



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: Nandita Haksar vs State of Manipur

Swaranjali Yadav^a

^aAmity Law School, Noida, India

Received 25 March 2022; Accepted 11 April 2022; Published 15 April 2022

INTRODUCTION

Citation: W.P. (CrI.) NO. 6 OF 2021, MC [W.P. (CrI.)] NO.1 OF 2021, MC [W.P. (CrI.)] NO.2 OF 2021

Decided on: 03/05/2021

Bench: Hon'ble Chief Justice Mr. Sanjay Kumar and Hon'ble Mr. Justice Lanusungkum Jamir

Petitioner: Nandita Haksar

Respondents: State of Manipur & Ors.

FACTS

The case concerns seven illegal entrants from Myanmar who entered India illegally in the wake of a military coup in Myanmar. These illegal entrants were mostly journalists and their family members who worked in a media establishment that was banned after the Junta took over. The Junta was cracking down on journalists from this establishment. Fearing persecution, they fled their country and took refuge in the state of Manipur, which shares a

border with Myanmar. The illegal entrants had entered India without the required documents. They approached the petitioner as the Ministry of Home Affairs had ordered the authorities at the border to check the inflow of people from Myanmar and were fearing deportation to Myanmar, where their lives would be in danger. The petitioner pleaded with the Court to allow the illegal entrants from Myanmar to approach the UNHCR in Delhi.

ISSUES

1. Difference between a migrant and a refugee and whether the illegal entrants from Myanmar were migrants or asylum seekers?
2. Whether illegal entrants can avail themselves of the protections under the “principle of non-refoulement” in India?
3. Whether the illegal entrants should be punished for their actions and not be granted protection since domestic laws are superior to international laws?

ARGUMENTS OF PETITIONER

The order to the authorities on borders to check the entry of illegal entrants did not draw a difference between refugees and migrants. Though India is not a party to the 1951 Convention, it has ratified the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights (ICCPR). Article 14 of the UDHR states that “*every person shall have a right to seek asylum in other countries*”.¹ The ICCPR also endorses a human being’s basic civil and political right which includes the right to seek asylum. In the year 2018 India showed its support for the “*Global Compact on Refugees*”. This initiative is related to the concept of burden-sharing which seeks to provide third-country options to the refugees so that the host country is not burdened by the refugee population. Apart from this, Article 51 of the Indian Constitution also states that the state shall take it upon itself to respect the treaty obligations of the international treaties it is a part of.² The Constitution guarantees certain rights even to foreigners who are not the citizens of India, such as, “*equality before the law*” and “*right to life*”

¹ Universal Declaration of Human Rights, 1948, art. 14

² Constitution of India, 1950, art. 51

and personal liberty” under Articles 14 and 21 respectively.³ To support this argument the petitioner used the case of the *National Human Rights Commission vs the State of Arunachal Pradesh & another*⁴ wherein the Chakma refugees who had been resettled in the state of Arunachal Pradesh were being threatened by the local population to leave the country and go back to Bangladesh. The court held that it is the state’s responsibility to ensure that the “*right to life and personal liberty*” as well as the “*right to equality*” of Chakma refugees are protected. Another case that was quoted by the petitioner was the *State of Arunachal Pradesh v Khudiram Chakma*⁵ wherein the Supreme Court held that the government should provide compensation to Chakma refugees as they were evicted from their place. Article 14 of the UDHR provides that once asylum is granted it cannot be taken away and the refugees cannot be returned to the country they came from.

The petitioner further argued that Article 21 endorses the “*principle of non- refoulement*”. Article 21 provides that the “*right to life and personal liberty*” is guaranteed to everyone regardless of their citizenship and forcibly sending a person back to the place where he will face persecution is a violation of his right to life and personal liberty. The lives of illegal entrants from Myanmar will be in danger if they are forcibly sent back to their country. The supreme court has on multiple occasions held that Article 21 encompasses the “*principle of non- refoulement*” unless respecting it would threaten the safety and security of the state.

ARGUMENTS OF RESPONDENT

The respondent argues that according to the Foreigners Order, 1948; Foreigners Act 1946, and Registration of Foreigners Act 1939 the illegal entrant should first be governed by the domestic laws before the international laws. They should face the consequences of entering India without proper documents. It was contended that Articles 19(1)(d) and 19(1)(e)⁶ of the Constitution are not available to foreigners which entails the “*right to move freely*” within India and the “*right to reside anywhere*” in India. Therefore, illegal entrants should not be allowed to

³ Constitution of India, 1950, art. 14 and art. 21

⁴ *National Human Rights Commission v The State of Arunachal Pradesh & Another* (1996), AIR 1234

⁵ *State of Arunachal Pradesh v Khudiram Chakma* (1994), AIR 1461

⁶ Constitution of India, 1950, art. 19(1) (d) and art. 19(1) (e)

move to Delhi to seek protection. The respondent supported these contentions through the case of *Chairman, Railway Board, and others vs Chandrima Das (Mrs.) and others*⁷ in which the court listed the fundamental rights available to foreigners that were Article 14, 20, 21, and 22⁸ and did not include Article 19⁹. It was also contended that allowing the petitioner's plea would be a blot on the judiciary's reputation as it would lead to the disruption of the process provided by the laws of the state.

JUDGEMENT

The court explained the distinction between the term migrant and refugee. A migrant is someone who, usually in search of work and a better chance of survival migrates to another place whereas, a refugee is someone who flees his country of residence if his life is likely to be in danger in that place. The people who entered India illegally from Myanmar are clearly of the second category as they had fled their country to escape persecution. It was held that they were asylum seekers. The illegal entrants were already in distress with the situation in Myanmar. In this case, if they are penalized under domestic laws, that would be against the spirit of humanity. It was held that the illegal entrants from Myanmar were only asserting their "right to life" under Article 21 of the Constitution and not under Article 19.¹⁰ Using the case relied upon by the respondent the Supreme Court observed that even in the case of *Chairman, Railway Board, and others v Chandrima Das (Mrs.) & Ors.*,¹¹ it was held that the Bangladeshi citizen was entitled to be treated with dignity under Article 21 even though she was not an Indian citizen.

There was no evidence produced by the respondents to show that the illegal entrants from Myanmar posed any threat to the security of India. The documents produced show that they had been granted UNHCR's certification earlier during which time they stayed in India and returned to Myanmar when things settled. Therefore, the contention is purely speculative and

⁷ *Chairman, Railway Board, and others v Chandrima Das (Mrs.) and Ors.* (2000) 1 SCC 465

⁸ Constitution of India, 1950, art. 14, art. 20, art. 21, and art. 22

⁹ Constitution of India, 1950, art. 19

¹⁰ Constitution of India, 1950, art. 19 and art. 21

¹¹ *Chairman, Railway Board, and Others* (n 8)

cannot be accepted. It was observed in some cases such as that of Ms. Zothansangpuii¹², who was from Burma and an illegal entrant into the territories of India was allowed to approach the UNHCR by the Gauhati High Court. She was later settled in Australia. Another case that was mentioned was that of Mr. Bogyi¹³ who was also allowed to approach UNHCR and shifted to Norway from India. The court proceeded to take some other examples where the asylum seekers who were earlier detained under the domestic law of India were allowed to approach UNHCR and then were resettled in a third country. None of the asylum seekers had to undergo the full range of punishment under the domestic laws. The court in its decision also pointed out that India does not have a proper refugee policy. In India, the determination of the status of the illegal entrants or asylum seekers is done by the UNHCR, especially for those from Afghanistan and Myanmar. In India, UNHCR has only one office which is located in New Delhi, and no office in border areas. After the status of the illegal entrants is determined, the Foreigners Regional Registration Offices take up their matter. The petitioner had sent a mail to the UNHCR office in New Delhi, who replied that the illegal entrants can take assistance from them once they arrive in New Delhi. Thus, the illegal entrants should be allowed to reach the UNHCR, and then after the determination of their status, the government can take action accordingly.

The court also held that the central and state government should assist them in reaching safely to the UNHCR's office. The court also directed the petitioner and the illegal entrants to submit their names and addresses to a police station according to the jurisdiction in Delhi.

CASE COMMENT: CONCLUDING REMARKS

Historically, India has given paramount importance to hospitality, which is also reflected in the phrase '*Atithi Devo Bhava*'. India has always received and attended to refugees entering its borders with open arms. It is only recently that India has shifted from this policy. This has dented its reputation both nationally and internationally because it failed to follow through with its international commitments. The judiciary has tried to help the state of affairs in this

¹² *Zothansangpuii v State of Manipur and Another* (1989) Civil Rule No. 981/1989

¹³ *Bogyi v Union of India* (1989) Civil Rule No. 1847/89

respect by bridging the gaps left open by the government. This was also evident in the case of *Nandita Haksar v State of Manipur*¹⁴, wherein the court took a humanistic approach to the situation and gave directions to the government to allow the asylum seekers to reach the office of UNHCR in Delhi. There is an absence of law or procedure to address the problems of refugees who enter India and the judiciary is the only option available to such refugees. India has also received flak nationally and internationally for the 2019 amendment to the Citizenship Act as well as its treatment of refugees. People who have fled their countries escaping persecution have already been through a lot of struggles and problems. Sending them back to that place where their life and liberty are likely to be in danger will only add to their woes. Suggestions given by “*Global Compact for Refugees*” in 2018 for India can be used by it to improve the treatment of refugees. Firstly, there should be a national law in place which could address the rights of the refugees as well as the process of rehabilitation. The national law should contain provisions regarding the establishment of requisite institutions, especially in those border areas from where the refugees enter.

Dedicated research is needed concerning the refugees in India to better address their problems. India should seek to exchange good practices and establish platforms for regional countries to regulate the problem of refugees in those states. India can take the help of the Asylum Capacity Support Group established under the “*Global Compact for Refugees*” 2018 which helps the states in establishing and regulating a National Asylum in their territory. Overall, India needs to revise its refugee policy and adopt a more humanitarian approach toward the issue. It needs to provide equitable treatment to all refugees and rehabilitate them accordingly. India needs to adopt a modern refugee policy while keeping in touch with its traditional and cultural roots.

¹⁴ *Nandita Haksar v the State of Manipur* (2021) Writ Petition (Criminal) No. 6/2021