Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JUDGMENT

WRIT PETITION NO. 1665 OF 2019

JOSHUA SADAGURSKY,
Aged 29 years, residing at 10
Parmenter Road, Wayland, MA 01778,
Massachusetts, USA ...PETITIONER

~ VERSUS ~

1. **UNION OF INDIA**
Through the Secretary, Ministry of
Home Affairs and having its office at
North Block, New Delhi 110 001

2. **BUREAU OF IMMIGRATION,**
CSI, MUMBAI,
through the Immigration Officer,
Chhatrapati Shivaji Maharaj
International Airport, Mumbai,
Maharashtra and having its office at
Chhatrapati Shivaji Maharaj
International Airport, Navpada, Vile
Parle East, Vile Parle, Mumbai,
Maharashtra 400 099

3. **FOREIGN REGIONAL**
REGISTRATION OFFICE,
MUMBAI
through the Foreign Regional
Registration Officer, Mumbai, Annex
Building, 3rd Floor, Badruddin
Tayyabji Marg, Behind St. Xavier's
College, C.S.T. Mumbai 400 001 ... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	**Dr Birendra Saraf**, *with Faraz Maqbool & Zaman Ali, i/b Zaman Ali.*
FOR RESPONDENTS	**Mr Rajendra K Singh**, *with Atul Singh.*

CORAM : S.C.DHARMADHIKARI & G.S. PATEL, JJ.

JUDGMENT RESERVED ON : 26th August 2019

JUDGMENT PRONOUNCED ON : 9th September 2019

JUDGMENT (*per G.S. Patel, J*)

1. **Rule**. Respondents waive service. By consent, rule made returnable forthwith and taken up for hearing and final disposal.

2. The petitioner ("**Sadagursky**") is a US national and is a citizen of that country. He has filed this petition invoking our jurisdiction under Article 226 of the Constitution of India. He seeks high prerogative remedies; specifically, the issue of a writ of mandamus to restrain the respondents from obstructing or preventing Sadagursky's entry into India; and a writ of certiorari to quash and set aside a notice dated 21st May 2018 issued to him by the respondents. Alternatively, Sadagursky seeks that he be issued a show-cause notice, and the opportunity of a hearing and of filing a written representation contesting his expulsion from India. There are other, relatively minor prayers: that the respondents be directed

to furnish complete reasons for his expulsion from India, and that he be reimbursed an amount of US$ 2,000 for his expenses for his return flight to the United States.

3. The 1st respondent is the Union of India through the Ministry of Home Affairs. The 2nd respondent is the Bureau of Immigration through the Immigration Officer, Chhatrapati Shivaji Maharaj International Airport ("**CSMIA**"), Mumbai, Maharashtra and the 3rd respondent is the Foreign Registration Regional Office, Mumbai.

4. We have heard Dr Saraf for Sadagursky and Mr Singh for the respondents. We have carefully considered the material on record. There is an Affidavit in Reply dated 3rd June 2019 from pages 88 to 94 filed by one Vivekanand Shankar Rasam, the Immigration Officer, Bureau of Immigration, CSMI Airport, Mumbai. There is also an Affidavit in Rejoinder said to have been affirmed in the United States on 3rd August 2019. Although there was some controversy initially about the correctness of the affirmation of the Writ Petition and the Affidavit in Support as also the Affidavit in Rejoinder, we will let that pass and proceed to the merits of the matter.

5. The facts lie in a narrow compass, but, regrettably, the petition is less than candid in the case it presents. Sadagursky, an American citizen, says he is 'a former employee' of a US-based non-profit organization called 'Global Citizen Year'. This was founded in 2008 in the United States. This organization apparently works in four countries, including India. It provides fellowship programmes

to the university-bound students coming to India from overseas. This organization partners in India with an Indian non-governmental organization called Teach for India. It conducts its activities from Hyderabad and Pune.

6. The petition directly says Sadagursky was issued a valid US passport on 13th December 2016 valid for 10 years until 12th December 2026. While the petition then immediately proceeds to the events of 2017, we believe it is essential, even at this early stage in the factual narrative, to refer to prior events set out in the Affidavit in Reply but wholly omitted in the petition. The petition gives the distinct impression — simply by not disclosing these prior events — that Sadagursky had a valid one year business visa dated 19th April 2017 and that there was nothing that passed before that date. This is incorrect. In fact Sadagursky first visited India some time in early-September 2012, a good five years earlier. He stayed for 148 days. This was on a tourist visa. He returned later in 2013 around 5th June and stayed on a student visa until 22nd December 2013 for a total of 201 days. In the aggregate for the 2012-2013, he stayed for 349 days, but, during his second stint in India on the student visa, he overstayed by 62 days. Sadagursky returned to India in 2014 twice: from 5th January 2014 to 24th May 2014, a total of 140 days, and from 5th June 2014 to 5th August 2014, a total 62 days, making in all 202 days. This was on a tourist visa.

7. Again in 2015, he had two visits to India, though of shorter duration from 16th August 2015 to 14th September 2015 (30 days) and from 19th December 2015 to 4th January 2016 (17 days). Both these visits were on an e-tourist visa. In 2016, Sadagursky made as

many as four visits to India. These were from 12th February 2016 to 29th February 2016 for 17 days on an e-tourist visa; from 22nd May 2016 to 19th June 2016, a period of 28 days, also on an e-tourist visa; from 8th July 2016 to 12th August 2016, a period of 35 days on a tourist visa; and from 28th August 2016 to 2nd January 2017 for 128 days also on a tourist visa. Altogether, in 2016 he was in India for 208 days.

8. In 2017-2018, Sadagursky was in India from 11th January 2017 to 7th May 2017, a period of 87 days as a tourist. He then returned from 29th April 2017 to 12th July 2017 for 75 days on a business visa and then from 30th July 2017 to 13th May 2018, for 288 days on a business visa. His total stay in India for this period was 450 days (from January 2017 to May 2018), and there was an overstay of about 25 days.

9. These facts are not disclosed in the petition. They ought to have been. An explanation comes late, only in the Rejoinder. Instead, the petition proceeds on the footing that Sadagursky arrived in India on 29th April 2017 (which is only a reference to his second visit of that year and with no preference to his previous stays). He says that he 'worked' for Teach for India, in the capacity of something he called Team Leader initially in Pune and then in Hyderabad. He claims to have done several noteworthy assignments. This is wholly irrelevant to the issue at hand.

10. The petition then goes on to say that Sadagursky applied for an extension of his business visa at the FRRO in Hyderabad in

March 2018. What this overlooks is that Sadagursky had no choice in the matter because he had already overstayed, and was in breach of his visa conditions. Sadagursky says that this was a 'minor violation of his visa conditions for which he was required to deposit a fine'. He says he did make that deposit and was then informed and assured that the issue stood resolved. He says this was an unintentional lapse.

11. His petition does not point out that this was not his first lapse. He had a similar such 'lapse' of 62 days several years earlier 2012-2013 when he was in India on a student visa. The petition then goes on to say that on 10th May 2018, Sadagursky was told by the FRRO Hyderabad that his request for an extension of the business visa had been denied. He was granted an exit permit. On 12th May 2018 Sadagursky returned to the United States.

12. He promptly applied for a fresh business visa. He claims that a five-year multiple-entry visa was issued to him 'due to his noteworthy contribution in India'. Of this so-called reason for issuing him a visa we have no evidence whatsoever. There is nothing to show that the five-year multiple-entry visa of 16th May 2018 was given to Sadagursky 'in recognition' of any of his activities or work that he did in India. It seems to us to be entirely a self-serving figment of Sadagursky's imagination.

13. On the basis of this five-year multiple-entry visa dated 16th May 2018, Sadagursky arrived in India at the CSM International Airport on 21st May 2018. At the immigration counter, he was made

to wait by the Immigration Officer and then escorted to a room. A short while later, Sadagursky was told that he was being sent back to the United States. Sadagursky claims that he was given no reason. It is at this point that Sadagursky says that he was issued a one-page notice under paragraph 6(i) of the Foreigners Order 1948 by the AFRRO/ACP, Bureau of Immigration, CSMIA under which he was to be removed from India. Sadagursky says there are no reasons in the notice, though they ought to have been. He claims this notice is illegal and is liable to be set aside because paragraph 6(i) of the Foreigners Order 1948 does not apply and cannot be invoked against him. A copy of this notice is at Exhibit "F" to the petition. We find this notice contains a single reason, namely, that Sadagursky is an 'inadmissible pax', meaning an inadmissible passenger.

14. Sadagursky's submission is that because he had a five-year multiple-entry business visa issued in the United States by the Indian Consulate, therefore, he was entitled to enter the country and could not have be stopped. The submission is entirely without merit. It needs only to be stated to be rejected. It is without logic, for it necessarily means that all immigration protocols and authorities are redundant and are denuded of all powers except to check whether the inbound passenger holds a visa. That is contrary to law, as we shall shortly see.

15. Sadagursky was then told to purchase a ticket to return to United States. This cost him US$ 2,000. He now wants a refund or reimbursement.

16. Sadagursky also complains says that during this time, i.e. after he landed and until his departure, he was made to wait in the waiting area outside immigration and was not allowed to go anywhere else. He was not allowed to approach a higher authority. He claims he was denied food and sleep. Shortly before the scheduled departure of his return flight, he was escorted to the aircraft after the other passengers had boarded. He was escorted through security. His passport was taken away and was returned to him only when he arrived in the United States.

17. Sadagursky's submission is that he was entitled to a show-cause notice and to be afforded a hearing. He submits that his expulsion from India in this form is illegal and unlawful. He claims that it is unconstitutional and contrary to several International Conventions and Treaties to which India is a signatory.

18. Sadagursky then filed an application under the Right to Information Act in India and in response he was told that no information could be provided, the authorities claiming an exemption under Section 24 of the Right to Information Act 2005.

19. This is the sum and substance of the petition, and with this we turn now to the Affidavits in Reply and Rejoinder. As we have noted at the forefront, the petition is less than candid and does not make any mention at all of Sadagursky's prior visits or the fact that he had not once but twice overstayed the durations stipulated in his visa. The Affidavit in Reply sets this out in a table below paragraph 3 and then says that for the period 30th July 2017 to 13th May 2018,

Sadagursky was guilty of a delay of as long as two months in registering with the FRRO. Further, it is pointed out that the business visa that Sadagursky obtained was for the purposes of a small/medium business. His previous visas were tourist visas. Despite this, Sadagursky engaged in work with another entity in India. The Affidavit in Reply points out that the declaration and the visa application clearly indicated that Sadagursky had understood that should the information he provided in the form be found to be incorrect, he would be liable to be denied entry or a visit. The three visa applications filed by Sadagursky are annexed as Exhibits "A", "B" and "C" at pages 95, 97 and 99 to this Affidavit in Reply. We also find from the copy of the visa itself that is annexed to the petition (e.g. Exhibit "E" at page 56) that there is a specific condition printed on the face of the visa that each stay is not to exceed 180 days.

20. A further condition is that the visa (including the one issued on 16th May 2018) does not make Sadagursky eligible for employment in India. As we shall see, the papers on our files indicate that not only was Sadagursky previously in violation of this condition but that on the strength of this 2018 visa, what he intended was nothing but yet a further violation of this condition.

21. The Affidavit in Reply states that the Government of India's policy is to ban foreigners in violation of visa conditions from entering India. The Foreigners Act 1948 confers the power to refuse entry to any foreigner into India. It vests the Central Government with discretion in this regard. Sadagursky was denied entry in pursuance of this policy.

22. On facts, the Affidavit in Rejoinder makes for interesting reading. For the first time, Sadagursky comes up with some sort of an explanation about his previous overstays in India. He does not deny them. He does not explain why they were left out of his petition. What he claims, at page 103, is that he applied for an extension of his business visa with the FRRO in Hyderabad in March 2018, but the authorities took almost two months to process this request — therefore, as usual, it always someone else's fault, never his. The submission is untenable. There is no requirement in law that an extension must be granted.

23. It is also in this Rejoinder that Sadagursky now for the first time admits that he overstayed in 2013. He claims this was purely inadvertent and occurred at the time when he was a young student. He then claims that subsequent visas issuances have more or less washed out this infraction. We disagree. There is no exception for students coming to India, and this story of alleged inadvertence is not credible.

24. The petition is founded on an invocation of both Article 14 and Article 21 of the Constitution of India. Both these Articles refer to 'person' and not 'citizen' and, therefore, the invocation.

25. We turn to the relevant statute, namely, the Foreigners Act 1946. We are not concerned with the provisions of the Citizenship Act 1955 or the Passports Act 1967. The Foreigners Act is a short Act. It was amended in 1962. Under Section 2(a) a foreigner is defined to mean a person who is not citizen of India. Sadagursky

clearly falls within that definition. Section 3 confers power on the Central Government to make provisions by order either generally or with respect to all foreigners or any class of foreigners to prohibit, regulate or restrict their entry into India or their departure from India, or their presence or continued presence in India. Section 3 reads thus:

> "**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 powers, 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 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) or clause (f) or sub-section (2)."

26. We must then notice Section 6 of the Foreigners Act, which reads as follows:

"**6. Obligations of masters of vessels, etc.—**

(1) The master of any vessel landing or embarking at a port in India, passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in India, passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) If any foreigner enters India in contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government,

accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passengers from a port or place in India to any destination outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefor at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a port or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under section 3 not to remain in India and for his dependents, if any, travelling with him.

(6) For the purposes of this section—

(a) "master of a vessel' and 'pilot of any aircraft' shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(b) 'passenger' means any person not being a *bona fide* member of the crew, travelling or seeking to travel on a vessel or aircraft."

27. The Foreigners Order 1948 was made in exercise of the powers conferred by Section 3. Again clause (3) of the Foreigners Order is relevant for our purposes and this is how it reads:

"**3. Power to grant or refuse permission to enter India.—**

(1) No foreigner shall enter India:-

(a) otherwise than at such port or other place of entry on border of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf, either for foreigners generally or for any specified class or description of foreigners; or

(b) without the leave of the civil authority having jurisdiction at such port or place.

(2) Leave to enter shall be refused if the civil authority satisfied that:-

(a) the foreigner is not in possession of a valid passport or visa for India or has not been exempted from the possession of a passport or visa;

(b) he is a person of unsound mind or mentally defective person;

(c) he is suffering from a loathsome or infectious disease in consequence of which, in the opinion of the medical officer of the port or the place of entry, as the case may be, the entry of the foreigner is likely to prejudice public health;

(d) he has been sentenced in a foreign country for an extradition offence within the meaning of the Indian Extradition Act, 1903 (XV of 1903).

(e) his entry is prohibited either under an order issued by a competent authority or under the specific orders of the Central Government.

(3) The civil authority may attach such conditions as it thinks fit to the grant of leave to enter and such conditions may be varied in such manner or cancelled as the Central Government deems fit.

(4)

(a) Notwithstanding anything contained in sub-paragraphs (1) to (3) or in the Passport (Entry into India) Act, 1920 (XXXIV of 1920), or in the rules made thereunder, a civil authority may, in the interests of public safety, prohibit the entry or any foreigner into India.

(b) Whenever the civil authority issues an order under clause (a) it shall report the matter forthwith to the Central Government, which may cancel or modify the order in such manner as it thinks fit.

(5) Where leave to enter is refused to a foreigner, he may be detained at some place approved by the Civil authority and may, if he has come by sea, be placed temporarily on shore for the purpose, and whilst he is so detained a foreigner shall be deemed to be a legal custody and not to have entered India."

28. Similarly, clauses 6 and 7 read thus:

"**6. Liability of master of vessel etc to remove a foreigner:**

(1) A civil authority may require the master of the vessel or pilot of the aircraft in which a foreigner has arrived or the owners or agents of that vessel or aircraft, as may be appropriate in the opinion of such civil authority, to remove a foreigner who has been refused permission to enter or who has entered India without its permission or who has been landed in contravention of sub-para (3) and the master, pilot, owner or agent, as the case may be shall comply with such requisition unless it is received more than two months after the date of the arrival of the foreigner in India.

(2) The master of a vessel or the pilot of an aircraft scheduled to call at any port outside India, shall, if so required by the Central Government, receive a foreigner in respect of whom an order directing that he shall not remain in India has been made, and his dependents, if any, on board the vessel or aircraft, as the case may be, and afford him and them a passage to that port and proper accommodation and maintenance during the passage.

(3) The master of any vessel or the pilot of any aircraft shall not, without the permission of the civil authority, land at any port in India any person travelling by that vessel or aircraft against the wishes or such person unless such person has been required by the Central Government to be brought to India.

(4) Nothing contained in the Foreigners (Exemption) Order, 1957 shall preclude the operation and application of the provision of sub-paragraph (3).

7. Restriction of Sojourn in India:-

(1) Every foreigner who enters India on the authority of a visa issued in pursuance of the passport (Entry into India) Act, 1920 (34 of 1920), shall obtain from the Registration Officer having jurisdiction either at the place at which the said, foreigner enters India or at the place at which he presents a registration report in accordance with rule 6 of the Registration of Foreigners Rules, 1939 a permit indicating the period during which he is authorised to remain in India and also indicating the place or places for stay in India, if any, specified in the visa. In granting such permit the said Registration Officer may restrict the stay of the foreigner to any of the places specified in the visa.

(2) Every foreigner, to whom the provision of sub-paragraph (1) do not apply, shall obtain a permit indicating

the period during which he is authorised to remain in India from the Registration Officer to whom he presents a registration report in accordance with rule 6 of the Registration of Foreigners Rules, 1939.

(3) Every foreigner to whom a permit is issued under sub-paragraph (1) or sub-paragraph (2):-

(i) shall not, if the permit indicates the place or places for stay in India, visit any other place unless the permit is extended by the Central Government to such other place;

(ii) shall, if the permit indicates the place or places for stay in India, report in person or in writing his arrival at and departure from, any such place to the Registration Officer having jurisdiction at such place, within twenty-four hours after arrival or, as the case may be, before his intended departure; and

(iii) shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period; and at the time of the foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from where he departs."

29. On the face of it, therefore, these statutory provisions make it clear that the civil authority at a port of entry has the discretion to refuse entry to any foreigner, i.e. to any person who is not a citizen of India. We are, therefore, not in agreement with the proposition canvassed, for it seems to us to be overbroad, viz., that having got a five-year multiple-entry visa, Sadagursky could not have been stopped at the port of entry, the CSMIA. If this be so, then the

entire requirement of having immigration officers is redundant. That can never be.

30. The second principle that emerges from these statutory provisions is that if the authorities find that there is a foreigner, i.e. a non-citizen, who is in violation of his visa conditions, he may be either removed or may be prohibited or prevented from re-entering the country. We have already noticed that there are multiple violations by Sadagursky. There are the two overstays that we have already noticed. There is also the fact that Sadagursky claimed to be employed in India although his visa restrictions specifically prohibited this. Sadagursky seems to want to equate 'business' with 'employment'. The difference is self-evident and it seems to us completely unnecessary to dilate further on this aspect of the matter. We only notice from the Court papers that on 8th August 2019, Sadagursky placed on record, although without an Affidavit, a letter from one Archana Rao, the Deputy Director, India of Global Citizen Year offering Sadagursky a full-time position of Team Leader. He was to report to and work closely with her. The letter makes it clear that this is indeed employment. It provides for compensation at an annual salary mutually agreed (unstated in the letter), a starting date of 20th March 2019, contribution towards insurance and medical and dental coverage, a retirement plan with matching funds of up to 3% of the annual salary, paid holidays, flexible time off and other benefits and responsibilities in accordance with the Global Citizen Year's Employee Handbook. As we have noticed, Exhibit "E", the relevant visa in question, clearly prohibits Sadagursky from taking up employment. What Sadagursky plainly intended to do, entering India on a business visa, was therefore

something his visa forbade. This was another violation-in-the-offing or making. In our view, this in itself is sufficient reason to dismiss the petition.

31. Dr Saraf has, however, drawn our attention to several authorities and the United Nations International Covenant on Civil and Political Rights. That India is a signatory to such conventions and to this covenant is not in doubt. Dr Saraf invokes Article 13 of the United Nations Covenant. This Article says that an alien lawfully in the territory of the State party may be expelled only in pursuance of a decision reached in accordance with law and shall ordinarily be allowed to submit reasons against his expulsion and to have his case reviewed and represented before a Competent Authority or persons designated by the Competent Authority. This, he submits, applies to Sadagursky. The submission is misconceived and misdirected. Sadagursky was never lawfully in the territory of India when he was required to return to the United States on his arrival on 21st May 2018. He had already left the country on 12th May 2018, and was now attempting to re-enter. He was therefore not expelled, which implies the ejectment from Indian territory of someone already within its borders. He was denied entry into the country. Article 13 has no application whatsoever.

32. Reliance is then placed on a Supreme Court decision in *Sarbananda Sonawal v Union of India*.[1] We failed to see how this decision has any application to Sadagursky's case. Reliance is placed on paragraphs 74 and 75 of this decision which speak of the law

1 (2005) 5 SCC 665.

regarding deportation of aliens. In fact these passages are against Sadagursky:

> "74. We consider it necessary here to briefly notice the law regarding deportation of aliens as there appears to be some misconception about it and it has been argued with some vehemence that aliens also possess several rights and the procedure for their identification and deportation should be detailed and elaborate in order to ensure fairness to them.
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> 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 on 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.** 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 receipt 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."
>
> (*Emphasis added*)

33. In fact, we may note that in its decision in *Louis De Raedt v Union of India*,[2] the Supreme Court clearly held that constitutional

2 (1991) 3 SCC 664.

rights available to foreigners are restricted to Article 21. The Supreme Court followed its earlier decision in *Hans Muller of Nuremberg v Superintendent Presidency Jail Calcutta*.[3] The Supreme Court held that in India, the law is that the Executive Government has the unrestricted right to expel a foreigner.

34. The case decided by a Division Bench of the Delhi High Court in *Mohammad Sediq v Union of India*[4] is also of no assistance because that dealt with an Afghan refugee who came to India in 1981 and began working and living in India where he made his home and had his family.

35. Reliance is then placed on the decision in *Hasan Ali Rehany v Union of India*.[5] That case again is distinguishable. The petitioner there was born in India to parents who were Iranian citizens. He was educated in India and intended to stay in India. He applied for an Indian passport. He was abruptly deported from India — where he was lawfully present — to Tehran. How this decision is of the slightest assistance to Sadagursky is difficult to understand. The entire discussion in paragraphs 6 to 9 of *Hasan Ali* proceeds on the footing that the petitioner in that case was lawfully in India and was sought to be summarily evicted without any hearing or notice. Paragraph 8 in fact makes it clear that he had entered the country legally. This is not Sadagursky's case at all.

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3 AIR 1955 SC 367.

4 1998 (47) DRJ (DB).

5 (2006) 3 SCC 705.

36. We will pass over the decision in *Leonid Bayzer v Union of India & Ors*,[6] because it lays down no general principle. Similarly, the decision of the Division Bench in *Anna Obukhova v State of Goa*[7] is of no assistance because it clearly says that it was rendered without any assessment on the merits.

37. Then there is a reference to a Division Bench judgment of this Court to which one of us (SC Dharmadhikari J) was a party in *Mohammad Hassan Jafari Naeimi v Union of India & Ors*.[8] That again is distinguishable on fact, but the findings in paragraphs 21 and 22 are actually against the present petitioner.

> "21] Mr. Chitnis has laid special emphasis on the observations of the Supreme Court and the obligation to assign reasons. He, therefore, submits that the impugned orders should be quashed and set aside.
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> 22] On the other hand, learned Counsel appearing for respondents would submit that the case must be viewed in a proper perspective. **The petitioner has no fundamental right to reside and settle in India as he is not an Indian Citizen.** The petitioner has entered India on a passport and in terms of Act of 1920. However, the petitioner should be well aware and is rather well aware of the fact that the requirement of obtaining visa has to be complied with by him. That he has complied with such requirement is admitted by him. **Once that requirement is absolute in its application to parties like the petitioner, then, he cannot violate the visa terms and conditions. The petitioner was informed very clearly even when he sought**

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6 (2008) 1 Mh.L.J. 289.

7 (2016) SCC OnLine Bom 128.

8 2013 SCC OnLine Bom 1207.

> **extension of his X visa that there is a requirement to endorse on his passport the relevant stipulation. However, the stipulation and endorsement in the case of the petitioner is specific namely that employment/business/study is not permitted on X visa. The petitioner continued on that basis and thus could not have undertaken any business activities. However, upon enquiry being made, it was revealed that he was running a business activity and particularly hotel business.** His name appeared in the Shops and Establishment Licence. **Therefore, the Visa Rules were violated by him and hence a LEAVE INDIA NOTICE was issued to him.** Thus, a passport will make him eligible to enter into India and to reside in India till the same is valid in the country of origin. He was well aware of the requirement of obtaining a Visa. That he applied and obtained a specific category of visa. In such circumstances, when repeatedly his application has been rejected and no conversion can be permitted in terms of the guidelines, rules and the regulations, then, in the garb of making applications, the petitioner cannot perpetuate his illegal stay in India. The petition, therefore, be dismissed."
>
> (*Emphasis added*)

38. This leaves the decision of a Division Bench of the Delhi High Court in *Mohd Javed v Union of India*.[9] That judgment, authored by Anuj J Bhambhani J is an elaborate discussion of the law on the subject. It was also rendered in extremely peculiar circumstances. One Mohammad Javed, an Indian Citizen, married Nausheen Naaz, a Pakistani national, in 2005 according to Islamic Sharia Conventions. A nikahnama was issued in evidence of the

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9 2019 SCC OnLine Del 8741.

marriage. The couple settled in India, where Mohammad Javed lived. They had two sons from the marriage, about 11 and 6 years of age at the time of the decision. Both children having been born in India, they were Indian citizens. Nausheen herself was on what is called a LTV or Long Term Visa. There is a discussion of Nausheen's being in and out of India, but it seems that without any reason, she was directed on 7th February 2019 to leave India within 15 days although she was legitimately resident India on a perfectly valid LTV. While the entire discussion on law is instructive, we find that the Division Bench was made privy to certain confidential information tendered to it in two sealed covers (noted in paragraph 16). The Division Bench considered these with due care and circumspection, but found that they furnish no reasons warranting Nausheen's abrupt and peremptory ejectment from India contrary to the terms of her Long Term Visa. This is not true of Sadagursky's case at all.

39. For some reason that we are unable to understand, Sadagursky seems to be oblivious to the fact that at the time of the impugned notice he was not legally in India at all. He had not crossed the immigration borders. Although he had a visa, as we have noted, this did not give him unrestricted right to enter India. The civil authorities at the Airport always had the right to refuse him entry. The impugned refusal, as we have found from the record itself, one that Sadagursky has been very careful to elide in his petition, tells a very different story from the one that Sadagursky would wish to project. Far from being an innocent victim, we see a person who has repeatedly entered India, yet kept from the petition all details of his past visits; has more than once violated the terms of

his visa, and not disclosed these in his petition; and his violations include not only overstaying the maximum permissible period, but also in engaging in activities that were clearly forbidden. We are unable to appreciate how this petitioner can, in these circumstances and these facts invoke any rights at all let alone any fundamental rights. Hence, this case is not about the violation of any fundamental right. It does not warrant the invocation of any broader or wider legal principle. The entire case turns only on Sadagursky's own conduct and his own defaults.

40. The petition is entirely without merit. It is dismissed. Rule is discharged. There will be no order as to costs.

(S.C. DHARMADHIKARI, J.)

(G.S. PATEL, J.)