

IN THE SUPREME COURT OF INDIA
[CIVIL ORIGINAL JURISDICTION]
I.A. NO.14970 OF 2018

IN
WRIT PETITION [CIVIL] NO.793 OF 2017

IN THE MATTER OF

Mohammad Samilullah & Anr. ... Petitioners

Versus

Union of India & ors. ... Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT - UNION OF INDIA

I, Pramod Kumar s/o Shri Amar Nath aged about 53 years having my office at National Stadium, Ministry of Home Affairs, New Delhi, do hereby solemnly affirm and state as under:

1. I am functioning as Director [Foreigners] in the Ministry of Home Affairs, Union of India. In my official capacity and being duly authorised, I am fully conversant with the facts and circumstances of the subject matter of the writ petition. I state and submit that I have gone through, perused and understood the relevant records and material with respect to the subject matter of the petition based upon which I am filing this Affidavit to place the following legal as well as factual position for kind consideration of this Hon'ble Court.

I state and submit that at the outset I deny and dispute the contents of the captioned Interim Application which is solely based on newspaper reports though the deponent, in the affirmation, has said that the facts stated are "believed to be true to the best of my knowledge".



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3. I respectfully submit that in view of the fact that the petition is based upon mere newspaper articles, I am advised not to deal with the Application parawise at this stage.
4. Before filing an Affidavit in Reply to the captioned I.A., I crave leave to refer to and rely upon the contents of the counter affidavit filed to the main petition earlier. The same may be treated as forming the part of the present reply also.
5. I state and submit that as I am not filing the Affidavit in Reply parawise, I am only dealing with the prayers made in the Interim Application at page 21 which are in three parts viz:
- (a) No "push back" of Rohingya refugees take place;
 - (b) Grant of medical, health care and educational facilities;
 - (c) A direction by this Hon'ble Court to grant Refugee Identification Cards through Foreigner Regional Registration Officer [FRRO]
6. I state and submit that the allegations against the Border Security Forces are found to be completely false. The Central Government sought a report from the Border Security Force and it is found that the allegations made in the Interim Application with regard to the use of chilli and stun grenades are false, incorrect and far from truth. It is submitted that no such devises are used either as alleged or otherwise.
7. It is respectfully submitted that the Border Security Force (BSF) was raised on 01 December, 1965 and is presently guarding the Indo-Pakistan and Indo-Bangladesh Border. As per BSF Act & Rules, the tasks of the BSF are:-
- (i) Promote a sense of security among the people living in the border areas.
 - (ii) Prevent trans-border crimes, un-authorized entry into or exit from the territory of India.
 - (iii) Prevent smuggling and any other illegal activity.

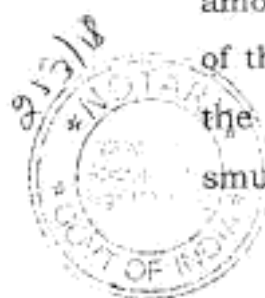


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To complete the assigned tasks, BSF takes following peace time actions:-

- (a) Dominates the routes of ingress and egress through International Boundary and establishes Border Out-Posts (BOPs).
- (b) Policing and patrolling along the borders to ensure that borders of the country are not violated / breached.
- (c) Effective anti-smuggling and anti-infiltration measures like establishing observation posts, laying ambushes and patrolling etc. along the borders.
- (d) Promotes sense of security among the border population by establishing its presence in the remote border areas and getting involved in the welfare of the border community by undertaking suo-moto or Government sponsored programmes.
- (e) Co-ordination with the counterpart to ensure peace and tranquility on the borders.

8. It is respectfully submitted that BSF is performing its duties in challenging circumstances to- (a) promote a sense of security among the people living in the border areas, (b) ensure the security of the nation by preventing un-authorized entry into or exit from the territory of India and (c) prevent trans-border crimes including smuggling and other illegal activity.



9. I respectfully submit that India is already facing serious problem of infiltration because of its porous border with other countries which is the root cause of spread of terrorism in the country which is taking thousands of lives of innocent citizens and security personnel. Securing the borders of any sovereign nation, in

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accordance with law, is an essentially executive function and this Hon'ble Court would not issue a writ directing not only the Central Government but all State Governments having a common border to ensure that foreigners enter the territory of India.

10. It is further respectfully submitted that as per the provisions in the Passport (Entry into India) Act, 1920 and the Passport (Entry into India) Rules, 1950, every foreigner entering India must be in possession of a valid national passport or any other internationally recognised travel document establishing his/her nationality and identity and bearing - (a) his/her photograph, and (b) a valid visa for India granted by an authorised Indian representative abroad.
11. It is therefore respectfully submitted that the steps being taken by any border guarding force is strictly in accordance with the law, in larger public interest and in the interest of nation.
12. I respectfully submit that all agencies tasked with the function of guarding the borders of our nations are discharging their duties strictly in accordance with law and complying with the human rights in larger national interest.
13. I respectfully submit that as already pointed out in the counter filed earlier India is not a signatory to the United Nations Convention of 1951 relating to the Status of Refugees and the Protocol of 1967 issued thereunder. The obligation of non refoulment is essentially covered by the provisions of the aforesaid convention to 1951 to which India is not a signatory. It is submitted that considering the very peculiar geographical situation existing namely India sharing its land border with China, Pakistan, Bangladesh, Bhutan, Nepal, Myanmar, it is not in the interest of the national security for this Hon'ble Court to issue a direction as sought for.
14. I state and submit that so far as the Rohingyas stated to have already entered in the territory of India and staying in various parts of the country are concerned, there has been no reported case



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wherein either medical help or education is denied to anyone. Wherever, medical facilities are available, the same are provided to anyone who visits medical health care centre or Government hospitals without the medical facilities requiring such person to prove its citizenship.

So far as the third prayer with regard to identification cards is concerned, the said issue is essentially in the domain of policy making and governance by the executives. However, it is respectfully pointed out that India being not a signatory to United Nations Convention of 1951 relating to the Status of Refugees and the Protocol of 1967 issued thereunder and there being no law passed by the Parliament with regard to refugees, there cannot be any issuance of refugees identification card to any person.

It is submitted that neither the Ministry of Home Affairs nor the Foreign Regional Registration Officers [FRRO] / Foreign Registration Officers [FRO] have issued any such refugee identification card to any person.

15. I respectfully submit that comparison with Sri Lankan Tamilian refugees based upon which prayer is sought to be made is ill founded and misconceived. The following facts will satisfy this Hon'ble Court that there is no comparable parity between the two cases as the case of Sri Lankan Tamilian refugees stands on different footing as narrated hereunder:



16. As regards the submission in the Interim Application to extend the relief facilities granted to Sri Lankan Tamil refugees to Rohingyas, it is respectfully submitted that grant of certain relief facilities to the Sri Lankan Tamil Refugees has its genesis in the Indo-Ceylon Agreement of 1964. According to the bilateral agreement between the Government of India and the Government of Ceylon (now Sri Lanka) signed on 30.10.1964, 5.25 lakh persons of Indian origin settled in Sri Lanka along with their natural increase were to be repatriated in a period of 15 years. Declared objective of the agreement was that all persons of Indian origin in Ceylon (now Sri

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Lanka) who have not been recognized either as citizens of Ceylon or as citizen of India should become citizens either of Ceylon or of India.

- 17. It is further respectfully submitted that by further agreement signed between the two countries in January, 1974, India agreed for the repatriation of another 75000 persons of Indian origin along with their natural increase within a period of 2 years after the persons of the first agreement had been repatriated. Therefore, under the Indo-Sri Lanka Agreements of 1964 and 1974, the Government of India had agreed to repatriate and grant Indian citizenship to six lakh persons of Indian origin together with their natural increase by 1981-82. It is submitted that rehabilitation assistance was given to such persons of Indian origin as per a bilateral agreement between the two nations. It is further respectfully submitted that as a result of an accord between the Government of India and the Government of Sri Lanka in January, 1986, the Government of Sri Lanka had agreed to grant Sri Lankan citizenship to 94,000 persons out of 6 lakhs persons originally to be granted Indian citizenship as per 1964 and 1974 agreements.



[Signature]
DEPONENT

VERIFICATION

15 MAR 2018

Verified and signed on this ____ day of March, 2018. That contents of para 1 to 17 of the above affidavit is true and correct to my knowledge and belief and nothing material has been concealed therefrom.

ATTESTED
[Signature]
NOTARY PUBLIC

15 MAR 2018

[Signature]
DEPONENT