

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.01.2019

+ **W.P.(C) 1775/2018 & CM Nos. 27041/2018**

DR CHRISTO THOMAS PHILIP Petitioner

versus

UNION OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Dhiraj Philip, Mr Febin Mathew, Mr Sanbha Rumnong, Ms Loreign Ovung, Mr B. Balakrishnan and Mr Jaiwan Pataanrar, Advocates.

For the Respondents :Mr Rajesh Gogna, CGSC with Mr Akhilesh Kumar and Mr Upendra Sai, Advocates for R-1 and R-2.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 01.08.2017 passed by respondent no.3 (Consulate General of India, Houston – hereafter ‘CGI’) cancelling the petitioner’s Overseas Citizen of India Card (OCI Card). The petitioner also impugns the order dated 22.12.2017 passed by the Appellate Authority of respondent no.1 (Ministry of Home Affairs, Foreigners

Division), whereby the petitioner's revision application under Section 15 of the Citizenship Act, 1955 (hereafter 'the Citizenship Act') against the order dated 01.08.2017 was rejected.

2. The petitioner's OCI Card was cancelled on the ground that he was involved in missionary activities in India. The petitioner has assailed the impugned orders, essentially, on the ground that the impugned orders are illegal and arbitrary inasmuch as they are not based on any material fact or evidence against the petitioner in respect of the aforesaid allegation and, thus, are liable to be set aside.

Factual Background

3. The petitioner was born in district Panthanamthitta, Kerala in the year 1982 and completed his primary schooling in Kerala. The petitioner claims that thereafter he, along with his family, shifted to USA in June, 1992.

4. In May 2008, the petitioner completed his M.D. (Doctor in Medicine) from Mayo Medical School in Rochester, Minnesota and in June 2011, he further completed his specialization in Emergency Medicine from University of Texas Southwestern Medical Centre, Dallas, Texas.

5. Thereafter, on 16.08.2012, the petitioner was granted U.S. citizenship. It is claimed by the petitioner that he held a valid India passport until August, 2012.

6. In the meanwhile, on 05.01.2009, respondent no.1 issued a notification (being No.S.0.36(E) [F.No.OI-15013/13/2008-DS] under Section 7(B)(1) of the Citizenship Act, *inter alia*, granting the doctors, dentists, nurses and pharmacists (registered as OCI cardholders) the right to pursue the medical profession in India.

7. Thereafter, the petitioner was registered as an OCI cardholder on 22.12.2012, and he was further issued a lifelong visa on the same date.

8. In the year 2013, the petitioner along with his family moved to India. Thereafter, on 01.01.2014, the petitioner got himself registered with the Medical Council of India and since then he has been practising as a doctor in the Duncan Hospital in Raxaul, Bihar.

9. On 03.04.2016, the petitioner along with his family boarded a flight from New Delhi to Athens, Greece via Doha to attend a Conference. The petitioner took a flight – Turkish Airlines Flight no. TK1306 dated 25.04.2016 – from Malaga, Spain back to New Delhi. On 26.04.2016, while waiting at the Immigration Counter at Indira Gandhi International (IGI) Airport, he was informed by certain officials of respondent no.1 that he is not allowed to enter into India and he shall be deported. Accordingly, the petitioner was escorted to the Immigration Detention Area at the IGI Airport and his OCI Card and passport were taken away from his possession by officials of respondent no.1. Thereafter, the petitioner was sent to Istanbul, Turkey on the same date by Turkish Airlines.

10. The petitioner claims that upon reaching Istanbul, he was detained in a detention cell at the Istanbul Airport and the next day, he boarded a flight to Malaga, Spain.

11. Aggrieved by the action of the respondents, the petitioner preferred a writ petition (being W.P.(C) 5374/2016) before this Court, *inter alia*, seeking a direction to the respondents for providing reasons for the deportation of the petitioner from India.

12. The said petition was moved before this Court on 01.06.2016 and on that day, the counsel for the respondents submitted that the petitioner's visa has been cancelled by the Consulate General of India, Houston on account of petitioner being found to be indulging in "*evangelical and subversive activities*" and the said Consulate has further recommended for the cancellation of OCI Card of the petitioner.

13. During the pendency of the said petition, the petitioner was informed that he was denied entry into the country as a Look Out Circular dated 30.12.2015 – bearing No. HOU/Cons/407/18/2015 – was issued against him by respondent no.3 on the ground that the petitioner has been involved in missionary activities in India. On 23.05.2017, during the course of hearing, this Court was informed that the petitioner was placed in the blacklist LOC and a decision had been taken to cancel the OCI Card of the petitioner.

14. Thereafter, on 01.08.2017, respondent no.3 passed an order under Section 7D(e) of the Citizenship Act cancelling the petitioner's OCI Card and lifelong Visa Sticker to respondent no.3. In terms of the said order, the petitioner was involved in missionary activities in India and as a

consequence, he was included in the Blacklist, therefore, the said LOC was issued against the petitioner to prevent him from entering India.

15. Subsequently, the said writ petition – W.P.(C) 5374/2016 – was disposed of by an order dated 11.08.2017 granting the petitioner liberty to file a fresh petition challenging the order dated 01.08.2017 cancelling the petitioner's OCI Card.

16. Thereafter, the petitioner filed another petition (W.P.(C) 7160/2017) before this Court assailing the Cancellation Order dated 01.08.2017. The said petition was disposed of by an order dated 21.08.2017 permitting the petitioner to avail the alternate remedy and approach the Revisional Authority under the provisions of the Citizenship Act against the order dated 01.08.2017 cancelling the OCI Card of the petitioner.

17. Accordingly, on 18.09.2017, the petitioner preferred a revision application under Section 15 of the Citizenship Act. The said application was rejected by the Appellate Authority of respondent no.1 by an order dated 22.12.2017 holding that the petitioner was involved in missionary and evangelical activities and he had “*suppressed the real purpose of his visit to the country to carry out evangelical, medical missionary and conversion activities which against the interest of general public leading to unrest and law & order problems.*”

18. Aggrieved, the petitioner filed the present petition.

Reasons and Discussion

19. The provisions relating to Overseas Citizenship of India were introduced in the Citizenship Act, 1955 by the Citizenship (Amendment) Act, 2003 (Act No. 6 of 2004). The said provisions came into effect from 03.12.2004. Section 7A of the Citizenship Act, 1955, as introduced by the aforesaid Act, provides for registration of Overseas Citizens of India. Section 7A was amended by the Citizenship (Amendment) Act, 2005 (Act 32 of 2005). Section 7A was, thereafter, once again amended by virtue of the Citizenship (Amendment) Act (1) of 2015. The said Section 7A, as it currently stands, reads as under:-

“7A. Registration of Overseas Citizen of India Cardholder.—(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

(a) any person of full age and capacity,—

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grandchild or a great grandchild of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.

(2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing persons of Indian Origin Cardholders shall be deemed to be Overseas Citizens of India Cardholders.

Explanation.—For the purposes of this sub-section, “Persons of Indian Origin Cardholders” means the persons registered as such under notification number 26011/4/98 F.I., dated the 19th August, 2002, issued by the Central Government in this regard.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.”

20. Section 7B of the Citizenship Act provides for the rights as available to an Overseas Citizen of India card holder. The said section is set out below:-

“7B. Conferment of rights on Overseas Citizen of India Cardholder.—(1) Notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An Overseas Citizen of India Cardholder shall not be entitled to the rights conferred on a citizen of India—

(a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;

(b) under article 58 of the Constitution for election as President;

(c) under article 66 of the Constitution for election as Vice-President;

(d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;

(e) under article 217 of the Constitution for appointment as a Judge of the High Court;

(f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;

(g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;

(h) under sections 5, 5A and section 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order in that behalf, specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.”

21. Section 7D of the Citizenship Act provides for cancellation of registration as Overseas Citizen of India Card Holder. The said sections are relevant and are set out below:-

“7D. Cancellation of registration as Overseas Citizen of India Cardholder.—The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that—

(a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or

(c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to

his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.”

22. As is apparent from the above, the petitioner’s registration as an OCI Cardholder has been cancelled by invoking provisions of Section 7D (e) of the Citizenship Act – that is , on the ground that it is necessary to do so in the interest of sovereignty and integrity of India and in the interest of general public.

23. The controversy that arises in this case is twofold. The first is whether there was any material for the Consulate General of India Houston (hereafter ‘CGI’) to conclude that registration of the petitioner as an OCI Cardholder, and the rights extended to him by virtue of such

registration, requires to be cancelled in the interest of sovereignty and integrity of India or in the interest of general public.

24. The allegation against the petitioner is that “*the petitioner was involved in missionary activities which is against the law of the land*”. Thus, foremost question to be addressed is whether there was any material before either the CGI or the Appellate Authority to conclude that the petitioner had indulged in any such activities.

25. The second question that falls for consideration is whether indulging in any missionary activity is against the law of the land and can be construed as being contrary to the sovereignty and integrity of India or in the interest of general public.

26. In order to ascertain the basis on which the petitioner’s OCI card was cancelled, this Court, by an order dated 18.07.2018, called upon the respondents to produce all relevant files and materials on the basis of which the impugned action was taken. On 30.07.2018, Mr Gogna, learned counsel appearing for the respondents had produced a one page note purporting to be a report. The said report indicated that investigations had revealed that the petitioner was working as a missionary with an organization registered in U.S. for obtaining material and human resource support from ‘ministry organizations’ in United States of America. The said report indicated that the petitioner was born in United States of America and was practicing medicine as a medical practitioner at Duncan Hospital in contravention of the rules that prohibit missionary work to OCI cardholders. The said report also

indicated that it was not clear whether the petitioner had obtained any license from Medical Council of India.

27. On examination of the said report, it was obvious that it contained certain erroneous facts. For one, the petitioner was born in India and not in United States of America. Second, that the petitioner was a registered medical practitioner with Medical Council of India. In this view, this Court directed the respondents to produce (if necessary in a sealed cover) all material available with the respondents (or the CGI) on the basis of which such report was generated.

28. Pursuant to the said order, the respondents have produced printouts of certain blogs published on the web. It is important to note that apart from the print out of the said blogs, there is no other material (including any report or information) available with the respondents on the basis of which the CGI or the respondents have formed a belief that the petitioner was indulging in any unlawful activities.

29. A reading of the print out indicates that the journal/blog contains an article authored by the petitioner about his experiences in serving at the Duncan Hospital. The article describes the petitioner's day at the Duncan Hospital. The only fact that one can discern from the said article is that the petitioner has a packed day treating patients which are in acute need of medical care. The petitioner has described some of the medical conditions of the patients that approach Duncan Hospital for treatment and the aggressive medical management that is required to treat their medical conditions. A plain reading of the said article

indicates that the petitioner is devoted to his profession and committed to provide the much needed medical care to patients.

30. The next article does not appear to have been penned down by the petitioner, as it refers to him as a third person. The said article speaks of a tragic life of one of the patients at Duncan Hospital. It is stated that the said patient had died on almost three occasions but was somehow saved in the nick of time. The author of the said article appears to be deeply religious and has attributed the same to the hand of God. The said article also states that the petitioner had spent a considerable time talking to the patients about his life and how God must have had a plan for him as he had been saved on three occasions in nick of time. The said article also states that the said patient had claimed to have a vision of God, which had left the petitioner flabbergasted. The other articles are also of similar nature.

31. It appears that the print out is of a journal/blog of Emmanuel Hospital Association. The print out produced by the respondents pertains to articles which pertain to Duncan Hospital. The said articles indicate the medical services being provided at the said hospital to the poor and needy. If what is written in the said articles is accepted at its face value, it would appear that the petitioner is a religious man and has devoted himself for providing medical relief to the poor and needy at Duncan Hospital.

32. This Court is at a loss to understand as to how such work or medical services could possibly be construed by the CGI or the

Appellate Authority as contrary to the interest of sovereignty and integrity of India. It has perhaps escaped their attention that India is a secular country. All persons in this country have a right to practice their faith in the manner they consider fit so long as it does not offend any other person. If the petitioner's faith motivates the petitioner to volunteer for medical services at a hospital, there is no law (certainly not of this land) that proscribes him from doing so.

33. This Court is, in no manner of doubt, that the decision of the CGI that it is necessary to cancel the petitioner's OCI Card in the interest of sovereignty and integrity of India, is wholly perverse and militates against the secular values engrafted in the Constitution of India.

34. There is no material whatsoever that could even remotely suggest that the cancellation of the petitioner's OCI Card is in the interest of general public. On the contrary, if the statements in the articles published on the website (the printout of which is relied upon by CGI) is believed, the cancellation of the petitioner's OCI card would deprive some of the patients belonging to the poorer section much needed medical assistance and such a decision, therefore, would be contrary to public interest rather than in favour of public interest.

35. Curiously, the order dated 22.12.2017 passed by the Appellate Authority rejecting the petitioner's application under Section 15 of the Citizenship Act adds another ground to support the action taken by the CGI. The Appellate Authority has proceeded to hold that the real

purpose of the petitioner is to carry out evangelical, medical missionary and conversion activities, which is against the interest of the general public leading to unrest and law and order problem. There is no material to hold that the petitioner has been indulging in conversion activities or any of the activities has led to public unrest and law and order problems. This conclusion is also bereft of any foundation whatsoever, as there is no whisper of any allegation that any activity of the petitioner had led to any public unrest or law and order problem.

36. This Court is of the view that the impugned orders cannot be sustained, as the same are without any basis. In this view, it is not necessary to examine the second question whether the missionary activities are contrary to the law of the land. However, since the CGI's order is founded on the said basis, this Court considers it apposite to examine that issue as well.

37. It was contended on behalf of the respondents that the visa granted to the petitioner does not permit to carry out any such activities. However, the respondents have been unable to refer to any law which proscribes an OCI cardholder from carrying out any such activity.

38. Section 7B of the Citizenship Act expressly provides that an OCI cardholder would be entitled to such rights, other than as specified under sub-section (2) of Section 7B, as the Central Government may by a notification in the official gazettes specify. Thus, apart from the

rights as available to a citizen under Articles 16, 58, 66, 124 and 217 of the Constitution of India and under certain provisions of the Representation of People Act, 1950, all other rights can be conferred on an OCI cardholder.

39. In exercise of the statutory powers, the Central Government has issued a notification dated 11.04.2005 clearly specifying that OCI Cardholder would be entitled to grant of life long visa for visiting India for *any purpose*.

40. The Central Government has also issued a notification dated 05.01.2009 granting parity with non-resident Indians in the following respect:-

“(a) parity with non-resident Indian in respect of,-

(i) entry fees to be charged for visiting the national monuments, historical sites and museums in India;

(ii) Pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:-

(i) doctors, dentists, nurses and pharmacists;

(ii) advocates”

41. In the present case, the petitioner has been practicing as medical professional. He is registered as a medical practitioner with Medical Council of India and, thus, the conclusion that the petitioner has indulged in any activity contrary to the law of land is also unsustainable.

42. It is relevant to refer to Article 25 of the Constitution of India, which reads as under:-

“25. Freedom of conscience and free profession, practice and propagation of religion (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Explanation I – The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II – In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

43. It is clear from the plain language of Article 25 that all persons are equally entitled to freedom of conscience and have the right to profess, practice and propagate religion. Article 25 is not restricted to the citizens of this country but is available to all persons.

44. In the *State Trading Corporation of India Ltd. and Ors. vs. the Commercial Tax Officer, Visakhapatnam and Ors* : AIR 1963 SC 1811, the Supreme Court had explained while certain fundamental rights are available only to citizens of India, the Constitution also provides for certain other rights to be available to any person. The relevant observations made by the Court are set out below:-

“5. Before dealing with the arguments at the Bar, it is convenient to set out the relevant provisions of the Constitution. Part III of the Constitution deals with Fundamental Rights. Some fundamental rights are available to "any person", whereas other fundamental rights can be available one to "all citizens". "Equality before the law" or "equal protection of the laws" within the territory of India is available to any person (Art. 14). The protection against the enforcement of ex-post-facto laws or against double-jeopardy or against compulsion of self-incrimination is available to all persons (Art. 20); so is the protection of life and personal liberty under Art. 21 and protection against arrest and detention in certain ceases, under Art. 22. Similarly, freedom of conscience and free profession, practice and propagation of religion is guaranteed to all persons. Under Art. 27, no person shall be compelled to pay any taxes for the promotion and maintenance of any particular religious denomination. All persons have been guaranteed the freedom to attend or not to attend religious instructions or religious worship in certain educational institutions (Art. 28). And, finally, no person shall be deprived of his property save by authority of law and no property shall be compulsorily acquired or requisitioned except in accordance with

law, as contemplated by Art. 31. These, in general terms, without going into the details of the limitations and restrictions provided for by the Constitution, are the fundamental rights which are available to any person irrespective of whether he is a citizen of Indian or an alien or whether a natural or an artificial person. On the other hand, certain other fundamental rights have been guaranteed by the Constitution only to citizens and certain disabilities imposed upon the State with respect to citizens only. Article 15 prohibits the State from discriminating against any citizen on grounds only of religion race, casts, etc., or from imposing any disability in respect of certain matters referred to in the Article. By Art. 16, equality of opportunity in matters of public employment has been guaranteed to all citizens, subject to reservations in favour of backward classes. There is an absolute prohibition against all citizens of Indian from accepting any title from any foreign State, under Art. 18(2), and no person who is not a citizen of Indian shall accept any such title without the consent of the President, while he holds any office of profit or trust under the State [Art. 18(3)]. And then we come to Art. 19 with which we are directly concerned in the present controversy. Under this Article, all citizens have been guaranteed the right :-

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and

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

Each one of these guaranteed rights under cls. (a) to (g) is subject to the limitations or restrictions indicated in cls. (2) to (6) of the Article. Of the rights guaranteed to all citizens, those under cls. (a) to (e) aforesaid are particularly apposite to natural persons whereas the freedoms under cls. (f) and (g) aforesaid may be equally enjoyed by natural persons or by juristic persons. Art. 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or State-aid on grounds only of religion, race, caste, language or any of them. This short resume of the fundamental rights dealt with by Part III of the Constitution and guaranteed either to 'any person' or to 'all citizens' leaves out of account other rights or prohibitions which concern groups, classes or associations of person, with which we are not immediately concerned. But irrespective of whether a person is a citizen or a non-citizen or whether he is a natural person or a juristic person, the right to move the Supreme Court by appropriate proceedings for the enforcement of their respective rights had been guaranteed by Art. 32.

6. It is clear on consideration of the provisions of Part III of the Constitution that the makers of the Constitution deliberately and advisedly made a clear distinction between fundamental rights available to 'any person' and those guaranteed to 'all citizens'. In other words, all citizens are persons but all persons are not citizens, under the Constitution.”

45. In *Ratilal Panachand Gandhi vs. State of Bombay & Ors.*: AIR 1954 SC 388, the Supreme Court examined a challenge to the validity of provisions of section 44 of the Bombay Public Trust Act, 1950 with respect to Article 25 and Article 26 of the Constitution of India. In this context, the Court observed as under:-

“10. Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of conscience and the right freely to profess practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State’s power to make laws providing for social reform and social welfare even though they might interfere with-religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious

belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause (2) of article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.”

46. *In Commissioner of Police and Ors. vs. Acharya Jagadishwarananda Avadhuta and Ors.: (2004)12 SCC 770*, Dr. AR. Lakshmanan J. observed as under:-

“75. Article 25(1) guarantees to every person freedom of conscience and the right freely to profess, practice and propagate any religion. It may be noted that this right is not confined to citizens alone, but covers all persons residing in India. But the right to freedom of religion guaranteed by this Article is subject to restrictions which may be imposed by the state on the grounds of:

1. Public order, morality and health;
2. Other provisions of Part III of the constitution;
3. Regulating nonreligious activity associated with religious practice;
4. Social welfare and reform; &
5. Throwing open Hindu religious institutions of public character to all classes of Hindus.”

47. Thus, the petitioner’s has a right to practice his faith and his rendering medical service, even if it is for furtherance of his religion, cannot be denied. The respondents have produced no law that

proscribes missionary activities. And, the impugned orders, which proceed on the assumption that such activities are against the law of the land, are fundamentally flawed.

48. In view of the above, the impugned orders are set aside. The respondents are directed to forthwith restore the petitioner's OCI Card. The respondents are further directed to ensure that there is no impediment in the petitioner entering this country.

49. The petition is disposed of in the aforesaid terms. The pending application stands disposed of.

JANUARY 08, 2019
pkv/MK

VIBHU BAKHRU, J

सत्यमेव जयते