

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 31.07.2013
Judgment pronounced on : 05.08.2013

+ **W.P.(C) 4835/2013**

MANISH KUMAR MITTAL Petitioner

Through: Petitioner-in-person.

versus

CHIEF PASSPORT OFFICER & ANR Respondents

Through: Mr Neeraj Chaudhary, Adv. for
respondents 1 and 2

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The petitioner before this Court is facing trial under Section 498A and 406 of IPC pursuant to a complaint made by his wife, which was registered vide FIR No.1010/2006 at Police Station Dwarka, New Delhi. The petitioner was issued a passport bearing No.G-4905048 on 26th September, 2007 and, according to him, while applying for the passport he had filed an affidavit disclosing the registration of the aforesaid FIR against him. In the above referred case registered against the petitioner, anticipatory bail was granted to him, vide order dated 19th November, 2009 and regular bail, vide order dated 8th June, 2010. The bail order, according to the petitioner, did not require him not to leave the country at all or not to leave country without prior permission of the Court. It

appears that a complaint was made against the petitioner by his father-in-law, seeking cancellation of his passport on the ground that the passport had been obtained by the petitioner by concealing the pendency of the criminal case against him. Vide communication dated 27th October, 2010, the Regional Passport Officer directed the petitioner to surrender the aforesaid passport. The petitioner made a representation against the aforesaid communication dated 27th October, 2010 and informed that before issue of the passport, he had disclosed the pendency of the criminal case against him. Vide communication dated 1st March, 2011, he was again asked to surrender his passport. He again represented to the Regional Passport Officer. Vide communications dated 14th March, 2011 and 25th March, 2011, he was yet again directed to surrender his passport. Ultimately, the passport was submitted by the petitioner to the Regional Passport Officer on 4th April, 2011. Since the petitioner was required by his employer to travel to USA, he sought release of the passport. Simultaneously, he also filed an application under RTI Act, seeking information with respect to the order passed on his application for release of the passport. On receipt of the documents under RTI Act, the petitioner discovered that no order has been passed on the aforesaid application. He also preferred an appeal to the Chief Passport Officer. However, the appeal filed by the petitioner has been dismissed, vide order dated 16th May, 2013. Being aggrieved from dismissal of his appeal, the petitioner is before this Court.

2. A perusal of the appellate order would show that the Chief Passport Officer was of the view that since a criminal case under Section

498A/406/34 IPC is pending against the petitioner and he is out on bail, the passport can be restored after he is acquitted of the said charge. It appears from a perusal of the documents filed by the petitioner that the passport of the petitioner was impounded under Section 10(3) of the Passport Act, which, to the extent it is relevant, provides that the passport authority may impound or cause to be impounded or revoke a passport or travel document, if the proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

3. Sub-section (5) of Section 10 of the Act, to the extent it is relevant, provides that when the passport authority makes an order impounding or revoking a passport or travel documents under Sub-section 3, it shall record, in writing, a brief statement of the reasons for making such an order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be 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 to furnish such a copy.

4. It appears from the record, including the documents supplied to the petitioner, under RTI Act and the order passed by the Appellate Authority that no speaking order in terms of Sub-section (5) of Section 10 was passed by the Regional Passport Officer while impounding/revoking the passport of the petitioner. In fact, not even a show cause notice was

given to the petitioner requiring him to explain as to why his passport should not be revoked/or impounded. He was simply asked to surrender his passport without passing a speaking order in terms of Sub-section (5) of Section 10. The order passed by the Regional Passport Officer, therefore was wholly in contravention of the statutory requirement of Sub-section (5) of Section 10.

5. In the celebrated case **Smt.Maneka Gandhi v. Union of India and Another** AIR 1978 Supreme Court 597, the passport of the petitioner was impounded in the public interest and the Govt. of India declined, 'in the interests of the general public' to furnish the reasons in its decision. The reasons, however, were disclosed in the counter affidavit filed in the Supreme Court. She filed a writ petition challenging the Constitution of validity of Section 10(3)(c) of the Passports Act to the extent it authorized the passport authority impounding a passport in the interests of general public, on the ground that the said provision was violative of Article 14 of the Constitution, since it conferred vague and undefined power on the passport authority and did not provide for an hearing to the holder of the passport before the passport was impounded. It was also challenged on the ground of being violative of Article 21 of the Constitution since it did not prescribe the procedure within the meaning of that Article. It was also submitted by the petitioner before the Supreme Court that if it is held that a procedure has been prescribed in the aforesaid section, that is arbitrary and unreasonable. The Court observed that even if there are no positive words in the statute requiring that the party shall be heard, the principle of *audi alteram partem* mandates that no one shall be

condemned unheard being is a part of the rules of natural justice and the said doctrine applies not only to quasi judicial functions but also to the administrative functions, the aim of both being to arrive at a just decision. The following view taken by the Court in the aforesaid judgment is pertinent:-

“62. Now, here, the power conferred on the Passport Authority is to impound a passport and the consequence of impounding a passport would be to impair the constitutional right of the holder of the passport to go abroad during the time that the passport is impounded. Moreover, a passport can be impounded by the Passport Authority only on certain specified grounds set out in Sub-section (3) of Section [10](#) and the Passport Authority would have to apply its mind to the facts and circumstances of a given case and decide whether any of the specified grounds exists which would justify impounding of the passport. The Passport Authority is also required by Sub-section (5) of Section [10](#) to record in writing a brief statement of the reasons for making an order impounding a passport and, save in certain exceptional situations, the Passport Authority is obliged to furnish a copy of the statement of reasons to the holder of the passport. Where the Passport Authority which has impounded a passport is other than the Central Government, a right of appeal against the order impounding the passport is given by Section [11](#), and in the appeal, the validity of the reasons given by the Passport Authority for impounding the passport can be canvassed before the Appellate Authority. It is clear on a consideration of these circumstances that the test laid down in the decisions of this Court for distinguishing between a quasi-judicial power and an administrative power is satisfied and the power conferred on the Passport Authority to impound a passport is quasi-judicial power. The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport even on the orthodox view which prevailed prior to A. K. Kraipak's case. The same

result must follow in view of the decision in A. K. Kraipak's case, even if the power to impound a passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences.”

It was contended by the learned Attorney General that *audi alteram partem* rule must be held to be excluded in such cases because if notice were to be given to the holder of a passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the country and the object of impounding the passport would be frustrated. Rejecting the contention, the Apex Court, *inter alia*, held as under:-

“63. It would not, therefore, be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport. The Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate,

because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports- Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be right, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure 'established' by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.”

However, in the case before this Court, even a post-decision of hearing was not given to the petitioner, as a result of which he was denied an opportunity to convince the RPO that despite pendency of a criminal case against him, he was not likely to flee from justice and therefore the order impounding/ revoking his passport should be recalled.

6. Though the petitioner did prefer an appeal, that would be of no consequence since in the absence of the reasons for impounding/revoking his passport could not have effectively assailed the order passed by the Regional Passport Officer. In any case, even the said order shows no application of mind by the Appellate Authority to the question as to whether it was really necessary to impound/ revoke the passport of the petitioner.

Even if a criminal case is pending against a person that by itself does not require the Regional Passport Officer to impound/ revoke the passport in every case. It is only in appropriate cases and for adequate and cogent reasons that such an order can be passed.

7. For the reasons stated hereinabove, the order passed by the Regional Passport Officer directing the petitioner to surrender his passport as well as the order passed by the Appellate Authority are, hereby, set aside. The respondents are directed to release the passport of the petitioner to him forthwith. This order, however, shall not come in the way of the Regional Passport Officer passing an appropriate order in terms of Section 10 Sub-section (5) of the Passports Act 1967. He may, in his discretion give either pre-decisional or post-decisional hearing to him. Such an order will be passed within eight weeks of receiving a copy of this order. If the Regional Passport Officer decides to revoke/impound the passport of the petitioner, he will have to pass a speaking order in terms of Sub-section (5) of Section 10 and supply a copy of the said order to the petitioner. However, in order to ensure that, in the meanwhile, the petitioner, on getting passport from the Regional Passport Officer,

does not flee the country and continues to attend the criminal trial pending against him, it is directed that till a fresh order under Section 10 Sub-section (3) of the Passport Act is passed, in terms of this order, he shall not leave the country without prior permission of the Court in which the criminal trial against him is pending. The petition stands disposed of.

V.K.JAIN, J

AUGUST 05, 2013

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