, it is requested that the Show Cause Notice may kindly be withdrawn and to allow me to visit my old and ailing mother who lives alone and relies on my support, as well as my parents-in-law in India."

6. Subsequently, an OCI Cancellation Order dated 08.02.2022 was issued by the respondent no.3 / Counsellor (Consultant & Culture), Embassy of India in Stockholm, stating as under :-

"OCI Cancellation Order This is with reference to your letter dated 26 November 2020 addressed to the undersigned containing your response to the Show Cause Notice dated 6 November 2020 issued by this Embassy regarding the cancellation of the Overseas Citizen of India (OCI) card issued to you.

The said reply has been examined by the authorities concerned in the Government of India. This is to convey that your reply to the Show Cause Notice has not been found satisfactory.

Therefore, in exercise of powers conferred under the Section 7D(e) of the Citizenship Act, 1955, the Government of India through the Indian Embassy in Stockholm, hereby cancel the registration as OCI cardholder granted to Mr. Ashok Swain with immediate effect.

Accordingly, in terms of rule 35(1) of the Citizenship Rules, 2009, you are hereby directed to deliver the OCI Card bearing number A3774535 to the undersigned within 15 days from the date of receipt of this letter failing which it shall be treated as cancelled under Rules, 35(2) of the Citizenship Rules, 2009 after expiry of 15 days from the date of receipt of this letter."

7. A writ petition bearing W.P.(C) 16823/2022 came to be filed by the petitioner assailing the said order dated 08.02.2022. The same was disposed of by this Court vide order dated 10.07.2023, inter alia, holding as under :-

"3. Other than repeating the Section as a mantra, no reason has been given in the order as to why the registration of the Petitioner as an OCI card holder has been revoked. It is well settled that reasons act as a link between the actual decision and the thought process of the decision maker. Reasons in an order demonstrates that the order is not a result of caprice, whims or fancies and has been arrived at after considering the facts and it reflects and establishes that the decision was just. Therefore, the Respondents are directed to pass a detailed order giving reasons for exercising powers under Section 7(D)(e) of the Citizenship Act.

4. In view of the above, the impugned Order is set aside. The Respondents are directed to complete the exercise within three weeks from today.

5. It is made clear that this Court has not expressed any opinion on the merits of the case."

8. In the counter-affidavit filed on behalf of the respondents in the present petition, it has been averred that in compliance with the aforesaid order dated 10.07.2023 in W.P.(C) 16823/2022, a revised and detailed order dated 30.07.2023 has been issued, cancelling the petitioner's registration as an OCI cardholder. The said order reads as under:-

"

No. ST0/CONS/406/6/20

ORDER

WHEREAS, Mr. Ashok Swain, a Swedish national (Swedish passport no.91560307), had applied for grant of registration as an OCI cardholder at the Embassy of India in Stockholm on 05/12/2019.

AND WHEREAS, such registration as OCI cardholder was granted to Mr. Ashok Swain by the Embassy of India in Stockholm and an OCI Card bearing No. A3774535 was issued to him on 14/01/2020.

AND WHEREAS, it had been brought to the notice of the Government of India by security agencies that Mr. Ashok Swain has been blacklisted for anti-India activities like spreading detrimental propaganda through his writings and speeches in various public forums. Mr. Ashok Swain has been found to be involved in hurting religious sentiments, spreading hatred propaganda and creating rift on religion and attempting to destabilize the social fabric of India. These activities are deemed to be

inimical to India's sovereignty, security and integrity and against public interest.

AND WHEREAS, Mr. Ashok Swain has been posting tweets regularly on his twitter account <https://twitter.com/ashoswai>, which is in public domain. He has defamed India on social media platforms by carrying out detrimental propaganda through his writing and speeches in various public forums thereby damaging India's image and its public institutions at international level.

AND WHEREAS, Fundamental Right to freedom of speech & expression to move freely and settle in any part of the territory of India as mentioned in Article 19(1)(a) and 19(1)(e) of the Constitution of India are only applicable to citizens of India. Hon'ble Supreme Court of India in the case of Louis De Raedt & Ors. vs. UOI and Ors. [1991 SCR (3) 149] had observed that the Fundamental Rights of foreigners are confined to Article 21 of the Constitution of India for life and liberty only and do not include the right to reside and settle in this country as mentioned in Article 19(1)(e) of the Constitution, which is applicable only to the citizens of this country. Mr. Ashok Swain, being a foreign national, is not entitled to these fundamental rights under Constitution of India.

AND WHEREAS, it was held by the Constitution Bench of Hon'ble Supreme Court of India in the case Hans Mueller of Nurenburg v Superintendent, Presidency Jail, Calcutta [1955 SCR (1) 1284: AIR 1955 SC 367 : 1955 Cri LJ 876], that the power of the Government of India to expel foreigners conferred by section 3(2)(c) of the Foreigners Act, 1946 is absolute and unlimited and there is no provision in the Constitution of India fettering this discretion.

AND WHEREAS, the OCI Card is a lifelong visa granted to a foreign national of Indian origin or their relatives. The grant of a Visa is a plenary sovereign function of the Government of India. Foreign nationals cannot claim visa services as a matter of right. Visa service is meant only for those foreign nationals who intend to arrive/ stay/depart in/from India legally and follow Indian laws and rules.

AND WHEREAS, after consideration of the facts and circumstances in the matter, the Government of India through the Notice No. STO/CONS/406/6/20 dated 06/11/2020 of Embassy of India, Stockholm, served "Show Cause Notice" on Mr. Ashok Swain as to why his registration as OCI cardholder should not be cancelled under section 7D(e) of The Citizenship Act, 1955.

AND WHEREAS, Mr. Ashok Swain, vide letter dated 25/11/2020, had given reply to "Show Cause Notice" dated 06/11/2020.

AND WHEREAS, the reply of Mr. Ashok Swain has been examined and the Government of India is satisfied that the actions of Mr. Ashok Swain to spread detrimental propaganda through his writings and speeches in various public forums

and his actions have led to damage of India's image and institutions at international level. These actions are deemed to be inimical to sovereignty, security and integrity of India and also against public interest.

THEREFORE, Government of India is satisfied that it is necessary to cancel Mr. Ashok Swain's OCI card under Section 7 D (e) of the Citizenship Act, 1955.

NOW THEREFORE, in exercise of its powers conferred under the section 7D(e) of The Citizenship Act, 1955, the Government of India through the Embassy of India, Stockholm, hereby cancels the registration as OCI cardholder granted to Mr. Ashok Swain with immediate effect.

Accordingly, in terms of rule 35 (1) of the Citizenship Rules, 2009, Mr. Ashok Swain, a Swedish national, is hereby directed to deliver the OCI Card bearing number A3774535 to the concerned authority in Embassy of India, Stockholm within 15 days from the date of receipt of this order, failing which it shall be treated as cancelled under Rule 35(2) of the Citizenship Rules, 2009 after expiry of 15 days from date of receipt of this order.

Sd/-

(Pawan Kumar) Second Secretary (Consular)"

9. It is the case of the petitioner in the present petition that even the above order dated 30.07.2023 is unsustainable inasmuch as the same has been passed in a mechanical manner, merely on the strength of bald averments that the petitioner has been spreading detrimental propaganda through his writings.

10. It is contended that the said order is "a name-sake attempt at passing a detailed order as directed by this Hon'ble Court vide order dated 10.07.2023, and the same is bereft of any material particulars/ reasons to believe that the activities of the petitioner are deemed to be inimical to India's sovereignty, security and integrity and against the public interest".

11. It has also been averred in the present petition that the petitioner has an ailing mother, aged about 78 years, who is suffering from various medical ailments including diabetes, high blood pressure and other age- related ailments. It is submitted that there is an extreme urgency for the petitioner to visit India to tend to his ailing mother.

12. The petitioner is also stated to have filed a revision petition under Section 15 of the Citizenship Act, 1955 read with Rule 42 of the Citizenship Rules, 2009, before the respondent no.2 (Ministry of External Affairs) assailing the order dated 08.02.2022. However, the said revision petition has remained un-adjudicated by the respondent no.2.

13. Learned counsel for the respondents opposes the present petition contending that:-

i. as per the section 7-D(e) of the Citizenship Act, 1955, the Central Government may, by order, cancel the registration granted under sub-section (1) of section 7-A, if it is satisfied that it is necessary to do so in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

ii. the grant of a visa is a plenary sovereign function of the Central Government and across the world, the matters concerning the non-grant, rejection or cancellation of visas, are not justiciable. It is humbly submitted that grant of a visa is not an enforceable right, let alone a Fundamental Right and grant of a visa is a privilege that any country grants to a foreigner. The said visa is always subject to unilaterally imposed restrictions and remains terminable unilaterally in case of a breach. In light of the same, it is submitted that the present petition is not maintainable; iii. relying upon Section 3 of the Foreigners Act, 1946, it is contended that the Central Government has sovereign powers to make any order regulating or restricting the entry of foreigners into India or their departure therefrom;

iv. it is submitted that in terms of Section 2(a) of the Foreigners Act, 1946, "Foreigner" is defined as under :-

"2(a) "foreigner" means a person who is not a citizen of India"

v. it is submitted that foreign nationals like the petitioner cannot claim visa services from the Central Government or assert as a matter of right that they have an individual right to come into their country. Reliance in this regard is placed upon Mr. Louis De Raedt. & Union of India and Ors., (1991) 3 SCC 554 and Hans Mueller of Nurenburg v. Superintendent, Presidency Jail, Calcutta, 1955 SCR (1) 1284; AIR 1955 SC 367.

vi. it is submitted that the cancellation of registration of an OCI Cardholder can be resorted to as a matter of sovereign discretion, which is exercisable on the basis of national/ public interest, security concern, foreign relations etc. It is further averred in the counter-affidavit that the Ministry of External Affairs examined the activities of the petitioner in view of reports received from security agencies, which revealed that the petitioner persistently and wilfully "indulged in writings and inflammatory speeches that tarnished the image of the country and its institutions in the eyes of international community undermining the nation and hurting the interests of the country and its people".

14. Accordingly, the registration of the petitioner as an OCI Cardholder was cancelled under Section 7D(e) of the Citizenship Act, 1955. It is emphasized that in compliance with the directions of this Court vide order dated 10.07.2023 in W.P.(C) 16823/2022, the respondent no.3 (Embassy of India to Sweden & Latvia) passed an elaborate order dated 30.07.2023 (supra).

15. It is submitted by the learned counsel for the respondents that the action of the respondents cannot be faulted and the present petition is liable to be dismissed.

16. During the course of hearing, learned counsel for the respondents has produced the relevant tweets/writings of the petitioner which have been found to be objectionable. The same have been perused by the Court.

17. It is contended by the learned counsel for the respondents that a perusal thereof clearly demonstrates that there is adequate justification for the impugned order, by virtue of which, the petitioner's registration as an OCI Cardholder has been cancelled.

18. It is submitted that the nature of the tweets made by the petitioner is such that the same can be said to be inimical to the interest of sovereignty, integrity and security of India.

19. It is submitted that the writings of the petitioner are inflammatory in nature and have the effect of tarnishing the image of the country and its institutions in the eyes of the international community, thus undermining the national interest and also the public interest at large.

Reasoning and Findings

20. It is noticed that in terms of Section 7-B of the Citizenship Act, 1955, read with notification dated 04.03.2021 issued in exercise of the powers conferred by Section 7-B(1) of the Citizenship Act, 1955, certain vital rights have been conferred on an OCI cardholder. In terms of the said notification, the entitlements of an OCI cardholder are as under :-

"(1) grant of multiple entry lifelong visa for visiting India for any purpose:

Provided that for undertaking the following activities, the OCI cardholder shall be required to obtain a special permission or a Special Permit, as the case may be, from the competent authority or the Foreigners Regional Registration Officer or the Indian Mission concerned, namely:-

(i) to undertake research;

(ii) to undertake any Missionary or Tabligh or Mountaineering or Journalistic activities;

(iii) to undertake internship in any foreign Diplomatic Missions or foreign Government organizations in India or to take up employment in any foreign Diplomatic Missions in India;

(iv) to visit any place which falls within the Protected or Restricted or prohibited areas as notified by the Central Government or competent authority;

(2) exemption from registration with the Foreigners Regional Registration Officer or Foreigners Registration Officer for any length of stay in India:

Provided that the OCI cardholders who are normally resident in India shall intimate the jurisdictional Foreigners Regional Registration Officer or the Foreigners Registration Officer by email whenever there is a change in permanent residential address and in their occupation;

(3) parity with Indian nationals in the matter of,-

(i) tariffs in air fares in domestic sectors in India; and

(ii) entry fees to be charged for visiting national parks, wildlife sanctuaries, the national monuments, historical sites and museums in India;

(4) parity with Non-Resident Indians in the matter of,-

(i) inter-country adoption of Indian children subject to the compliance of the procedure as laid down by the competent authority for such adoption;

(ii) appearing for the all India entrance tests such as National Eligibility cum Entrance Test, Joint Entrance Examination (Mains), Joint Entrance Examination (Advanced) or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any supernumerary seat:

Provided that the OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens;

(iii) purchase or sale of immovable properties other than agricultural land or farm house or plantation property; and

(iv) pursuing the following professions in India as per the provisions contained in the applicable relevant statutes or Acts as the case may be, namely:-

- (a) doctors, dentists, nurses and pharmacists;
- (b) advocates;
- (c) architects;
- (d) chartered accountants;

(5) in respect of all other economic, financial and educational fields not specified in this notification or the rights and privileges not covered by the notifications made by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 (42 of 1999), the OCI cardholder shall have the same rights and privileges as a foreigner."

21. It has been judicially recognised that an OCI cardholder benefits from the privileges that elevate them above the ordinary foreign nationals, aligning them, in many respects, with Indian Citizens.

22. The Supreme Court has also taken note of the special status of OCI cardholders and has termed the right conferred on such OCI cardholders as a "midway" right. In *Anushka Rengunthwar v. Union of India*, (2023) 11 SCC 209, it has been observed as under :-

"46. To put the matter in perspective and understand the concept based on which the rights are being claimed by the petitioners, it is necessary to advert to the fact situation and the law governing them despite being classified as "foreigner". Most of the petitioners are all persons who are either of full age or are yet to reach the full age but are all children, whose both parents or one of them are Indian citizens. In the changing world and in an era where the concept of multinationals providing employment to Indian citizens had increased, the incident of birth of the children taking place in a country outside India had also increased. In that circumstance, successive Governments had to bestow their attention to this aspect of the matter to provide better rights to such persons, who, though in the technical sense were "foreigners", not being citizens of this country, yet had a "connect" with this country. These were cases where though the umbilical cord with the biological mother had snapped in a foreign country, the umbilical connections with the country continue to remain intact as the entire family including the grandparents would be in India and the parents were Indian citizens in most cases. In that view, having considered all these aspects of the matter, despite such persons not having the benefit of citizenship as provided under Part II of the Constitution through Articles 5 to 8 thereof and there being no scope for dual citizenship, certain rights were created under the 1955 Act which had come into force based on the provision in Article 11 of the Constitution of India.

47. In that regard, in a concept where the "dual citizenship" was not recognised, such persons as like that of the petitioners were considered as Overseas Citizens of India cardholders as defined under Section 2(ee) of the 1955 Act. The 1955 Act through Amendment Act 6 of 2004 brought certain rights and through substitution of Sections 7-A to 7-D the manner of registration of Overseas Citizen of India cardholder; renunciation of citizenship and cancellation of registration were provided for. In the cases, on hand, the fact that all the petitioners are registered as Overseas Citizens of India cardholders is not in dispute. The right to which they are making a claim is conferred under Section 7-B(1) of the 1955 Act which has been extracted and noted above. The right to education which was conferred under the Notification dated 11-4-2005, in parity with the non-resident Indians is due to the fact that the non-resident Indians which is a separate class, had such right similar to that of the Indian citizens in matters relating to education. It is based on such right being conferred as far back as in the year 2005, the OCI cardholders were taking part in the process of selections conducted for undertaking educational courses in India. Such benefit was extended to appear for the All India pre-medical test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant acts, through the Notification dated 5-1-2009. The said benefit is being enjoyed by all the OCI cardholders in the same manner as the non- resident Indians

were enjoying along with the Indian citizens. In that circumstance, most of such OCI cardholders have been pursuing their entire educational career in India.

* * *

54. As noted, the right of the OCI cardholders is a midway right in the absence of dual citizenship. When a statutory right was conferred and such right is being withdrawn through a notification, the process for withdrawal is required to demonstrate that the action taken is reasonable and has nexus to the purpose. It should not be arbitrary, without basis and exercise of such power cannot be exercised unmindful of consequences merely because it is a sovereign power. To examine this aspect, in addition to the contentions urged by the learned Additional Solicitor General we have also taken note of the objection statement filed with the writ petition."

23. It is also noticed that Section 7-D of the Citizenship Act, 1955, contemplates grounds for cancellation of registration as an Overseas Citizen of India Cardholder. The said provision reads as under :-

"7D. Cancellation of registration as Overseas Citizen of India Cardholder .- The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that-

(a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or

(c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or (da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or

(e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

or

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,-

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person:] [Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard."

24. It can be seen that there is a statutory proscription from cancelling of registration as an OCI cardholder unless the concerned OCI cardholder has been given "reasonable opportunity of being heard". As such, the principles of natural justice have been embedded and made part of the statutory procedure envisaged for cancelling the registration of an OCI cardholder.

25. The expression "reasonable opportunity of being heard" has been interpreted by the Supreme Court in a catena of cases.¹ It is now well settled that the same subsumes an effective opportunity to meet the relevant allegations. Necessarily, the same also takes within its sweep the entitlement to being informed about the material/ basis for taking the proposed action.

26. In the present case, in response to the show cause notice dated 06.11.2020, the petitioner specifically sought as under :-

"Thus, it will be only possible for me to reply to the Show Cause Notice if you can kindly provide me the specific speech and alleged activity which you allege to be "Inflammatory speeches" and "anti-India activities", along with the documents/ evidence complained of.

Otherwise, as a continuation of the above-humble submission, it is requested that the Show Cause Notice may kindly be withdrawn and to allow me to visit my old and ailing mother who lives alone and relies on my support, as well as my parents-in-law in India."

27. The record of the case reveals that the said documents/material sought by the petitioner was not supplied to him.

28. Even in the aftermath of the order dated 10.07.2023 passed by this Court, wherein this Court observed that the order dated 08.02.2022 *State of Gujarat v. R.G. Teredesai and Another*, (1969) 2 SCC 128; *State of Orissa v. Binapani Dei* 1967 SCC OnLine SC 15.

In *State of Orissa v. Binapani Dei* (supra), it has been held as under-

"12. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

In *State of Gujarat v. R.G. Teredesai and Another* (supra), it has been held as under -

"5. The entire object of supplying a copy of the report of the Enquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe."

(whereby the registration of the petitioner as an OCI cardholder was cancelled), referred to the statutory provision "only as a 'mantra' ", the respondents did not take steps to supply the relevant material/document to the petitioner so as to inform the petitioner of the allegations against him and to enable the petitioner to submit his reply/defence dealing with the same. The same is not in consonance with the dicta laid down by this Court in *Khalid Jahangir Qazi* through his power of Attorney Holder *Ms. Farida Siddiqi v. Union of India* through Secretary and Others and connected matter, 2024 SCC OnLine Del 7847, wherein, it has been held by a co- ordinate Bench of this Court as under :-

"49. Section 7-D of the Citizenship Act, as amended by the Citizenship (Amendment) Act, 2019, introduced a significant procedural safeguard by embedding the principles of natural justice into the cancellation process for OCI card-holders. Effective from 10-1-2020, this amendment added a crucial proviso to Section 7-D, mandating that no order to cancel OCI registration shall be issued without first granting the card-holder a reasonable opportunity to be heard. This right to a fair hearing embodies the principles of natural justice, a concept has been long recognised by the courts. In this context, the right to a "reasonable opportunity of being heard" does more than merely allow a card-holder to state their case; it mandates a level of transparency and specificity in the grounds for cancellation. The Government is required to provide clear reasons for the proposed action so that the OCI card-holder can respond meaningfully, safeguarding the procedural fairness that natural justice principles intend to protect.

50. Furthermore, Section 7-D begins with the mandate that the Central Government must be "satisfied" that the grounds for cancellation are justified. The term "satisfied" emphasises that a high standard of decisional fairness is expected, where the reasons for cancellation are explicit, allowing the card-holder a genuine opportunity to engage with the basis for the action. Therefore, for any cancellation order to withstand judicial scrutiny, it must not only be grounded in specific, reasonable

grounds but must also reflect a process that meets both substantive and procedural reasonableness.

51. Consequently, the 2019 amendment's requirement of a "reasonable opportunity of being heard," when read along with the requirement of "satisfaction," manifests that an order to cancel OCI registration must transparently reflect both the grounds for cancellation and a fair decision-making process. This combination of principles ensures that any adverse action taken under Section 7-D must meet the test of reasonableness and fairness. Therefore, the Government's decision for cancellation should be clear, justified, and procedurally sound and apposite.

Reconciling the Citizenship Act and Foreigners Act: need for harmonious construction

52. The Citizenship Act, particularly Section 7-D affords a right to be heard before cancellation of OCI status. In contrast, under Section 3(2) of the Foreigners Act does not mandate these procedural protections, allowing for broad discretion in matters of national security or public order. Although this does not present a direct conflict, certain areas do create a need for a balanced interpretation to ensure coherence and avoid incompatibility."

29. In the said case, this Court has gone to the extent of saying that where action under Section 7-D of the Citizenship Act, 1955 is proposed to be taken simultaneously with action under Section 3(2) of the Foreigners Act, 1946 the principles of harmonious interpretation mandate that the procedural safeguards under Section 7-D of the Citizenship Act, 1955 should also be extended for the purpose of any action under Section 3 of the Foreigners Act. It has been observed as under:-

"53. Since legislature has enacted two statutes covering related issues, it is presumed that both are meant to co-exist. Such an interpretation is necessary as both statutes address grounds like national security and public interest as ground for restricting OCI card-holders to enter the country. While the Citizenship Act provides a comprehensive regulatory framework applicable to OCI card-holders, the Foreigners Act may still apply in situations where a broader public interest requires uniform treatment of all foreign nationals. As per our analysis, it emerges that while the Foreigners Act applies to OCI card-holders, the Citizenship Act confers on them a unique status with distinct rights and procedural protections. Considering this, a harmonious interpretation is necessary to enable the operation of both statutes alongside each other, upholding the legislative intent of each legislation. Therefore, where the grounds for blacklisting an OCI card-holder mirror those for cancellation under Section 7-D of the Citizenship Act, the procedural safeguards under Section 7-D should be extended to the blacklisting process. This means that even when invoking Section 3 of the Foreigners Act, the Government should observe procedural fairness by allowing the OCI card-holder an opportunity to respond when the grounds for blacklisting are one of the grounds mentioned under Section 7-D. This

interpretation is in consonance with the legislative intent, and the object and reasons behind the amendment of Citizenship Act, which recognises OCI card- holders and grants them rights that set them apart from ordinary foreigners.

54. If this safeguard is not applied, we would run the risk undermining the very purpose of the OCI scheme, as it would enable authorities to bypass the specific protections and privileges granted to OCI card- holders by indiscriminately invoking the Foreigners Act. Such an approach would conflict with the doctrine of non-retrogression-- principle of progressive realisation of rights and by discouraging any regressive measures that undermine established rights--effectively weakening the OCI framework by treating card-holders as ordinary foreigners. Allowing the State to circumvent the safeguards embedded in the OCI scheme would erode the privileges the legislature intended for OCI card-holders, undermining both the purpose and object of the status of OCI card-holders under the Citizenship Act, 1955, and rendering their protections redundant. The result would be that an OCI card-holder, though technically retaining their registration, would effectively be prevented from exercising the rights afforded by that status. The long- term visa rights conferred under the OCI scheme would, in effect, be nullified without due process, denying the card-holder of the intended benefits."

30. In *Ramesh Ganeriwal v. Union of India and Anr.*, 2017 SCC OnLine Del 10082, it has been held by a co-ordinate Bench of this Court as under :-

"13. It is apparent from the above that the controversy involves two principal questions. First, whether there is sufficient material to establish the allegations of (i) encroachment of forest land; (ii) holding benami property; and (iii) illegally acquired immovable property. And second, whether such allegations, if established, would warrant cancellation of petitioner's OCI Card in the interest of the general public.

14. It is apparent from the above that although certain allegations had been made against the petitioner, however, he had not been provided any real opportunity to meet the same. The Show Cause Notice issued on 11.11.2014 was completely bereft of any specific details of "anti- social/illegal activities", thus, providing no opportunity to the petitioner to provide any explanation with respect to the same. In the impugned order passed on 13.01.2017, it was alleged for the first time, that the petitioner was in possession of agricultural/forest land and had thereby violated the provisions of the Gazette Notification no. S.O. 542(E) dated 11.04.2005. The said impugned order also does not mention any specific details as no particulars of the agricultural land alleged to have been acquired by the petitioner or forest land alleged to have been encroached by the petitioner or any legal proceedings in that regard were mentioned.

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16. In the given facts, this Court is of the view that principles of natural justice had not been followed. It is trite law that a Show Cause Notice must specifically indicate the case that a noticee has to meet. In the present case, it is apparent that in absence of any specific details, the petitioner has been deprived of an opportunity to submit an explanation.

17. The learned counsel for the respondents had also contended that the petitioner has no rights and, therefore, cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. This Court is not persuaded to accept the said contention; while, the petitioner being a foreign citizen may not have certain rights but nonetheless, he is entitled to the protection of Article 14 of the Constitution of India. It is well settled that Article 14 of the Constitution strikes at arbitrariness in state action; thus notwithstanding that the petitioner is not a citizen of India, the respondents being State are enjoined to act fairly and to follow the principles of natural justice."

31. From a perusal of the tweets of the petitioner, as produced by the respondents, it does appear, prima facie, that some of the tweets of the petitioner contain objectionable insinuations, and can be construed as undermining the constitutional apparatus and legitimacy of the Indian State itself. Some of the tweets also contain a disparaging reference to the Indian armed forces and law enforcement agencies. Notwithstanding however, it is still incumbent on the concerned authorities to afford an effective and real opportunity to the petitioner to furnish an explanation and/or take remedial steps.

32. During the course of hearing, learned counsel for the petitioner has, in fact, submitted that the petitioner will proceed to delete some of the objectionable tweets. All these are aspects that are required to be gone into by the concerned authorities while considering the matter in consonance with procedural and substantive requirements set out by a co-ordinate Bench of this Court in Khalid Jahagir (supra).

33. In the circumstances, the said order dated 30.07.2023 and the procedure followed by the respondents, does not meet the statutory requirements as set out in the proviso to Section 7-D of the Citizenship Act, 1955 as interpreted by this Court in Khalid Jahagir (supra). The same is, accordingly, set aside.

34. The pendency of a review under Section 15 of the Citizenship Act, 1955 read with Rule 42 of the Citizenship Rules, 2009, does not come in the way of the aforesaid directions inasmuch as it is incumbent on the authorities, in the first instance, to comply with the necessary statutory requirements before passing an order under Section 7-D(e) of the Citizenship Act, 1955.

35. It is clarified that this order shall not preclude the concerned authorities from issuing a fresh show cause notice, indicating the allegations against the petitioner and providing relevant materials/writings to the petitioner, thus, enabling him to present his explanation, if any.

36. The concerned authority would be at liberty thereafter to pass such order as it thinks fit after considering the reply/explanation, if any, furnished by the petitioner.

37. Needless to say, once such an order is passed, the petitioner would be entitled to avail statutory remedies as provided under Section 15 or 15A of the Citizenship Act, 1955.

38. It is also clarified that this order shall not be construed as an expression of opinion of this Court as regards the merits of the allegations against the petitioner and/or whether such allegations are sufficient to revoke the petitioner's OCI Card under Section 7-D of the Citizenship Act, 1955.

39. The present petition is disposed of in the above terms.

SACHIN DATTA, J MARCH 28, 2025 r, dn