**In the High Court at Calcutta**
**Constitutional Writ Jurisdiction**
**Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P. No.4432(W) of 2020**

**Kamil Siedczynski**
**Vs.**
**Union of India and another**

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| For the petitioner | : | Mr. Jayanta Kumar Mitra,<br>Mr. Ranjan Bachawat,<br>Mr. Sanjay Ginodia,<br>Mr. Sarosij Dasgupta,<br>Mr. Shwetank Ginodia,<br>Mr. Satyaki Mukherjee,<br>Mr. Rozel Arora |
| For the respondents | : | Mr. Firoze Edulji,<br>Mr. M.C. Pushty,<br>Mr. Avinash Kankani,<br>Mr. Sudshan Lamba |
| Hearing concluded on | : | 05.03.2020 |
| Judgment on | : | 18.03.2020 |

**Sabyasachi Bhattacharyya, J.:-**

**1.** The writ petitioner is a Polish citizen and has come to India on a student visa, which was lastly renewed till August 31, 2020. He did his graduation of the first cycle degree studies in Oriental Studies, with a major in Indian Studies, from the Warsaw University and claims to have a detailed and organized knowledge of Bengali and Sanskrit literature and to be familiar with Hindi literature. The petitioner was awarded as best student by the Warsaw

University in the academic year 2015-2016. The Faculty of Oriental Studies, University of Warsaw, granted the petitioner a diploma which reflects his proficiency in Bengali, Hindi, Sanskrit and Tamil literature as well as command over history, philosophy and religion, art and aesthetics, socio-cultural issues (within the scope of natural environment and ethnic, demographic and political situation. The petitioner's diploma, annexed to the writ petition and accepted by the authorities while granting and renewing his visa, indicates that he can read, analyze and interpret literary texts and other works of culture (film, press, social writing) of South Asia and appropriately place them in their cultural context, apart from the ability to establish relations and cooperate with representatives of other cultures and acts in aid of sharing and promoting cultural and linguistic heritage of South Asia.

**2.** The petitioner did a one-year course to Study Sanskrit at Visva Barati, Santiniketan and was selected for a General Scholarship Scheme (GSS) for the academic year 2016-2017 by the Indian Council for Cultural Relations (ICCR), pursuant to which the petitioner applied for a visa to India and obtained the same on June 6, 2016. The petitioner duly completed the said course in Sanskrit with distinction and was thereafter admitted into a diploma programme in the Bengali language at 'Bhasha Bhavan' (Institute of Languages, Literature and Culture) in Visva Bharati, which he also passed with distinction. After such a successful academic career, the petitioner sought admission to the post-

graduate programme (M.A.) in Comparative Literature conducted by the Jadavpur University. Since the petitioner comes from a low-income family, he applied for a concession in fees by the said University, which was endorsed by the Head of the concerned department. Thereafter the petitioner has been pursuing such course, which was likely to be completed by August, 2020. As such, the petitioner applied and obtained a renewal of his Student Visa on October 1, 2019, valid till August 31, 2010.

**3.** Corroborative papers in support of the aforesaid averments have been annexed to the writ petition itself and have not been denied as such by the Respondents although, since no affidavits were called for in view of the urgency of the matter, as an inordinate interim order favouring the petitioner would tantamount to allowing the writ petition at the inception, it is deemed that none of the averments in the writ petition are admitted.

**4.** However, subsequently a Leave India Notice (LIN) dated February 14, 2020 was issued to the petitioner, allegedly in exercise of powers conferred by sub-section (2) (c) of Section 3 of the Foreigners Act, 1946 (hereinafter referred to as "the 1946 Act"), by the respondent no. 2, that is, the Foreigners' Regional Registration Office, Kolkata (FRRO), against which the present writ petition has been preferred.

**5.** Learned Senior Counsel for the petitioner argues that the LIN dated February 14, 2020, being devoid of reasons, ought to be set aside on the face of it.

**6.** It is further argued that no hearing, worth the name, was given to the petitioner prior to issuance of the LIN. It is submitted that from the annexures at pages 57 and 58 of the writ petition, it is evident that the last date for the petitioner to appear before the respondent no.2-authority was fixed by the said authority as February 24, 2020, for the purpose of being heard. However, the LIN itself, annexed at page 50 thereof, *ex facie* shows that it was issued on February 14, 2020. As such, it is argued, the hearing proposed to be given to the petitioner subsequently, after the notice was already issued, would be only an empty formality and would serve no useful purpose. The conclusion in the LIN was a foregone one.

**7.** Learned senior counsel appearing for the petitioner further submits that Section 3(2)(c), read with Section 3(1), of the 1946 Act empowers the Central Government to make an order inter alia providing that the foreigner shall not remain in India or in any prescribed area therein. It is argued that the language of the said provision that is Section 3 of the 1946 Act, contemplates an order making such provision. In the present case, the notice did not reflect any 'order' preceding the same, and is devoid of reasons. The said notice, issued by the respondent no.2, could not amount to an 'order' passed by the Central Government within the contemplation of Section 3 of the 1946 Act.

**8.** Citing the judgment reported at *AIR 1967 SC 295 [Barium Chemicals Ltd. and another vs. Company Law Board and others]*, in particular paragraph no.64 thereof,

learned senior counsel submits that any government action has to be reasonable and not arbitrary. It is submitted that, in the instant case, the decision taken against the petitioner is, on the face of it, arbitrary and without reasons. As such, it is argued that the impugned notice ought to be set aside.

**9.** Learned counsel appearing for the respondents submits that the ambit of the 1946 Act is wide and gives certain unfettered powers to the Central Government. Placing reliance on Section 14 of the 1946 Act, it is argued that, in the event a foreigner's entry/stay in India is illegal, the said foreigner is subject to the penal consequences provided for therein.

**10.** Section 3, it is argued, does not contemplate any reason being attributed or any prior hearing to the concerned foreigner, prior to making an order of expulsion.

**11.** It is submitted that the dispute LIN is not based merely on a newspaper publication, but also on a confidential field report, which has been filed in a sealed envelope at the time of hearing of the matter, in order to protect the identity of the concerned Investigating Officer and in view of the secrecy involved in such investigation.

**12.** It will be evident, it is argued, that the petitioner was under surveillance at least from January, 2020. Moreover, the newspaper report, which formed another basis of the LIN, was never challenged by the petitioner at any point of time before issuance of the LIN. Only on March 1, 2020 was a representation apparently given by the petitioner, to the concerned newspaper, alleging that

the contents of the report-in-question were false. However, such representation was merely for the purpose of preparing a ground work for filing of the writ petition and was not a bona fide and/or spontaneous one, which is betrayed by the delay in sending the same.

**13.** Learned counsel for the respondents next submits that the petitioner is a foreigner on student visa and hence, cannot take part in any movement criticizing any act of the Indian Parliament. It is submitted that such political activity is beyond the scope of such a visa.

**14.** Learned counsel further argues that Article 19 of the Constitution of India is applicable only to citizens of India and not foreigners.

**15.** It is further submitted, on the basis of the confidential report and the newspaper publication, that the petitioner had participated in at least two political rallies on the same day. By placing reliance on the petitioner's representation at page 52 of the writ petition, it is submitted that the said fact was admitted by the petitioner, along with certain previous activities, in the representation itself.

**16.** Thus, it is submitted, it was the prerogative of the Central Government, acting through the respondent no.2, to order the expulsion of the petitioner. Such order, it is argued, does not tantamount to deportation but is merely an expulsion.

**17.** In this context, learned counsel for the respondents cites a judgment reported at *AIR 1955 SC 367 [Hans Muller of Nurenburg vs. Superintendent, Presidency Jail, Calcutta and others]*, wherein the vires of Section 3 of the 1946 Act was upheld and it was held further that Article 19 of the Constitution is not applicable to foreigners.

**18.** Learned counsel for the respondents next placing reliance on the judgment of *Anwar vs. The State of J. and K,* reported at *AIR 1971 SC 337,* for the proposition that Article 19 is not applicable to foreigners.

**19.** Learned counsel next relies on the judgment reported at *AIR 1991 SC 1886 [Louis De Raedt vs. Union of India and others],* which, according to him, laid down the proposition that the foreigner, if expelled under the 1946 Act, does not have any right of hearing as such. It is submitted that in the present case, the respondent no.2 permitted a hearing to the petitioner, initially on prior dates, which was postponed on the request of the petitioner. Such notice, although not a mandatory requirement under the law, was given for abundant caution. As such, the grievance as to the petitioner not being heard does not hold water.

**20.** Next citing *AIR 1961 SC 1526 [Union of India and others vs. Ghaus Mohammad],* it is submitted that a foreigner cannot participate in political activities in India.

**21.** In support of the proposition that Article 19 of the Constitution is not applicable to a foreigner, the judgment reported at *(2005) 5 SCC 665*

*[Sarbananda Sonowal vs. Union of India and another]* was also referred to on behalf of the respondents.

**22.** Learned counsel then refers to a division bench judgment of this court, reported at *AIR 1966 Calcutta 552 [A.H. Magermans vs. S.K. Ghose and other]* to advance the proposition that, if the legislature has clearly indicated the underlying principle and policy of legislation and has laid down the criteria and proper standards, but has left the application of those principles and standards in the hands of the executive, it cannot be said that there is excessive delegation of powers by the legislature. It was held that the legislature has indicated, both in the preamble of the 1946 Act and Sections 3 and 3-A of the same the principle and policy of the legislation. What has been left with the executive is the application of the principles to individual cases. As to when the executive authority should act in exercise of the powers under the statute, and in respect of which individuals, must be left to the discretion of the executive authority.

**23.** In reply, learned senior counsel appearing for the petitioner submits that although Article 19 of the Constitution may be applicable only to citizens and not specifically to foreigner, Articles 14, 20, 21 and 22 of the Constitution are squarely applicable to foreigners as well and protect their rights and liberties as envisaged therein.

**24.** As regards the judgment of *Union of India and others vs. Ghaus Mohammad (supra)*, it is argued that an application under Article 226 was held not to be maintainable on the facts of the said case. Moreover, a different question fell for consideration in the said case, as regards whether the concerned person was a foreigner or not. As such, the said judgment was rendered in such context and, since a detailed examination of facts was necessary, it was held that Article 226 of the Constitution of India is not applicable. The said judgment, as such, is not a ratio decidendi as far as the present case is concerned.

**25.** In the present case, the visa of the petitioner expired in 2017 but was renewed upto August 30, 2020, conferring valid rights on the petitioner. The said renewal, and consequentially the visa, is still valid and the visa of the petitioner has not been cancelled. Hence, the rights accrued the petitioner by virtue of such visa, as renewed subsequently, could not be curtailed without any reason being attributed and without hearing the petitioner.

**26.** It is further submitted on behalf of the petitioner, in reply, that the context of Article 21 of the Constitution has changed and the scope thereof has been enlarged by subsequent judicial developments in India. Law follows the society and, as such, the 1946 Act, particularly the interpretation thereof as given in *Union of India and others vs. Ghaus Mohammad (supra)*, has now become obsolete.

**27.** Learned senior counsel for the petitioner cites a judgment reported at *2015(1) KLT 111*, also reported at *ILR 2015(1) Kerala 410 [Jonathan Baud vs. State of*

*Kerala]*, for the proposition that Article 21 of the Constitution is guaranteed even to foreigners, as long as the foreigner continues to be in India.

**28.** Relying on paragraph no. 4 of the said judgment, learned senior counsel argues that attending any meeting was not prohibited in either the Rules framed under the Registration of Foreigners Act, 1939 or the 1946 Act.

**29.** By citing another judgment reported at *(2006) 3 SCC 705 [Hasan Ali Raihany vs. Union of India and others]*, which was considered in *AIR 2019 Delhi 170 [Mohd. Javed and Ors. vs. Union of India and Ors.]* by a division bench of the Delhi High Court, which is also cited, it is argued that in the said case as well, a sealed envelope containing the surveillance report which led to the expulsion. It was held that the inputs therein did not disclose any conduct of the foreigner befitting a notice under the 1946 Act for leaving the country.

**30.** It is further argued, by citing the judgment of *Areni Lotha vs. Union of India (UOI) and Ors.*, reported at *AIR 2006 Gau 83,* that if a Confidential Intelligence Report was not the basis of the order of expulsion, as reflected from the order itself, such report could not be taken into consideration while considering the validity of the order. Article 21 of the Constitution was extended to foreigners also in the said judgment. In the present case, the Confidential Intelligence Report filed by the respondents was shown for the first time in court, without the petitioner being given an opportunity of hearing on the allegations therein.

Moreover, the said report was not a basis of the impugned notice, at least as reflected therefrom.

**31.** Referring to *Hans Muller of Nurenburg vs. Superintendent, Presidency Jail, Calcutta and others (supra)*, cited by the respondents, it is argued that the said judgment was rendered at a juncture when the Constitution of India was at its rudimentary stage of development. The Preventive Detection Act was in force at that point of time. Moreover, the expression 'unfettered' used in paragraph no.37 therein, shows that the opinion of the Central Government while passing such order was subjective and the court can satisfy itself as to the circumstances for expulsion of a foreigner.

**32.** Distinguishing the judgment reported at *Anwar vs. The State of J. and K (supra)*, learned senior counsel for the petitioner submits that, in the said case, the foreigner concerned had illegally crossed the ceasefire line and was sentenced upon supply of reasons. Hence, it is argued that the ratio laid down therein is not applicable to the present case, since the present petitioner still holds a valid visa.

**33.** Referring to the decisions reported at *Louis De Raedt vs. Union of India and others (supra)* and *A.H. Margermans vs. S.K. Ghose and other (supra)*, the visa of the concerned foreigner had already expired, thus rendering the said of the foreigner in India illegal, unlike the present case. In the present case, the petitioner had a valid right to stay in India on the basis of the visa issued in

favour of the petitioner, which could not be curtailed by an executive order, passed without any reasons.

**34.** As far as *Sarbananda Sonowal vs. Union of India and another (supra)* is concerned, learned senior counsel submits that paragraph no.75 of the same provides for an exception to the proposition laid down therein. Moreover, the said judgment was considered in *Hasan Ali Raihany vs. Union of India and others (supra),* cited by the petitioner, due to which the latter judgment is binding as a precedent, by overriding the former one.

**35.** In reply, learned counsel for the respondents submits that as far as the decision reported at *Mohd. Javed and Ors. vs. Union of India and Ors. (supra)* is concerned, it is submitted that a special leave petition is at present pending against the said judgment and, as such, the matter being sub judice before the Supreme Court, loses its binding value.

**36.** It is necessary to record here that the confidential report filed in court by the respondents, due to its nature, has been filed by the respondents in a sealed envelope. As such, except the bare outline thereof, necessary for deciding the present writ petition, the details thereof are not being disclosed. The said report, as filed in court, is comprised of two individual, continuously-numbered pages which were not stapled/joined with each other.

**37.** It is relevant for the purpose of the present adjudication only to mention the following:

It mentions about a cutting of ABP (a Bengali daily) dated December 20, 2019 having been enclosed, although such cutting was actually not enclosed with the version of the report filed in court. However, the respondents have filed such newspaper excerpts separately in court, at the time of advancing their arguments.

**38.** Without divulging details in particular, it could be safely mentioned, for the purpose of the present adjudication, that the confidential report mentions about the allegations about the petitioner participating in a political rally organized against a recently-enacted law of Parliament on December 19, 2019, which was also attended by the members of certain other political organizations. It is further mentioned therein that action was taken against the petitioner on the recommendation of "higher formation" based on inputs against him.

**39.** It further indicates that the petitioner was informed on the date of notice itself, through an e-mail, to appear in the office of the FRRO on February 19, 2020 but the petitioner postponed such meeting. The petitioner's e-mail dated February 27, 2020 is also acknowledged in the report.

**40.** In gist, the ground for expulsion, as reflected from the Confidential Intelligence Report, is primarily that a student visa does not allow a foreign national to get involved or speak publicly in anti-government demonstrations, which the petitioner was allegedly guilty of.

**41.** From the materials before the court, it does not appear, however, that any valid ground for expulsion of the petitioner, despite the validity of his visa till August 30, 2020, has been made out in the confidential report.

**42.** Without disclosing the details of the report, in view of its confidential nature, my conclusion as to the report is discussed here. The grounds given in the report for such expulsion primarily relies on the proposition that a student visa does not allow a foreign national to get involved or speak publicly in anti-government demonstrations.

**43.** Even from the extract of the newspaper report, also relied on by the respondents, it appears that the petitioner's alleged fault was that he participated in two political rallies the same day.

**44.** One of the said rallies was apparently attended by members of other political parties as well, which have not been mentioned in the report to be under any ban.

**45.** First, the petitioner was not given any opportunity to deal with specific allegations against him before the impugned order was passed. Even the order itself discloses no reason for expulsion.

**46.** Learned senior counsel for the petitioner is justified in arguing that such order, without any reason, cannot be a valid decision, in view of the subsistence of the validity of the petitioner's visa, at least till August 30, 2020. Since reason is the

soul of any order and reveals the decision-making process which led to the conclusion logically from the allegations levelled, the impugned order was, in any event, not valid in the eye of law.

**47.** The discretion, as conferred by Section 3 of the 1946 Act on the Central Government, cannot be unfettered and arbitrary, unless so spelt out explicitly in the section itself.

**48.** Whatever may be the powers given to the government, the necessity of disclosing the reasons for curtailing the valuable rights already accrued in favour of the petitioner cannot be dispensed with. In a democracy like India, the rights of any authority cannot be totally arbitrary and unrestricted. The fundamental rights enshrined in the Constitution of India govern not only the Indian citizens but foreigners as well, as long as they are on Indian soil.

**49.** That apart, a basic principle of natural justice, that is, *audi alteram partem,* was patently violated in the instant case.

**50.** Most of the judgments cited on behalf of the respondents for the proposition that the Government had absolute discretion in the matter, pertained to illegal immigrants and/or immigrants, whose visa had expired, thereby rendering him/her a trespasser on Indian soil. However, in the present case, it is the Central Government which consented to the issuance of a student visa to the petitioner, which was subsequently renewed, lastly till August 30, 2020. Hence, the respondents cannot resile from such position at this stage. The visa confers

valuable rights on the petitioner, not merely to stay in India but other associated rights, which are assured by the Constitution of India not only to citizens but also to foreigners.

**51.** In the present case, unlike the fact-situations of the cited judgments, the student visa, since renewed, conferred valuable rights on the petitioner, which conferment is valid, at least till August 30, 2020.

**52.** A perusal of Article 19 of the Constitution of India shows that the rights provided therein have been conferred upon "citizens" of India. However, such rights are not specifically excluded by the said provision in respect of foreigners. In the event the right to life and liberty and associated rights are curtailed by any government action, the same is always subject to judicial scrutiny on the yardstick of fundamental rights guaranteed by the Constitution of India.

**53.** It is evident from the language of the Constitution that Articles 14, 20, 21 and 22 apply to all human beings living in India and is not restricted to her citizens only.

**54.** In this context, Articles 14, 19, 20, 21 and 22 of the Constitution are set out below:

"**Articles of the Constitution of India:-**

**14. Equality before law. –** *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

.... .... .... ....

**19. Protection of certain rights regarding freedom of speech, etc. -** *(1) All citizens shall have the right –*

*(a) to freedom of speech and expression;*

*(b) to assemble peaceably and without arms;*

*(c) to form associations or unions or co-operative societies;*

*(d) to move freely throughout the territory of India;*

*(e) to reside and settle in any part of the territory of India; and*

*(g) to practise any profession, or to carry on any occupation, trade or business.*

*(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence.*

*(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.*

*(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.*

*(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.*

*(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to –*

*(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*

*(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.*

**20. Protection in respect of conviction for offences. -** *(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*

*(2) No person shall be prosecuted and punished for the same offence more than once.*

*(3) No person accused of any offence shall be compelled to be a Witness against himself.*

**21. Protection of life and personal liberty. –** *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

**22. Protection against arrest and detention in certain cases. -** *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*

*(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*

*(3) Nothing in clauses (1) and (2) shall apply –*

*(a) to any person who for the time being is an enemy alien; or*

*(b) to any person who is arrested or detained under any law providing for preventive detention.*

*(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless –*

*(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:*

*Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or*

*(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).*

*(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.*

*(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.*

*(7) Parliament may by law prescribe -*

*(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);*

*(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and*

*(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).*

.... .... .... ...."

**55.** It is evident that the right to life or personal liberty of a person cannot be curtailed except according to "procedure established by law". The application of the said Articles has not been restricted by the Constitution of India to citizens of India only. Such rights, as held time and again by the Supreme Court and various High Courts of India, some of which have been cited on behalf of the petitioner, extend to all persons living in India, be they citizens or foreigners.

**56.** It has been held in a plethora of judgments and is now well-settled that the right to life and personal liberty does not merely pertain to a bare existence and meaningless freedom. All persons living in India are guaranteed the right to

life and personal liberty, which, it is well-settled by judicial propositions, is not restricted to a bare existence. The expressions, "life" and "personal liberty" also include basic necessities and amenities to live a life worth human existence and the liberties associated therewith.

**57.** Such rights emanate not merely from the Constitution of India but are basic rights inherent in all human beings, as recognized time and again by the United Nations as well as several Charters and treaties between all the nations in the world. Hence, such rights cannot be fettered by a limited use of the term "citizens" in Article 19 of the Constitution.

**58.** For a brilliant student of the academic standard of the petitioner, it is but natural that the petitioner shall have free interactions in an atmosphere of freedom with Indians, at least while in India. Such liberties, as guaranteed by the Constitution of India, do not arise from the Constitution alone but are basic rights inherent in human existence, as recognized internationally, over the edges, which are also recognized by the Constitution of India. The source of such rights is not merely the Constitution, which itself is the *grundnorm* of Indian legislation, but also inhere in a human being, be she/he an Indian or a foreigner.

**59.** All certificates produced by the petitioner while obtaining the student visa, regarding his academic qualifications, were accepted without any qualification by the Central Government while issuing the visa and at the time when the

same was renewed. A mere perusal of such qualifications would show that the petitioner is not only an expert in several oriental languages but also has detailed and organized knowledge of Sanskrit, Bengali, Hindi and Tamil literature as well as a comprehensive knowledge of the history of South India, the philosophy and religion of South Asia, the arts and aesthetics of South Asia, socio-cultural issues in the said region within the scope of natural environment and ethnic, demographic and political situations and has proficiency in the aforementioned Indian languages. The certificate issued by the University of Warsaw also reflects the petitioner's propensity to engage in interactions with others and his expertise in the cultural tradition of South Asia, including India. The very premise of such qualifications, which the petitioner has, provide for the petitioner's ability to engage in such activities as indicated above. Hence, the 'life' and 'personal liberty' of the petitioner cannot be limited to a bare existence worth the name but also contemplates his right to actively pursue his interests and fields of specialization, which are necessary for the petitioner to lead a healthy life. The personal liberties of any person cannot be restricted merely to the right of staying in India. Since the student visa in favour of the petitioner confers the right on the petitioner to live in India up to August 30, 2020, the rights to pursue his intellectual interests and to seep in the ethnicity and lifestyle of different communities in India also go hand in hand with his right to life.

**60.** Moreover, in view of the petitioner's knowledge in political situations and socio-cultural issues of South Asia, it would be an unreasonable restriction on the petitioner to restrain him even from participating in political rallies, unless the same amounts to sedition or any other offence envisaged in Indian law.

**61.** It has been alleged that the petitioner merely participated in a political rally and was present when the rally was going on. Such facts, even if admitted, cannot be of such a dangerous nature that the same would entitle the Central Government to rescind the valuable rights conferred on the petitioner by virtue of his visa, by expelling him from India. The simple fact that the petitioner's visa, after renewal, is valid till August 30, 2020, validates the petitioner's stay in India, unless withdrawn on specific grounds, to be disclosed to the petitioner, and without any prior hearing being given to the petitioner. The petitioner, as long as his visa subsists, has a valid right to stay in India, unless such rights are withdrawn on valid ground that he has acted in a manner which amounts to commission of a penal offence under the Indian legal system.

**62.** On a broader perspective, Indian society has all along been known as tolerant of all views, religions and creeds. The influx and intermingling of visitors and Indian citizens are a part of Indian culture. Throughout history, India has seen various races and cultures entering her territory and often becoming an inseparable part of Indian culture and society. India has welcomed students from all over the world and has permitted free interaction of minds and

intellect between foreigners and Indians. Eminent educational institutions, such as the Nalanda University, have been located in this country, where students from all over the world participated and enriched Indian society and culture. Thus, the expulsion of the petitioner during subsistence of his visa, without having committed any penal offence, would send a wrong message to the world about India in general. The mere activity of participation in a political rally is included within the right to life and personal liberty and freedom of speech and expression, particularly in respect of a student with brilliant academic career, whose consciousness is above the ordinary and is required to be cultured. Seen in perspective, the petitioner is expecting to complete his studies in India by August 30, 2020, on which premise the visa was extended by the Central Government itself. Thus, curtailing such rights, thereby ruining the academic career of the petitioner, could not have taken place without hearing the petitioner and assigning proper reasons for such curtailment.

**63.** As far as the judgments cited by the respondents are concerned, in *Berium Chemicals Ltd. (supra)*, the Supreme Court observed that the maxim *delegatus non potest delegare* must not be pushed too far and does not embody a rule of law, and held the same to be a rule of construction of a statute or other instrument conferring an authority. It was held that prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that

authority and by no other, but the intention may be negatived by any contrary indications in the language, scope or object of the statement. The construction that would best achieve the purpose and object of the statute, it was held, should be adopted. The said findings were in the context of the facts of the case, which arose from a Company Law Board matter and was rendered in a different perspective altogether. Even if we construe Section 3 of the 1946 Act in the context in the statement of objects and reasons of the said Act, such statement begins with the expression "at present". The 1946 Act was enacted since the powers under the previously existing Acts were ineffective and inadequate during normal times as well as during an emergency. The 1946 Act was meant to be a permanent legislation on the subject of expulsion of foreigners and their apprehension and detention pending removal and for their ban on their entry into India after removal.

**64.** As it is, the said statement of objects and reasons is in tune with the preamble of the 1946 Act, which says that it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and the departure therefrom. However, the said statute has to be read in the context of the fundamental rights guaranteed to persons living in India by its Constitution. Section 3 of the 1946 Act, *ipso facto*, does not provide any explanation as to blanket powers having been conferred on the Central Government in such regard. Hence, to test the legitimacy if its

exercise on the anvil of the Constitution of India, is always permissible in a judicial review under Article 226 of the Constitution of India.

**65.** As far as *Sarbananda Sonowal (supra)* is concerned, the same was rendered in the context of the Illegal Migrants (Determination by Tribunal) Act, 1983. It was held therein that the said statute was ultra vires and was struck down and the Tribunals and Appellate Tribunals constituted under the said Act were held to cease to function. The other prevalent Acts, including the 1946 Act, were held to be applicable to the State of Assam and matters pending in connection therewith were directed to be disposed of early. The adjudication in the said reported judgment was in the context of the said Act of 1983 and was not a precedent on the 1946 Act. The primary context of the observations was the meaning of "aggression" as used in Article 355 of the Constitution of India. The said Article provides for duty of the Union to protect States against external aggression and internal disturbance and does not speak in any way about the right under Section 3 of the 1946 Act being unfettered.

**66.** In *A.H. Magermans (supra),* it was held that an order under Section 3(2)(c) of the 1946 Act were executive or administrative orders and hence, the said provision could not be held to be excessive delegation of powers. It was further held that if an executive order has been made in exercise of the powers conferred by a statute, and if the statute itself is a valid piece of legislation, no criticism could be entertained by the High Court in a writ proceeding on the ground that there

were no sufficient grounds for making the order or to infer that the mode of making the order was contrary to law. In the said judgment, it was held by the Supreme Court that if the petitioner's case was that opportunity was not given to him to make representations against the order under Section 3(2)(c) of the 1946 Act, he should have set out in his petition sufficient facts to enable the opposite party to deal with them and could not raise the question of violation of principles of natural justice at the stage of arguments.

**67.** In the present case, as opposed to the said reported judgment, the petitioner specifically pleads that he was not given any opportunity of hearing at all, prior to the impugned order of expulsion being issued. The "right of hearing" given to the petitioner in the instant case was not worth the name and was only a *post facto* consideration of his submissions, after expulsion order has already been passed. Moreover, the view of the Supreme Court has seen a sea-change with regard to Article 14 in the interregnum, after the said division bench judgment was passed. As rightly argued by learned senior counsel for the petitioner, law changes with the society and so does interpretation of old statutes, in the context of changing society. In the present day of personal liberties being reiterated by the Supreme Court time and again, the Act of 1946 and its provisions ought to be read in appropriate context, attributing a liberal intent of the Constitution-makers behind the said provision.

**68.** *Hans Muller (supra)*, also cited by the respondents, was rendered in the context of the Preventive Detention Act, 1950. The Supreme Court, in the said judgment, found that when criminal charges for offences said to have been committed in this country and abroad were levelled against a person on the apprehension that he is likely to disappear and evade an order of expulsion, cannot be called either unfounded or unreasonable.

**69.** In the present case, however, no reason was at all attributed in the order of expulsion, nor was any prior hearing given to the petitioner. There is no allegation of commission of a criminal offence by the petitioner in the present case. Hence, the perspective of the said reported judgment and the facts of the present case are entirely different from each other. As such, the said judgment cannot be held to be a precedent in the context of the present case, since it is well-settled that a judgment operates as a precedence only in the context of the facts of the case.

**70.** As regards *Anwar vs. State of J and K (supra),* the same was rendered in respect of foreign nationals who were staying on Indian soil without any permission of the Indian authorities to do so. In the present case, however, as opposed to the facts of the said cited judgment, the petitioner still has a valid visa up to August 30, 202, which was issued and renewed by the Central Government itself on more than one occasion, upon being satisfied with all the documents produced by the petitioner on that score. Such accrued right of the petitioner

could not be taken away by an unreasoned order, that too without giving any prior hearing to the petitioner for him to defend himself.

**71.** As far as *Union of India vs. Ghaus Mohammad (supra)* is concerned, the question which fell for consideration before the Supreme Court was whether the respondent therein was a foreigner. It was held that the said question being one of facts, a proceeding under Article 226 of the Constitution would not be appropriate for a decision on the question but would best be decided by a suit. In the case at hand, however, the fact that the petitioner is carrying a valid visa till date has not been disputed by the respondents at all.

**72.** Thus, the petitioner in the present case had a right to stay on in India, at least till August 30, 2020, by virtue of the permission granted by the Central Government itself by virtue of issuing a visa in favour of the petitioner, which was renewed subsequently. Such accrued rights of the petitioner cannot be equated, by any stretch of imagination, with the 'rights' of an illegal migrant. Thus, the ratio in the said reported judgment is also not applicable to the present case.

**73.** As far as the judgments cited by the petitioner are concerned, *Areni Lotha (supra)* was rendered on a similar issue as involved in the present case. Since valid permits were extended, the doctrine of *audi alteram partem* was held to be applicable by virtue of Article 21 of the Constitution of India even for a

foreigner. Although the said judgment is not, binding as precedent on this court, the same undoubtedly as persuasive value.

**74.** The judgment of *Mohd. Javed and others (supra)* passed by a division bench of the Delhi High Court, laid down that a "Leave India Notice" did not stand the scrutiny of law since, by virtue of the same, the liberty of the appellant therein was curtailed, which could not be done except by a reasoned decision. In the said case, it was held that grant of visa in the first instance may be a matter of pure discretion but once such a visa was granted, the same could not be trimmed down by a subsequent order of the Central Government. Although the respondent argues that a notice was issued on a special leave petition filed against such judgment by the Supreme Court, the admission of the special leave petition, by itself, does not operate as *res judicata* or lay down any precedent. As such, the validity of the division bench judgment of the Delhi High Court cannot be read down merely in view of the pendency of a challenge against it before the Supreme Court.

**75.** In the case of *Jonathan Baud (supra)*, the Kerala High Court held that the principles embodied in Article 21 of the Constitution of India is applicable to a foreigner as well, as long as the foreigner concerned continues to stay in India. It was held that since the appellant therein had, out of curiosity, happened to address a condolence meeting organized by a political group, he could not be treated as a radical and could not be confined to jail.

**76.** A conjoint reading of the aforesaid decisions, rendered by the Supreme Court as well as various High Courts of India, go on to show that individual liberty, even of a foreigner, cannot be restricted on the limited anvil of Article 19 of the Constitution of India, in view of the rights guaranteed under Article 14 and Articles 20 to 22 of the Constitution. Even foreign nationals, as long as they have the right to stay in India, by virtue of a visa issued to them (in the present case, which was also renewed), cannot be turned out of India only by an administrative order, without any rhyme or reason and without a prior hearing being given to the foreigner.

**77.** In the present case, the Confidential Report, relied on by the respondents, does not disclose any valid ground for expulsion of the petitioner from India. Although Article 19 is applicable to citizens of India, the premise on which the present petitioner was turned out of the country did not meet the principles of life and personal liberty and the rights associated with those, as enshrined in Article 21 of the Constitution of India, which is very much applicable to all persons living in India, including foreigners. Strictly speaking, the petitioner does not seek to enforce any right under Article 19 of the Constitution of India, since the said Article applies in the sphere of residence or settlement in any part of the territory of India, which has an element of permanence implicit in its nature. The right claimed by the petitioner is by virtue of his extended student visa, which confers upon the petitioner the valuable right to stay in

India, with the associated rights to life and personal liberty, as guaranteed in Article 21 of the Constitution. A valid right to reside in India goes hand-in-hand with such fundamental rights.

**78.** Moreover, Article 19 *ex facie* does not curtail the rights of a foreigner as guaranteed under Article 21 of the Constitution. The usage of the phrase "right to freedom of speech and expression, guaranteed to citizens of India" under Article 19 of the Constitution, *ex facie* does not curtail such rights of foreigners. Although the ambit of Article 19 has been applied to citizens of India, the said Article does not take away or confer any rights on foreigners. Similarly, Article 19 cannot be deemed to have the effect of curtailing the rights of the foreigners without expressly saying so. In the present case, the valuable rights in favour of the petitioner, accrued to him by virtue of his visa granted by the Central Government itself, automatically brings with it the rights to life and personal liberty, as enshrined in Article 21 of the Constitution, which is applicable to all persons staying on Indian soil.

**79.** Article 19 is not couched in restrictive or negative language. Hence, the right to life and personal liberty, along with all associated rights, including the right to have political views and participate in political activities, as guaranteed to all persons in Indian soil, cannot be curtailed or fettered, since Article 21 acts in harmony with Article 19 and the two Articles do not cancel out each other. The conferment of certain rights and basic liberties on an individual, validly staying

on Indian soil, cannot be said to have been withdrawn merely by conferment of certain basic rights to the Indian citizens.

**80.** That apart, the rights to life and personal liberty, and associated rights, do not emanate from the Constitution itself, but are basic human rights universally accepted by civilized society, and merely recognized in the Constitution of India.

**81.** Such being the legal position, the petitioner's fundamental rights, as enshrined in Article 21 of the Constitution, cannot be taken away without any prior hearing being given to the petitioner and/or without attributing any reason for doing so.

**82.** Political activity itself, in the absence of any specific allegation that the petitioner was actively involved with any political party which is banned in India, is a part of the bunch of rights which come along with the right to life and personal liberty. The expression of one's free will through any mode and participation and interaction with Indians, of any caste, creed and colour, having whatever socio-political and economic background, is a part of a healthy life and has to be read into the wide ambit of Article 21 of the Constitution.

**83.** In the present case, no reasons were attributed in the order of expulsion. Even the grounds disclosed in the Confidential Report, filed by the respondents, do not carry any suggestion as to the petitioner being involved in any illegal

activity and/or having committed any offence under Indian law. In the absence of any specific offence having been alleged against the petitioner, having a penal consequence, the valid visa of the petitioner could not be negated by his expulsion from India. Unless valid reasons, which are not contrary to the provisions of Article 21 of the Constitution of India, are disclosed, such rights conferred by the visa could not be taken away in any manner by expelling the petitioner on the pretext of 'political activity', more so, without giving the petitioner a prior opportunity of defending himself on the specific allegations made against him.

**84.** Moreover, a newspaper article cannot be the basis of such expulsion, since such a report is not acceptable in any court of law or statutory authority as evidence regarding the activity of the petitioner, in the absence of any concrete proof of any illegal activity being done by the petitioner. Even the newspaper article, relied on by the respondents, does not disclose any violation of Indian law by the petitioner at all. Neither the 1946 Act, nor any other statute, debars any person, be her/him an Indian citizen or a foreigner, from taking part in political activities. The petitioner is merely alleged to have participated in a rally, that too as a bye-stander and having expressed certain political opinions to the press. Such stray acts, by themselves, cannot be labelled as 'political activity', let alone being unlawful under any Indian statute, including the 1946 Act.

**85.** Thus, no justified grounds for expulsion of the petitioner from Indian soil have been made out by the respondents.

**86.** Moreover, the impugned order of expulsion is devoid of any reasons. The petitioner ought to have been given a right of hearing prior to curtailing his valuable rights, accrued by dint of his visa, issued and renewed subsequently by the Central Government itself. In the present case, a 'hearing' was alleged to have been given to the petitioner after his expulsion order was issued, which makes such 'hearing' merely a lip-service and an eye-wash.

**87.** The right of the petitioner, as recognized by Article 21 of the Constitution, is to be harmoniously read with Article 19, which operates in a different field, pertaining to Indian citizens only. The basic and fundamental rights of a foreigner, associated with life and personal liberty, inhere in all persons living in India, citizen or foreigner, not only by virtue of Article 21 of the Constitution but also go along with a healthy human existence, which is the birth-right of any human being, including the petitioner.

**88.** The impugned order of expulsion thus appears to be a paranoid over-reaction, contrary to the rights enshrined in Article 21 of the Indian Constitution. The process of arriving at such decision is patently *de hors* the fundamental rights guaranteed by Article 21 of the Constitution and violative of the principle of *Audi Alteram Partem.*

**89.** In such view of the matter, W.P. No.4432(W) of 2020 is allowed on contest, thereby setting aside the impugned order of expulsion of the petitioner, dated February 14, 2020. The said order is held to be null and void, being *de hors* the Constitution of India and Indian law. The respondents and their men and agents are restrained from giving any effect to the said impugned order in any manner.

**90.** There will be no order as to costs.

**91.** Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**