

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.754 of 2015
Date of decision:29.7.2016**

Nitin Dihana

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Aditya Dassaur, Advocate for
Mr.C.L.Verma, Advocate for the petitioner.
Mr.Indresh Goyal, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned appellate order dated 9.9.2014 (Annexure P-14), whereby an ex parte order dated 7.3.2014 (Annexure P-11) was upheld, refusing to release an already issued passport to the petitioner, he has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for setting aside the impugned orders. Petitioner is also seeking a writ in the nature of mandamus for restoration of his passport.

Notice of motion was issued and in compliance thereof, written statement on behalf of respondent No.2 has been filed.

Heard learned counsel for the parties at considerable length.

It has gone undisputed before this Court that after having been deported from United Kingdom, because of his alleged overstay there, petitioner applied for fresh passport. He duly filled in his application form, which was supported by an affidavit. After due verification of all the facts and circumstances of the case, including antecedents of the petitioner, respondent authorities issued him the passport for the second time, copy

whereof is Annexure P-9 dated 24.1.2013. Thereafter, respondent authorities had a second thought and asked the petitioner to surrender his passport (Annexure P-9). Petitioner shown his bonafide, did not raise any protest relying upon the respondent authorities and surrendered his passport without raising any kind of objection.

Thereafter, vide impugned communication dated 7.3.2014 (Annexure P-11), respondent No.2 unilaterally decided not to restore the passport of the petitioner up to 24.4.2017. It is also not in dispute that neither any show-cause notice was issued to the petitioner nor he was granted any opportunity of being heard, before issuing the impugned communication dated 7.3.2014 (Annexure P-11).

Feeling genuinely aggrieved, petitioner filed his appeal which also came to be dismissed by the appellate authority vide impugned order dated 9.9.2014 (Annexure P-14). Even the appellate authority proceeded on a wholly misconceived and perverse approach, while passing this impugned appellate order. Neither there is any allegation against the petitioner that he applied for alleged political asylum in London, after issuing the passport Annexure P-9 dated 24.1.2013, nor he was ever confronted with such an allegation so that he could have furnished his explanation in that regard. Having said that, this Court feels no hesitation to conclude that respondent No.2 as well as appellate authority acted in most arbitrary manner, while passing the impugned orders Annexure P-11 and Annexure P-14. The impugned orders are not only patently illegal and perverse but the same are also contrary to the principles of natural justice because of which none of the orders can be upheld.

In the peculiar facts and circumstances of the case, it was least

expected from the appellate authority to enquire about the true factual aspect of the matter, as to whether after issuance of passport Annexure P-9 dated 24.1.2013, petitioner, as a matter of fact, had applied for political asylum in London, because it is specifically pleaded and argued case on behalf of the petitioner that after having been deported back to India in 2012, he never went back to England again. It is also not argued case on behalf of the respondents that petitioner had concealed any material information from the notice of the respondent authorities, at the time of submitting his application duly supported by an affidavit, seeking issuance of passport Annexure P-9 dated 24.1.2013.

The only bonafide mistake seems to have been committed by the petitioner was that while staying in England on study visa, he fell in love with a girl with whom he later on married, as well. It was an inter-religion marriage and his wife was a British Citizen. Parents of the petitioner as well as parents of his wife were not accepting their marriage. Faced with said situation and having found himself cornered, petitioner applied for political asylum in England, as he was facing threat to his own life as well as to the life of his wife, at the hands of parents and family members, of both of them. It has been so stated by the petitioner in his affidavit Annexure P-12.

However, instead of treating this case as that of a simple rebellion marriage, the respondent authorities have proceeded on their own imagination, without there being any supporting material and unilaterally decided not to release the passport in favour of the petitioner up to 24.4.2017. In view of what has been discussed and noticed hereinabove, the impugned orders passed by the respondent authorities have been found wholly misconceived and arbitrary, because of which these cannot be

upheld.

Once the petitioner applied for his passport in the year 2012 on a duly prescribed form along with his sworn affidavit in support thereof, the respondent authorities were duty bound to conduct every kind of enquiry about the petitioner and also a discreet enquiry, if any required, so as to ensure that application form of the petitioner was in order and he was entitled for issuance of passport. It is so said because it is not even the allegation levelled against the petitioner that at the time of applying fresh passport, he has concealed any relevant information or withheld any material fact from the notice of respondent authorities. This is not the allegation against the petitioner even today. In the absence of any such allegation, respondent authorities had no jurisdiction to take an unilateral decision behind the back of the petitioner while issuing the impugned communication (Annexure P-11).

During the course of hearing, when a specific question was put to the learned counsel for the respondents, as to whether there was any other serious allegation against the petitioner, he had no answer and rightly so, it being a matter of record. Once there had been no allegation against the petitioner, including any allegation of concealment or withholding any material information, the impugned orders are nothing but non-speaking and arbitrary orders, which cannot be upheld. The respondent authorities have also violated the basic principles of natural justice. It has also not been pointed out on behalf of the respondents that they conducted any enquiry against the petitioner, wherein they might have come across about some serious objections against the petitioner, including his antecedents either in India or in England.

Further, when asked whether the petitioner has violated any provisions of law, including that of the Passport Act, 1967 or there was any other allegation or serious objection against the petitioner, learned counsel for the respondents could not point out any and rightly so, it being a matter of record. In this view of the matter, nothing is to be reconsidered by the respondent authorities which may warrant remanding the matter to them. In fact, keeping in view the totality of peculiar facts and circumstances of the case and testing it from any angle, the impugned orders have been found so arbitrary that the same cannot be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders dated 7.3.2014 (Annexure P-11) and dated 9.9.2014 (Annexure P-14) have been found patently illegal and arbitrary orders, the same cannot be sustained. Accordingly, the impugned orders are set aside.

Consequently, respondent No.2 is directed to release the passport of the petitioner forthwith and in any case within a period of three weeks from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

29.7.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No