

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.09.2017

+ **W.P.(C) 7706/2016**

ROHIT GOSWAMI

..... Petitioner

versus

**MINISTRY OF EXTERNAL AFFAIRS
AND ANR**

..... Respondents

Advocates who appeared in this case:

For the Petitioner

:Mr Karan S. Thukral, Mr Rohit Yadav.

For the Respondents

:Mr Ajay Digpaul, CGSC with Mr Saakshi
Aggarwal and Mr Mohita, Advocate
Govt. Pleader-UOI.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the decision of the respondents to revoke the petitioner's passport under Section 10(3)(c) of the Passports Act, 1967 (hereafter 'the Act'). The petitioner's passport was cancelled by a communication dated 25.04.2016 (hereafter 'the impugned order') principally on the ground that the petitioner had failed to respond to the show cause notice within the extended time as provided to him. The petitioner contends that revocation of his passport is without following the principles of natural justice and without authority of law.

2. Although, there is a considerable variance in the facts as narrated by the petitioner and the respondents, this Court does not consider necessary to enter the controversy in that regard. For the purposes of the present petition, it would be apposite to consider the facts as stated in the counter affidavit filed on behalf of the respondents. The principal question to be addressed is, whether the decision to revoke the petitioner's passport is in accordance with law. And, this question can be addressed on the facts as admitted in the counter affidavit. The facts as emerging from the counter affidavit filed by the respondents are set out below:-

2.1 The respondents state that on 01.09.2015, Indian Embassy at Kyiv (hereafter 'the Embassy') had received a complaint by an e-mail from one Adam Kalavat Husainbhai on behalf of himself and eight other students studying at Odessa National Medical University (ONMU). It was alleged in the e-mail that the petitioner had not returned money aggregating to US\$20,500, which the students had given to the petitioner for exchanging into local currency. A complaint was lodged by one of the students (Adam Kalavat Husainbhai) with Odessa Police.

2.2 Espousing the cause of the students, the Embassy immediately sent a letter dated 01.09.2015 to the Director, Ministry of Foreign Affairs, Kyiv and the Minister of Interior Affairs requesting that immediate action be taken, on the complaint lodged; to locate the petitioner and recover the amounts claimed from him. The Embassy also requested that Look Out Circular (LOC) notices be issued to the Airport/Migration Authorities as it was apprehended that the petitioner may try to flee the country.

2.3 The Embassy received information from the Chief of Police of Odessa that pre-trial investigations were being conducted. Thereafter, on

05.10.2015, the Embassy sent another reminder to the local police of Odessa to inform the Embassy about the progress in pre-trial investigation against the petitioner. Yet another reminder was sent on 12.11.2015. However, it is stated that the Embassy did not receive any response from the police authorities.

2.4 In the meantime, the Embassy also called the petitioner to the Embassy on 07.10.2015. It is stated in the counter affidavit that "*On 07.10.2015, Dr. Rohit Goswami was called to the Embassy and to exert pressure on him, his passport was retained in the Embassy with the approval of the Ambassador.*"

2.5 The petitioner sent an e-mail on 14.09.2015, *inter alia*, disputing the allegations made against him. He also complained of the conduct of Mr Ranbir Sandhu, the First Secretary, Indian Embassy at Kyiv (hereafter 'the First Secretary') terming his conduct of retaining the petitioner's passport as "blackmailing". On 02.12.2015, the petitioner reiterated his stand that he had cleared all the balance due to the students. The Embassy responded to the petitioner's mail calling upon him to furnish the written statement of the students along with copies of their passports, acknowledging that they had received the payments.

2.6 The petitioner sent several e-mails to the concerned officials on 12.12.20015, 15.12.2015 and 16.12.2015 expressing his frustration in the matter. He repeatedly demanded that his passport be returned.

2.7 The respondents state that in order to sort out the matter, the petitioner and one Mr Adam Kalavat Husainbhai were called to the Indian Embassy at Kyiv on 08.01.2016 and the petitioner was again advised to

return the money as claimed by the students. The respondents further claim that the Indian Embassy pursued through other prominent NRI's located in Odessa to morally pressurize the petitioner to return the money but the petitioner did not comply.

2.8 On 14.01.2016, the Indian Ambassador to Ukraine (hereafter 'the Ambassador') issued a formal show cause notice to the petitioner calling upon the petitioner to settle the outstanding dues with the six students, failing which appropriate action would be taken against the petitioner. A perusal of the said show cause notice indicates that the petitioner had provided statements written and signed by three of the nine students, who had initially complained against the petitioner, indicating that they had received all their funds from the petitioner. The notice further indicates that on the intervention of the First Secretary - at the directions of Charge'd affaires - the petitioner had returned half the amount taken from the students but had refused to return the balance.

2.9 The petitioner was issued another notice dated 27.01.2016 to resolve the matter with the students by 05.02.2016, failing which the Embassy would be forced to take action.

2.10 On 24.02.2016, the Ambassador sent a communication to the Joint Secretary, Ministry of Foreign Affairs seeking approval to revoke the petitioner's passport under Section 10(3)(c) of the Act as the petitioner had not resolved the issues with the students. The Ministry of External Affairs responded to the Ambassador, requesting that a show cause notice be issued to the petitioner and depending upon the reply submitted by him, the Embassy may revoke the passport according to Section 10(3)(c) of the Act, in the interest of general public.

2.11 Thereafter, a show cause notice dated 29.03.2016 was issued calling upon the petitioner to show cause as to why appropriate action not be taken for revocation of the petitioner's passport.

2.12 On 08.04.2016, the petitioner requested for extension of time to respond to the show cause notice on the ground that he was awaiting receipt of some documents. It is stated that the petitioner also came to the Embassy with two policemen demanding the return of his passport. However, they were not allowed to enter the Embassy. Thereafter, on 25.04.2016, the First Secretary sent a communication to the petitioner confirming that his passport (Passport No. F9510749) dated 23.10.2006, stands cancelled.

2.13 The petitioner responded to the show cause notice on 25.04.2016, *inter alia*, stating that he was a doctor by profession and was running a business in Odessa and he was not a money exchanger. He further stated that some students had approached him for taking some money to take a good rate and the money received by him was returned to the students in terms of their mutual understanding. He further claimed that he had written acknowledgement from the nine students that they had taken their money back and did not have any problems with the petitioner.

2.14 The petitioner further claimed that his passport had been taken away by the First Secretary on 01.10.2016 and he had refused to give the Passport back until the petitioner paid the amounts demanded. The petitioner also complained the manner in which the First Secretary, had been behaving with the petitioner.

2.15 The First Secretary sent another email dated 26.04.2016, calling upon the petitioner to make the necessary arrangements to go back to India as his passport stood revoked.

3. Mr Karan S. Thukral, learned counsel appearing for the petitioner stated that the entire process adopted by the Embassy in revoking the petitioner's passport was violative of principles of natural justice. The concerned authorities had failed to consider the case of the petitioner. He further submitted that the petitioner had been granted no opportunity of being heard before taking the decision for revoking his passport.

4. Mr Digpaul, learned counsel appearing for the respondents contended that the petitioner's passport was impounded as he had failed to comply with the directions to return the money taken from the students. On a pointed query being asked by the Court as to under what authority was the petitioner's passport impounded by the Embassy, Mr Digpaul contended that the Ambassador was attempting to resolve the disputes between the petitioner and nine students, who had filed complaint against the petitioner and the petitioner's passport was taken to pressurize him to resolve the matter amicably with the students. He submitted that the Ambassador had acted in a good faith and more like "*principal and a teacher to the petitioner and other students*". He stated that the passport was revoked in public interest and the said decision could not be faulted.

Reasoning and conclusion

5. At the outset, it is relevant to observe that it is now well settled that a citizen's right to a passport, which enables a citizen of India to travel, is a facet of fundamental rights guaranteed under the Constitution of India.

6. In *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India & Ors. : AIR 1967 SC 1836*, the Supreme Court (majority opinion) had held that the expression "personal liberty" in Article 21 of the Constitution of India includes the right to travel abroad and, therefore, no person could be deprived of such right except in accordance with the procedure established by law. The Passports Act, 1967 (hereafter 'the Act') was, therefore, enacted to regulate the issuance of passports and travel documents.

7. In the present case, it is apparent that there are certain disputes that had arisen between nine students who are stated to have entered into a transaction to exchange currency with the petitioner. This was admittedly, a private transaction between those students and the petitioner. One of the students, Mr Adam Kalavat Hussanbhai had also filed a complaint with the police authorities, and the Embassy had also espoused their cause by requesting action be taken against the petitioner. The petitioner, of course, had disputed the allegations made in the complaint.

8. Curiously, the Embassy had, immediately, on receipt of the complaint on 01.09.2015, issued a letter to Ministry of Interior Affairs and Police Chief, requesting for immediate action and also to issue a LOC. Admittedly, this action was taken without verifying any facts from the petitioner. Although, this court finds this a bit strange, but there is no dispute that the Indian Embassy Officials were within their right to assist the Indian students, to seek their remedies under the laws in force in Ukraine. However, what this court cannot countenance, is the manner in which the Indian Embassy Officials have acted thereafter.

9. In the counter affidavit filed by the respondents, it is, *inter alia*, affirmed as under:-

"On 07.10.2015, Dr Rohit Goswami was called to the Embassy and to exert pressure on him, his passport was retained in the Embassy with the approval of the Ambassador and this was subsequently informed to the Ministry of External Affairs, New Delhi."

10. It is, thus, the conceded position that the officials at Indian Embassy had taken away the petitioner's passport to put pressure on him. The said action on the part of the officials of the Indian Embassy is wholly without authority of law and contrary to the provisions of the Act. It is clear that the action of the Embassy Officials - the First Secretary and the Ambassador - to take away the passport of the petitioner was a blatant abuse of their authority and wholly illegal. The Petitioner's protest that Mr Sandhu, the First Secretary, was blackmailing (used in the sense of coercing) the petitioner is thus, plainly admitted.

11. Section 10A of the Act contains specific provisions for impounding passports. Section 10A(1) of the Act is quoted below:-

"10A. Suspension of passports or travel documents in certain cases.—(1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so to do, it or he may,—

- (a) by order, suspend, with immediate effect, any passport or travel document;
- (b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid,

for a period not exceeding four weeks:

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded:

Provided further that every holder of the passport or travel document, in respect of whom an order under clause (a) or clause (b) of this sub-section had been passed, shall be given an opportunity of being heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section."

12. It is apparent from the plain reading of Section 10A(1) of the Act that a passport of a citizen can be impounded or suspended only if the Central Government or any designated officer is satisfied that the passport is likely to be revoked under Section 10(3)(c) of the Act and it is necessary in public interest to do so. Moreover, the passport can only be impounded by an order, the term of which cannot exceed four weeks.

13. In the present case, the petitioner's passport had been effectively impounded on 07.10.2016 without passing any order and in complete disregard of the provisions of Section 10A of the Act. The Ambassador and the First Secretary seem to have evolved an extra legal procedure to adjudicate the disputes regarding monies allegedly due from the petitioner and to enforce their decision by coercive measures. The Ambassador and the First Secretary are not ignorant of the Act; however they chose to ignore the provisions of the Act and have wilfully acted contrary to law. This conduct, *prima facie*, violates the Civil Services Conduct (Rules)

1964 which, *inter alia*, enjoins all Government Servants to *refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices*.

14. The contention that the Ambassador acted as a teacher/principal and in good faith provides no excuse for acting contrary to the law. The officials in Indian Embassy had requested the local police authorities to take action on the complaint filed by Mr Adam Kalavat Husainbhai. In the event, the Embassy Officials, Ambassador and First Secretary felt that the students had been wronged, they could have taken a pro-active role in pursuing with the concerned authorities to ensure that the grievance of the students was readdressed, but it did not entitle them to *suo motu* appoint themselves as adjudicatory authorities and enforce their decision on the petitioner by coercive measures. Plainly, they could not have abused their official position to take away the petitioner's passport contrary to law and without any lawful order, as a coercive measure to enforce their demand that he pays money to third parties (students).

15. Section 10(3)(c) of the Act, which provides for cancellation of a passport reads as under:-

“10(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document, –

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(c) if the passport authority deems it necessary so to do 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.”

16. In the present case, there is no allegation that it was necessary to impound the passport in the interest of the sovereignty and integrity or the security of India or in the interest of friendly relations of India with any foreign country. The petitioner's passport has been purportedly revoked in the interest of general public.

17. At this stage, it is also relevant to refer to the show cause notice issued to the petitioner on 29.03.2016, which reads as under:-

"1. On Sept 01, 2015, Embassy received a complaint from 09 students studying in Odessa National Medical university that one Dr. Rohit Goswami had taken money US \$ 20,500 for exchange in local currency for depositing their tuition fees. Out of this amount you have returned 50% of the amount to the students after a lot of persuasion. Embassy had contracted you number of times regarding returning of the above amount and you were also called to the Embassy to settle the issue. In spite of briefing by the Ambassador, you failed to return the money. You have been advised a number of times verbally and in writing to return the money but despite all the efforts by the Embassy to resolve the issue you failed to comply with the request. Moreover, your behavior with the affected students has been inappropriate, intimidating and terrifying which is not expected from an Indian national. Your acts have not only put these students in difficult situation but have also left a very poor image of Indian nationals living in Ukraine on the Administration and police system of Odessa.

2. In view of the above facts the Embassy is forced to give a show cause notice to you as to why your passport should not be revoked under section 10, sub section 3 (3) of the Passport Act, 1967 which states that "if the passport authority deems it necessary so to do 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".

3. You may submit your reply within 10 days from receipt of this show-cause notice otherwise Embassy will be forced to take appropriate action.

4. This may be treated as Show-Cause notice as required under the rules.

5. This issues with the approval of Ambassador."

18. A plain reading of the show cause notice indicates that the real issue had no relation with public interest. Although, it is stated that the acts of the petitioner have left a poor image of Indian Nationals on the Administration and Police System of Odessa. This Court has no doubt that the said allegation has been put to give a colour of public interest, where none-exists. The correspondence relied upon by the respondents clearly indicates that the Embassy officials had demanded the petitioner to pay the money to the concerned students. The Embassy officials also attempted to move the police authorities to act immediately on the complaint filed by one of the students. Thus, it is apparent, that the only object of seeking revocation of the passport was not in any public interest, but to enforce the diktat of the Ambassador/First Secretary, for recovery of money. The Ambassador had sent an email to the Ministry of External Affairs on 24.02.2016, seeking approval to revoke the petitioner's passport and had enclosed therewith an email on 14.01.2016, which according to the Ambassador contained the "whole issue".

19. A plain reading of the said email indicates that the only issue was regarding refund of money to the students, which the Ambassador/First

Secretary were insisting upon. According to the respondents, the petitioner had submitted written and signed statement of three students that they had received the money, and the Ambassador was insisting that such written and signed statements of other students be also submitted to the Embassy. The relevant extract of the said email is quoted below:-

"2. On 01/09/2015, Embassy received a complaint from 9 students studying in Odessa Medical University that one Dr. Rohit Goswami had taken money from them (total amount was around US\$ 20,500) and that Dr Goswami was refusing to return the money to them. Shri R.S. Sandhu, First Secretary (Cons) in the Embassy was directed to intervene by the then Cd'A and sort out this matter. FS(Cons) was in touch with you and after a lot of persuasion, you had returned almost half of the amount to the students. However, you have refused to return the rest of the money to the students.

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5.... You were told specifically that the rest of the money should be returned to the 6 helpless students of the Odessa Medical University (which totals around US\$ 6800) and a written and signed statement by each of these six students may be submitted to the Embassy just as you had submitted in case of the other three students earlier. Once the Embassy confirms with the students that the money has been returned to them, all matters related to you will be considered resolved".

20. It is apparent from the above that the entire object of revoking the petitioner's passport was to enforce recovery of money from him.

21. In *Maneka Gandhi v. Union of India: 1978 SCR (2) 621*, Justice P.N. Bhagwati (speaking for himself Untwalia and Murtaza Fazal Ali, JJ) held that the words "in the interest of general public" was clearly defined

and took its colour from Article 19(5) of the Constitution of India. The relevant extract of the said decision is quoted below:

“There are four grounds set out in Section 10(3) (c) which would justify the making of an order impounding a passport. We are concerned only with the last ground denoted by the words “in the interests of the general public”, for that is the ground which is attacked as vague and indefinite. We fail to see how this ground can, by any stretch of argument, be characterised as vague or undefined. The words “in the interests of the general public” have a clearly well defined meaning and the courts have often been called upon to decide whether a particular action is “in the interests of the general public” or in “public interest” and no difficulty has been experienced by the courts in carrying out this exercise. These words are in fact borrowed ipsissima verba from Article 19(5) and we think it would be nothing short of heresy to accuse the constitution-makers of vague and loose thinking. The legislature performed a scissor and paste operation in lifting these words out of Article 19(5) and introducing them in Section 10(3) (c) and if these words are not vague and indefinite in Article 19 (5), it is difficult to see how they can be condemned to be such when they occur in Section 10 (3) (c). How can Section 10(3) (c) be said to incur any constitutional infirmity on account of these words when they are no wider than the constitutional provision in Article 19 (5) and adhere loyally to the verbal formula adopted in the Constitution? We are clearly of the view that sufficient guidelines are provided by the words “in the interests of the general public” and the power conferred on the Passport Authority to impound a passport cannot be said to be unguided or unfettered.”

22. The expression "in the interest of general public" has been interpreted, in the context of Article 19(5) and 19(6) of the Constitution of India, in various decisions to mean for the benefit of general public and for a public purpose. A reasonable restriction for benefiting the public at large (as opposed to private interests) has been sustained by the Courts. In other

words, any restriction in the interest of general public must be for the benefit of the public at large. The expression "in the interest of general public" has also been interpreted to include in furtherance of social or economic policy; for "common good"; and for securing the object mentioned in Part IV of the Constitution of India.

23. In *State of Bihar vs Kameshwar Singh: AIR 1952 SC 252*, the Supreme Court held that the expression "public interest" would also take colour from the statute. In the present context, the effect of cancelling the petitioner's passport would effectively deprive the petitioner from carrying on his business, which he has established in Ukraine. Thus, such action of revoking the petitioner's passport seriously curtails his fundamental rights. Plainly, such action which impinges on a citizen's fundamental rights, has to be justified by overwhelming public good and larger public interest, to fall within the scope of "in the interest of general public" as used in Section 10(3)(c) of the Act.

24. Viewed in the aforesaid context, the decision to cancel the petitioner's passport under Section 10(3)(c) of the Act cannot be sustained. It hardly served any public interest for the officials at the Embassy to act as self appointed dispute adjudicators; and, the decision of revoking the petitioner's passport on account of a dispute relating to a private transaction, can under no circumstances be termed as "in general public interest".

25. In view of the above, the order revoking the petitioner's passport is plainly without authority of law and cannot be sustained.

26. The petition is, accordingly, allowed and the respondents are directed to forthwith return the petitioner's passport.

27. The petition stands disposed of.

VIBHU BAKHRU, J

SEPTEMBER 18, 2017
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