

John Robert Roughton Iii 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

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W.P.(C) 17113/2024 & CM APPL.72516/2024

JOHN ROBERT ROUGHTON III

..... Petitioner

Through: Dr. Amit George, Mr. Dhiraj

Abraham Philip, Mr. Febin Mathe

Varghese, Ms. Ibansara Syiemlie

Ms. Achalika Ahuja and Mr. Nave

Richard, Advocates.

versus

UNION OF INDIA & ORS.

Through:

Ms. Nidhi Rama

Mr. Zubin Sing

Mittal, Advocates

R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

Factual Background and Submissions of Respective Counsel

1. The petitioner has filed the present petition, inter alia, praying as under -

a) Allow the present Writ and Issue a writ of or in the nature of mandamus or any other appropriate writ, directing Respondents to allow the Petitioner to enter India on his OCI card bearing No. A2327906;

b) Issue a writ of or in the nature of Certiorari or any other writ, order or direction calling for the records of the petitioner's case.

c) Issue a writ of in the nature of mandamus or any other appropriate writ, order or direction quashing any order/direction restraining petitioner's entry into India;

d) Issue a writ of in the nature of mandamus or any other appropriate writ, directing Respondents to furnish information/reasons for petitioner's deportation and refusal of entry into India;

2. The petitioner is a U.S. citizen and an OCI cardholder. He holds a valid OCI Card (No. A2327906) and a U.S. Passport (No. 505607460). His wife is an Indian citizen by birth and holds an Indian passport (No. M6835303).
3. The petitioner was born on 07.09.1963 in Virginia, United States. He completed his high school education in Virginia Beach in 1981 and subsequently earned a Bachelor's degree in Music from Old Dominion University in 1985.
4. The petitioner married to his wife (who is an Indian national) in Virginia, USA, in 1991. They later relocated to Dimapur, Nagaland, in February 1994. They have three children, one of whom was born in Dimapur and is also an OCI cardholder. The petitioner and his wife jointly own property in Nagaland, including their house in Valley View Colony, Dimapur.
5. From 1994 to 2003, the petitioner stayed in India on multiple five- year visas. In 1999, the Government of India introduced the Person of Indian Origin (PIO) Card Scheme to facilitate the entry and residence of people of Indian origin. In August 2003, the petitioner was issued a PIO card (No. P0069568) valid for 15 years.
6. In 2004, the Citizenship (Amendment) Act introduced the Overseas Citizen of India (OCI) scheme to allow long-term residence for foreign nationals with Indian ties. The petitioner transitioned from a PIO cardholder to an OCI cardholder in 2016. His OCI Card (No. A2327906) was issued by the respondents, granting him a lifelong multiple-entry visa to India.
7. On 18.06.2024, the petitioner and his wife travelled to the USA to visit the petitioner's parents. Upon their return to India on 31.10.2024 at Indira Gandhi International Airport, while the petitioner's wife cleared immigration without any issues, the petitioner was stopped by the immigration officials and was informed that he would not be allowed entry into India and was being deported. When he requested an explanation, he was told that no reason could be provided. No official order or documentation was given to explain his deportation. The immigration officials further refused to stamp his passport and stated that he had to return to the USA on the same flight in which he had arrived.
8. Following the deportation of the petitioner, the petitioner and his wife submitted multiple representations, including one to the Home Department, Government of Nagaland, and another to the respondents seeking grounds for refusal of entry in India.
9. On 26.11.2024, the Home Department, Government of Nagaland, responded, stating that they had no information regarding the reasons for the deportation. The petitioner subsequently sent another representation to the respondents on 03.12.2024, requesting reasons for his denial of entry. However, no response or explanation was provided by the authorities.
10. Aggrieved by the deportation and the respondents' failure to provide reasons for denying him entry into India, the petitioner has filed the present petition. It is submitted that despite holding a valid OCI Card, the petitioner was denied entry into India at Indira Gandhi International Airport,

New Delhi, on 31.10.2024. The petitioner's primary plea is to be allowed entry into India based on his valid OCI Card (bearing No. A2327906), which grants him a lifelong visa.

11. The petitioner argues that the rights granted under Section 7B of the Citizenship Act, 1955, including a multiple-entry lifelong visa for OCI (Overseas Citizen of India) cardholders, cannot be taken away without following due process under Section 7D of the Citizenship Act, 1955.

12. The petitioner while placing reliance on *Khalid Jahangir Qazi v. Union of India & Ors.* 2024 SCC OnLine Del 7847, submits that if the grounds for blacklisting an OCI cardholder mirror the grounds for cancellation under Section 7D, then the procedural safeguards of Section 7D must apply to blacklisting as well. The petitioner argues that these safeguards were not followed in his case.

13. The petitioner contends that his situation is even less severe than *Khalid Jahangir's* case, where the allegations involved anti-India activities. Here, at most, the claim is that the petitioner engaged in missionary activities, which are merely regulated under the Citizenship Act and require prior permission, unlike anti-India activities, which are entirely prohibited.

14. It is submitted that the respondents are relying on MHA Notification dated 04.03.2021, which was issued under Section 7B of the Citizenship Act, to justify their actions. However, they are not extending the safeguards provided under the same Act, making their approach arbitrary and inconsistent.

15. The petitioner argues that the petitioner was not given an opportunity to present his case, violating principles of natural justice. Reliance has been placed on *Ramesh Ganeriwal v. Union of India*, 2017 SCC OnLine Del 10082.

16. It is further submitted that the term "missionary activities" is not clearly defined in law. Furthermore, Article 25 of the Constitution of India grants every individual the right to profess, propagate, and promote their religion. The petitioner refers to *Dr. Christo Thomas Philip v. Union of India* 2019 SCC OnLine Del 6426 to emphasize this fundamental right.

17. It is further submitted that the Respondents' reliance on *Union of India v. Savitha Kumar LPA* 219/2019 is not valid because the decision was made before the amendment to Section 7D, which introduced the requirement of prior notice and hearing.

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

a. The petitioner was denied entry at IGI Airport as he had been blacklisted by security agencies. The reason cited for his blacklisting is his involvement in missionary activities in Nagaland and other Northeastern states for several years without obtaining special permission from the competent authority.

b. It is submitted that the petitioner violated the OCI provisions under the MHA notification dated 04.03.2021, which requires special permission for certain

activities, including missionary work. however, the petitioner failed to obtain this permission.

c. Under Section 3 of the Foreigners Act, 1946, the Central Government has absolute power to regulate, restrict, or prohibit the entry of any foreign national into India.

d. The respondents argue that blacklisting has an overriding effect on all types of visas, including OCI cards. Foreign nationals, including OCI holders, cannot claim visa services as a matter of right, especially if they are involved in activities contrary to India's national interests. e. In order to substantiate its claims the petitioner has relied upon *Louis De Raedt & Ors. v. UOI* 1991 SCC (3) 554, *Hans Mueller of Nuremberg v. Superintendent, Presidency Jail* 1955 AIR 367, *Calcutta, UOI v. Savitha Kumar*, LPA 219/2019, and *A.H. Magermans v. S.K. Ghose*, AIR 1966 Cal 552.

19. This Court, having heard both parties, finds merit in the contentions made on behalf of the petitioner.

20. Under Section 7-B of the Citizenship Act, 1955, certain rights are conferred upon an OCI cardholder, elevating their status above that of an ordinary foreign national. The notification dated 04.03.2021, issued under Section 7-B(1) of the Citizenship Act, 1955, outlines the privileges of OCI cardholders. 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. The Supreme Court has 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."

22. Furthermore, Section 7-D of the Citizenship Act, 1955, prescribes the conditions under which an OCI cardholder's registration may be cancelled. Significantly, it mandates that no cancellation can take place without providing the affected individual with a "reasonable opportunity of being heard." 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."

23. 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.

24. In the present case, the respondents have taken a stand that the petitioner has been blacklisted under section 3 of the Foreigners Act, and blacklisting has an overriding effect on all kinds of visas, including an OCI card, which is also a lifelong visa granted to eligible foreign nationals. There is no liability on the respondent to even tell the petitioner the reason for such blacklisting, let alone providing them the opportunity of being heard.

25. However, the said stand of the respondent is contrary to the authoritative pronouncement of 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. This Court reaffirmed that while Section 3 of the Foreigners Act, 1946, does not expressly provide for a hearing, the procedural safeguards under Section 7-D of the Citizenship Act must be harmoniously read into cases involving OCI cardholders, particularly when blacklisting them effectively negates their rights under the Citizenship Act. The Court cautioned against using the Foreigners Act to bypass the procedural safeguards embedded in the OCI framework. The relevant portion of the said judgment is reproduced 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."

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."

26. This Court further finds weight in the argument of the petitioner that the Respondents' reliance on Union of India v. Savitha Kumar (supra) is not valid because the decision was made before the amendment to Section 7D, which introduced the requirement of prior notice and hearing. This position is also validated by the order dated 03.08.2023 passed in Khalid Jahangir Qazi through his power of Attorney Holder Ms. Farida Siddiqi v. Union of India through Secretary and Others and connected matter W.P.(C)-7755/2023. The relevant portion of the order dated 03.08.2023, is reproduced as under -

"7. Learned Counsel for the Respondent draws the attention of this Court to the Judgment dated 28.08.2019, passed by this Court in LPA No.219/2019, titled as Union of India v. Savitha Kumar, and more particularly to paragraph No.5 of the said Judgment to contend that prior intimation is not needed before passing an order blacklisting an OCI card holder.

8. This contention of the learned Counsel for the Respondent cannot be accepted for the reason that the Judgment dated 28.08.2019 was passed prior to the amendment in the Citizenship Act. After amendment in the year 2019 a proviso to Section 7D (f) of the Act has been added which mandates that no order shall be passed against the Overseas Citizen of India Cardholder unless he has been given a reasonable opportunity of being heard."

27. In the present case, the petitioner has not been granted an opportunity to be heard, and has also not been informed about the grounds for his deportation/blacklisting. At the time of deportation, he was neither informed that he had been blacklisted nor given an opportunity to contest the allegations against him.

28. The expression reasonable opportunity of being heard has been interpreted by the Supreme Court in a catena of cases. 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 grounds for taking the proposed action.

29. Consequently, both the deportation of the petitioner and the process of blacklisting him fail to meet the statutory requirement/s prescribed under Section 7-D of the Citizenship Act, 1955. Given that the petitioner continues to hold a valid OCI card, his rights as an Overseas Citizen of India

cannot be curtailed arbitrarily.

30. Accordingly, the present petition is disposed of with a direction to the respondents to serve a show cause notice as regards the 'black-listing' of the petitioner and pass a speaking order after duly considering the response of the petitioner thereto, and after affording an opportunity of hearing to the petitioner.

31. It is, however, clarified that this Court has not rendered any opinion on the merits of the allegations against the petitioner or on whether such allegations warrant blacklisting of the petitioner and/or cancellation of his OCI card under Section 7-D of the Citizenship Act, 1955.

32. The petition stands disposed of in the above terms.

SACHIN DATTA, J MARCH 28, 2025/sv