



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2026

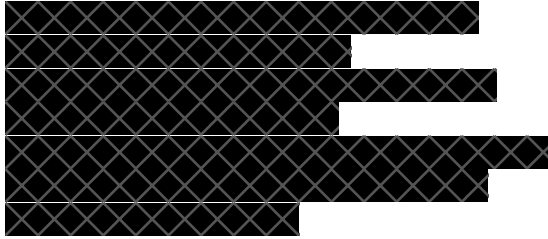
BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 26412 OF 2019 (GM-RES)

BETWEEN

MR CHRISTOPHER CHARLES KAMOLINS



...PETITIONER

(BY SRI. K.G. RAGHAVAN SR. ADVOCATE FOR
SRI. ANIND THOMAS., ADVOCATE)

AND

UNION OF INDIA
BY THE FOREIGN REGIONAL REGISTRATION OFFICER,
FOREIGN REGIONAL REGISTRATION OFFICE,
BUREAU OF IMMIGRATION,
MINISTRY OF HOME AFFAIRS,
5TH FLOOR, A-BLOCK, TTMC,
BMTc BUS STAND BUILDING,
SHANTHI NAGAR, K.H.ROAD,
BANGALORE-560027



.... RESPONDENT

(BY SRI. K. ARAVIND KAMATH., ASGI., FOR
SRI. ADITYA SINGH., CGC)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF



CERTIORARI QUASHING THE LEAVE INDIA NOTICE DATED MAY 1, 2019, BEARING REFERENCE NO. 03/FM/BOI/2019-LIN-162, PRODUCED AS ANNEXURE-A TO THIS PETITION AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 16.12.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The petitioner who is an Australian national/citizen is before this Court seeking for the following reliefs:

- i. Issue a writ of Certiorari quashing the Leave India Notice dated May 1, 2019 bearing reference No. 03/FM/BOI/2019-LIN-162, produced as Annexure-A to the petition.*
- ii. Issue a writ of mandamus directing the Respondent not to take any further action pursuant to the Leave India Notice produced at Annexure-A and to reverse any action that may have been taken pursuant to the said Leave India Notice; and*
- iii. Grant any other relief that this Hon'ble Court may deem fit having regard to the facts and circumstances of this Case, in the interests of justice and equity.*

2. The petitioner is an Australian citizen holding a valid Australian passport. He asserts that he was granted an Employment Visa (E-2) on 08.01.2018, permitting



multiple entries into India and valid until 07.01.2020.

The said visa was issued on the basis of his proposed employment as General Manager of Fisher and Paykel Health Care India Private Limited, an Indian subsidiary of Fisher and Paykel Health Care Limited, a New Zealand-based multinational corporation with operations in 36 countries and distribution of its products in over 125 countries worldwide.

3. The company is engaged in the manufacturing, design, and marketing of medical devices used in respiratory care, acute care, and the treatment of obstructive sleep apnea. It is stated that the company has been operating in India since 2008. The petitioner was appointed as General Manager with effect from 01.02.2018 pursuant to an appointment letter dated 11.12.2017.
4. According to the petitioner, prior to his appointment, the Indian operations of the company were headed by an Indian national who functioned as Resident



Director and was responsible for managing business operations within the country. It is alleged that during that tenure, the company experienced significant performance challenges, including high attrition rates, particularly within its sales team, adversely affecting overall business performance.

5. The petitioner asserts that the company undertook an internal review or study to analyse the causes of attrition and operational decline. It is claimed that this review revealed that certain members of the senior management were engaged in practices inconsistent with the company's global ethics, principles, and corporate culture. Consequently, the services of the concerned senior management personnel were discontinued.
6. It is in this background that the petitioner was appointed as General Manager. The company contends that the petitioner possessed the requisite mix of experience, technical knowledge, and



familiarity with the company's global business standards necessary to stabilise operations and align the Indian entity with international corporate practices. It is further asserted that prior to appointing the petitioner, the company conducted enquiries to identify a suitable Indian candidate for the position, but none was found to meet the required qualifications and experience. On that basis, the petitioner's appointment was finalised and the Employment Visa was obtained.

7. Subsequently, on 11.07.2018, the Respondent, Foreign Regional Registration Officer (FRRO) addressed an email to the company seeking details regarding the employment status of three former Indian employees, two of whom were part of the earlier senior management, and also sought information regarding foreign nationals employed by the company. The company responded on 26.07.2018 stating that the three former employees



had resigned or separated in accordance with the terms of their appointment.

8. Thereafter, on or about 25.07.2018, the FRRO again called upon the company to furnish detailed particulars regarding the employment of the petitioner and another expatriate employee. The company claims to have submitted a response to the said query. Several further communications were exchanged between the FRRO and the company in the ensuing months.
9. Ultimately, on 19.06.2019, a Leave India Notice (LIN) was issued to the petitioner directing him not to remain in India. It is the legality and validity of the said Leave India Notice that is challenged in the present writ petition, in which the petitioner seeks the reliefs prayed for.
10. Sri.K.G.Raghavan, learned senior counsel appearing for the Petitioner would submit that:



10.1. There being no eligible or suitably qualified Indian candidate available for appointment to the post of General Manager, the petitioner was selected for the said position. It is contended that the company had furnished all requisite particulars and documentation to the competent authorities at the time of seeking the Employment Visa. Upon scrutiny of the material placed before it, the High Commission of India at Canberra granted the Employment Visa (E-2) in favour of the petitioner. Once such approval had been accorded by the competent visa-issuing authority, the same could not, according to the petitioner, be effectively nullified by the FRRO through issuance of a Leave India Notice (LIN), which in substance amounts to cancellation of the Employment Visa.



10.2. The company had, prior to the petitioner's appointment, experienced operational instability under the earlier Indian management, including high attrition rates in the sales division, which adversely impacted business continuity and client relationships. It is submitted that these difficulties were attributed to deviations from the group's global standards, corporate ethics and management systems. In order to restore organisational stability, the services of the then General Manager and certain senior employees were discontinued. In that background, the petitioner was appointed, he being familiar with the group's global operations and culture.

10.3. In support of the petitioner's candidature, it is submitted that he is an Australian citizen possessing a Bachelor's degree in Nursing and a Graduate Certificate in Critical Care Nursing. He



had served the parent organisation for over twelve years and possessed, according to the company, the necessary technical proficiency, managerial experience and institutional familiarity to stabilise Indian operations, restructure workflows and train local staff. It is emphasised that no Indian candidate with comparable expertise and organisational exposure was available at the relevant time.

10.4. It is contended that while applying for the Employment Visa, the company submitted a detailed justification letter dated 14.12.2017 to the High Commission of India at Canberra. The letter set out the petitioner's qualifications, experience and the reasons necessitating the appointment of a foreign national, including the assertion that no comparably experienced Indian candidate was available. Upon consideration of the said material, the



competent authority granted the Employment Visa on 08.01.2018, valid for multiple entries until 07.01.2020. Upon arrival in India, the petitioner registered with the FRRO on 09.02.2018 and was issued a Registration Certificate/Residential Permit, which was thereafter renewed upon compliance with the applicable statutory norms.

10.5. It is submitted that during the year 2018, certain queries were raised by the FRRO with respect to the petitioner's employment and other related matters. In response, the company furnished what it describes as comprehensive particulars, including documentation evidencing the petitioner's professional expertise and indispensability. Despite this, the FRRO issued a Leave India Notice, dated 01.05.2019, which was served upon the petitioner on 19.06.2019. It is the



petitioner's grievance that the said notice was issued without assigning reasons and without affording him any opportunity of hearing.

10.6. The LIN is arbitrary and procedurally improper. It is contended that the petitioner was not put on notice nor granted an opportunity to explain his position prior to the issuance of the LIN, thereby violating principles of natural justice. It is further pointed out that a show-cause notice was subsequently issued to the company on 04.06.2019 alleging that the petitioner had fraudulently obtained the Employment Visa in breach of visa norms.

10.7. Emphasis is laid on the sequence of dates. The LIN is dated 01.05.2019 and was served on 19.06.2019, whereas the show-cause notice to the company was issued only on 04.06.2019. It is argued that there is no reference to the LIN in the show-cause notice, which, according to



the petitioner, indicates that the latter was an afterthought. The petitioner submits that a reply to the show-cause notice was promptly furnished by the company on 20.06.2019 refuting the allegations. On this basis, it is contended that the issuance of the LIN prior to the show-cause notice demonstrates pre-determination and non-application of mind on the part of the FRRO.

10.8. It is further argued that the petitioner's employment was valid, his selection was lawful, and the documentation submitted to the visa-issuing authority had been duly examined and accepted. The Employment Visa having been issued by the High Commission of India at Canberra, it is submitted that the FRRO, by issuing the LIN, has in effect sought to overreach or override the decision of the visa-issuing authority, which is impermissible in law.



10.9. The petitioner asserts that the LIN was issued arbitrarily and without issuance of any prior show-cause notice to him personally. No opportunity of hearing was afforded to him before directing him to leave the country. Such action, it is submitted, violates the principles of natural justice and fair procedure.

10.10. On the aforesaid grounds, learned Senior Counsel submits that the Leave India Notice is liable to be quashed as being arbitrary, violative of natural justice, issued without jurisdiction, and unsustainable in law.

10.11. He relies upon the decision of the Hon'ble Apex Court in ***Hasan Ali Raihany v. Union of India***¹, more particularly Paras 1, 6, 7 and 8 thereof, which are reproduced hereunder for easy reference:

1. In this writ petition, the petitioner prays for issuance of a writ of mandamus quashing the order cancelling the residence visa permit by order dated 7-10-2005. He has

¹ (2006) 3 SCC 705



also prayed for directions to the respondent to produce the papers relating to grant of Indian citizenship to him by naturalisation. He further prays that this Court may issue a writ of certiorari quashing and setting aside the oral direction or order of deportation passed by the respondents and allow the petitioner to enter the Indian territory.

6. *The question that arises for consideration is whether the authorities intend to deport him again and if so, whether they are obliged to disclose to the petitioner the reasons for his proposed deportation.*

7. *Learned counsel for the petitioner has relied upon a decision of this Court in National Human Rights Commission v. State of Arunachal Pradesh [(1996) 1 SCC 742] and particularly to the principles laid down in para 19 thereof and submitted that the petitioner cannot be thrown out of this country having regard to the fact that he was born in this country and lived here for many years and his application for grant of Indian citizenship is still pending. It is not as if he has entered the territory of India stealthily with any ulterior objective and, therefore, it is only proper, even though he is not an Indian citizen, that he should at least be informed of the reasons why he is sought to be deported, and his representation if any in this regard considered. The learned Additional Solicitor General has fairly brought to our notice the principles laid down by this Court in Sarbananda Sonowal v. Union of India [(2005) 5 SCC 665] . This Court in para 75 of the report has observed as follows: (SCC p. 720)*

"Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law does not prohibit the expulsion en masse of aliens. (p. 351) Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law, and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa, etc. and not to those who have entered illegally or unlawfully."

(emphasis in original)



8. Having regard to the facts and circumstances of the case, particularly, having regard to the fact that the petitioner has entered this country legally upon the single entry permit issued to him, it is only fair that the competent authority must inform him the reasons for his deportation. If such a decision is taken, the petitioner must be given an opportunity to submit his representation against his proposed expulsion. The competent authority may thereafter consider his representation and pass appropriate order. As observed by this Court, this procedure may be departed from for compelling reasons of national security, etc. In the instant case, we have not so far noticed any fact which may provide a compelling reason for the State not to observe this procedure.

10.12. Learned Senior Counsel, placing reliance on the decision in ***Hasan Ali Raihany***, submits that before a person is directed to leave the country or deported, the reasons forming the basis of such action must be communicated to him, particularly where the individual had entered the country lawfully and in accordance with due procedure. It is contended that deportation or an order directing a foreign national not to remain in India carries serious civil consequences and therefore must conform to the minimum standards of fairness and transparency.



10.13. It is further urged that the jurisprudence emerging from the said decision recognises only a limited exception to the requirement of disclosure of reasons, namely, where compelling considerations of national security or public interest justify non-disclosure. In the absence of such exceptional circumstances, the affected individual must be informed of the grounds so as to enable him to effectively respond or seek appropriate remedies.

10.14. In the present case, it is submitted, there is no allegation of threat to national security, public order, or sovereignty of the State. The sole basis for issuance of the Leave India Notice is stated to be alleged irregularity or impropriety in the procurement of the Employment Visa. Such an allegation, according to the petitioner, does not fall within the narrow category of



cases where reasons may be legitimately withheld.

10.15. It is therefore contended that the impugned LIN, having been issued without furnishing reasons and without affording an opportunity of hearing, is contrary to established principles of fairness and procedural propriety. The petitioner submits that where entry was legal and registration formalities were complied with, expulsion without disclosure of reasons cannot be sustained in law.

10.16. He relies upon the decision of the Hon'ble Delhi High Court in the case of **Mohd. Javed v. Union of India**², more particularly paras 1, 25, 26, 27, 35, 37 and 42, which are reproduced hereunder for easy reference:

1. By the present appeal filed under Clause 10 of the Letters Patent of the Delhi High Court, the appellants Mohd. Javed (appellant No. 1) and Nausheen Naz (appellant No. 2)

² 2019 SCC OnLine Del 8741



impugn order dated 28.02.2019 made by the learned single Judge of this Court in W.P. (C) No. 1835/2019, whereby the single Judge has been pleased to dismiss the writ petition, thereby upholding the 'Leave India Notice' dated 07.02.2019 issued by respondent No. 2 through the Deputy Commissioner of Police, Special Branch, New Delhi ('Notice', for short) directing appellant No. 2 to leave India within 15 days of receipt of the Notice, that is by 22.02.2019.

25. *Much as the Ministry states in short affidavit dated 10.04.2019 that:*

"... Based on these inputs, the Central Govt. has arrived at a conclusion that the Appellant No. 2 has to be served with a "Leave India Notice" in the interest of the security of the nation."

26. *We find no reasoning or basis for the Central Government to have arrived at the conclusion as the Ministry says above, nor any basis for perceiving a threat to national security.*

27. *We have recorded the above only to say that the overall facts and circumstances of the case, including in particular, the conduct of the Ministry and the authorities, do not inspire confidence or persuade us to believe that Nausheen is a persona non grata.*

35. *We must also remind ourselves that our country is party to the International Covenant on Civil and Political Rights ('ICCPR', for short) adopted by the General Assembly of the United Nations on 19.12.1966, Articles 13, 17, 23 and 24 whereof read as under:*

"Article 13. An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

XXXXX

"Article 17.

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or



correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

XXXXX

"Article 23.

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. xxxxx

3. xxxxx

4. xxxxx

Article 24.

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality"

37. *In the present case, the mandate of Articles 13, 17 and 23 have been thrown to the winds. The record does not reveal that Nausheen has indulged in any unlawful conduct, unfriendly activity or offensive act. Even upon perusal of the 'inputs' received from the Intelligence Bureau, as shared by the Ministry with the court, no such act or omission is discernible as would warrant unilateral, peremptory action by the Ministry.*

42. *In the backdrop of the above administrative and legal contours, the position that emerges is the following:*

(a) Nausheen's LTV is valid until 08.06.2020. As of date, she has also applied for citizenship in India, which application is pending with the authorities;

(b) No notice, order or communication has ever been issued to Nausheen by the Ministry or by any other authority



calling upon her to show cause against any alleged breach or violation of any terms or conditions of her LTV;

(c) Nausheen's LTV has never been cancelled;

(d) The Ministry's decision, as also the decision of the single Judge, against Nausheen's continued residence in India are based upon intelligence 'inputs' which, in our view, do not disclose matters that are egregious enough nor do they disclose a proximate or causal link between what is stated in the 'inputs' and the issuance of the Notice;

(e) While the single Judge proceeds on the essential basis of Nausheen being an alien who has no 'right' to continue to reside in India, that view omits to note that being the mother of two children who are Indian citizens and the wife of an Indian citizen, directing Nausheen to leave the country would break-up the family and would thereby be a serious infraction of the rights of at least three Indian citizens, namely the husband and the two sons aged 6 and 11 years, to live as a family. It bears mention that appellant/petitioner No. 1 in these proceedings is Mohd. Javed, an Indian citizen;

(f) In our view, the right to life under Article 21 of the Constitution of India would include the right of young children to live with their mother and the right of a husband to consortium with his wife; and State entities cannot be permitted to deprive Nausheen's sons and husband of these rights, merely by a stroke of the pen, in a manner that smacks of authoritarianism, without authority of law and without complying with basic tenets of natural justice and without affording her an opportunity of hearing to answer any matter alleged against her;

(g) While grant of a visa in the first instance may be a matter of pure discretion with the authorities, curtailing the liberty of residing in the country during the validity of an LTV cannot be permitted except by a reasoned decision, as has been held by the Supreme Court in Hasan Ali Raihany (supra) and by a Division Bench of this court in Mohammad Sediq (supra);

(h) If, as contended by the Ministry in affidavit dated 10.04.2019, it derives the power to regulate the entry, stay and exit of a foreign national from India inter-alia from Section 3 of the Foreigners Act 1946, then a fortiori such power can never be untrammelled or unregulated since law abhors absolutism and arbitrariness;



(i) What is under consideration here is not Nausheen's 'right' to stay in the country so much as the entitlement of the Ministry to act with manifest arbitrariness in directing Nausheen to leave the country in spite of a valid and subsisting visa that she holds.

10.17. Placing reliance upon **Mohd. Javed**, learned Senior Counsel reiterates that before directing a person to leave the country, particularly one who has entered lawfully and holds a valid visa, the authority must furnish reasons and afford an opportunity of hearing. He submits that the right to travel and reside, though subject to statutory regulation, is intertwined with the broader protection of life and personal liberty under Article 21 of the Constitution. In *Mohd. Javed*, the Court considered the impact of expulsion upon family life and recognised that arbitrary executive action affecting residence during the currency of a visa cannot be sustained without due process.



10.18. It is therefore argued that the power vested in the FRRO under the Foreigners Act cannot be exercised in an unguided, uncanalised or untrammelled manner. According to the petitioner, the statute does not confer absolute authority to virtually cancel a visa issued by the High Commission through the mechanism of a Leave India Notice. The absence of a prior show-cause notice to the petitioner before issuance of the LIN is emphasised. It is contended that the subsequent issuance of a show-cause notice to the company, after the LIN had already been issued, cannot cure the initial procedural defect or validate what is described as a predetermined action.

10.19. On this basis, learned Senior Counsel submits that the impugned Leave India Notice is vitiated for want of reasons, violation of natural justice,



and arbitrary exercise of statutory power, and therefore deserves to be quashed.

10.20. The notices which have been issued to the company are different from that to be issued to the petitioner to whom the LIN has been issued. In this regard, he relies upon the decision of the Hon'ble Apex Court in **Canara Bank v. Debasis Das**³, more particularly paras 15, 16 and 19 thereof, which are reproduced hereunder for easy reference:

15. *The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found*

³ (2003) 4 SCC 557



its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works [(1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] the principle was thus stated : (ER p. 420)

"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?'"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. *Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.*

19. *Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.*



10.21. By relying on ***Debasis Das*** he submits that the doctrine of *audi alteram partem*, has been elaborated by holding that notice is the foundational limb of natural justice. Such notice must be precise, unambiguous and determinative of the case that the affected party is required to meet. Adequate time must be afforded to enable representation. In the absence of proper notice and opportunity, any adverse order stands vitiated.

10.22. Learned Senior Counsel also refers to the observations of the Hon'ble Supreme Court that natural justice is not confined to judicial proceedings alone but extends to administrative actions having civil consequences. The expression "civil consequences" has been interpreted expansively to include infraction of civil liberties, material deprivation and even



non-pecuniary injury affecting a person's civil life.

10.23. Placing reliance upon the aforesaid principles, learned Senior Counsel submits that the issuance of a Leave India Notice unquestionably entails civil consequences. It affects the petitioner's right to reside in the country during the currency of a valid visa, disrupts his employment, and impacts his personal and professional standing. Such action, even if characterised as administrative, must conform to the minimum standards of fairness mandated by natural justice.

10.24. It is contended that no notice was issued to the petitioner prior to the issuance of the Leave India Notice. No opportunity was granted to him to explain his position or rebut the allegations underlying the impugned action. According to the petitioner, the subsequent



show-cause notice issued to the employer cannot cure the initial procedural defect nor substitute the requirement of a personal hearing where adverse civil consequences are directed against him.

10.25. Learned Senior Counsel therefore submits that, in view of the ratio laid down in **Debasis Das**, the impugned Leave India Notice stands vitiated for failure to comply with the foundational requirement of notice and hearing and is liable to be set aside on that ground alone.

10.26. He relies upon the decision of the Hon'ble Apex Court in **CCE v. Brindavan Beverages (P) Ltd⁴**, more particularly para 14 thereof, which is reproduced hereunder for easy reference:

14. *There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show-cause notice is the foundation on which the Department has to build up its case. If the allegations in the show-*

⁴ (2007) 5 SCC 388



cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show-cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by cegat cannot be faulted.

10.27. By relying on ***Brindavan Beverages's*** case, he submits that the Hon'ble Supreme Court in the said decision has held that a show-cause notice constitutes the very foundation of the case sought to be built by the authority. If the allegations in such notice are vague, lacking in particulars, or unintelligible, the noticee cannot be said to have been afforded a proper opportunity to meet the case against him. The Hon'ble Supreme Court held that in the absence of specific allegations supported by material, any consequential order would stand vitiated



for failure to comply with principles of natural justice.

10.28. He draws attention to the observation of the Supreme Court that mere assertions or broad allegations without substantive material are insufficient to proceed against a party. The notice must clearly set out the factual basis, the nature of alleged contravention, and the role attributed to the noticee so as to enable an effective defence.

10.29. Relying on the aforesaid principles, learned Senior Counsel submits that even the show-cause notice issued in the present case suffers from vagueness and absence of particulars. It is contended that neither the petitioner nor the company was clearly apprised of the specific allegations that they were required to meet. According to him, the notice merely makes broad assertions regarding alleged violations of



visa norms without detailing the factual foundation or specifying the precise misrepresentation alleged.

10.30. It is therefore submitted that in the absence of a precise and intelligible notice, the petitioner was deprived of a meaningful opportunity to respond, rendering the subsequent action unsustainable in law. On this ground as well, it is urged that the impugned Leave India Notice is liable to be set aside.

10.31. He relies upon the decision of the Hon'ble Apex Court in ***Gorkha Security Services v. Govt. (NCT of Delhi)***⁵, more particularly paras 21 and 22 thereof, which are reproduced hereunder for easy reference:

21. *The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement,*

⁵ 2014, SCC Online, SC 599



according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. *The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:*

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

10.32. By relying on **Gorkha Security Services's**

learned Senior Counsel submits that in the present case the fundamental requirements of a valid show-cause notice have not been satisfied. It is contended that no notice was issued to the petitioner prior to the issuance of the Leave India Notice. The show-cause notice



issued to the company, according to the petitioner, does not clearly articulate the specific imputations nor does it specify the precise action proposed to be taken against the petitioner.

10.33. It is therefore argued that the petitioner was never apprised of the precise case he was required to meet, nor was he informed of the proposed adverse action so as to enable him to demonstrate why such action ought not to be taken. In the absence of compliance with the dual requirements laid down in ***Gorkha Security Services***, the impugned Leave India Notice, it is submitted, stands vitiated for violation of principles of natural justice and is liable to be quashed.

10.34. He relies upon the decision of the Hon'ble Apex Court in the case of ***UMC Technologies (P)***



Ltd. v. Food Corpn. of India⁶, more particularly paras 19, 20 and 24 thereof, which are reproduced hereunder for easy reference:

19. *In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.*

20. *In the present case, the factum of service of the show-cause notice dated 10-4-2018 by the Corporation upon the appellant is not in dispute. Rather, what Shri Banerji has argued on behalf of the appellant is that the contents of the said show-cause notice were not such that the appellant could have anticipated that an order of blacklisting was being contemplated by the Corporation. Gorkha Security Services [Gorkha Security Services v. State (NCT of Delhi), (2014) 9 SCC 105] is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/contemplating such an action in the show-cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show-cause notice pursuant to which adverse action such as blacklisting may be adopted : (SCC pp. 118-19, paras 21-22)*

"Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the

⁶ (2021) 2 SCC 551



defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated [Gorkha Security Services v. State (NCT of Delhi), 2013 SCC OnLine Del 4289] that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

24. *A plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by the Corporation in its show-cause notice. After listing 12 clauses of the "Instruction to Bidders", which were part of the Corporation's bid document dated 25-11-2016, the notice merely contains a vague statement that in light of the alleged leakage of question papers by the appellant, an appropriate decision will be taken by the Corporation. In fact, Clause 10 of the same Instruction to Bidders section of the bid document, which the Corporation has argued to be the source of its power to blacklist the appellant, is not even mentioned in the show-cause notice. While the notice clarified that the 12 clauses specified in the notice were only indicative and not exhaustive, there was nothing in the notice which could have given the appellant the impression that the action of blacklisting was being proposed. This is especially true since the appellant was under the belief that the Corporation was not even empowered to take such an action against it and since the only clause which mentioned*



blacklisting was not referred to by the Corporation in its show-cause notice. While the following paragraphs deal with whether or not the appellant's said belief was well-founded, there can be no question that it was incumbent on the part of the Corporation to clarify in the show-cause notice that it intended to blacklist the appellant, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same.

10.35. His submission is that the Hon'ble Supreme Court in **UMC Technologies**, after referring to **Gorkha Security Services**, held that a valid show-cause notice must clearly indicate both (i) the material or grounds necessitating action, and (ii) the specific action or penalty proposed to be taken. The Court emphasised that the noticee must be placed in a position where he can effectively rebut not only the allegations but also the proportionality or justification of the proposed action. A notice that merely refers to alleged breaches without specifying the nature of the contemplated penalty fails to meet the requirements of natural justice.



10.36. Absence of clarity regarding the proposed action deprived the noticee of meaningful opportunity and rendered the subsequent blacklisting order unsustainable.

10.37. Placing reliance upon the aforesaid principles, learned Senior Counsel submits that issuance of a valid show-cause notice is not a mere procedural formality but a substantive safeguard inherent in fair administrative process. In the present case, it is contended that no show-cause notice was issued to the petitioner prior to the issuance of the Leave India Notice. Even the show-cause notice issued to the company, it is argued, did not clearly set out the specific action proposed to be taken against the petitioner, nor did it indicate that expulsion was contemplated.

10.38. It is therefore submitted that the impugned Leave India Notice, having been issued without



compliance with the minimum procedural requirements articulated by the Hon'ble Supreme Court in ***UMC Technologies***, stands vitiated. Learned Senior Counsel reiterates that the decision to direct the petitioner to leave India was taken arbitrarily, without adherence to due process and without affording the procedural safeguards guaranteed under law.

10.39. On this ground as well, it is urged that the Leave India Notice is liable to be quashed.

10.40. Learned Senior Counsel submits that the issuance of the Leave India Notice carries with it a lasting stigma that extends beyond the immediate regulatory consequence. It is contended that even if the petitioner has since exited India and the Employment Visa has expired, the existence of the LIN remains part of his immigration history. In future visa applications to various countries, the petitioner



may be required to disclose whether he has ever been directed to leave any country. Being duty-bound to answer truthfully, the petitioner would be compelled to disclose the issuance of the LIN. Such disclosure, it is argued, may adversely influence decisions of foreign immigration authorities and potentially result in denial of visas, thereby impacting his professional trajectory and personal mobility.

10.41. It is further submitted that the LIN was issued without due process and allegedly on the basis of an unverified and motivated complaint made by a disgruntled former employee of the company. According to the petitioner, the issuance of the LIN, without prior notice and without adjudication of the allegations, has already affected his professional reputation. The continuing existence of the LIN, it is urged, compounds that injury and may prejudice his



prospects in other jurisdictions where immigration authorities may take note of such regulatory history.

10.42. Learned Senior Counsel also refers to Rule 5 of the Passport (Entry into India) Rules, 1950, submitting that the essential requirements for lawful entry into India are possession of a valid passport and a valid visa. The petitioner, it is contended, satisfied both requirements at the time of entry. The Employment Visa having been granted by the competent authority at the High Commission of India in Canberra, and there being no formal cancellation thereof by the issuing authority at the relevant time, the FRRO could not, by issuance of a Leave India Notice, effectively nullify or overriding the visa while it remained valid. If there was an allegation that the visa had been procured by fraud, it is argued, such determination ought to



have been undertaken by the visa-issuing authority and not by the FRRO.

10.43. Reiterating the submission regarding institutional competence, learned Senior Counsel contends that the High Commission of India at Canberra, after examining all documents including the justification letter, employment terms, and the representation regarding non-availability of suitable Indian candidates, granted the Employment Visa upon being satisfied of compliance with applicable norms. The FRRO, it is urged, cannot now overreach or sit in appeal over the satisfaction recorded by the High Commission.

10.44. It is further submitted that even subsequent to the issuance of the LIN, the petitioner applied for and was granted fresh visas to enter India. According to the petitioner, this conduct of the Respondents themselves demonstrates that he



has not engaged in any activity rendering him undesirable or persona non grata. In such circumstances, it is argued, the continuance of the LIN in official records serves no regulatory purpose and merely perpetuates stigma without justification.

10.45. His vehement submission is that the FRRO does not have the jurisdiction to issue a LIN under any statute or notification. In this regard, he refers to Section 3 of the Foreigners Act, 1946, which is reproduced hereunder for easy reference:

3. Power to make orders.—

(1)The Central Government may by order 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 [India] or their departure therefrom or their presence or continued presence therein.

(2)In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a)shall not enter [India] or shall enter [India] 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 [India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c)shall not remain in [India] or in any prescribed areas therein; [(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;]

(d)shall remove himself to, and remain in, such area in [India] 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 may be prescribed or specified;

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

(vi)prohibiting him from association with persons 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 detained or confined;]and may make provision [for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) 5 [or clause (f)] of sub-section (2).]

[3A. Power to exempt citizens of Commonwealth Countries and other persons from application of Act in certain cases.—(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to—

(a)the citizens of any such Commonwealth Country as may be so specified; or

(b)any other individual foreigner or class or description of foreigner.

(2)A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.]



10.46. By referring to Section 3, he submits that the said provision empowers the Central Government to make orders regarding the entry, presence and departure of foreigners in India.

10.47. In terms of clause (c) of subsection (2) of Section 3, an order directing the person not to remain in India or in a prescribed area therein could be passed. Thus, it is only the Central Government which would pass such an order and not the FRRO is his submission.

10.48. He refers to Section 12 of the Foreigners Act, 1946, relating to the delegation of powers, and he submits that any authority upon which a power is conferred by the Act can authorise in writing any subordinate authority to exercise such power on its behalf. The delegation contemplated is only a one-step delegation from the Central Government and not for the



delegatee to further delegate to another subordinate authority, namely the FRRO.

10.49. It is only the Central Government that can delegate its powers under Clause (c) of Subsection (2) of Section 3, and not for the delegatee to further delegate. In the present case, the delegatee being the Joint Director (Bureau of Immigration), it is only the said Joint Director who could exercise powers under Clause (c) of Subsection (2) of Section 3. By referring to the notification dated 13.07.2000, he submits that the authorisation is only in favour of the Joint Director of Immigration. Even the exercise of the powers by the Joint Director is subject to compliance with any general or specific conditions issued by the Central Government. Such exercise of powers has to be done in a proper manner by following the applicable procedure.



10.50. The Joint Director not being authorised to delegate his powers, the respondents cannot contend that there is a delegation of such powers by the Joint Director (Immigration), in favour of the FRRO.

10.51. By referring to Section 3 of the Registration of Foreigners Rules, 1992, he submits that the powers of a registration officer would include the power to authorise the performance of any functions under the rules with the approval of the Central Government. His submission is that the Foreigners Act empowers the Central Government to regulate the presence of foreigners in India, including by directing their removal under Section 3. In furtherance of this, Section 12 permits the Central Government to delegate to a subordinate authority. In the present case, there is no such delegation to the FRRO. The delegation, in



terms of notification dated 13.7.2000, is only to the Joint Director (Immigration), and it is only the Joint Director (Immigration), who could have exercised such powers.

10.52. The FRRO, having exercised powers under the Foreigners Act 1946, and the notification dated 13.7.2000 is not authorised or empowered to issue a LIN as done by the FRRO. Insofar as the alleged sub-delegation by the Joint Director in favour of the FRRO, his submission is that Firstly, such delegation could not be made, since such sub-delegation is not contemplated. Secondly, the submission is that even the so-called delegation has not been published and is not known to the world as such.

10.53. At the most, it can be said to be an internal office note which cannot be considered as a valid delegation dehors a gazette notification which has not been issued. His further



submission is that the said delegation is not published and there is no date stamp, and as such, doubts the veracity and validity of the so-called delegation.

10.54. He relies upon the decision of the Hon'ble Apex Court in ***Harla vs. State of Rajasthan***⁷, more particularly Para 9 thereof, which is reproduced hereunder for reference:

9. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.

10.55. By referring to ***Harla's*** case, his submission is that before a law can become operative, it must be promulgated or published, that is to say, it

⁷ 1951, SCC 936



must be broadcast in some reasonable way so that all men may know what it is, so as to exercise due and reasonable diligence. Any decision which is reached in the secret recesses to which the public has no access cannot bind the general public.

10.56. He relies upon the decision of the Hon'ble Apex Court in ***I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer***⁸, more particularly Para 13 thereof, which is reproduced hereunder for easy reference:

13. *The first question we have to answer is whether the publication of the exemption notification in the Andhra Pradesh Gazette, as required by Section 11(1) of the Act, is mandatory or merely directory? Section 11(1) requires that an order made thereunder should be (i) published in the Andhra Pradesh Gazette and (ii) must set out the grounds for granting the exemption. The exemption may be on a permanent basis or for a specified period and shall be subject to such restrictions or conditions as the Government may deem necessary. Shri Sorabjee's contention is that while the requirements that the power under Section 11 should be expressed through an order, that it must contain the grounds for granting exemption and that the order should specify whether the exemption is on a permanent basis or for a specified period are mandatory, the requirement of publication in the Gazette is not. According to the learned counsel, the said requirement is merely directory. It is enough, says the counsel, if due publicity is given to the order. He relies upon certain decisions to which*

⁸ (1996) 6 SCC 634



we shall presently refer. We find it difficult to agree. The power under Section 11 is in the nature of conditional legislation, as would be explained later. The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the authority of the Government. Publication of an order or rule in the Gazette is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspapers or may be broadcast by radio or television. If a question arises when was a particular order or rule made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media (See Pankaj Jain Agencies v. Union of India [(1994) 5 SCC 198]). In other words, the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on a particular day (where the order or rule takes effect from the date of its publication) and is made by a particular authority; it is also the official version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation in, an Act, Rule or Order. Section 83 of the Evidence Act, 1872 says that the court shall presume the genuineness of the Gazette. Court will take judicial notice of what is published therein, unlike the publication in a newspaper, which has to be proved as a fact as provided in the Evidence Act. If a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it would become necessary to refer to the original itself, involving a good amount of inconvenience, delay and unnecessary controversies. It is for this reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official Gazette. To call such a requirement as a dispensable one — directory requirement — is, in our opinion, unacceptable. Section 21 of the Andhra Pradesh General Clauses Act says that even where an Act or Rule provides merely for publication but does not say expressly that it shall be published in the Official Gazette, it would be deemed to have been duly made if it is published in the Official Gazette [Section 21 reads: "21. Publication of Orders and Notifications in the Official Gazette.—Where in any Act or in any rule passed under any Act, it is directed that any order, notification or other matter shall be notified or published, that notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Official Gazette."] . As observed by Khanna, J., speaking for himself and Shelat, J. in Sammbhu Nath Jha



v. Kedar Prasad Sinha [(1972) 1 SCC 573 : 1972 SCC (Cri) 337] the requirement of publication in the Gazette (SCC p. 578, para 17) "is an imperative requirement and cannot be dispensed with". The learned Judge was dealing with Section 3(1) of the Commissions of Inquiry Act, 1952 which provides inter alia that a Commission of Inquiry shall be appointed "by notification in the Official Gazette". The learned Judge held that the said requirement is mandatory and cannot be dispensed with. The learned Judge further observed: (SCC p. 578, para 17)

"The commission of inquiry is appointed for the purpose of making an inquiry into some matter of public importance. The schedule containing the various allegations in the present case was a part of the notification, dated 12-3-1968 and specified definite matters of public importance which were to be inquired into by the Commission. As such, the publication of the schedule in the Official Gazette should be held to be in compliance with the statutory requirement. The object of publication in an Official Gazette is twofold: to give publicity to the notification and further to provide authenticity to the contents of that notification in case some dispute arises with regard to the contents."

10.57. By relying on **ITC Bhadrachalam's** case, his submission is that the publication of sub-delegation is mandatory, and if there is an exemption claim, the reasons for such exemption would have to be clearly and categorically specified. The publication in the Gazette not only provides information to the general public but also makes it an official document published under the authority of the government.



10.58. He relies upon the decision of the Hon'ble Apex Court in the case of ***State of Maharashtra vs. Mayer Hans George***⁹ more particularly Para 34 thereof, which is reproduced hereunder for easy reference:

34. Reverting now to the question whether mens rea-in the sense of actual knowledge that the act done by the accused was contrary to the law-is requisite in respect of a contravention of S. 8(1), starting with an initial prescription in favour of the need for mens rea, we have to ascertain whether the presumption is overborne by the language of the enactment, read in the light of the objects and purposes of the Act, and particularly whether the enforcement of the law and the attainment of its purpose would not be rendered futile in the event of such an ingredient being considered necessary.

10.59. By referring to ***Mayer Hans George's*** case his submission is that there is no purpose served by the manner in which the law is sought to be enforced, when the petitioner has been granted a valid employment visa which was in force and never cancelled.

⁹ (1965) 35 Comp Cas 557



10.60. On the above basis, his submission is that the Writ Petition is required to be allowed and the relief/s sought for is/are to be granted.

11. Sri. Arvind Kamath, learned Additional Solicitor General of India, appearing for the respondent, submits that:

11.1. The present writ petition has wholly lost its substratum. The Leave India Notice (LIN) dated 01.05.2019 was issued exclusively in relation to the petitioner's Employment Visa (E-2), which was valid only until 07.01.2020. The operation of the LIN was necessarily coterminous with the subsistence of that visa category. Upon the petitioner's exit from India and the subsequent expiry of the Employment Visa by efflux of time, the LIN stood exhausted and became functus officio. There is, therefore, no subsisting order operating against the petitioner that calls for adjudication.



11.2. It is emphatically contended that the Employment Visa was secured through suppression and misrepresentation. The company represented that no suitable Indian national was available for the position of General Manager. Subsequent material, including admissions made during correspondence, revealed that the foundational representation was untenable. The issuance of the LIN was therefore not arbitrary but a lawful regulatory response to material irregularity. The Respondents maintain that fraud vitiates the foundation of any administrative grant.

11.3. An Employment Visa is conditional upon the position being of a highly skilled or specialised nature for which no qualified Indian candidate is available. The petitioner's qualifications, a Bachelor's degree in Nursing and a Graduate Certificate in Critical Care Nursing, do not,



according to the Respondents, justify displacement of Indian managerial talent in a general managerial role, there are innumerable persons with the same qualifications in India. India has no dearth of qualified and experienced professionals in such fields. The visa regime is not designed to facilitate substitution of domestic managerial leadership with expatriates without all conditions being fulfilled.

11.4. The Employment Visa framework cannot be exploited as a device to circumvent domestic employment safeguards. The policy objective underlying the visa regime is to preserve employment opportunities for Indian citizens while permitting foreign expertise strictly in cases of genuine requirement. Any interpretation diluting this principle would



defeat the statutory and policy architecture governing foreign employment.

11.5. The petitioner voluntarily exited India on 15.11.2019. Even though interim protection had been granted by this Court, the petitioner chose to leave. Upon such departure, the directive contained in the LIN stood complied with. The LIN was not a continuing restraint but a direction not to remain in India under the Employment Visa. Once the petitioner departed, the LIN achieved its purpose and extinguished itself. The underlying visa expired on 07.01.2020 and was never renewed. Consequently, the LIN no longer has operative force.

11.6. Significantly, neither the petitioner nor the employer seek renewal of the Employment Visa nor challenge the alleged visa irregularity through re-application under the same



category. Instead, the petitioner voluntarily applied for a Business Visa, which was granted from 10.01.2020 to 09.01.2021. This conduct demonstrates conscious abandonment of the Employment Visa category. The petitioner's own actions reflect that he did not seek restoration of employment-based residence. If any employment activity were undertaken under the guise of a Business Visa, appropriate action would follow in accordance with law.

11.7. The record further demonstrates that the petitioner travelled to India on the Business Visa in January 2020 and later on a Tourist Visa in May 2024. Both visas were granted by the competent authorities of the Government of India. These subsequent grants categorically negate the allegation of blacklist, prohibition, or continuing stigma within the Indian immigration system.



11.8. The petitioner, by voluntarily shifting visa categories and entering India thereafter without impediment, has waived any residual grievance connected with the Employment Visa. The LIN became inoperative upon expiry of that visa. A spent administrative direction cannot be resurrected for academic adjudication.

11.9. It is categorically affirmed that the LIN does not constitute a permanent bar to future visa applications, which is borne out by official record and subsequent conduct of the authorities. The Respondents have formally clarified this position through written communication dated 26.06.2025. The petitioner has thereafter been granted further visa permissions. The assertion of continuing injury is therefore factually untenable.

11.10. The plea regarding adverse impact on foreign visa applications was not part of the original



writ petition. It has been raised for the first time in the rejoinder filed in 2025, several years after the initiation of proceedings. The Respondents submit that a speculative apprehension introduced belatedly cannot revive a petition otherwise rendered infructuous.

11.11. It is emphasised that the issuance or refusal of visas by other sovereign nations lies entirely outside the jurisdictional domain of this Court. No material has been placed on record to demonstrate that any foreign country has denied the petitioner a visa on account of the LIN. The alleged prejudice remains hypothetical. Courts do not adjudicate upon conjectural possibilities.

11.12. The Respondents categorically state that the details of the LIN are not disseminated to foreign governments or international databases.



By official letter dated 26.06.2025 and further clarification dated 04.11.2025, it has been made clear that no further action is contemplated pursuant to the LIN. These communications were issued to bring finality and to dispel apprehension.

11.13. The visa application forms produced by the petitioner refer to removal or deportation. The petitioner was not forcibly deported; he exited voluntarily. The LIN directed him not to remain under a particular visa category. The petitioner cannot equate regulatory departure with deportation so as to artificially construct a continuing grievance

11.14. That the present petition seeks adjudication of a spent administrative directive tied to an expired visa category. The petitioner has re-entered India under fresh visas. No operative restraint exists. No continuing disability



subsists. No concrete injury has been demonstrated. The writ petition, having lost both factual and legal substratum, deserves to be dismissed as wholly infructuous.

11.15. He refers to the decision of the Hon'ble Apex Court in the case of **Minerva Mills Ltd., and ors vs. Union of India**¹⁰ more particularly, Paras 36 and 37 thereof, which are reproduced hereunder for easy reference:

36. *Both the Attorney-General and the Additional Solicitor-General have raised a preliminary objection to the consideration of the question raised by the petitioners as regards the validity of Sections 4 and 55 of the 42nd Amendment. It is contended by them that the issue formulated for consideration of the court: "Whether the provisions of the Forty-second Amendment of the Constitution which deprived the fundamental rights of their supremacy and, inter alia, made them subordinate to the directive principles of State policy are ultra vires the amending power of Parliament? is too wide and academic. It is urged that since it is the settled practice of the court not to decide academic questions and since property rights claimed by the petitioners under Articles 19(1) (f) and 31 do not survive after the 44th Amendment, the court should not entertain any argument on the points raised by the petitioners.*

37. *In support of this submission reliance is placed by the learned counsel on the decisions of the American Supreme Court in Commonwealth of Massachusetts v. Andrew W. Mellon, George Ashwander v. Tennessee Valley Authority, and on WEAVER'S CONSTITUTIONAL LAW, 1946 Edition and AMERICAN JURISPRUDENCES, Reliance is also placed on*

¹⁰ (1980) 3 SCC 625



certain decisions of this court to which it is unnecessary to refer because the Attorney-General and the Additional Solicitor-General are right that it is the settled practice this Court to which it is unnecessary to refer because the Attorney-General of this Court not to decide academic questions. The American authorities on which the learned counsel rely take the view that the constitutionality of a statute will not be considered and determined by the courts as a hypotheti-cal question, because constitutional questions are not to be dealt with abstractly or in the manner of an academic discussion. In other words, the courts do not anticipate constitutional issues so as to assume in advance that our Court has consistently taken the view that we will not formulate a rule ment which may offend against the provisions of the Constitution. Similarly, a certain law may be passed in pursuance of a certain constitutional amend-of constitutional law broader than is required by the precise facts to which it is to be applied. It is only when the rights of persons are directly involved that relief is granted by this Court.

11.16. By relying on the decision in ***Minerva Mills Limited's*** case, his submission is that the Court is not required to address or decide academic questions. It is only when the rights of persons are directly involved that the matter would be considered and relief granted by a Court. All the contentions and apprehensions on the part of the petitioner are hypothetical in nature. The petitioner has not placed even one document on record indicating that an



application made by the petitioner has been rejected on the ground that a LIN had been issued by the respondent.

11.17. Learned ASGI submits, alternatively and without prejudice, that even assuming any foreign sovereign were to refuse a visa to the petitioner in future, this Court would have no territorial or subject-matter jurisdiction to adjudicate upon such refusal. Decisions of foreign immigration authorities are governed exclusively by the domestic law of those jurisdictions. The petitioner's legal rights within India have not been adversely affected in any continuing manner. On the contrary, the grant of a Business Visa and thereafter a Tourist Visa clearly demonstrates that the petitioner's travel interests into India remain intact and unhindered.



11.18. It is therefore emphatically submitted that this Court cannot pass directions, directly or indirectly, regarding issuance or refusal of visas by foreign countries. Any such relief would be beyond the constitutional competence of this Court.

11.19. On merits, learned ASGI submits that the action of the Respondents was entirely justified. The Employment Visa regime mandates that such visas be granted only where the position requires highly specialised skills unavailable in India. The justification letter dated 14.12.2017, though authored by the employer, was submitted as part of the petitioner's visa application. The petitioner derived direct benefit from that representation. If that representation is shown to be false or misleading, the beneficiary cannot disclaim responsibility for its consequences.



11.20. Referring to the documentary requirements accompanying an Employment Visa application, learned ASGI submits that the employer is required to furnish:

11.20.1. A categorical undertaking that the applicant will be employed full-time;

11.20.2. An undertaking assuming responsibility for the applicant's professional conduct;

11.20.3. A detailed justification letter explaining why no Indian national can be employed against the post;

11.20.4. Specific details of efforts made to identify suitable Indian candidates.

11.21. These requirements are not a formality they form the foundation for consideration of the application. The justification must demonstrate actual search and due diligence within India. In the present case, the explanation furnished later reveals that no such search was



conducted. This constitutes a fundamental non-compliance warranting revocation and regulatory action.

11.22. The justification letter dated 14.12.2017 asserted that the petitioner possessed experience unavailable in India and that no individual with similar qualifications could be found domestically. This categorical representation formed the basis of visa issuance.

11.23. The use of the expression "could not be found" necessarily implied that a search had been undertaken and that efforts had been made to locate suitable Indian candidates. However, subsequent correspondence revealed that no such search was conducted. The employer later admitted that there was no advertisement, no recruitment exercise, and no attempt to identify Indian candidates. The petitioner, in his visa



application, had expressly declared that the information furnished was true and complete and that he understood that incorrect information could result in denial of entry, deportation or other penalties. He was therefore fully aware of the legal consequences of misrepresentation.

11.24. It was only after a complaint was received by the Ministry of Home Affairs alleging irregularities in visa procurement that an enquiry was directed. Pursuant thereto, the FRRO sought detailed clarification regarding recruitment methodology, qualifications required, advertisements issued, number of applicants, and interview procedures. These queries were not speculative; they were grounded in regulatory duty.

11.25. The employer's response dated 25.07.2018 admitted that due to business urgency,



candidates were selected from the Australian office and no search was conducted within India. No advertisements were issued; no domestic recruitment process was undertaken. This admission directly contradicted the earlier justification. Selection from an internal overseas office without even attempting domestic recruitment cannot satisfy the fundamental requirement of the non-availability of Indian talent.

11.26. The contradiction between the original justification and subsequent explanation establishes misrepresentation. Had the latter explanation, that no domestic search was conducted, been disclosed in the justification letter, the Employment Visa would not have been granted. The misrepresentation therefore, goes to the root of the visa's validity. The issuance of the LIN was not arbitrary; it was a



proportionate regulatory response to a foundational defect.

11.27. Upon admission by the employer, a show-cause notice was issued to the employer. Simultaneously, the derivative beneficiary, the petitioner, was issued a LIN. This was consistent with the structure of an Employment Visa, where the employee's status is dependent upon the sponsor's compliance. The petitioner had expressly accepted potential consequences for incorrect information.

11.28. He submits that the FRRO acted with restraint and proportionality. The authorities could have initiated deportation proceedings. Instead, the petitioner was permitted to exit voluntarily. His family was not subjected to coercive measures. The action taken was the least intrusive response consistent with regulatory enforcement.



11.29. Even thereafter, the petitioner was granted Business and Tourist Visas. This fact demonstrates the absence of vindictiveness or punitive intent. The action was confined to rectifying a defective Employment Visa, not imposing lasting disability.

11.30. On the issue of authority, learned ASGI submits that the FRRO acted strictly within the statutory framework. The FRRO sought directions from the competent authority, namely the Joint Director (Immigration), Bureau of Immigration, Ministry of Home Affairs. The original file placed before the Court evidences this hierarchical decision-making process.

11.31. He refers to Notifications S.O. 3310(E) and S.O. 3311(E) dated 30.12.2009, whereby the FRRO, Bangalore, was appointed as Civil Authority under the Foreigners Act and Registration



Officer under the Registration of Foreigners Rules.

11.32. Further reliance is placed upon Gazette Notification GSR 605(E) dated 13.07.2000 issued under Section 12 of the Foreigners Act, authorising the Joint Director (Immigration) to exercise powers under Section 3(2)(c). The LIN was issued pursuant to such delegated authority.

11.33. It is submitted that there was no impermissible sub-delegation. The Joint Director, being the statutory delegate of the Central Government, directed issuance of the LIN. The FRRO merely executed that direction in formal terms. The issuing authority, in substance, was the Joint Director acting within delegated competence.

11.34. On the question of natural justice, learned ASGI submits that the alleged misrepresentation was by the employer. The authorities corresponded



extensively with the employer, sought explanation, and considered the responses before taking action. The principles of natural justice were satisfied vis-à-vis the party responsible for the representation. The employee, whose visa status was derivative, cannot demand a separate adjudication on matters exclusively within the employer's domain.

11.35. In so far as the decisions relied upon by the learned senior counsel for the petitioner his submission is that the decision in ***Hasan Ali Raihanys'*** case would not be applicable inasmuch as in that case the petitioner had applied for seeking citizenship of India and while the said application was pending, he was sought to be deported and in that background, the Hon'ble Apex Court had come to a conclusion that without hearing the person who



had applied for Indian citizenship, a deportation order could not be passed. In the present case, there being a misrepresentation by the employer, which was a cause for issuance of the employment visa, that decision would not be applicable.

11.36. As regards the decision of the Hon'ble Delhi High Court in ***Mohammed Javid's*** case, he again submits that, that was also a case where the petitioner had made an application for grant of Indian citizenship, the petitioner being a Pakistani national having married an Indian national and in that background the Hon'ble Delhi Court came to a conclusion that an applicant for Indian citizenship was required to be heard before issuance of a LIN, she having a valid long-term visa. The submission is also that the decision in ***Mohammed Javid's*** case is now pending before the Hon'ble Supreme



Court in SLP Nos.24092-24093/2019 and as such, the said decision not having attained finality, cannot be relied upon by the petitioner.

11.37. He relies upon the decision in ***Hans Muller of Nurenburg v. State of W.B***¹¹, particularly Paragraph 35 thereof which is reproduced hereunder for easy reference:

35. *Entries 9, 10, 17, 18 and 19 in the Union List confer wide powers on the Centre to make laws about, among other things, admission into and expulsion from India, about extradition and aliens and about preventive detention connected with foreign affairs. Therefore, the right to make laws about the extradition or aliens and about their expulsion from the land is expressly conferred; also, it is to be observed that extradition and expulsion are contained in separate entries indicating that though they may overlap in certain aspects, they are different and distinct subjects. And that brings us to the Foreigners Act which deals, among other things, with expulsion, and the Extradition Act which regulates extradition.*

11.38. By relying on ***Hans Muller's*** case, it is submitted that the said decision authoritatively recognises the plenary sovereign power of the State in matters relating to admission, regulation and expulsion of foreigners.

¹¹ (1955) 1 SCC 167



11.39. The Hon'ble Supreme Court in ***Hans Muller*** examined the constitutional scheme under the Seventh Schedule and noted that Entries 9, 10, 17, 18 and 19 of the Union List confer wide and exclusive legislative competence upon Parliament in matters concerning admission into India, expulsion, extradition, aliens and preventive detention connected with foreign affairs. The Court observed that extradition and expulsion are distinct and separately enumerated subjects, thereby emphasising that the power to expel is not derivative or incidental, but an independent and express constitutional competence.

11.40. Learned ASGI submits that the Foreigners Act, 1946 is a direct legislative manifestation of this sovereign authority. Section 3 of the Act empowers the Central Government to regulate, restrict, or direct that a foreigner shall not



remain in India. The power of expulsion is not a matter of concession but an incident of sovereignty. A foreign national has no fundamental right to reside or settle in India. His presence in the country is conditional, regulated by statute, and subject at all times to executive supervision in accordance with law.

11.41. Relying upon ***Hans Muller***, learned ASGI submits that the executive discretion in matters of expulsion is necessarily wide. Immigration control is intimately connected with sovereignty, national policy, labour regulation, and public order. Courts have consistently recognised that such matters fall within the executive domain, subject only to limited judicial review to ensure absence of mala fides, arbitrariness, or statutory violation.

11.42. In the present case, it is contended that irregularities in the procurement of the



Employment Visa were established through documentary admissions by the employer. Once the foundational misrepresentation stood revealed, the executive was well within its statutory competence to direct that the petitioner shall not remain in India under that visa category. The power to expel includes the lesser power to direct departure without initiating coercive deportation proceedings.

11.43. Learned ASGI emphasises that the authorities did not exercise the full rigour of deportation powers. The petitioner was not forcibly removed. He was permitted voluntary exit. His family was not detained. No permanent prohibition was imposed. Instead of invoking the harshest available measure, the authorities adopted a measured and proportionate course by issuing a Leave India Notice, thereby allowing compliance without coercion.



11.44. It is submitted that when viewed through the constitutional lens articulated in ***Hans Muller***, the impugned action represents a restrained and calibrated exercise of sovereign power. The petitioner, being a foreign national whose visa was found to be tainted by misrepresentation, cannot claim immunity from the regulatory consequences contemplated under the Foreigners Act.

11.45. Thus, learned ASGI contends that the issuance of the LIN was not only within statutory competence but also reflective of a proportionate exercise of executive discretion in a domain where the Constitution accords primacy to sovereign authority.

11.46. On all the above basis, the submission of learned ASGI is that the Writ Petition as filed is required to be dismissed.



12. Shri K.G. Raghavan learned senior counsel in rejoinder, would submit that:

12.1. Learned Senior Counsel for the petitioner submits that the reliance placed by the Respondents upon ***Hans Muller*** is misplaced and inapposite to the present controversy. It is contended that the said decision was rendered in the year 1955, at a constitutional moment when the jurisprudence relating to personal liberty, procedural fairness and international human rights obligations had not yet evolved to their present contours. The constitutional interpretation prevailing at that time, it is argued, was pre-*Maneka Gandhi* and pre-dates the incorporation of modern standards of fairness under Articles 14 and 21.

12.2. Learned counsel submits that the legal landscape governing expulsion of foreign nationals has undergone significant



transformation since 1955. India is now a signatory to the International Covenant on Civil and Political Rights (ICCPR), which, inter alia, mandates under Article 13 that an alien lawfully present in the territory of a State Party shall not be expelled except in pursuance of a decision reached in accordance with law and shall, save for compelling reasons of national security, be allowed to submit reasons against his expulsion and have his case reviewed by a competent authority.

12.3. It is contended that India's accession to the ICCPR imposes binding international obligations to ensure procedural safeguards in matters of expulsion. These safeguards include fairness, transparency, and opportunity of representation, except in narrowly defined cases of national security. The petitioner submits that the principles embodied in the



ICCPR have informed the development of domestic constitutional jurisprudence, particularly post ***Maneka Gandhi***, where the Hon'ble Supreme Court expanded the meaning of "procedure established by law" to require that such procedure be just, fair and reasonable.

12.4. According to the petitioner, the ratio in ***Hans Muller*** must therefore be read in the historical and constitutional context in which it was delivered. The broad observations regarding executive discretion in matters of expulsion cannot, it is submitted, be understood as conferring unfettered or unreviewable power in the contemporary constitutional framework. Executive action affecting personal liberty, even of a foreign national, must now withstand scrutiny under Articles 14 and 21 and conform



to principles of non-arbitrariness and procedural fairness.

12.5. It is further submitted that the present case does not involve considerations of national security or public order that might justify curtailed procedural safeguards. The sole basis for the impugned action is alleged irregularity in procurement of the Employment Visa. In such circumstances, reliance upon a 1955 articulation of sovereign power without incorporating the subsequent evolution of constitutional and international law principles, it is argued, would be inappropriate.

12.6. He therefore submits that ***Hans Muller*** cannot be invoked as authority for the proposition that expulsion power is unfettered or immune from contemporary procedural safeguards. The decision, it is urged, must yield to the modern constitutional doctrine that even where the



State possesses sovereign authority over foreigners, the exercise of such authority must conform to fair procedure and international human rights commitments.

12.7. He relies upon the decision of the Hon'ble Madras High Court in ***R.I. Jebaraj v. Union of India***¹², more particularly Para 28 thereof, which is reproduced hereunder for easy reference:

28. *As concluded above, if the order under challenge is in the nature of an order of expulsion of a foreigner from Indian soil, necessarily notice should have been given by the Central Government to the foreigner to afford an opportunity to him to make representation. The entire argument of Mr. V.T. Gopalan, the learned Senior Counsel, was under the premise that the impugned order is an order of expulsion. But I am unable to subscribe to the said contention. Admittedly, the petitioner's brother was not in Indian soil and so, the impugned order cannot be construed to be an order of expulsion at all. As rightly pointed out by the respondents in the counter, the impugned order is only an order banning the entry of the petitioner's brother into India without reference to the Central Government. Nowhere it has been held in any of the judgments cited supra that before passing any order under Section 3 of the Foreigners Act r/w Clause 3 of the Foreigners Order, 1948 such a notice should be given to the foreigner and he should be afforded an opportunity of being heard before passing an order prohibiting the entry of the foreigner. As held by the Hon'ble Supreme Court in Hans Muller v. Supdt., Presidency Jail, Calcutta's case (cited supra) for passing an order either regulating or banning the entry of any foreigner into India, it is the absolute and unfettered discretion of the Central*

¹² 2009 SCC OnLine Mad 160



Government. The said sovereign power is unlimited and unrestricted. The United Nations International Covenant on Civil and Political Rights, 1966 does not speak of any such opportunity to be given to any foreign national in respect of prohibitory or regulatory orders. As I have already stated, in Gilles Preifer v. The Union of India, Sarbananda Sonowal's case and Hasan Ali Aihany's case, the Hon'ble Supreme Court has held in clear terms that the sovereign power of the Central Government is absolute and has further held that only in the matter of expulsion of a foreign national who has already been allowed to be in Indian soil, in view of the International Covenant 1966, such a notice and opportunity should be given to him before expelling him. But in respect of an order banning the entry of a national into India, the Central Government need not state any reason as to why such ban order is imposed on him and it need not give any opportunity or notice to the foreign national. The Constitution of India does not contain any provision obliging the Central Government to issue notice affording an opportunity. The right to life guaranteed under Article 21 which is available to any foreign national does not engulf into its ambit a right to a foreign national to compel the Central Government either to allow him to enter into India or to afford an opportunity to make representation or to state the reasons for such a ban. Therefore, the contention of the learned Senior Counsel that the impugned order is vitiated on the ground that the same came to be passed without affording any opportunity to the petitioner deserves only to be rejected.

12.8. By relying on **Jebbaraj's** case, his submission is that before an order of expulsion of a foreigner from Indian soil is made, a necessary notice should have been given by the Central Government to the foreigner to afford an opportunity for him to make a representation. The decision in **Hans Muller's** case, having



been considered by the Hon'ble Madras High Court in **Jebaraj's** case, and reference having been made to ICCPR, it is the decision in Jebaraj's case which is required to be considered by this Court.

12.9. He relies on the decision of the Hon'ble Delhi High Court in **Mohd. Javed v. Union of India**¹³, more particularly paras 28, 29, 33 and 41 thereof, which are reproduced hereunder for easy reference:

28. *From the juristic standpoint, what requires elucidation is the exact nature of the 'right' that is under consideration. Confusion appears to have arisen from the perception that the 'right' being considered is Nausheen's 'right to live in India', which it is contended, she has none since she is an alien or foreigner. That is indeed true. What we are losing sight of though, is the fact that Nausheen is not an illegal immigrant and has not entered India clandestinely or unlawfully but has been continually residing in India for the last thirteen years on a valid visa, which has been renewed by the authorities from time-to-time. What is under the lens here is not Nausheen's right to reside in the country but the Ministry's authority to revoke a valid and subsisting LTV without following any process or procedure whatsoever and without arriving at a reasoned decision based on a factual matrix. It is not Nausheen's substantive right but her procedural right to 'due process' or right to procedural due process, as it is sometimes called, that is required to be considered.*

29. *In this context, while we are clear that most of the Part III rights under the Constitution, namely fundamental*

¹³ 2019 SCC OnLine Del 8741



rights, are available only to citizens and not to foreigners, however, as has been consistently held, on a bare perusal of the constitutional provisions the rights enshrined in Articles 20, 21 and 22 of the Constitution are available even to non-citizens or foreigners. While invocation of rights under Articles 20 and 22 does not arise in the present case, the right under Article 21, namely the right of a person not to be "deprived of his life or personal liberty except according to procedure established by law" does. Here also, we hasten to add, it is not that Nausheen has been deprived of her life or personal liberty, in the narrow and restricted sense, by being asked to leave India but what is impacted is Nausheen's 'right to life' in its expanded interpretation as given by the courts, with several aspects of 'life' having been read into Article 21 of the Constitution.

33. *It is also a basic tenet of the rule of law, that no power conferred upon any authority must be unguided, uncanalized, untrammelled or absolute. Courts will invariably frown upon unguided power, wherever it be found; and the test would be vis-a-vis the authority upon which power is conferred, regardless of the subject upon which the power is exercised. That is to say, in the present context, the Ministry cannot have absolute, unguided power, regardless of whether the power be exercised over a citizen or a foreigner. The question to ask therefore is, whether there is any guidance or restraint on the power of the Ministry to direct a foreigner to leave the country or is the discretion unguided and absolute? The fact that the power is exercised upon or against a foreigner is not the point. It is the existence of unguided power in the hands of an authority that is in issue. Providing a procedure for its exercise is the basic minimum restraint on exercise of any power. What, may we ask, is the procedure for exercise of the Ministry's power to direct a foreigner on a valid and subsisting visa, to leave the country. If no procedure is discernible in the statute, a basic procedure must be read into it. What was the procedure followed by the Ministry in the present case before issuing the Notice to Nausheen? Here we are not holding the Ministry to the standard of a just, fair or reasonable procedure prescribed by law as per the principles laid down inter alia in the case of Maneka Gandhi v. Union of India, (1978) 1 SCC 248 which may not be applicable to a case under the Foreigners Act or to regulations or orders made thereunder; but did the Ministry follow any procedure at all? We are afraid we are unable to discern any procedure whatsoever having been followed before the issuance of the Notice. The abrupt and peremptory issuance of the Notice itself cannot, on any parameters, be construed to be a procedure. A legal*



procedure must be a set of steps prescribed by law or read into the law, involving and displaying assessment of a fact situation, application of mind, leading to inferential action by the authorities, that precedes such action; which, in case of civil consequences, must also include due consideration of the version or representation of the person who will be visited with such consequences. The absence of any steps cannot itself pass-off as procedure.

41. *We are only too familiar with the vast scope and expanse of rights protected under the overarching principles of Article 21 of the Constitution as developed over the past decades by court pronouncements. How then can the rights of a family against arbitrary and capricious interference by the State not be protected as part of the ever-growing bundle of rights under Article 21? Drawing upon the covenants contained in the ICCPR, we hold that the 'family', being the natural and fundamental unit of society, is entitled to protection of its integrity against arbitrary interference by the State.*

12.10. By relying on **Mohammed Javid's** case, his submission is that when a person has entered India lawfully under a valid visa, the right of such a person has to be balanced with the right of the authority of the ministry to revoke the long-term visa by following a procedure and arriving at a reasoned decision based on the factual matrix. He distinguishes the right to be in India from the procedural due process right to be denied the right to live in India, even if the petitioner did not have a right to live in



India, that right cannot be deprived without the procedural due process being followed by the authorities.

12.11. He reiterates the decision of the Hon'ble Apex Court in **Hasan Ali's** case and also places reliance on the decision of the Hon'ble Apex Court in **Sarbananda Sonowal v. Union of India**¹⁴, more particularly para 75 thereof, which is reproduced hereunder for easy reference:

75. *In Introduction to International Law by J.G. Starke (1st Indian Reprint 1994) in Chapter 12 (p. 348), the law on the points has been stated thus:*

"Most States claim in legal theory to exclude all aliens at will, affirming that such unqualified right is an essential attribute of sovereign government. The courts of Great Britain and the United States have laid it down that the right to exclude aliens at will is an incident of territorial sovereignty. Unless bound by an international treaty to the contrary, States are not subject to a duty under international law to admit aliens or any duty thereunder not to expel them. Nor does international law impose any duty as to the period of stay of an admitted alien."

Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law does not prohibit the expulsion en masse of aliens. (p. 351). Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant

¹⁴ (2005) 5 SCC 665



to a decision reached by law, and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa, etc. and not to those who have entered illegally or unlawfully. Similar view has been expressed in Oppenheim's International Law (Ninth Edn. 1992 in paras 400, 401 and 413). The author has said that the reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy, competent to exclude aliens from the whole or any part of its territory. In para 413 it is said that the right of States to expel aliens is generally recognised. It matters not whether the alien is only on a temporary visit, or has settled down for professional business or any other purposes in its territory, having established his domicile there. A belligerent may consider it convenient to expel all hostile nationals residing or temporarily staying within its territory, although such a measure may be very harsh on individual aliens, it is generally accepted that such expulsion is justifiable. Having regard to Article 13 of the International Covenant on Civil and Political Rights, 1966, an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law.

12.12. By relying on **Sarbananda Sonowal's** case, he again seeks to draw a distinction between a person who has entered the country illegally or unlawfully and a person who has entered legally under a valid visa. He again reiterates that as per the visa applications required to be filed with the US Department of State, as also before the consulate General of India in Australia, an



applicant is required to make a disclosure as to whether the applicant has been deported or removed from the respective country and insofar as the visa applications to United Kingdom, New Zealand, Australia Japan and Canada, the applicant is required to disclose whether the applicant was asked to leave or ordered to leave the country with a detailed explanation. The LIN coming within the mischief of being asked to leave or ordered to leave, the petitioner is entitled to challenge the LIN even after the expiry of the visa and or the LIN having been rendered incapable of enforcement.

12.13. As regards the letter dated 26.6.2025 issued by the FRRO to the learned counsel for the Respondent and the letter dated, 4.11.2025 issued by the FRRO to the petitioner, his submission is that the operation of the LIN



having been stayed by this Court by the order dated 24.06.2019, it cannot be said that the business and e-tourist visa was issued despite the LIN being issued inasmuch as when the business visa and e-tourist visa was issued, the LIN had been stayed by this Court.

12.14. The visa, if any, filed by the petitioner with other countries cannot be processed on the basis of the assurance of the respondent that there is a duty cast on the petitioner to disclose the LIN having been issued.

12.15. He refers to the decision of the Hon'ble Apex Court in ***M. Sudakar v. V. Manoharan***¹⁵, more particularly paras 15 and 16 thereof, which are reproduced hereunder for easy reference:

15. True it is that the learned Single Judge had observed that the writ petition had become infructuous and still proceeded to grant relief to the appellant. In our opinion, the learned Single Judge may not be absolutely right in observing that the writ petition had become infructuous as the resolution debarring the appellant was still operative. In

¹⁵ (2011) 1 SCC 484



our opinion a writ petition broadly speaking is held infructuous when the relief sought for by the petitioner is already granted or because of certain events, there may not be necessity to decide the issue involved in the writ petition. Here in the present case the resolution of the governing body was still holding the field when the writ petition was heard and in fact was to operate for a further period, hence it cannot be said that the relief claimed by the appellant had become infructuous. In any view of the matter, as the effect of the order continued, the learned Single Judge was right in moulding the relief. The act of the appellant in removing a large number of members and financial impropriety will not clothe the general body to pass resolution debarring the appellant from holding the post for 10 years, as no such power is conferred by the bye-laws. The action being patently illegal, the learned Single Judge could not have declined the relief taking into account the alleged action.

16. *As regards the decision of this Court in Krishna Rice Mills [(1981) 4 SCC 148] relied on by Mr Sorabjee, the same has no bearing in the facts and circumstances of the case. In the said case the instruction issued by the Government was challenged and when the matter was taken up it was conceded by the State that the State Government would withdraw the instruction. In view of the aforesaid the High Court observed that the writ petition has become infructuous and in that background this Court observed that the High Court ought not to have gone into the merit of the case. In the present case the resolution debarring the appellant was and still in force and, therefore, the learned Single Judge rightly went into its validity. Hence, the judgment relied on in no way supports the contention of the respondents.*

12.16. By relying on **M. Sudhakar's** case, his submission is that merely because the visa had expired, the issuance of the LIN is not taken away. The fact of the issuance of the LIN continues to be true and valid. The petitioner,



having left the country and subsequently entered on the basis of other valid visas, the disclosure of the said LIN being required to be made by the petitioner, it cannot be said that the writ petition has become infructuous.

12.17. He relies upon the decision of the Hon'ble Apex Court in ***Union of India v. Narender Singh***¹⁶, more particularly para 5 and 6 thereof, which are reproduced hereunder for easy reference:

5. The High Court's order is clearly indefensible. A writ petition questioning the Tribunal's order on merits does not become infructuous by giving effect to the Tribunal's order. Merely because the order of reinstatement had been implemented by the appellant, that did not render the writ petition infructuous as has been observed by the High Court. This position was clearly stated in Union of India v. G.R. Prabhavalkar [(1973) 4 SCC 183 : 1973 SCC (L&S) 374] . In para 23 of the decision it was observed as follows : (SCC p. 193)

"23. Mr Singhvi, learned counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on 19-3-1971, the effect of which is to equate the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade III, of Bombay. This order, in our opinion, has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous."

¹⁶ (2005) 6 SCC 106



6. *The expression infructuous means ineffective, unproductive and unfruitful. It is derived from the Latin word "fructus" (fruit). By implementing an order, the challenge to the validity of the order is not wiped out and is not rendered redundant.*

12.18. By relying on **Narendra Singh's** case, his submission is that an order passed by a Court or Tribunal, in this case by the FRRO, will not become infructuous after the order is given effect to. The right to challenge an order would continue even after being given effect to, and as a consequence thereof, the petitioner would be entitled to restitution.

12.19. As regards the authority of the FRRO and the delegation in favour of FRRO, he submits that the FRRO in the impugned LIN has not mentioned any direction issued by the competent authority. Thus, the LIN can only be presumed to have been issued by the FRRO in its capacity as FRRO and not on the instruction of the competent authority. The documents



which have been shown to this Court have not been made available to the petitioner, and as such, those documents cannot be considered for the purpose of passing an order against the petitioner without a copy thereof having been furnished to the petitioner.

12.20. The delegation is permitted only to the Joint Director; the Joint Director is not permitted to further delegate his powers to the FRRO. No sub-delegation being provided, even if it were to be accepted that there is sub-delegation, the sub-delegation is not proper and valid. Be that as it may, he again reiterates that the FRRO has not, in the impugned LIN, mentioned anything about the Joint Director having directed the FRRO to issue the LIN.

12.21. He relies upon the decision in ***Amit Kumar Sharma v. Union of India***¹⁷, more particularly

¹⁷ (2023) 20 SCC 486



paras 25, 26 thereof, which are reproduced hereunder for easy reference:

25. *The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with "reasonable probability" influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject-matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.*

26. *The non-disclosure of relevant material to the affected party and its disclosure in a sealed cover to the adjudicating authority (in this case AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond the reach of challenge. Secondly, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to-case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such as the identity of a sexual harassment victim cannot be disclosed. The measure of non-disclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks*



to serve. The exceptions should not, however, become the norm.

12.22. By relying on **Commander Amit Kumar Sharma's** case, his submission is that any material relied upon by either party in the Court in a judicial proceedings must be disclosed and even if the adjudicating authority does not rely on the material while arriving at a finding if the possibility of the same influencing the decision, there would be a serious violation of principles of natural justice.

12.23. On all the above grounds, he submits that the Petition is required to be allowed and the relief sought for to be granted.

13. Heard Sri.K.G.Raghavan, learned senior counsel for the Petitioner, Sri.K.Aravind Kamath, learned ASGI for the Respondents. Perused papers.

14. The points that would arise for consideration are:



- i) **Whether the Leave India Notice (LIN) dated 01.05.2019 is vitiated for violation of the principles of natural justice?**
- ii) **Whether the issuance of a Leave India Notice during the subsistence of a valid and un-cancelled Employment Visa (E-2) amounts to an impermissible indirect or de facto cancellation of the visa?**
- iii) **Does the Foreign Regional Registration Officer (FRRO) possess statutory jurisdiction to issue a Leave India Notice?**
- iv) **Whether the power under Section 3(2)(c) of the Foreigners Act, 1946, to direct a foreigner "not to remain in India" vests exclusively in the Central Government or its duly authorised delegate?.**
- v) **Whether an internal communication or direction issued by the Joint Director (Immigration) can constitute a lawful delegation or authorisation under the Foreigners Act?**
- vi) **Whether the impugned LIN suffers from arbitrariness and non-application of mind?**
- vii) **Whether allegations of fraud or misrepresentation in the procurement of an Employment Visa can be acted upon by the FRRO without prior adjudication by the visa-issuing authority?**
- viii) **Whether a show-cause notice issued to the employer can satisfy the requirements of natural justice, qua the employee against whom the adverse civil consequence is directed?**
- ix) **Whether the writ petition has been rendered infructuous or academic on account of the petitioner's exit from India, expiry of the Employment Visa, and subsequent grant of business and tourist**



visas, or whether the impugned LIN continues to have civil, reputational, or legal consequences warranting judicial review?

x) **What order?**

15. I answer the above points as follows:

16. **Answer to Point No.1: Whether the Leave India Notice (LIN) dated 01.05.2019 is vitiated for violation of the principles of natural justice?**

16.1. Sri K.G. Raghavan, learned Senior Advocate appearing for the Petitioner, challenges the impugned LIN primarily on the ground of procedural impropriety and violation of the *audi alteram partem* rule. He submits that the Leave India Notice dated 01.05.2019 was served on the Petitioner on 19.06.2019 without any prior show-cause notice (SCN) or opportunity of hearing afforded specifically to him. The Petitioner was presented with a *fait accompli* directing him to leave the country, without being informed of the grounds for such expulsion.



16.2. It is the specific contention of the Petitioner that there exists a vital distinction between a foreigner who enters the country illegally and one who enters lawfully on a valid visa. The Petitioner entered India on a valid Employment Visa (E-2) issued by the High Commission of India at Canberra after due verification of his documents, including the Justification Letter. He subsequently registered with the FRRO and held a valid Residential Permit. As a lawful entrant, he is entitled to the protection of Article 21 of the Constitution of India.

16.3. The learned Senior Counsel places heavy reliance on the decision of the Hon'ble Supreme Court in **Hasan Ali Raihany v. Union of India**. He argues that in **Hasan Ali**, the Hon'ble Supreme Court categorically held that a foreigner who enters on a valid visa must be informed of the reasons for deportation and



given an opportunity to represent his case. The only exception to this rule is the existence of "compelling national security reasons." In the present case, the Respondents have not pleaded any threat to national security, and therefore, the denial of a hearing is illegal and violative of the procedural due process mandated by Article 21.

16.4. Reliance is also placed on the decision of the Hon'ble Delhi High Court in **Mohd. Javed v. Union of India**, where a LIN issued to a Pakistani national was quashed. The Hon'ble Delhi Court held that the "procedure established by law" under Article 21 applies to foreigners, and arbitrary expulsion without reasons violates this fundamental right. The learned Senior Counsel contends that the impugned LIN is cryptic, unreasoned, and arbitrary.



16.5. Furthermore, referencing **Canara Bank v. Debasis Das**, it is argued that even administrative orders entail civil consequences, here, the stigma of expulsion, loss of employment, and disruption of residence, requiring strict adherence to natural justice. Specifically, the Court in **Canara Bank** held that notice is the first limb of natural justice and must be precise and unambiguous.

16.6. Learned Senior Counsel also relied upon **CCE v. Brindavan Beverages (P) Ltd.**, to contend that a show-cause notice is the foundation of the department's case. If the allegations are vague or lacking, the notice is vitiated. In the present case, no notice was issued to the Petitioner at all.

16.7. Further reliance was placed on **Gorkha Security Services v. Govt. (NCT of Delhi)**, and **UMC Technologies (P) Ltd. v. Food**



Corpn. of India, to submit that where an action entails grave consequences like blacklisting (or expulsion), a specific show-cause notice proposing the exact penalty is mandatory. The failure to issue such a notice renders the subsequent order void.

16.8. He also cited **R.I. Jebaraj v. Union of India**, wherein the Hon'ble Madras High Court distinguished the power to *ban entry* from the power to *expel*, holding that in cases of expulsion of a foreigner already on Indian soil, notice and opportunity are required, citing the International Covenant on Civil and Political Rights (ICCPR).

16.9. Sri K. Aravind Kamath, learned Additional Solicitor General of India (ASGI), countered these submissions by asserting the sovereign nature of the power exercised under the Foreigners Act, 1946.



16.10. The Respondent contends that under Section 3 of the Foreigners Act, 1946, the Central Government possesses absolute, unfettered, and plenary discretion to expel a foreigner. This power is an incident of territorial sovereignty and is not subject to the strictures of natural justice applicable to citizens.

16.11. The Respondent places strong reliance on the Constitution Bench judgment of the Hon'ble Supreme Court in **Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta**. It is submitted that this judgment unequivocally holds that the Foreigners Act vests the government with unrestricted power to expel aliens, and the Constitution does not fetter this discretion. The fundamental right to reside and settle in India under Article 19(1)(e) is not available to foreigners.



16.12. The learned ASGI distinguishes **Hasan Ali Raihany v. Union of India** on the facts. He submits that in **Hasan Ali**, the petitioner therein had an application for Indian Citizenship pending and had deep roots in the country (born in India). The Hon'ble Supreme Court's direction for a hearing was influenced by the potential claim to citizenship and long-standing residence, which is absent in the present case where the Petitioner is a contractual employee on a temporary visa.

16.13. Similarly, **Mohd. Javed v. Union of India** is distinguished as it involved the family rights of an Indian citizen (husband) and Indian children, implicating Article 21 rights of the family unit. The present Petitioner has no such family ties in India.

16.14. The Respondent submits that the visa was procured through fraud and material



misrepresentation by the Employer (Company). The Justification Letter dated 14.12.2017 claimed no Indian was available, but the Company later admitted in July 2018 that no advertisement was placed. The Respondent argues that fraud vitiates all solemn acts. Since the fraud was committed by the Employer, the SCN was rightly issued to the Employer. The Petitioner, being a beneficiary of this fraud, cannot claim equitable relief or a separate hearing. In cases of fraud, the principles of natural justice are not required to be stretched to the point of futility.

16.15. The primary question before this Court is whether the principles of natural justice, specifically the right to a pre-decisional hearing, are absolute and mandatory in the context of the expulsion of a foreign national holding an employment visa, particularly when the validity



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of that visa is questioned on grounds of misrepresentation.

16.16. It is settled constitutional law that while foreigners in India enjoy the protection of Article 21 (Right to Life and Personal Liberty) and Article 14 (Equality before Law), they do not possess the fundamental rights guaranteed under Article 19, specifically the right to reside and settle in any part of the territory of India [Article 19(1)(e)].

16.17. The *locus classicus* on this subject is the Constitution Bench decision of the Hon'ble Supreme Court in **Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta**. The Hon'ble Supreme Court categorically held that the Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there



is no provision limiting this discretion, the Constitution does not fetter this discretion.

16.18. The Hon'ble Supreme Court in ***Hans Muller*** further elucidated that the government has the right to refuse entry or order expulsion, and this right is "absolute and unlimited". While the Petitioner argues that the evolving jurisprudence under Article 21 dilutes this principle, ***Hans Muller*** remains the binding law of the land regarding the sovereign power of the State over aliens. The classification of foreigners as a distinct class permissible under Article 14 was also upheld in this judgment.

16.19. The Petitioner's reliance on **Hasan Ali Raihany v. Union of India** is misplaced. A careful reading of that judgment reveals a crucial factual distinction. In *Hasan Ali*, the petitioner was born in India to Iranian parents, had lived in India for a substantial period, and most



importantly, had an application for naturalisation (citizenship) pending before the authorities. The Hon'ble Supreme Court invoked the principles of natural justice in that specific context, reasoning that a person seeking citizenship who has lived in the country for decades cannot be summarily deported without reasons, as it affects his potential claim to citizenship.

16.20. Similarly, **Mohd. Javed v. Union of India**

involved a Pakistani national who was the spouse of an Indian citizen and mother to two Indian minor children. The Delhi High Court's intervention was predicated on the "Right to Family Life" and the derivative rights of the Indian family members (husband and children) under Article 21. The disruption of the family unit was a central concern. The Petitioner also cited **R.I. Jebaraj v. Union of India**, which



again deals with the expulsion of a person who had acquired foreign citizenship but had roots in India.

16.21. In stark contrast, the Petitioner herein is a contractual employee of a foreign multinational subsidiary. He has no claim to Indian citizenship, nor does his expulsion separate him from an Indian family. His right to stay is purely contingent upon the validity of his employment visa.

16.22. The Respondent has placed substantial material on record demonstrating that the "Justification Letter" dated 14.12.2017 submitted by the Company to obtain the Petitioner's visa contained a material misrepresentation. The letter claimed that "no individual with similar experience and qualification could be found within India. However, upon inquiry, the Company admitted in July 2018 that "no



advertisements were placed" and they "selected employees from their existing Australian office".

16.23. This contradiction is fatal. The Employment Visa regime is designed to protect the domestic labor market. A declaration that no local talent is available is a jurisdictional fact for the grant of the visa. If this declaration is false, the visa is void *ab initio*.

16.24. The legal maxim *fraus omnia corrumpit* (fraud vitiates everything) applies. When a privilege is obtained by fraud, the beneficiary cannot claim a violation of natural justice when that privilege is withdrawn. Natural justice is not a rigid formula, If the undisputed facts (here, the Employer's admission) point to only one conclusion, the issuance of a notice would be a "useless formality" theory. The Petitioner's reliance on **Canara Bank v. Debasis Das** regarding strict adherence to notice in



administrative matters is distinguishable because **Debasis Das** involved a disciplinary proceeding against an employee where rights were protected by service regulations. Here, the Petitioner is a foreigner with no vested statutory right to stay beyond the pleasure of the Government.

16.25. Similarly, the reliance on **Gorkha Security Services** and **UMC Technologies** regarding blacklisting is inapposite. Expulsion is not blacklisting. Expulsion is the removal of an unauthorised person. The Petitioner was unauthorised because the basis of his authorisation (the Justification Letter) was found to be false.

16.26. Since the misrepresentation was made by the Employer, the FRRO correctly issued the Show Cause Notice to the Employer on 04.06.2019. The Employer was heard. The Petitioner, whose



status is derivative of the Employer's sponsorship, has no independent ground to stand on once the sponsorship is found tainted. To require a separate hearing for every expatriate employee when the employer admits to a systemic breach of recruitment norms would burden the administration unreasonably and is not required by law.

16.27. I answer Point No.1 by holding that the Leave India Notice is NOT vitiated for violation of principles of natural justice. The Petitioner, as a foreign national on a contractual visa obtained through misrepresentation, does not enjoy the same degree of procedural protection as a citizen or a long-term resident seeking citizenship. The hearing afforded to the Employer was sufficient compliance with fairness, given the nature of the fraud.



17. **Answer to Point No.2: Whether the issuance of a Leave India Notice during the subsistence of a valid and un-cancelled Employment Visa (E-2) amounts to an impermissible indirect or de facto cancellation of the visa?**

17.1. The Petitioner contends that the FRRO lacks the power to cancel a visa granted by the High Commission of India. It is urged that by issuing the Leave India Notice (LIN) while the Employment Visa (E-2) remained facially valid until January 2020, the FRRO achieved an indirect cancellation, thereby violating the principle that what cannot be done directly cannot be done indirectly.

17.2. Learned Senior Counsel submits that an Employment Visa is a sovereign grant issued by the Ministry of External Affairs through its diplomatic mission. The FRRO, functioning under the Ministry of Home Affairs, cannot override that sovereign act. According to the Petitioner, issuance of the LIN effectively



terminated the visa without adherence to a formal cancellation proceeding, thereby depriving him of procedural safeguards.

- 17.3. Reliance is placed upon ***K.S. Rashid & Son v. Income Tax Investigation Commission***, to contend that a statutory authority cannot achieve indirectly what it lacks power to do directly. It is argued that if the FRRO cannot cancel the visa, it cannot neutralise it through expulsion.
- 17.4. The Respondents, on the other hand, submit that the power to issue a Leave India Notice under Section 3(2)(c) of the Foreigners Act, 1946 is an independent statutory power, distinct from the administrative act of visa issuance, and that such statutory direction overrides the subsisting visa.
- 17.5. Learned ASGI submits that a visa is merely an initial permission to enter the country.



Continued presence is governed by the Foreigners Act, 1946. Section 3(2)(c) expressly empowers the Central Government and its delegates to direct that a foreigner shall not remain in India. That power is not conditioned upon prior cancellation of the visa endorsement.

17.6. The Petitioner's submission, though at first blush appears attractive, rests upon a fundamental misconception of the statutory scheme governing foreigners in India.

17.7. Section 3(2)(c) of the Foreigners Act authorises the Central Government to make orders directing that a foreigner "shall not remain in India." This power is statutory in origin, flowing directly from Parliamentary legislation; plenary in nature, not conditioned upon cancellation of a visa stamp; and overriding in character,



inasmuch as it operates irrespective of administrative permissions previously granted.

17.8. The Foreigners Act, 1946 constitutes a comprehensive regulatory code concerning entry, stay and departure of foreigners. The power under Section 3(2)(c) is preventive and regulatory, rooted in sovereign control over territorial presence. The statute does not prescribe cancellation of a visa as a jurisdictional precondition to expulsion. To read such a requirement into the provision would amount to judicial legislation.

17.9. A visa is a conditional permission to enter. It does not create a vested right to remain for the entirety of its duration if statutory conditions are breached or if public interest so demands. Acceptance of the Petitioner's argument would lead to an untenable situation where domestic authorities would be rendered powerless to



remove a foreigner who violates conditions or becomes undesirable, unless and until a diplomatic mission abroad formally cancels the visa. Such a construction would render Section 3(2)(c) nugatory and must be rejected.

17.10. The Ministry of External Affairs and the Ministry of Home Affairs are not competing sovereigns. They are administrative departments of the same Central Government. The grant of a visa and the regulation of continued presence operate within a coordinated sovereign framework.

17.11. The reliance on ***K.S. Rashid & Son*** is misplaced. That principle applies where an authority lacking jurisdiction attempts to accomplish indirectly what it cannot do directly. In the present case, the FRRO does not purport to cancel the visa. It exercises a distinct statutory power of expulsion under Section



3(2)(c). The legal source of authority is explicit. The incidental consequence that the visa becomes practically ineffective does not transform a statutory expulsion into a colourable cancellation.

17.12. It is settled that Article 19 protections are confined to citizens. In ***Hans Muller of Nuremberg v. Superintendent, Presidency Jail***, the Hon'ble Supreme Court held that a foreigner cannot claim the freedoms guaranteed under Article 19. The right to reside and settle in India is therefore not constitutionally available to a non-citizen.

17.13. Article 21, however, applies to "persons" and therefore extends to foreigners. While Article 21 is applicable, a foreigner has no fundamental right to reside in India. The power of expulsion is inherent in sovereignty, subject to procedure established by law.



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17.14. Post ***Maneka Gandhi v. Union of India***, such procedure must be fair, just and reasonable. Executive action must therefore withstand scrutiny under Articles 14 and 21.

17.15. Applying the proportionality doctrine articulated in ***Modern Dental College v. State of Madhya Pradesh*** and reaffirmed in ***K.S. Puttaswamy v. Union of India***, the impugned action satisfies constitutional scrutiny. The objective of regulating foreign presence is legitimate. The direction to leave is rationally connected to that objective. No less restrictive measure would achieve removal where continued stay is impermissible. The impact is limited to termination of territorial presence and does not entail penal consequences. The balance clearly favours sovereign regulatory interest.



17.16. The contention regarding violation of natural justice must be examined contextually. Principles of audi alteram partem are flexible and not rigid. In ***Maneka Gandhi***, the Hon'ble Supreme Court recognised that a pre-decisional hearing is not an invariable constitutional mandate in every context.

17.17. In matters of immigration control, closely connected with sovereignty and public order, Parliament has not prescribed a mandatory adjudicatory hearing prior to issuance of an order under Section 3(2)(c). In ***Hans Muller***, the Hon'ble Supreme Court did not read such a requirement into the statute.

17.18. Where power is preventive and regulatory, particularly concerning non-citizens, fairness may be satisfied through contextual safeguards, including availability of post-decisional representation and judicial review



under Article 226. The existence of constitutional oversight serves as a significant check against abuse.

17.19. The action must also withstand scrutiny under Article 14. In ***Shayara Bano v. Union of India***, the Hon'ble Supreme Court recognised "manifest arbitrariness" as a ground of invalidation. Manifest arbitrariness denotes capriciousness, irrationality, absence of determining principle, or bad faith.

17.20. The Leave India Notice in the present case is traceable to statutory authority, issued by a competent delegate, and aligned with the legislative scheme. There is no material suggesting mala fides, discrimination, or extraneous considerations. The action does not cross the threshold of manifest arbitrariness.

17.21. Deportation is universally recognised as an incident of national sovereignty. Visa



permission does not confer an irrevocable right to remain; it remains subordinate to statutory power of removal.

17.22. Viewed cumulatively, under statutory construction, constitutional doctrine, proportionality analysis, contextual natural justice, and Article 14 review, the Petitioner's contention cannot be sustained.

17.23. The Leave India Notice is not an indirect cancellation of the visa. It is a direct exercise of statutory authority under Section 3(2)(c) of the Foreigners Act, 1946. The visa does not create an indefeasible right to remain immune from that power. Articles 14 and 21 are not violated, and Article 19 is inapplicable.

17.24. Accordingly, the issuance of the Leave India Notice during the subsistence of the Employment Visa does not amount to an



impermissible indirect or de facto cancellation of the visa.

17.25.I answer Point No.2 by holding that the issuance of a Leave India Notice during the subsistence of a visa does **NOT** amount to an impermissible indirect cancellation. It is a lawful, independent exercise of the power under Section 3(2)(c) of the Foreigners Act, 1946, which overrides the permission granted by the visa.

18. **Answer to Point No.3: Does the Foreign Regional Registration Officer (FRRO) possess statutory jurisdiction to issue a Leave India Notice?**

18.1.The Petitioner argues that the FRRO has no jurisdiction to issue the LIN as the Act vests power in the "Central Government". They claim there is no specific notification delegating this power to the FRRO.



18.2. Sri Raghavan argues that under Section 3 of the Foreigners Act, the power to make orders is vested in the Central Government. While Section 12 allows delegation, such delegation must be express and specific. The Petitioner contends that no notification exists that explicitly authorises the FRRO to issue an order under Section 3(2)(c) to expel a foreigner holding a valid visa.

18.3. The Respondent relies on Notification S.O. 3310(E) and others which designate the FRRO as the "Civil Authority" and delegate powers under Section 3.

18.4. The Respondent produced the relevant notifications issued by the Ministry of Home Affairs, specifically Notification S.O. 590(E) and subsequent amendments, which appoint the FRRO as the Civil Authority for the jurisdiction of Bengaluru.



18.5. The learned ASGI submits that as the Civil Authority, the FRRO is empowered to regulate the movement and stay of foreigners. Furthermore, the specific direction in this case came from the Joint Director (Immigration), who holds delegated power from the Central Government via GSR 605(E).

18.6. The FRRO is not merely a record-keeper. Under the Foreigners Order, 1948, the "Civil Authority" is vested with significant powers to regulate the movement and stay of foreigners. Paragraph 11 of the Foreigners Order empowers the Civil Authority to direct a foreigner to comply with conditions regarding their place of residence and movements.

18.7. Furthermore, **Section 12 of the Foreigners Act** authorizes the Central Government to delegate its powers. By various notifications, including **S.O. 590 (E)** and subsequent



notifications defining the jurisdiction of FRROs, the powers of the Central Government to regulate the continued presence of foreigners have been delegated to the FRROs.

18.8. Specifically, the Respondent has produced the official file showing that the decision to issue the LIN was processed through the Bureau of Immigration (BoI), which is the apex immigration body. The FRRO, as the regional head of the BoI, exercises these delegated powers. To suggest that the FRRO lacks jurisdiction is to ignore the entire administrative framework of immigration control in India. The FRRO is the statutory authority on the ground empowered to execute the orders of the Central Government.

18.9. The Petitioner has mounted a jurisdictional challenge to the issuance of the Leave India Notice (LIN), contending that the Foreign



Regional Registration Officer (FRRO) lacks statutory competence to exercise the power under Section 3(2)(c) of the Foreigners Act, 1946. It is urged that the power to make orders under Section 3 is vested exclusively in the “Central Government” and that any exercise of such power by the FRRO must be supported by a specific and express delegation. According to the Petitioner, no notification has been produced that explicitly authorises the FRRO to direct a foreigner not to remain in India, particularly in circumstances where the foreigner holds a facially valid visa.

18.10. This contention requires careful examination of the statutory framework, the scheme of delegation under the Act, and the constitutional doctrine governing delegated authority.



18.11. The Foreigners Act, 1946 is a comprehensive legislation enacted to regulate the entry, presence, and departure of foreigners in India.

18.12. Section 3 is reproduced hereunder for easy reference:

3. Power to make orders.-(1) *The Central Government may by order 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 for restricting the entry of foreigners into [India) or their departure therefrom or their presence or continued presence therein*

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner-

(a) shall not enter [India), or shall enter (India) 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 [India), or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed,

(c) shall not remain in India), or in any prescribed area therein,

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal.

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

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

(i) requiring him to reside in a particular places



- (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 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 may be prescribed or specified;*
 - (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified*
 - (vi) prohibiting him from association with persons 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 detained or confined*
- and may make provision for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.*
- (3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) for clause (f) of sub section (2).*

18.13. Section 3 confers wide regulatory powers upon the Central Government. Sub-section (2) enumerates illustrative categories of orders that



may be made, including, under clause (c), an order that a foreigner "shall not remain in India." The language of the provision is broad, and its purpose is clear: to preserve sovereign control over the territorial presence of non-citizens.

18.14. However, the Act does not contemplate that the Central Government must personally or directly issue every individual order affecting a foreigner. Recognising the practical necessity of decentralised implementation, Parliament enacted Section 12, which expressly authorises the Central Government to direct, by notification, that any power conferred by or under the Act may be exercised by such officer or authority as may be specified. Delegation is therefore not incidental to the statutory scheme; it is embedded within it as an essential mechanism for operational enforcement.



18.15. The Respondents have produced notifications issued by the Ministry of Home Affairs, including Notification S.O. 590(E), S.O. 3310(E), and subsequent amendments, whereby the FRRO is appointed as the “Civil Authority” for specified territorial jurisdictions, including Bengaluru. These notifications are issued in exercise of powers under Section 12 of the Act and operate in conjunction with the Foreigners Order, 1948.

18.16. The **Foreigners Order, 1948**, issued under Section 3, defines “Civil Authority” as such authority as may be appointed by the Central Government. The Order further confers upon the Civil Authority substantive powers to regulate movement, residence, reporting obligations, and compliance with conditions imposed upon foreigners. Paragraph 11 empowers the Civil Authority to issue directions



concerning residence and movement, and to ensure enforcement of statutory requirements.

18.17. The statutory structure is thus layered and coherent:

18.17.1. Parliament confers substantive power upon the Central Government under Section 3.

18.17.2. Parliament expressly authorises delegation under Section 12.

18.17.3. The Central Government, by notification, appoints the Civil Authority for defined jurisdictions.

18.17.4. The Foreigners Order, 1948 operationalises the role and authority of such Civil Authority.

18.18. The FRRO, by virtue of the notifications on record, functions as the Civil Authority within its territorial domain. Its authority is neither



implied nor assumed; it is expressly conferred through statutory delegation.

18.19. The Petitioner's submission that the delegation must specifically enumerate each sub-clause of Section 3(2) is unsustainable. Delegation of powers under Section 3, unless expressly restricted, extends to the powers contained therein. The notifications produced do not impose any limitation curtailing the FRRO's competence to exercise clause (c). Once the power under Section 3 stands delegated, the delegate may exercise it within the statutory framework.

18.20. The records further reveal that the impugned decision was processed through the Bureau of Immigration (BoI), functioning under the Ministry of Home Affairs. The FRRO operates as the regional head within this administrative hierarchy. The decision-making chain involved



supervisory consideration at the level of the Joint Director (Immigration), who exercises authority under delegated notifications such as GSR 605(E). This demonstrates that the impugned action was not a unilateral or isolated exercise but part of an integrated administrative framework.

18.21. The challenge to jurisdiction must also be examined against constitutional principles governing delegation.

18.22. While essential legislative functions cannot be abdicated, Parliament may delegate to the executive the power to implement and administer the legislative policy, provided that the policy and guiding principles are clearly laid down.

18.23. The Foreigners Act satisfies this constitutional requirement. The legislative policy, regulation of foreigners and preservation of sovereign



control, is explicitly articulated. Section 3 enumerates the nature and scope of permissible orders. Section 12 expressly authorises delegation. The discretion conferred is structured by statutory purpose and subject to judicial review.

18.24. Delegation that is guided by legislative standards and confined to execution of policy would have to be upheld. The power exercised by the FRRO under Section 3(2)(c) is executive and administrative; it does not entail formulation of new legislative norms but enforcement of existing statutory commands.

18.25. Immigration control, by its very nature, requires decentralised execution. The Central Government cannot practically adjudicate every individual case across the country. Delegation to field-level authorities such as the FRRO is not merely permissible; it is administratively



indispensable. Such delegation remains subject to statutory limits, executive supervision, and constitutional review under Article 226.

18.26. The Petitioner's argument, if accepted, would paralyse the statutory framework. It would require the Central Government at the apex level to personally issue every expulsion order, defeating the legislative intent underlying Section 12. Courts must construe statutes in a manner that furthers, rather than frustrates, legislative purpose.

18.27. Jurisdictional validity must ultimately be tested on three planes:

18.27.1. **Statutory Authority:** Section 3 confers the substantive power; Section 12 authorises delegation.



18.27.2. **Valid Delegation:** Notifications appoint the FRRO as Civil Authority for the concerned jurisdiction.

18.27.3. **Exercise Within Limits:** The impugned action was taken within territorial and statutory bounds, under supervisory administrative structure.

18.28. All three conditions are satisfied in the present case.

18.29. The FRRO, acting as the delegated Civil Authority under the Foreigners Act, 1946 and the Foreigners Order, 1948, therefore possesses statutory jurisdiction to issue a Leave India Notice. The delegation is constitutionally valid, statutorily authorised, administratively structured, and subject to judicial control.

18.30. The impugned action thus cannot be invalidated on the ground of lack of jurisdiction.



18.31. I answer Point No.3 by holding that the Foreign Regional Registration Officer (FRRO) possesses the statutory jurisdiction to issue a Leave India Notice, acting as the delegated Civil Authority under the Foreigners Act, 1946, and the Foreigners Order, 1948.

19. **Answer to Point No. 4: Whether the power under Section 3(2)(c) of the Foreigners Act, 1946, to direct a foreigner "not to remain in India" vests exclusively in the Central Government or its duly authorised delegate?.**

and

Answer to Point No. 4: Whether an internal communication or direction issued by the Joint Director (Immigration) can constitute a lawful delegation or authorisation under the Foreigners Act?

19.1. The Petitioner contends that the delegation was only to the Joint Director (Immigration) via Notification GSR 605(E), and the Joint Director could not "sub-delegate" this to the FRRO.



19.2. It is submitted that the maxim *delegatus non potest delegare* applies. If the Central Government delegated the power of expulsion to the Joint Director, the Joint Director must exercise it personally. He cannot pass it down to the FRRO.

19.3. Further, the instruction to issue the LIN was an unpublished internal note. Relying on **Harla v. State of Rajasthan**, the Petitioner argues that secret orders or internal notes cannot have the force of law to affect the rights of individuals. The delegation must be published in the Official Gazette to be valid.

19.4. Reliance is also placed on **I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer**, to argue that where a statute requires a particular mode of publication (Gazette), non-compliance renders the order void.



19.5. The Respondent argues that the FRRO acted under the direct instruction of the Joint Director. This is not sub-delegation but execution.

19.6. The learned ASGI clarifies that the decision was taken by the Joint Director (Immigration) based on the inquiry report. The Joint Director then instructed the FRRO to *issue* the notice. This is a standard administrative hierarchy where the superior takes the decision and the subordinate executes it.

19.7. Regarding *Harla* and *ITC Bhadrachalam*, the Respondent submits that internal administrative orders directing a subordinate to issue a notice do not require gazetting. Only statutory rules and notifications of general application require publication.



19.8. The Petitioner's argument suffers from a confusion between "legislative delegation" and "administrative execution".

19.8.1. **Delegation:** The Central Government delegated power to the Joint Director (BoI) via GSR 605(E). This is a valid statutory delegation.

19.8.2. **Execution:** The Joint Director, having taken the decision that the Petitioner must leave, instructed the FRRO (his subordinate officer) to issue the formal notice. This is not *delegatus non potest delegare*. It is the performance of a duty through the machinery of the department. The decision was taken by the competent delegate (Joint Director/MHA). The FRRO merely



communicated and enforced that decision.

19.9. The reliance on **Harla v. State of Rajasthan** is legally untenable in this context. *Harla* dealt with the non-publication of a **penal statute** (Opium Act) which created general criminal liability for the public. A law that creates offences must be published.

19.10. Similarly, **I.T.C. Bhadrachalam Paperboards** dealt with a power to grant tax exemptions which required Gazette notification by the explicit terms of the statute.

19.11. However, an internal file noting or an administrative instruction from a superior officer to a subordinate to issue a specific order against a specific individual is not a law. It is an executive instruction. There is no requirement in the General Clauses Act or the Constitution



that internal administrative hierarchies and case-specific instructions be gazetted. The "Law" (Foreigners Act) is published. The "Order" (LIN) was served on the Petitioner. The internal processing of that order is privileged administrative business.

19.12. Section 3 of the Foreigners Act, 1946 vests substantive power in the Central Government to regulate the presence of foreigners. Section 12 expressly authorises delegation of that power. Pursuant to statutory notifications, including GSR 605(E), powers under Section 3 stand delegated within the immigration hierarchy. The Joint Director (Immigration), functioning within the Bureau of Immigration under the Ministry of Home Affairs, is one such delegate.

19.13. The question, however, is not whether there was valid delegation from the Central Government to the Joint Director, that position



stands supported by notification, but whether the act of the FRRO issuing the LIN pursuant to instructions from the Joint Director constitutes impermissible sub-delegation.

19.14. The records indicate that the decision that the Petitioner ought not to remain in India was taken at the level of the Joint Director (Immigration) upon consideration of the inquiry materials. The FRRO was thereafter instructed to issue and serve the formal notice. The FRRO did not independently assume the power to expel; it acted within the administrative chain to communicate and implement the decision taken by the competent authority.

19.15. The maxim *delegatus non potest delegare* applies where a delegate attempts to transfer decision-making authority to another who is not authorised by statute. It does not prohibit performance of ministerial or procedural acts



through subordinate officers within an administrative hierarchy.

19.16. Administrative functioning necessarily operates through departmental machinery. Decision-making and execution are conceptually distinct. The authority who takes the decision may utilise subordinates for communication, service, drafting, or enforcement. Such acts do not constitute sub-delegation of statutory power.

19.17. The present case falls squarely within this distinction. The Joint Director, being a statutory delegate under GSR 605(E), exercised the decision-making authority. The FRRO, acting within the established hierarchy, carried out the implementation. This is administrative execution, not legislative or statutory sub-delegation.

19.18. The reliance placed upon ***Harla v. State of Rajasthan*** is misplaced. In ***Harla***, the Hon'ble



Supreme Court dealt with the non-publication of a penal law that created general criminal liability. The Court held that a law which imposes obligations upon the public must be promulgated to acquire enforceability. The case concerned absence of publication of a statute affecting the general public.

19.19. Similarly, in ***I.T.C. Bhadrachalam Paperboards***, the Hon'ble Supreme Court considered a statutory requirement mandating Gazette notification for grant of tax exemption. The statute itself prescribed publication as a condition precedent to validity.

19.20. The present matter stands on a fundamentally different footing. The Foreigners Act and the relevant delegation notifications are duly published. The Leave India Notice itself was served upon the Petitioner. The internal file movement, deliberations, and administrative



directions between superior and subordinate officers do not constitute "law" or "legislation." They are components of executive decision-making in an individual case.

19.21. There exists no constitutional or statutory mandate requiring that every internal administrative instruction or case-specific direction be published in the Official Gazette. To require gazetting of intra-departmental communications would paralyse governance and disregard the practical necessities of executive administration.

19.22. The "law" in this case is the Foreigners Act, 1946, read with valid delegation notifications. The "order" affecting the Petitioner is the Leave India Notice, which was duly issued and served. The internal instruction from the Joint Director to the FRRO forms part of privileged



administrative processing and does not independently require publication.

19.23. It must also be noted that the power under Section 3(2)(c) vests either in the Central Government or in its duly authorised delegate. Once validly delegated, the delegate acts in the name and authority of the Central Government. The exercise of power within that delegated structure does not require personal issuance of every communication by the highest officer in the chain.

19.24. Administrative law recognises the distinction between:

19.24.1. **Delegation of power**, which must be authorised by statute and, where required, notified; and

19.24.2. **Administrative implementation**, which may be carried out through



subordinate officers within a structured hierarchy.

19.25. The Petitioner's argument collapses this distinction and treats every act of execution as impermissible sub-delegation. Such an approach is unsustainable.

19.26. In the present case:

19.26.1. The power under Section 3(2)(c) stands validly delegated under statutory notification.

19.26.2. The decision was taken by a competent delegate within the immigration hierarchy.

19.26.3. The FRRO acted pursuant to that decision in execution of departmental authority.



19.26.4. No statutory requirement mandates Gazette publication of case-specific internal directions.

19.26.5. The Leave India Notice itself was formally issued and communicated to the Petitioner.

19.27. Accordingly, the instruction from the Joint Director (Immigration) to the FRRO constitutes a lawful administrative direction for execution of a statutory decision. It does not amount to impermissible sub-delegation. Nor does it suffer from invalidity on account of absence of Gazette publication.

19.28. The power under Section 3(2)(c) is therefore validly exercised through the duly authorised administrative hierarchy.

19.29. I answers to Points 4 and 5 by holding that the power under Section 3(2)(c) was validly



exercised. The instruction from the Joint Director to the FRRO constitutes a lawful administrative direction for the execution of a statutory order and does not amount to impermissible sub-delegation. Such internal communications need not be gazetted.

20. **Answer to Point No.6: Whether the impugned LIN suffers from arbitrariness and non-application of mind?**

20.1. The Petitioner argues arbitrariness based on the dates: LIN dated 01.05.2019, SCN to Employer dated 04.06.2019. They argue the decision was pre-judged.

20.2. Sri Raghavan points out the glaring anomaly the decision to expel the Petitioner (LIN) was taken on May 1st, but the Show Cause Notice asking the Employer to explain the fraud was issued on June 4th. This chronology proves that the Respondents had already decided to expel the Petitioner before even hearing the



Employer's version. This amounts to a "post-decisional hearing" which is a farce is his submission.

20.3. The Respondent clarifies that the inquiry began in 2018. The facts (misrepresentation) were admitted by the Company in July 2018. The decision was based on those earlier admissions.

20.4. The learned ASGI submits that the dates must be read in context. The FRRO had been corresponding with the Company since July 2018. The Company admitted in its letter dated 26.07.2018 that "no advertisements were placed". This admission crystallised the fraud. The decision to issue the LIN was based on this admission from 2018. The SCN in June 2019 was a separate proceeding regarding the Company's liability, distinct from the decision regarding the Petitioner's visa.



20.5. This contention of the Learned Senior Counsel for the Petitioner, at first glance, appears to raise a legitimate procedural concern. However, when the factual matrix is examined in its entirety, the argument does not withstand scrutiny.

20.6. The Respondents have placed material on record demonstrating that the inquiry did not commence in May 2019. The process began much earlier. In December 2017, the Employer submitted a justification letter asserting that no suitable Indian candidate was available for the position for which the Petitioner was recruited. This assertion formed the basis of the employment visa grant.

20.7. In July 2018, the FRRO initiated correspondence seeking clarification regarding the recruitment process. In response, by communication dated 26.07.2018, the



Employer admitted that no advertisements had been placed to assess availability of Indian candidates. This admission was not equivocal; it directly contradicted the earlier representation that no suitable Indian candidate was available after due effort.

20.8. This sequence of events is significant. The discrepancy between the 2017 justification and the 2018 admission was not speculative; it was documentary. Once the Employer conceded that no advertisement was placed, the foundation of the justification letter stood eroded. The inference of misrepresentation was not a matter of conjecture but arose from the Employer's own written admission.

20.9. The decision-making process must therefore be evaluated in light of this chronology:



- 20.9.1. December 2017: Justification letter claiming non-availability of Indian candidates.
- 20.9.2. July 2018: Admission that no advertisement was placed.
- 20.9.3. Post-July 2018: Evaluation of the implications of that admission.
- 20.9.4. May 2019: Issuance of Leave India Notice.
- 20.9.5. June 2019: Separate Show Cause Notice to the Employer.
- 20.9.6. By May 2019, the authorities were in possession of undisputed documentary material establishing inconsistency between representation and reality. The LIN was thus not an impulsive or sudden action; it followed a period of inquiry extending over several months.



20.10. The issuance of the Show Cause Notice to the Employer in June 2019 must be understood in its proper context. The proceedings concerning the Petitioner's visa status and those concerning the Employer's potential liability or future eligibility under the visa regime are not necessarily co-extensive. Immigration enforcement action against a foreign national may proceed independently of administrative or penal consequences against the sponsoring entity.

20.11. The Petitioner's argument presumes that both proceedings must move together and that expulsion cannot precede formal adjudication of employer liability. The statute does not impose such sequencing. The integrity of the visa regime is compromised the moment material misrepresentation is established. The regulatory response concerning the foreign national is



distinct from any collateral action against the Employer.

20.12. Arbitrariness, in constitutional parlance, implies action that is capricious, irrational, devoid of relevant material, or taken without application of mind. The Supreme Court in ***Shayara Bano v. Union of India*** explained that “manifest arbitrariness” denotes action that lacks a determining principle or is excessive and disproportionate.

20.13. In the present case, the impugned LIN is traceable to a clearly identifiable factual basis, admission of procedural non-compliance in recruitment. The authorities did not act on suspicion alone; they relied upon documentary admission from the Employer. The decision was therefore anchored in relevant material.

20.14. The allegation of non-application of mind must also be rejected. Non-application of mind arises



where the authority fails to consider relevant material, considers irrelevant material, or acts mechanically without discernible reasoning. Here, the material forming the basis of the action is evident from the record. The chronology reflects a period of inquiry, correspondence, and evaluation before issuance of the LIN.

20.15. The mere fact that the Show Cause Notice to the Employer bears a later date does not invalidate the prior decision concerning the Petitioner's visa. Administrative processes do not always unfold in a linear or symmetrical fashion. What is material is whether the authority possessed sufficient material at the time of decision. The record indicates that it did.

20.16. Nor can the argument of "pre-judging" be accepted in the absence of evidence of closed-



mindfulness. The decision appears to have been taken after crystallisation of the discrepancy in July 2018 and subsequent administrative assessment. The interval between July 2018 and May 2019 itself indicates deliberation rather than haste.

20.17. It must also be borne in mind that immigration control is regulatory in nature. Once misrepresentation underlying a visa is established, continued stay loses its legal foundation. The objective of protecting the integrity of the visa regime constitutes a legitimate state interest. The action taken bears rational nexus to that objective.

20.18. Arbitrariness arises when an action is capricious or lacks a rational basis. Here, the basis is crystal clear and rational - **Visa Fraud**.

20.19. Delay in service or sequencing of notices, without demonstrable prejudice, does not ipso



facto establish arbitrariness. The Petitioner has not demonstrated that relevant material was ignored or that extraneous considerations influenced the decision.

20.20. Viewed holistically, the impugned Leave India Notice does not suffer from arbitrariness or non-application of mind. It is founded upon documentary material, processed through administrative hierarchy, and directed towards preserving the integrity of the immigration framework.

20.21. I answer Point No.6: The impugned LIN does **NOT** suffer from arbitrariness. It was based on relevant material—the Employer's admission of irregular recruitment—which constitutes a rational nexus to the objective of protecting national interests and the integrity of the visa regime.



21. **Answer to Point No. 7: Whether allegations of fraud or misrepresentation in the procurement of an Employment Visa can be acted upon by the FRRO without prior adjudication by the visa-issuing authority?**

21.1. The Petitioner argues that only the High Commission (Visa Issuer) can determine if the visa was obtained by fraud. The FRRO cannot usurp this adjudicatory function.

21.2. It is submitted that fraud is a mixed question of law and fact. The determination that the Justification Letter was fraudulent requires a judicial or quasi-judicial inquiry by the authority that accepted the letter (the High Commission). The FRRO, acting unilaterally, cannot declare a document submitted to another authority as fraudulent.

21.3. The Respondent argues that the FRRO is the domestic enforcement authority and can act on fraud detected within India.



21.4. The learned ASGI submits that the FRRO is the "eyes and ears" of the Government. If an alien is found in India with a visa obtained by fraud, the FRRO is statutorily bound to act. There is no legal requirement to refer the matter back to the foreign mission, which would cause indefinite delays and compromise national security.

21.5. This submission by the Learned Senior Counsel for the Petitioner, though framed as a jurisdictional restraint, misconceives the nature of immigration control and the statutory role of domestic enforcement authorities.

21.6. A visa is granted abroad by a diplomatic mission of India, functioning under the Ministry of External Affairs. However, once the foreign national enters Indian territory, regulatory jurisdiction over his continued stay shifts to domestic authorities acting under the



Foreigners Act, 1946 as also the state authorities, our country being federal.

21.7. The Act does not create a bifurcated sovereignty in which the visa-issuing authority retains exclusive competence to determine validity of representations or action even after entry.

21.8. The Foreigners Act confers upon the Central Government, and through valid delegation, its domestic authorities, the power to regulate, restrict, and if necessary terminate the presence of foreigners within India. The FRRO functions as the field-level statutory authority responsible for monitoring compliance with visa conditions, detecting irregularities, and enforcing immigration control.

21.9. The Respondents submit that the FRRO acts as the "eyes and ears" of the Government within the territorial jurisdiction of India. This



characterisation is not rhetorical but statutory in substance. The detection of misrepresentation after entry falls squarely within the operational domain of domestic immigration authorities. To hold otherwise would create an artificial and impractical distinction between grant of entry and enforcement of conditions.

21.10. The Petitioner's argument implies that even if fraud is detected on Indian soil, through documentary admission or otherwise, the FRRO must refer the matter back to the overseas mission and await formal adjudication. Such a proposition finds no support in the statute. The Foreigners Act does not mandate referral to the visa-issuing authority as a condition precedent to regulatory action under Section 3(2)(c). This is also impracticable and illogical since the Petitioner against whom action is to be initiated



would be residing in India, whereas the determination would occur by the Indian High Commission in Australia.

21.11. Looked at from any angle, once the visa has been granted and the individual has entered India, the diplomatic mission becomes functus officio with respect to territorial regulation. The jurisdiction to monitor compliance with visa conditions and to respond to violations vests in the domestic authorities, namely the Ministry of Home Affairs and its delegates.

21.12. The argument that fraud requires a judicial or quasi-judicial declaration also requires careful scrutiny. The present matter does not involve criminal prosecution for fraud under the Penal Code. It concerns administrative satisfaction that the foundation upon which the visa was obtained stands vitiated by misrepresentation. Administrative authorities are competent to act



upon documentary material and admissions in forming such satisfaction, subject to judicial review.

21.13. In the present case, the material relied upon by the authorities includes the Employer's own written admission that no advertisements were placed, contrary to the representation made in the justification letter. The inference of misrepresentation is therefore not speculative; it is drawn from admitted facts. The FRRO did not embark upon a roving adjudication of complex disputed facts; it acted upon documentary inconsistency apparent on record.

21.14. The Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath*** observed that fraud vitiates all solemn acts and that a person who approaches a forum with falsehood cannot retain advantage obtained thereby. Although that decision arose in the



context of civil proceedings, the underlying principle is of general application: an act obtained by fraud is voidable at the instance of the authority competent to regulate the subject matter.

21.15.A visa obtained through material misrepresentation does not acquire immunity merely because it was initially granted by a diplomatic mission. The regulatory authority empowered to supervise continued stay must necessarily possess the incidental power to act when foundational representations are shown to be false.

21.16.If the Petitioner's argument were accepted, it would produce grave and untenable administrative consequences. Consider a scenario where a foreign national suppresses a criminal antecedent, or where an employer fabricates material facts to secure an



employment visa, and the falsity is detected after the individual has entered India. If domestic authorities were compelled to refer the matter back to the overseas mission and await fresh adjudication, the following consequences would inevitably ensue:

21.16.1. **Indefinite delay:** Diplomatic correspondence across jurisdictions, examination of records abroad, and re-evaluation by the issuing mission would consume considerable time. The statute does not contemplate suspension of enforcement pending such protracted inter-governmental communication.

21.16.2. **Undermining of domestic enforcement:** The statutory authority charged with monitoring foreigners within India would be rendered



powerless to act promptly upon material irregularity discovered within its territorial jurisdiction.

21.16.3. **Compromise of public order and national security:** Immigration control is integrally linked with internal security. Delay in response to detected misrepresentation could expose the State to avoidable risk.

21.16.4. **Frustration of legislative intent:** Section 3(2)(c) would be rendered ineffective if its invocation were conditioned upon a prior overseas re-determination by the issuing mission.

21.17. A further and more immediate difficulty arises, what would be the legal status of such a foreign national during the interregnum? If referral to the overseas mission were mandatory, and if



domestic authorities were disabled from acting pending that decision, the individual would, in effect, continue to remain in India under a cloud of established misrepresentation.

21.18. Two possibilities then emerge, neither of which is constitutionally or administratively tenable.

21.18.1. First, the person would be permitted to remain at large, notwithstanding credible material indicating that the visa was procured by fraud. This would amount to conscious toleration of illegality and erosion of regulatory discipline.

21.18.2. Second, the person would be placed under restraint or detention pending foreign adjudication. Such detention, in the absence of a domestic statutory determination under Section 3, would itself raise serious constitutional



concerns under Article 21, for preventive custody cannot be justified merely on the basis of administrative uncertainty.

21.19. Thus, the Petitioner's proposed procedural sequencing leads either to regulatory paralysis or to disproportionate coercive restraint. Both outcomes are inconsistent with the statutory design of the Foreigners Act, which empowers domestic authorities to act decisively and proportionately within their jurisdiction.

21.20. The statute contemplates that the authority responsible for regulating presence within India must also possess the incidental power to respond to discovered illegality. It would be incongruous to hold that domestic authorities may detect fraud but must suspend action until validation from a foreign post is secured.

21.21. The interpretation urged by the Petitioner is therefore not merely impractical; it is



structurally incompatible with the statutory framework and constitutional balance.

21.22. Accordingly, the power of the domestic authority to act upon fraud detected within India cannot be made contingent upon prior adjudication by the visa-issuing mission.

21.23. Immigration control is dynamic and territorial. The authority responsible for enforcement within India must necessarily possess the competence to act upon fraud detected within its jurisdiction.

21.24. It is also important to distinguish between cancellation of a visa as an administrative endorsement and termination of stay under statutory power. The FRRO did not purport to “cancel” the visa stamp issued by the High Commission. It exercised statutory power under the Foreigners Act to direct that the foreigner shall not remain in India. The two operate at



different legal planes. The existence of misrepresentation provided the factual basis for invoking statutory power; it did not require prior formal cancellation by the issuing mission.

21.25. The determination made by the FRRO is administrative in character and subject to judicial scrutiny. It is not a final criminal adjudication of fraud; it is a regulatory decision regarding continued stay. The threshold for such administrative action is satisfaction based on relevant material, not proof beyond reasonable doubt.

21.26. In the present case, the admission by the Employer in July 2018 constituted relevant and substantial material. The authorities were therefore competent to conclude that the foundation of the visa stood compromised. The action taken bears rational nexus to the



objective of preserving the integrity of the visa regime.

21.27. Accordingly, there is no statutory requirement that allegations of fraud or misrepresentation in procurement of an Employment Visa must first be adjudicated by the overseas visa-issuing authority before domestic regulatory action is taken. The FRRO, acting within the delegated framework of the Foreigners Act, is competent to act upon such material when discovered within India.

21.28. The Petitioner's argument would lead to a dangerous proposition where domestic security agencies are powerless to act against visa fraud detected on Indian soil. The FRRO is the competent authority to monitor foreigners within India.

21.29. If a foreigner obtains a visa by suppressing a criminal record, or as in this case, by the



employer suppressing the availability of local talent, and this fact is discovered *after* entry, the FRRO is the competent authority to act. The High Commission in Canberra is *functus officio* once the visa is issued and the person enters India. The jurisdiction to police the conditions of the visa shifts to the domestic authorities (FRRO/MHA).

21.30.I answer Point No. 7 by holding that the allegations of fraud or misrepresentation can be validly acted upon by the FRRO. There is no requirement to refer the matter back to the overseas visa-issuing authority for adjudication.

22. **Answer to Point No, 8: Whether a show-cause notice issued to the employer can satisfy the requirements of natural justice, qua the employee against whom the adverse civil consequence is directed?**

22.1.The Petitioner argues he is a separate legal entity from the Employer and should have been heard independently.



22.2. It is argued that the Petitioner has distinct rights. He has a lease, a bank account, and a reputation in India. The Employer's admission of fault cannot automatically bind the Petitioner without him being given a chance to prove his own bona fides or lack of complicity in the Employer's fraud.

22.3. The Respondent argues that the visa is an Employment Visa, inextricably linked to the sponsorship of the Employer.

22.4. The learned ASGI submits that under the visa rules, the employee is the "beneficiary" and the employer is the "petitioner/sponsor". If the sponsor withdraws support or if the sponsorship is found invalid, the beneficiary's status collapses automatically. There is no independent right to the visa divorced from the employment.



22.5. The nature of the visa is of importance. An Employment Visa (E-2) is a sponsored visa. It is granted not just on the Petitioner's merit, but on the Employer's certification that the post cannot be filled by an Indian. The Employer acts as the agent and sponsor of the Petitioner for the purpose of the visa application.

22.6. Under the law of agency and the specific rules of visa sponsorship, the employee stands in the shoes of the employer regarding the justification of the post. If the Employer, the entity solely responsible for the market search, admits that no search was done, the foundation of the visa collapses. The Petitioner, as the employee, cannot plausibly argue that he knows more about the Company's HR recruitment processes (advertisements, interviews of Indians) than the Company itself.



22.7. Therefore, the notice to the Employer was the correct procedural step. Hearing the Petitioner would have served no purpose as he could not contradict the Company's own admission regarding the lack of advertisements. The principles of natural justice do not require futile hearings.

22.8. The employee is the beneficiary of a sponsorship-based representation made by the Employer to the visa-issuing authority. The Employer functions, in effect, as the petitioner and sponsor, and the visa stands upon the foundation of the Employer's declarations.

22.9. When the very foundation of that sponsorship is shown to be defective, through the Employer's admission that no advertisement was placed despite a prior representation to the contrary, the basis upon which the Employment Visa rests is undermined.



22.10. Learned Senior Counsel for the Petitioner has submitted that the Petitioner ought to have been heard independently to demonstrate absence of personal fraud or complicity. This argument must be evaluated against the nature of the misrepresentation.

22.11. The alleged fraud in the present case does not concern falsification of the Petitioner's educational qualifications or concealment of his personal antecedents. It concerns the Employer's certification that no suitable Indian candidate was available and that due market search had been conducted. The factual matrix relating to recruitment, advertisements, interviews, search process, is exclusively within the knowledge and control of the Employer. The employee cannot reasonably claim superior knowledge regarding the Employer's internal human resource procedures.



22.12. The Employer, having been issued notice and having admitted that no advertisement was placed, effectively conceded the factual premise on which the visa was justified. Once that admission was on record, the regulatory consequence flowed from the collapse of sponsorship conditions.

22.13. Natural justice requires a meaningful opportunity to respond to adverse material. It does not require multiplication of hearings where the foundational facts are admitted and lie outside the knowledge domain of the person seeking separate hearing.

22.14. Principles of natural justice are flexible and context-dependent. They do not mandate ritualistic compliance where the outcome would remain unaltered. A hearing that would serve no useful purpose need not be insisted upon as an empty formality.



22.15. In the present case, what could the Petitioner have meaningfully asserted? He could not dispute whether advertisements were placed; that fact lay within the Employer's domain and stood admitted. He could not independently validate the recruitment process undertaken by the Company. His lack of personal involvement in the alleged misrepresentation, even if assumed, would not revive a visa whose foundational condition was shown to be unfulfilled.

22.16. It is also important to distinguish between culpability and regulatory consequence. The impugned action does not impose penal liability upon the Petitioner for fraud. It regulates his continued stay based upon the collapse of sponsorship conditions. The absence of personal wrongdoing does not transform a



sponsored visa into an independent right to remain.

22.17. The Employment Visa regime operates on the principle that sponsorship validity is a continuing condition. If sponsorship is withdrawn, invalidated, or shown to be fundamentally defective, the beneficiary's status correspondingly lapses. This is inherent in the nature of sponsored visas across immigration systems.

22.18. The Petitioner's argument that he possesses independent civil attributes, leasehold interest, bank accounts, professional associations, does not alter the legal character of the visa. These are consequences of his presence in India, not sources of independent entitlement to remain.

22.19. It must further be emphasised that natural justice is concerned with fairness in decision-making. The Employer, who was solely



responsible for the statutory declaration forming the basis of the visa, was issued notice and responded. The factual issue relevant to the visa, whether due recruitment process was undertaken, was addressed at the appropriate source. Once that issue was clarified through the Employer's admission, there remained no separate factual controversy requiring independent adjudication vis-à-vis the Petitioner.

22.20. The principles of natural justice do not compel authorities to conduct parallel inquiries where the material facts stand admitted by the party exclusively competent to speak to them.

22.21. Accordingly, in cases of Employment Visa sponsorship where the alleged misrepresentation pertains to the Employer's statutory declarations, issuance of a show-cause notice to the Employer satisfies the



procedural requirement of fairness. The beneficiary employee cannot claim an additional independent hearing where the determinative facts lie beyond his personal domain and stand admitted by the sponsor.

22.22. The impugned action therefore does not suffer from violation of natural justice on this ground.

22.23. I answer Point No. 8 by holding that a show-cause notice issued to the employer satisfies the requirements of natural justice qua the employee in cases of Employment Visa fraud where the misrepresentation relates to the employer's statutory declarations (Justification Letter).

23. **Answer to Point No. 9: Whether the writ petition has been rendered infructuous or academic on account of the petitioner's exit from India, expiry of the Employment Visa, and subsequent grant of business and tourist visas, or whether the impugned LIN continues to have civil, reputational, or legal consequences warranting judicial review?**



23.1. The Petitioner argues the petition is not infructuous because of the "stigma" affecting future travel.

23.2. Learned Senior Counsel for the Petitioner submits that the LIN is a permanent blot. He produces visa application forms for the USA, UK, and Japan, which ask: "Have you ever been ordered to leave any country?" The Petitioner must answer "Yes" because of the LIN. This will prejudice his future travel.

23.3. Relying on **Union of India v. Narendra Singh** and **M. Sudhakar v. V. Manoharan**, he argues that even if the order is executed, the Court can examine its legality to remove the stigma. He also cites **Amit Kumar Sharma v. Union of India** regarding the need for transparency and disclosure to fight stigma.

23.4. The Respondent argues the Petitioner has left India, the visa expired in 2020, and he has



since been granted new visas (Business/Tourist), proving no permanent blacklist exists.

23.5. The learned ASGI points out that the Petitioner voluntarily left India in November 2019. The E-2 visa expired in January 2020. Subsequently, the Petitioner applied for and was granted a Business Visa (2020) and a Tourist Visa (2024). This conduct by the Government of India proves there is no permanent ban. The LIN has "spent itself".

23.6. The Respondent relies on **Minerva Mills Ltd. v. Union of India**, to contend that the Court should not decide academic questions. Since the Petitioner has already left and the visa has expired, the validity of the LIN is now an academic question.

23.7. In the present case, the primary relief sought by the Petitioner was to quash the Leave India



Notice so as to enable him to remain in India under the Employment Visa. That relief has become incapable of grant. The Petitioner has already left India. The Employment Visa expired more than six years ago. A writ directing the Respondents to permit continuation of a visa that has expired by efflux of time would be legally untenable.

23.8. This Court must therefore consider whether any surviving civil consequence justifies continued adjudication.

23.9. The Petitioner relies upon the concept of stigma. The Respondents have placed on record that subsequent Business and Tourist visas were granted to the Petitioner. These grants are significant. They demonstrate that the Government of India has not imposed a permanent ban, blacklist, or enduring disability upon the Petitioner.



23.10. The very authority that issued the impugned LIN subsequently cleared the Petitioner for re-entry into India on fresh visa categories. This conduct negates the assertion of continuing stigma within the Indian immigration framework.

23.11. The underlying rationale for the issuance of the Leave India Notice is not difficult to discern. The action was precipitated by material misrepresentation made by the Employer in the course of securing the Employment Visa. The foundation of the visa rested upon the Employer's certification that statutory conditions had been fulfilled, including the assertion that no suitable Indian candidate was available. Once that representation was shown to be factually incorrect, the legal substratum of the visa stood vitiated.



23.12. Though the regulatory action was formally directed against the Petitioner, its necessity arose from the Employer's misrepresentation. The Petitioner's entitlement to remain in India under the Employment Visa was derivative in character; it flowed from, and was inseparably linked to, the validity of the Employer's sponsorship and declarations. When the foundational representation collapsed, the superstructure built upon it could not survive.

23.13. It is immaterial, in this regulatory context, whether the Petitioner personally participated in or had knowledge of the misrepresentation. The action taken is not penal in nature; it does not attribute criminal culpability to the Petitioner. Rather, it addresses the continuing validity of the visa status. A person claiming benefit under a representation subsequently shown to be materially false cannot insist upon retention of



that benefit merely on the ground of absence of personal complicity.

23.14. The principle that no person can retain advantage obtained through misrepresentation applies irrespective of whether the beneficiary was the author of the falsehood. Once the statutory condition underpinning the Employment Visa is demonstrated to be unfulfilled, the derivative status of the employee cannot subsist independently of that defect.

23.15. Accordingly, the Petitioner cannot retain the benefit of a visa whose very foundation was compromised by material misrepresentation of the sponsoring Employer.

23.16. The apprehension expressed by the Petitioner regarding potential prejudice in future foreign visa applications remains, at its core, speculative and contingent upon decisions of



independent sovereign jurisdictions. The function of this Court under Article 226 is to examine the legality, validity, and constitutional sustainability of State action within its own territorial and statutory domain. It is not the province of this Court to render advisory declarations for the collateral purpose of influencing or facilitating responses in immigration questionnaires administered by foreign governments.

23.17. Each sovereign nation frames and applies its immigration policies in accordance with its own domestic law. How a foreign authority may interpret, contextualise, or weigh a historical regulatory action taken by Indian authorities lies entirely outside the adjudicatory reach of this Court. Judicial review cannot be extended into the realm of anticipatory reputational management before other sovereign states.



The mere possibility that the Petitioner may be required to disclose a prior Leave India Notice in a foreign visa application does not, in itself, create a subsisting legal injury within the jurisdiction of this Court.

23.18. More importantly, the material on record demonstrates that the Government of India has subsequently granted fresh Business and Tourist visas to the Petitioner. This conduct evidences the absence of any continuing adverse classification, blacklist, or prohibition within the Indian immigration framework. The regulatory action was specific to the Employment Visa context and did not translate into a permanent exclusion. In the absence of an enduring legal disability within India, the alleged reputational consequence abroad cannot sustain a live writ remedy.



23.19. It is also necessary to address the Petitioner's attempt to distance himself from the misrepresentation that formed the basis of the impugned action. The record indicates that the Employment Visa was granted on the strength of statutory declarations made by the sponsoring Employer, particularly the representation that no suitable Indian candidate was available for the post. The Petitioner's entitlement to remain in India under that visa was derivative and conditional; it flowed directly from the validity of the Employer's sponsorship.

23.20. When it emerged that the representation regarding recruitment efforts was factually unsustainable, the legal foundation of the Employment Visa stood compromised. The regulatory consequence that followed was not punitive in nature but corrective and



preventive. It addressed the continuing validity of immigration status rather than attributing criminal culpability.

23.21. The Petitioner may not have been the author of the misrepresentation. However, he was undeniably the beneficiary of the representation. Immigration law, particularly in the context of sponsored visas, operates on the principle that the beneficiary's status is inseparable from the sponsor's compliance with statutory conditions. When the foundational declaration collapses, the derivative benefit cannot survive in isolation.

23.22. To permit the Petitioner to retain the advantage of a visa secured upon a materially defective sponsorship would undermine the integrity of the visa regime and dilute regulatory discipline. The law does not countenance retention of benefits flowing from misrepresentation,



irrespective of whether the beneficiary personally orchestrated the falsehood. The issue is not moral blameworthiness but regulatory validity.

23.23. The Employment Visa was not an autonomous personal right divorced from its sponsorship matrix. It was contingent upon the truthfulness and completeness of the Employer's declarations. Once that matrix was shown to be flawed, the consequent regulatory action was a lawful response to the collapse of conditions precedent.

23.24. In that sense, the consequences that ensued were not imposed arbitrarily upon the Petitioner but were inherent in the structure of the visa category under which he sought entry and stay. The Petitioner cannot now disassociate himself from the consequences that inevitably follow when the very basis of his derivative



immigration status is shown to be unsustainable.

23.25. The Petitioner's reliance on **Narendra Singh** and **Sudhakar** does not advance the case. Those decisions recognise that execution of an order does not automatically render a matter infructuous where substantive rights continue to be affected. However, here, the foundational right asserted, the right to remain under the Employment Visa, has itself expired by efflux of time. The statutory basis of stay has ceased independently of the impugned action.

23.26. The Court must also note that the subsequent grant of visas materially alters the landscape. If the impugned LIN had resulted in permanent exclusion, blacklisting, or statutory disability, the argument of enduring consequence might merit closer examination. The record reflects the contrary.



23.27. The Petitioner has also relied upon ***State of Maharashtra v. Mayer Hans George*** to suggest that strict liability principles must be tempered by fairness. However, that decision in fact upheld strict enforcement of statutory obligations upon foreigners and recognised that absence of mens rea does not necessarily invalidate regulatory action. The reliance is therefore misplaced and, if anything, reinforces the State's regulatory competence.

23.28. Judicial discipline requires that courts refrain from deciding academic issues. The controversy that once existed, whether the Petitioner could continue under the Employment Visa, has ceased to exist in fact and in law. The impugned LIN operated within a finite temporal framework. That framework has concluded.

23.29. In assessing whether the petition retains vitality, the Court must examine whether any



enforceable right presently survives for adjudication. None does. The Petitioner is not presently under restraint. He has re-entered India under subsequent visas. There is no subsisting order prohibiting his entry or imposing a continuing disability.

23.30. In these circumstances, the writ petition has been rendered infructuous. The challenge to the impugned Leave India Notice now presents an academic question devoid of operative consequence.

23.31. I answer Point No. 9 by holding that the writ petition has been rendered infructuous and academic. The Petitioner has exited India, the visa has expired, and the subsequent grant of new visas by the Respondents negates the claim of enduring stigma or permanent disability.

24. **Answer to Point No. 10: What order?**



24.1. A visa is a conditional permission to enter India and does not confer an indefeasible or vested right to remain for its entire duration. The issuance of a Leave India Notice under Section 3(2)(c) of the Foreigners Act, 1946 is an independent statutory exercise of sovereign power to regulate presence of foreigners. It does not amount to an impermissible indirect or de facto cancellation of the visa.

24.2. The Foreign Regional Registration Officer, acting as the designated Civil Authority under valid statutory notifications issued pursuant to Section 12 of the Foreigners Act and the Foreigners Order, 1948, possesses statutory jurisdiction to issue a Leave India Notice within his territorial jurisdiction.

24.3. The power under Section 3(2)(c) vests in the Central Government and its duly authorised delegates. Where the competent delegate (Joint



Director – Immigration) takes the decision and directs a subordinate officer to issue and serve the notice, such action constitutes lawful administrative execution and not impermissible sub-delegation. Internal administrative directions need not be published in the Official Gazette.

24.4. The impugned Leave India Notice does not suffer from arbitrariness or non-application of mind. It is founded on relevant documentary material, including the Employer's admission regarding irregular recruitment, and bears a rational nexus to the objective of preserving the integrity of the visa regime.

24.5. Allegations of fraud or misrepresentation detected after entry into India can be acted upon by domestic immigration authorities. There is no statutory requirement that such matters must first be adjudicated by the



overseas visa-issuing authority. Once entry is effected, regulatory jurisdiction over continued stay vests in domestic authorities.

24.6. In cases of Employment Visa sponsorship, where the alleged misrepresentation pertains to the Employer's statutory declarations forming the foundation of the visa, issuance of a show-cause notice to the Employer satisfies the requirements of natural justice. A separate hearing to the employee is not mandated where the determinative facts lie exclusively within the Employer's domain and stand admitted.

24.7. The Petitioner has exited India, the Employment Visa has expired by efflux of time, and the Petitioner has subsequently been granted Business and Tourist visas. The primary relief sought has become incapable of grant, and no enduring civil, legal, or reputational disability subsists. The writ petition



has therefore been rendered infructuous and academic.

24.8. In view of the above findings, I pass the following

ORDER

- i. The writ petition is **dismissed**.
- ii. In any event, the writ petition has been rendered infructuous due to subsequent events, including the Petitioner's departure from India, expiry of the Employment Visa, and grant of fresh visas.
- iii. The impugned Leave India Notice does not suffer from illegality, lack of jurisdiction, violation of natural justice, arbitrariness, or constitutional infirmity.

SD/-
(SURAJ GOVINDARAJ)
JUDGE