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Before Munib Akhtar and Yousuf Ali Sayeed, JJ

AAMIR AMAN and 21 others---Petitioners

Versus

FEDERATION OF PAKISTAN through Secretary, Ministry of Interior, Islamabad---Respondent

Constitutional Petition No.D-6606 of 2016, decided on 12th March, 2018.*

(a) Foreigners Act (XXXI of 1946)---

----Ss. 3 & 10---Constitution of Pakistan, Arts. 9 & 199---Constitutional petition filed by foreign teachers (petitioners) of Pak Turk International Schools and Colleges, who were denied extension of their visas by the Government of Pakistan---Maintainability---Petitioners were foreign (Turkish) nationals, who admittedly entered Pakistan along with their families lawfully on validly issued visas---Petitioners had remained in Pakistan on such basis for a number of years and had worked here as well, again lawfully---No allegation was made, at any time, against the petitioners or their families that they violated any condition of the visas or any allegation relating to their stay or any applicable laws of Pakistan---Furthermore, their visas had been extended in the past and they had remained in the country for some years---Petitioners could only be removed (from Pakistan) in accordance with law, and it was in such context that Art. 9 of the Constitution was engaged---Petitioners denied that there had been, or could or would be, action taken in accordance with law in such regard, whereas the Government rejected any such allegation---In such circumstances, an issue was joined that could be brought before the High Court by the foreign (Turkish) nationals, therefore, the objection as to maintainability of present Constitutional petition could not be accepted.

(b) Foreigners Act (XXXI of 1946)---

----S. 3---Foreigner's Order, 1951, Para. 7---Foreign teachers of "Pak Turk International Schools and Colleges"---Non-extension of visas of foreign teachers and their families---Legally enforceable expectation---Scope---Petitioners and their families had a legally enforceable expectation that before the Federal Government took the action of refusing them extensions in their visas they ought to have been given a chance to say something in regard thereto---Furthermore, petitioners and their families were entitled to some indication as to why, if the Federal Government was going to refuse any extension, it had to be so---Furthermore the offer made by the Federal Government to wait for and abide by the decision of the United Nations High Commissioner for Refugees (UNHCR) in respect of the pending asylum applications of the petitioners and their families must be regarded as a binding commitment; this was especially so given that the Federal Government generally accepted the decisions of the UNHCR---Petitioners and their families had made out a case for appropriate directions from the High Court---Constitutional petition was disposed of with relevant directions.

High Court gave the following directions in disposing of the Constitutional petition filed by foreign teachers (petitioners) of "Pak Turk International Schools

and Colleges" who along with their families were denied extension in their visas by the Government of Pakistan:

(i) Two impugned letters whereby extension in visas of petitioners and their families were refused and they were told to leave Pakistan were suspended;

(ii) The petitioners and their families must be given a chance to explain their position for an extension in their visas to the Federal Government. If at all the Federal Government was inclined to confirm the two impugned letters it must give some written explanation as to why this was so. This exercise should preferably be completed within 30 days from the date of judgment. If the impugned letters were confirmed, then the petitioners and their families were to be given a period of 15 days to review their position and seek such remedy, if any, before such forum and in such proceedings as may be appropriate in accordance with law. They were entitled to remain in Pakistan till such time;

(iii) At the same time, and independently of the above directions, the petitioners and their families were entitled to remain in Pakistan till such time as their asylum applications remained pending with UNHCR. If those applications were disposed of in a manner accepted by them, then they were to be dealt with in the manner as so provided for and not otherwise, within such timeframe as may be applicable. If those applications were rejected or disposed of in a manner that they considered adverse to them, either in whole or in part, then they were to be given a period of 15 days to review their position and seek such remedy, if any, before such forum and in such proceedings as may be appropriate in accordance with law;

(iv) The petitioners and their families were entitled to remain in Pakistan till such time as the last of the periods stipulated in either sub-paras (ii) or (iii) above expired;

(v) During the period to which sub-para (iv) above applied, the petitioners and their families shall be entitled to remain in Pakistan on the same terms (including the 'right to work') as applicable to them on the date on which their visas expired;

(vi) The Federal Government shall immediately issue an appropriate order under section 10 of the Foreigners Act, 1946 ('the Act') that ensured that, consistent with the present judgment, the relevant provisions of the Act and the Foreigner's Order, 1951 ('the Order') did not apply to the petitioners and their families during the period to which sub-para (iv) above applied;

(vii) Without prejudice to the foregoing and independently and regardless of the same, and with immediate effect, the Federal and Provincial Governments, and all Federal and Provincial authorities and agencies (including but not limited to the FIA) were restrained from taking any action against the petitioners or their families in terms of the Act, the Order or any other applicable provision of any law on the basis that they continued to be in Pakistan without lawful permission, or on any other basis whatsoever, without the express permission of the High Court during the period to which sub-para (iv) above applied;

(viii) If, when the period to which sub-para (iv) above expired and there was then no order or direction of competent authority or of any Court to the contrary,

and the applications filed by the petitioners and their families with UNHCR stood rejected or concluded in a manner adverse to them, then if the two impugned letters continued to hold the field, they shall stand revived, and on such revival action could be taken on the basis thereof strictly in accordance with law against the petitioners and their families; and

(ix) The petitioners (or any of them) or the Federal Government may make an application in the present petition seeking such clarifications or directions as may be required consistent with the judgment or to give it full and proper effect. The Court may on such application make such orders and/or give such directions as it deemed appropriate.

Abdul Majeed Khoso for Petitioners.

Salman Talibuddin, Additional Attorney General along with Muhammad Hafeez Section Officer, Ministry of Interior, Government of Pakistan for Respondent.

Dates of hearing: 8th, 14th, 16th, 24th March 3rd, 24th April and 22nd May, 2017.

ORDER

MUNIB AKHTAR, J.---This petition has 22 petitioners. The first twenty are parents of children studying at the Pak Turk International Schools and Colleges at Karachi. The remaining two are teachers at these institutions. They are Turkish nationals. They came to Pakistan (along with their families) to teach at these schools. For this purpose they were granted appropriate visas under which they worked. Those visas have expired and have not been renewed by the Government of Pakistan. The question is whether notwithstanding the foregoing they, and by extension other. Turkish nationals and their families similarly placed (i.e., associated with the Pak Turk educational institutions) can continue to remain in Pakistan and if so, on what basis? The petitioners contend that they can. The learned Additional Attorney General submits that they cannot. This is the crux of the matter.

2. We may note that at the time of the hearing, it seemed to us that the petition raised certain questions with regard to the application of Article 9 of the Constitution. Therefore, we invited the learned Additional Attorney General to commence first with his submissions, with the consent of learned counsel for the petitioners, who then followed. However, for convenience, below we will first note the submissions made by learned counsel for the petitioners and then those of the learned AAG.

3. Learned counsel for the petitioners submitted that a memorandum of understanding ("MOU") was entered into on 30.10.1999 between the Government of Pakistan and the Pak-Turk International CAG Educational Foundation ("Foundation"), an entity established under the laws of Turkey. The MOU, described the Foundation as an "international educational, non-profitable and Non-Governmental organization". In terms of the MOU the Government undertook inter alia to "grant work permits for all approved expatriate employees and entry permits for their families in accordance with the laws of Pakistan". Learned counsel also referred to various other clauses of the MOU. It appears that the aims and objects

of the Foundation are to establish and run educational institutions. Learned counsel also referred to an entity established by or under the auspices of the Foundation; being the Pakturk Education Foundation ("Pakistan Foundation"), which is registered as a Section 42 company (limited by guarantee without a share capital) under the Companies Ordinance, 1984. It was submitted that the subscribers to the memorandum of association were all Turkish nationals. The Pakistan Foundation was incorporated on 25.05.2011. The Pak Turk educational institutions in this country were being run and managed in terms of the foregoing arrangements. It appears that 10 educational institutions have been set up in which thousands of students are enrolled. The Turkish petitioners are teachers at these institutions.

4. Learned counsel submitted that the Turkish petitioners and others similarly placed were granted visas to enter and work in Pakistan on the foregoing basis and those visas were renewed from time to time without any problems. In the ordinary course, the visas so issued and renewed were valid up to 28.10.2016. Extensions were applied for well in time, but by letter dated 11.11.2016, the same were refused. By then of course the visas had already expired. Thereafter, by letter dated 14.11.2016 the Foundation was informed that all those persons whose visas had expired and not been renewed (including the Turkish petitioners) were to leave the country by 20.11.2016. For this purpose, exit permits "without overstay charges" had been arranged for Learned counsel emphasized that there had never been any complaints against the Foundation or the Pakistan Foundation or any person associated with them or their operations. They had worked within the parameters of law and in particular had adhered to the terms and conditions of the MOU. The Government gave no reason as to why, abruptly, the extensions had been refused. As far as the petitioners were aware there had been no complaints from the Turkish Embassy either. It was submitted that the denial of extension was unlawful and the consequent attempt to force the Turkish petitioners and others similarly placed (and their families) from the country contrary to law. Learned counsel referred to certain provisions of the Foreigners Act, 1946 ("Act") and to the Foreigners Order, 1951 ("1951 Order") framed in terms thereof. Learned counsel referred to certain case law in support of his submissions.

5. Learned counsel also noted that the Pakistan Foundation along with two Turkish nationals filed a petition in the Islamabad High Court (W.P. 4199/2016). That petition was dismissed in limine by order dated 17.11.2016. An Intra Court Appeal (I.C.A. 539/2016) was preferred against this dismissal and it appears still to be pending.

6. It also appears that after the Turkish petitioners were denied extension in visa, they and their families applied for asylum to the United Nations High Commissioner for Refugees (UNHCR), which is the premier UN Refugee Agency and has operations in this country. They were issued "UNHCR Asylum Seeker Certificates", which certified that they had applications pending before the UNHCR. As of the date of the hearing of the petition, those certificates were still "active", i.e., the applications were pending adjudication with UNHCR. We may note that at an earlier stage in these proceedings, the learned Attorney General for Pakistan had also appeared. Without prejudice to the Government's case on the merits it was offered that the Turkish nationals and their families would not be

removed from Pakistan as long as their applications with the UNHCR remained pending. However, the Turkish petitioners would not be permitted to work in Pakistan during the duration. This offer has consistently been the stance of the Federal Government throughout the hearing.

7. The learned AAG submitted that the petition was not maintainable. It was submitted that the first twenty petitioners were simply parents of students at the educational institution and clearly not aggrieved persons insofar as the subject matter of the petition was concerned. As regards the Turkish petitioners, the learned AAG submitted that their visas had admittedly expired and they therefore had no legal right to remain in Pakistan. It was submitted that it was well settled (and reference was made to the relevant case law) that it was the exclusive right of the Government to decide whether or not to grant or refuse a visa or any extension thereof. There was no legal right associated with what was described as the prerogative of the Government. Therefore even the Turkish petitioners had no legal right in this regard, and in any case the extension had been refused. It was submitted that all the Turkish nationals and their families in this country who were similarly placed had been treated in the same manner, i.e., refused extensions in the visas. Thus, the petition was not maintainable. The learned AAG submitted, without conceding, that the highest that the petitioners' case could be put was that if there was anything patently illegal or mala fide with regard to a decision to deny the grant or extension of visa, the same could be subjected to judicial review. Even in such a situation, the onus lay on the petitioners to show that such was the case, and it was a heavy burden to discharge. In the present case, no such allegation had been made and, if made, would in any case not cross the legal threshold. However, the learned AAG emphasized, the grant or refusal of a visa or an extension lay exclusively within the executive domain and was beyond judicial review. Therefore the petition was liable to be dismissed.

8. As regards the MOU, the learned AAG submitted, that the policy applicable at the time when the MOU was executed had changed, and a new policy was put in place in 2015 with regard to foreign NGOs operating in Pakistan. Indeed, the Foundation had made an application under the new policy, which was still pending decision. The reliance placed on the MOU was therefore misconceived. The learned AAG also relied on the litigation in the Islamabad High Court, and the decision dismissing the petition filed there. It was submitted that High Court had reached the correct conclusion in law on essentially the same facts and prayed that this Court should also take the same view of the matter. It was submitted with reference to the Act and the 1951 Order that there had been no violation of the same and the Government had (subject to what is stated below) full power to remove the Turkish nationals and their families from Pakistan.

9. With regard to the applications filed with the UNHCR, the position adopted by the Federal Government has already been set out above. However, the learned AAG emphasized that no right, legally enforceable as such, had accrued to the Turkish nationals. It was only a grace offered to be shown by the Government and no more. Nothing further or more should be read into the assurance extended by the Government. As regards Article 9 of the Constitution, the learned AAG submitted that a person who entered Pakistan lawfully on a valid visa was entitled to the full

panoply of rights consistently with the visa status and-requirements. However, once the visa expired and the person continued to remain in the country, then the scope of the rights available narrowed accordingly. It was not that there were no such rights. But, since the visa holder was now illegally continuing with his presence in the country, Article 9 applied accordingly. It was accepted that the right to be removed from Pakistan in accordance with law did apply. The Act and the 1951 Order contained adequate provisions in this regard. The learned AAG submitted that the FIA was the federal agency that had jurisdiction as regards the removal of a person whose visa had expired. It was reiterated that the Turkish nationals would be removed in accordance with law, but it was strongly denied and contested that they had any rights other than or above that. In particular it was denied that they had any continued right to work in the country. The learned AAG also relied on certain case law.

10. We have, heard learned counsel as above, considered the material and the case law. We begin with the maintainability of the petition. As noted, two of the petitioners are Turkish nationals. They admittedly entered Pakistan along with their families lawfully on validly issued visas. They have remained in this country on such basis for a number of years and have worked here as well, again lawfully. It is their removal from this country that is in issue. It has been accepted, quite properly, that they can only be removed in accordance with law. It is (at the very least) in this context that, in our view, Article 9 of the Constitution is engaged. The petitioners deny that there has been, or can or will be, action taken in accordance with law in this regard. The Government of course rejects any such allegation. In such circumstances, in our view an issue is joined that can be brought before this Court by the Turkish nationals. Therefore, with respect, the objection as to maintainability cannot be accepted.

11. Before proceeding further, we may note that we are here concerned with the situation of persons who have lawfully entered this country on valid visas and have so remained here, and were in Pakistan at the time that the visas expired. There is no allegation that at any time the Turkish nationals or their families violated any condition of the visas or relating to their stay or any applicable laws of Pakistan. Furthermore, their visas have been extended in the past and they have remained in the country for some years. Whatever is said in this judgment is only in the context of this factual matrix and is intended to so apply.

12. As regards the power of the Government to grant or deny a visa or any extension therein in its absolute right, the learned AAG relied on the cases that had been cited before the Islamabad High Court in the litigation referred to above. The judgments are of this Court and the Islamabad, Lahore and Peshawar High Courts. In Roman Catholic Diocese of Islamabad v. Federation of Pakistan 2015 MLD 1714 a learned Single Judge of the Islamabad High Court (indeed, we may respectfully note, the same learned Single Judge who dismissed the aforementioned W.P. 4199/2016) referred to the cases. In that case the petitioner Diocese had asked for and obtained visas for two Sisters from the Philippines. Those visas, for missionary work, were granted and extended. However they were then cancelled on the ground that there had been a violation of the terms of the grant inasmuch as the sisters were engaged in employment. It was this cancellation that, was challenged. The learned

Single Judge inter alia held that the petitioners were not aggrieved persons within the meaning of Article 199 and since the issuance and cancellation of visas were acts of State, they could not be challenged before the High Court. With respect, the position in this case was different inasmuch as the visas were cancelled for a specific and stated reason, i.e., that there had been a violation of the terms of the grant. Here, as noted, there is no such allegation. In Said Muhammad Khan v. Registration Officer and another PLD 1962 Kar. (WP) 595, the petitioner was an Afghan, who was a member of the Pawenda tribe. Members of this tribe (at least at that time) spent six months in Pakistan and the remaining months in Afghanistan. They were exempted from the operation of the 1951 Order by a specific notification. It was specifically said of the petitioner that he could "come to Pakistan in winter and leave in summer as a Nomad". It was in such circumstances that the petitioner sought to challenge his removal from this country. As is obvious, the facts of the case were far removed from those at hand. In Jean Charles Groosen v. State of Pakistan PLD 1980 Peshawar 275, the petitioner came to Pakistan for the first time in 1966 and remained in Chitral till 1973 as a tourist. During this period, he would visit Afghanistan from time to time. He did not renew his registration with the police and was charged with an offence for which he was convicted. He, left the country, but returned in 1976. He was allowed entry for one month and thereafter left. After that, in exercise of the relevant powers under the Act, the Government made an order banning the petitioner's entry into Pakistan, the reason given being activities prejudicial to the interests of the country. Notwithstanding this, the petitioner was able to obtain a visa on another passport and entered the country. He was subsequently arrested for the offence of entering the country contrary to the ban. These were the circumstances which led to the petition in the Peshawar High Court, which was dismissed. Again, the factual matrix was wholly different from the one at hand. In Wang Lilly v. Ministry of Interior and others 1997 MLD 1594, the facts were rather unfortunate. The petitioner married a Pakistani and came to this country on a visa in 1993 to be with her husband. He however divorced her. She then started working at a restaurant. There another person allegedly raped her but promised to marry the petitioner if she made no complaint. The petitioner became pregnant and not unsurprisingly that promise never materialized. When the petitioner pressed him for marriage, the alleged rapist (in circumstances not entirely clear from the decision as reported) got her visa cancelled and a case registered against her under Section 14 of the Act. In such circumstances, the petitioner, who was up for deportation, challenged the action in the Lahore High Court, which was dismissed. Again, the facts were totally different from those at hand. In Muhammad Ali and another v. Government of Sindh and others 1986 CLC 1123 the question was whether the petitioner was at all a citizen of this country. He was "rounded up" in a "general raid" sometime in 1980 and claimed to be a Pakistani citizen. The authorities alleged that he was a foreigner. Ultimately the petition was dismissed by this Court, inter alia, on the ground that it involved intricate and disputed questions of fact.

13. With respect, in our view the facts and circumstances of the cases relied upon by the learned AAG were quite, and more often than not remarkably, different from those at hand. They do not therefore provide the sought for assistance to the Government. These cases found favour with the Islamabad High Court in

dismissing W.P. 4199/2016. No doubt the facts there were the same as here. The Pakistan Foundation and two Turkish nationals (teachers) challenged the very same letters of 11.11.2016 and 14.11.2016 as are impugned before us. However, with great respect, we are unable to agree with that High Court that the cases cited before it were relevant in the factual matrix that, in our view, is here material (and has been set out in para 11 above). However, we do not say anything more because, as noted above, an Intra-Court Appeal appears to be pending.

14. The learned AAG has of course asserted that the right of the executive branch to grant or refuse a visa or to extend or refuse to extend it is absolute and unfettered and, in particular, is beyond judicial review. It is said to be an integral aspect of sovereignty, to the State's absolute right to determine who amongst foreigners can be in this country and for how long and under what circumstances. The proposition advanced by the learned AAG is not unknown to the law. For example, in US constitutional law the current appears to flow strongly in the direction favored by the learned AAG. It is however not necessary to consider here the entirety of this claim, when set out in the full amplitude of its generality. No doubt in certain, and probably many, and possibly most of its aspects the nature of the power is such that the Court will not interfere, or at least ought not to interfere except in the most egregious of situations. What exactly are the circumstances that would fall on this or that side of the line (i.e., be regarded as within or beyond judicial review) need not be determined here and we leave the question open, postponing for another day any engagement with US constitutional doctrines in this regard. But even if the claim as asserted would be accepted most of the time, that does not mean that it is therefore necessarily valid all the time. We remind ourselves that we are only concerned with the factual matrix as set out in para 11 above. In our view in this context at least, there is a right that can and ought to be recognized and therefore, if necessary, enforced by the Court. After all, a person has been validly granted permission to enter the country. He (or she) has done so in a lawful manner and has remained here keeping always within the terms of the grant and all applicable laws. He has remained in, and perhaps even become part of the local community and has contributed to the community in some measure, howsoever modest it may be. It may even be that his contribution is more than marginal and even significant (if, e.g., he undertakes the noble profession of teaching). He and his family have inevitably "mingled and socialized" (to borrow words from an Indian decision considered below) with Pakistanis. He has periodically been granted extensions in the period of stay. All along, he has so conducted himself that perhaps, had he been a Citizen, he would have been regarded as a model one. His children, foreigners though they may be, may have grown up here and become so attuned to local rhythms and manners that back in the home country, they may well feel like strangers in a strange land. Now, abruptly, he and his family are being shown the door. What is his position? In our view, to this much at least a person in this position is entitled: the expectation (and we deliberately avoid prefixing this word with "legitimate") that before any action is taken against him, he, will be at least given a chance to say something if he wishes to do so (and we deliberately avoid using the expression "opportunity of hearing") and if the action is nonetheless to proceed, some indication of why it must be so (and we deliberately avoid using the word "reasons"). This much, at least, is

consonant with the dignity of man that is guaranteed to citizen and alien alike by Article 14(1), and therefore this much at least is due from the law. In our view, even though the facts and circumstances of the Turkish petitioners' (and their families') case might not come within the full scope of the whole of the descriptions given above, the overlap is sufficient that they can be regarded as well within the same. Inasmuch as the Federal Government has failed to abide by the position at law just articulated, there has come about a situation that can, and ought, to be rectified by the Court. In our view therefore, the Turkish petitioners and their families have made out a case for relief in this regard. What is to be the nature thereof is set out below.

15. There are also the Act and the 1951 Order to consider. Both the Act and the 1951 Order have, of course, been much amended since their enactment and promulgation. The Act seeks to regulate the "entry of foreigners into Pakistan, their presence therein and their departure therefrom". The mechanism devised for this purpose is set out in Section 3. This empowers, in subsection (1), the Federal Government to provide, by order, "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 Pakistan or their departure therefrom or their presence or continued presence therein". Subsection (2) then sets out particular instances of the sort of orders that may be made, though of course without prejudice to the generality of subsection (1). The 1951 Order has been made in exercise of the powers so conferred, Section 10 allows the Federal Government to grant, subject to such terms and conditions as may be imposed, exemption from any or all of the provisions of the Act or order "in relation to any individual foreigner or any class or description of foreigner". Section 13, inter alia, deems any contravention of an order made under Section 3 to be a contravention of the Act, and Section 14, inter alia, makes any contravention of the Act or an order a criminal offence, punishable by a term of imprisonment of up to three years. Section I4B provides that, subject to certain specified conditions, a foreigner having no permission to stay in Pakistan and who is being tried for an offence under the Act or, having been convicted, is undergoing the sentence of imprisonment may be allowed to "depart from Pakistan". Section l4C provides, again subject to certain conditions, that a foreigner having no permission to stay in Pakistan and who has been convicted and served his sentence shall not be released from custody, so as to "enable arrangements for his deportation to be finalized". As indicated by the learned AAG, it is the FIA which is the agency authorized, to act with regard to any violations. Article 7 of the 1951 Order provides as follows: -

> "7. Restriction on sojourn in Pakistan. Every foreigner who enters or has entered Pakistan shall obtain from the Registration Officer having jurisdiction at the place at which the said foreigner enters or has entered Pakistan a permit indicating the period during which he is authorised to remain in Pakistan and shall, unless the period indicated in the permit is extended by the Federal Government, depart from Pakistan before the expiry of the said period and at the time of the foreigner's departure from Pakistan the permit

shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs:

Provided that where a foreigner overstays and the Registration Officer is satisfied that such overstay was due to unavoidable circumstances, he may waive the contravention for the period of overstay not exceeding seven days."

Reading the foregoing provisions together, it would seem that a person who enters Pakistan on a visa is required to obtain a "permit" indicating the extent or period of stay, and once that period (unless extended) has expired then the person must depart from the country in the manner indicated. A failure to do so would violate Article 7, i.e., the 1951 Order and hence such person will be liable to be visited with the penal consequences as set out in the Act, as indicated above. It would therefore seem that, unless there is anything to the contrary, the Turkish petitioners and their families, now that their visas have expired and not been renewed, are in violation of Article 7 with the result that the consequences just outlined will ordinarily have followed.

16. We now turn to the applications filed by the Turkish petitioners and their families with the UNHCR. The UNHCR has a website specifically dedicated to Pakistan (www.unhcriak.org), where the following description appears of how it operates in this country (emphasis supplied):

"Pakistan is not a party to the 1951 Convention relating to the Status of Refugees/1967 Protocol and has also not enacted any national legislation for the protection of refugees nor established procedures to determine the refugee status of persons who are seeking international protection within its territory: Such persons are therefore treated in accordance with the provisions of the Foreigners Act, 1946.

In the absence of a national refugee legal framework, UNHCR conducts refugee status determination under its mandate (Statute of the Office of the United Nations High Commissioner for Refugees adopted by the General Assembly Resolution 428 (V) of 14 December 1950) and on behalf of the Government of Pakistan in accordance with the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR. Pakistan' generally accepts UNHCR decisions to grant refugee status and allows asylum-seekers (who are still undergoing the procedure) as well as recognized refugees to remain in Pakistan pending identification of a durable solution."

The portion emphasized is consistent with what was, as noted above, said before us by the Attorney General for Pakistan and has throughout been the stance taken by the Federation. The learned AAG also placed on record a copy of the 1993 Agreement referred to in the extract above. Also as noted, the applications of the Turkish petitioners and their families appear still to be pending with the UNHCR.

17. Finally, we turn to consider a decision of the Delhi High Court which was relied upon by the learned AAG, being Dongh Liam Kham and others v. Union of India and others (2016) 226 DLT 208. (We may note that in India also the Act continues to apply although of course as amended in that country after 1947.) The

relevant facts were as follows. The first two petitioners were citizens of Myanmar, which they fled fearing persecution. They applied for refugee status in India with UNHCR. The UNHCR issued appropriate certificates to them regarding their refugee status. These documents were valid till certain dates in 2017. They were granted long term visas (in 2009 and 2011 respectively) to remain in India as "mandate refugees". Insofar as the visas were concerned, those expired in 2015 and 2012 respectively, but it appears that the petitioners were promised help by UNHCR in getting the visas extended. The petitioners applied to the Indian authorities for an extension. While the applications were pending the two petitioners were convicted of offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (which appears to be the Indian equivalent of our Control of Narcotic Substances Act, 1997). After they had served their sentences they continued in custody and were subjected to deportation proceedings. There was an earlier round of litigation in which the petitioners were released from prison but not the threat of deportation. It was in such circumstances that the petition came to be filed in the Delhi High Court. It was noted by the High Court that the respondent Union submitted that:

> "19.... India is not a signatory to the 1951 UN Conventions on the status of refugees and the 1967 protocol. No national law has also been enacted till date regarding refugees and asylum seekers. Despite this, Indian Government has received accolades worldwide for their general policy of giving shelter to refugees."

This position is thus not unlike that of Pakistan. The respondent Union also submitted as follows:

> "20. It was not denied on behalf of the respondent No. 1 that the petitioners were not granted long term VISA by them on the recommendation of UNHCR. However, the conviction of the petitioners is perceived as a threat to the security of the nation and their involvement in drugs also poses a threat to the social fabric. Because of the petitioners having involved themselves in a case under the NDPS Act, a conscious decision has been taken by the Government to deport them."

The High Court held as follows:

> "25. It is not in dispute that the petitioners are not economic migrants to India. They are refugees who fear persecution in their home country. It is also not disputed that long term VISA was given to them on the recommendation of UNHCR. The solitary instance of the petitioners having violated the penal municipal law of the country has made the respondents decide that the petitioners be deported to their home country. It appears that the petitioners were found to be in possession of pseudoephedrine tablets, attracting penal provisions of Sections 29/25A of the NDPS Act. The sentence imposed upon them by a competent Court of law has already been served by them. This Court has not been apprised of any instance prior to their involvement in the aforesaid case or of any conduct of the petitioners during their incarceration

in jail which could substantially demonstrate that their presence in the country would be detrimental to the interest of the nation in general.

26. It is the decision of the Union Government and FARO [i.e., Foreign Regional Registration Officer] to permit or not to permit a refugee to stay in a country or to grant or not to grant long term VISA in the first instance or its extension on a year wise basis. The Fundamental Right of a foreigner/refugee is only confined to Article 21, i.e. the right to life and liberty and does not include the right to reside and settle in India, which right is only applicable to the citizens of the country. The power of the Indian Government to expel foreigners is absolute and unlimited and there is no provision in the Constitution of India or other law, putting fetters on the aforesaid discretion of the Government.

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28. This Court, taking note of the fact that the petitioners, but for one instance, have lived peacefully in this country for a long time and nothing adverse was reported against them while they were in custody; their families also have been given long term VISAs which has not yet expired and they have mingled and socialised to their advantage with the Indian population, feels that an opportunity be given to the petitioners by the FRRO before finally taking a decision regarding their deportation.

30. The principle of "non-refoulement", which prohibits expulsion of a refugee, who apprehends threat in his native country on account of his race, religion and political opinion, is required to be taken as part of the guarantee under Article 21 of the Constitution of India, as "non-refoulement" affects/protects the life and liberty of a human being, irrespective of his nationality. This protection is available to a refugee but it must not be at the expense of national security.

31. Whether the petitioner, on their conviction and serving out the sentence of one year and seven months in jail, have posed a danger to the national security and have, thus, lost their right for consideration for extension of their long term VISA, is an issue which surely requires to be revisited by the respondents.

32. Since the petitioners apprehend danger to their lives on return to their country, which fact finds support from the mere grant of refugee status to the petitioners by the UNHCR, it would only be in keeping with the golden traditions of this country in respecting international comity and according good treatment to refugees that the respondent FRRO hears the petitioners and consults UNHCR regarding the option of deportation to a third country, and then decide regarding the deportation of the petitioners and seek approval thereafter, of the MHA (Foreigners Division).

33. Thus, Respondent No. 2 is directed to hear the petitioners and explore a third country option for their deportation. The UNHCR is also expected to give its inputs to the FRRO for the needful. After a conscious decision is taken, the necessary concurrence/approval may be obtained from MHA (Foreigners

Division). The aforesaid exercise be completed before 31st of March, 2016. The petitioners shall not be deported from India till then."

18. In our view, while there are certain similarities in the facts and circumstances before us and those before the Delhi High Court, there are also material differences. Thus, there the petitioners were convicted of criminal offences. Here there is no such situation, and we again draw attention to the factual matrix (set out in para 11 above) in which we decide this petition. It is true that the Delhi High Court, in para 26, has accepted that the Government has an "absolute and unlimited" power and unfettered discretion to expel foreigners. As to this, we have already reserved the position of this Court to consider the matter in some appropriate future case. The High Court noted that the applications of the petitioners before it with UNHCR showed that they apprehended persecution if returned to their country. If so, the High Court held (para 30) that protection was available to such a refugee, although not at the expense of national security. We say nothing here about the claims put forward by the Turkish petitioners in their applications with UNHCR. However, whether the Turkish petitioners or any family member are a threat to the national security of Pakistan (as opposed to, e.g., any foreign relation interests) remains yet to be determined. Certainly, nothing has been placed on record that would require us to reach such a conclusion. Finally, the High Court recognized that the petitioners before it has a right of hearing to be given by the respondent Union in terms as set out in para 33. Taken as a whole, with respect our view is that the cited decision does not assist or further the case sought to be made by the Federation.

19. In light of the above discussion, we conclude as follows. Firstly, the Turkish petitioners and their families had a legally enforceable expectation that before the Federal Government took the action of refusing them extensions in their visas they ought to have been given a chance to say something in regard thereto. Inasmuch as this petition has been filed, the Turkish petitioners have clearly evinced a desire to do so. Furthermore, they and their families were entitled to some indication as to why, if the Federal Government was going to refuse any extension, it had to be so. Inasmuch as there has been a breach of the foregoing, the Turkish petitioners and their families have made out a case for appropriate directions from this Court. Furthermore, and in addition to the foregoing and especially since there has been a breach of law as just noted, the offer made by the Federal Government to wait for and abide by the decision of the UNHCR in respect of the pending applications must be regarded as a binding commitment. This is especially so given that the Federal Government generally accepts the decisions of the UNHCR. It must be noted here that this position is to be applauded and is consistent with Pakistani's international stance and position. However, the position of the Turkish petitioners and their families is, notwithstanding the foregoing, somewhat ambiguous if not precarious, given the relevant provisions of the Act and the 1951 Order as noted above. This therefore also needs to be considered and appropriate directions made. Finally, if at all the Turkish petitioners and their families are at all to remain in Pakistan for some time, then it is only right and proper that they should be in a position to fend for themselves in a lawful manner and not become a burden on, e.g., the State or dependent on the charity of others no, matter how generous their

benefactors may be. This, too, is something that is consistent with the dignity of man.

20. We therefore dispose off this petition as follows:

a. Subject to what is stated below, the letters dated 11.11.2016 and 14.11.2016 are hereby suspended.

b. The Turkish petitioners and their families must be given a chance to explain their position for an extension in their visas to the Federal Government. If at all the Federal Government is inclined to confirm the letters of 11-11-2016 and 14-11-2016 it must give some written explanation as to why this is so. This exercise should preferably be completed within 30 days from the date of judgment. If the letters are confirmed, then the Turkish petitioners and their families are to be given a period of 15 days to review their position and seek such remedy, if any, before such forum and in such proceedings as may be appropriate in accordance with law. They are entitled to remain in Pakistan till the foregoing.

c. At the same time, and independently of the above, the Turkish petitioners and their families are entitled to remain in Pakistan till such time as their applications remain pending with UNHCR. If those applications are disposed off in a manner accepted by them, then they are to be dealt with in the manner as so provided for and not otherwise, within such timeframe as may be applicable. If those applications are rejected or disposed off in a manner that they consider adverse to them, either in whole or in part, then they are to be given a period of 15 days to review their position and seek such remedy, if any, before such forum and in such proceedings as may be appropriate in accordance with law.

d. Thus, the Turkish petitioners and their families are entitled to remain in Pakistan till such time as the last of the periods stipulated in either sub-paras (c) or (d) expires.

e. During the period to which sub-para (d) applies, the Turkish petitioners and their families shall be entitled to remain in Pakistan on the same terms (including the right to work) as applicable to them on the date on which their visas expired.

f. The Federal Government shall immediately issue an appropriate order under Section 10 of the Act that ensures that, consistently with this judgment, the relevant provisions of the Act and the 1951 Order do not apply to the Turkish petitioners and their families during the period to which sub-para (d) applies.

g. Without prejudice to the foregoing and independently and regardless of the same, and with immediate effect, the Federal and Provincial Governments, and all Federal and Provincial authorities and agencies (including but not limited to the FIA) are restrained from taking any action against the Turkish petitioners or their families in terms of the Act, the 1951 Order or any other applicable provision of any law on the basis that they continue to be in

Pakistan without lawful permission, or on any other basis whatsoever, without the express permission of this Court during the period to which sub-para (d) applies.

h. lf, when the period to which sub-para (d) expires and there is then no order or direction of competent authority or of any Court to the contrary, and the applications filed by the Turkish petitioners and their families with UNHCR stand rejected or concluded in a manner adverse to them, then if the letters of 11.11.2076 and 14.11.2016 continue to hold the field, they shall stand revived, and on such revival action can be taken on the basis thereof strictly in accordance with law against the Turkish petitioners and their families.

i. The petitioners (or any of them) or the Federal Government may make an application in this petition seeking such clarifications or directions as may be required consistently with this judgment or to give it full and proper effect. The Court may on such application make such orders and/or give such directions as it deems appropriate.

j. There will be no order as to costs.

MWA/A-68/Sindh Order accordingly.

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