

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I A. NO. _____ OF 2017

IN

W.P. (C) No.793 OF 2017

IN THE MATTER OF:

MOHAMMAD SALIMULLAH & ANR. PETITIONERS

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

AND IN THE MATTER OF:

INDIC COLLECTIVE TRUST,

THROUGH ITS SECRETARY,

5 E, BHARAT GANGA APARTMENTS,

MAHALAKSHMI NAGAR,

4TH CROSS STREET, ADAMBAKKAM,

CHENNAI,

TAMIL NADU – 88APPLICANT/ INTERVENOR

WITH

I.A.No. of 2017

AN APPLICATION FOR INTERVENTION

[FOR INDEX PLEASE SEE INSIDE]

ADVOCATE FOR THE APPLICANT: **SUVIDUTT M.S.**

FILED ON: **06.09.2017**

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.....APPLICANT/ INTERVENOR

AN APPLICATION FOR INTERVENTION

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE

SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF

THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWEH:

1. That the above Writ Petition is filed before this Hon'ble court to protect the interest of illegal immigrants known as

Rohingya Muslims who are staying in India since long and are in 40,000 and more in number. Both of the two Petitioners herein belonging to the Rohingya community moved this Hon'ble Court to draw an assurance that the government would not go against their community or take 'coercive steps'. The Petitioners herein contends that any move to deport them would violate the constitutional guarantee under Article 21 by the Indian State to 'protect the life and liberty of every human being, whether citizen or not'. In addition, they claim that their deportment would violate India's commitment to international conventions that recognize the 'Principle of Non-Refoulement' – a principle of customary international law that prohibits the deportation of refugees to a country where they face threat to their lives.

2. This Hon'ble Court after hearing the plea of the Petitioners herein admitted the above mentioned case on 04.09.2017. The true copy of the said order of this Hon'ble Court is herewith annexed and marked as **ANNEXURE I-1 (Page 9)**
3. The Applicant herein is a registered trust named 'Indic Collective' having their registered office at 5 E, Bharat Ganga Apartments, Mahalakshmi Nagar, 4th Cross Street, Adambakkam, Chennai, Tamil Nadu – 88.
4. The members of the said trust are activists working for the welfare of the interest of Indian tradition, culture and civilization. The Trust takes keen interest in addressing substantial political and religious issues that involves national concerns. The said trust has been working proactively for the general public since its inception and registration.

5. That the intervenor organization is making this application seeking indulgence of this Hon'ble Court for permitting them to intervene in the above matter which involves questions that may seriously affect the security and other issues of India.
6. It is humbly submitted at the very outset that the Rohingyas have in fact become an Islamic terror, and it is said so because from a cursory survey of Rohingya history, it is clear that the Rohingyas are not an ethnic, but a political construction. The Rohingya population was denied citizenship under the 1982 Burmese citizenship law, after which they migrated to nearby countries like Bangladesh and India. As of today around 40,000 and more Rohingyas are residing in India and are identified as illegal immigrants by the government and they pose a serious threat not only to the national security but also to peacefully living Indian citizens. There is a clear and present social, economic and security danger, and if India does not set down the rules of the game right now, it will be difficult to argue against and stop Rohingyas influx into India at later point of time.
7. That the Rohingya conflict is undeniably a massive humanitarian disaster and even United Nation officials have taken note of it. But such cataclysms although irremediable are best addressed locally within the home state i.e. Myanmar, by way of exerting international pressure or by working out a road map with the Burmese government or by sending shiploads of aid and so on, and on the other hand, India cannot solve this crisis by importing and welcoming it.

Therefore, it is submitted that accommodating Rohingyas in India is equivalent to inviting wretchedness, turbulence and disturbance on the Indian soil.

8. It is submitted that undisputedly India is among nations worst affected by Islamic terrorism. It has its serious demographic challenges. Thousands of Rohingya refugees, most of them settled in Jammu and Kashmir where already Islamist separatism is raging, are a people ripe for terror hiring and indoctrination. Armed rebellion is not new for the Rohingyas. They have been engaged in armed militancy since the 1940s with the aim of seceding from Myanmar and creating an Islamist state. The same may happen in India too, as the Rohingya community is volatile and may act as a catalyst to the smoldering separatist fire.
9. Further, it is submitted factually that recently on 25th August, 2017, around 150 men armed with machetes, bombs and other weapons launched coordinated attacks on 24 police camps and an army base in Myanmar's Rakhine state resulting in 71 dead. It also announced to the world the coming of age of the Arakan Rohingya Salvation Army (ARSA), a terror outfit led by Ata Ullah, a Rohingya man born in Karachi and brought up in Mecca of Saudi Arabia. Further Burmese, Bangladeshi and Indian intelligence agencies have found Pakistan's terror groups hiring Rohingyas from Bangladesh's refugee camps, training and arming them. Terrorist groups like Lashkar-e-Taiba are already out in shopping spree and recruiting Rohingya forces. Several news reports on this front speak the reality. True copy of the news

report published in the Hindustan Times dated 02.08.2013 is annexed & marked as **ANNEXURE I-2 (Pages 10 – 11)**.

10. In this background, it is not just wise but urgent for India to deport these 40,000 and more Rohingya Muslim refugees from the Indian Territory.
11. It is submitted that under Section 3 of The Foreigners Act, 1946 the Union Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India. Therefore, it is submitted that in the case of Rohingyas the Union Government shall make an order for their expulsion as the entire community is occupying the Indian Territory without properly acquiring Indian citizenship.
12. Further it is submitted that under Section 8 of The Foreigners Act, 1946 where it is uncertain as to the nationality of a foreigner, the determination of nationality vests absolute and unfettered discretion in the Union Government to expel foreigners, especially those residing illegally without valid documents. Therefore, it is submitted that Union Government shall deport Rohingyas immediately for being illegal immigrants.
13. It is submitted that Article 21 enshrined in the Indian Constitution although guarantees that no person shall be deprived of his life or personal liberty and this fundamental right extends to a foreigner, this Article 21 is confined to his life and liberty only and does not include the right to reside

and settle in the country of India. A foreigner cannot take shelter under Article 21 to avail the protection guaranteed under Article 19 (1) (e) as foreigners does not come under its purview. Substantiating this point, this Hon'ble Court has held in the case of *Mr. Louis De Raedt & Ors. vs. Union of India & Ors.* [1991 AIR 1886: 1991 (3) SCC 554], as follows:

"13. ... The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors, [1955] 1 SCR 1284 that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution lettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner...."

Therefore, Rohingyas cannot claim protection under Article 21 of the Constitution to settle as residents of India and the Union Government has unrestrictive power to expel or deport Rohingyas from India under law.

14. Further, it is submitted that India is not a signatory to the United Nations Refugee Convention (UNRC) and not bound

by it. According to available data, more than 14,000 Rohingyas are registered with the United Nations High Commissioner for Refugees (UNHCR) and were staying in India. Since India is not a signatory to UNRC, India considers UNHCR as only a private body, therefore, the legal status of this 14,000 registered Rohingyas are not valid in the eyes of law.

15. That this Hon'ble Court may allow the Applicant organization herein to make their submissions for proper adjudication of the above mentioned Special Leave Petition.
16. This application is made bona fide and in the interests of justice.

PRAYER

It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to:-

- a. Permit the Applicant organization herein to intervene in the aforesaid Writ Petition bearing W.P. (C) No.793/2017;
- b. Permit the Applicant to place its Written Submissions before this Hon'ble Court;
- c. Pass any other order/orders as may be deemed fit in the facts and circumstances of this case.

AND YOUR APPLICANT/ INTERVENOR, AS IN DUTY BOUND
SHALL EVERY PRAY.

DRAWN & FILED BY

SUVIDUTT M.S.
ADVOCATE FOR THE APPLICANT

Drawn on: 04.09.2017
Filed on: 06.09.2017
New Delhi

IN THE SUPREME COURT OF INDIA

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AFFIDAVIT

I, Mohit Bharadwaj, S/O Devendra Kumar Sharma, aged 27 years, resident of D 131, B 9/6, Telecoms City Apartments, Sector 62, Noida of UP State, is the Secretary of the registered trust named Indic Collective Trust, presently at New Delhi, do hereby solemnly affirm and declare as under:-

1. That I am the Applicant in the present Application and being well conversant with the facts and circumstances of the present case am competent to swear this affidavit on behalf of the Trust.
2. That I have read over the accompanying Application from Paras 1 to 16 (pages 1 to 7), and I have understood the contents therein which are true to my knowledge and belief and nothing material has been concealed therefrom.
3. That the Annexure – I 1 and I 2 are the true copy of their respective original.

DEPONENT

VERIFICATION

Verified this on this 5th day of September, 2017, at New Delhi that the contents of the above Affidavit from para 1 to 3 are true and correct to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

DEPONENT