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

+ **W.P.(C) 5315/2017**

SIKANDAR KHAN

..... Petitioner

Through: Mr Pradeep Dahiya, Advocate.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Vipra Bhardwaj and Mr Akhilesh
Kumar, Advocates for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.07.2017

VIBHU BAKHRU, J

CM No. 22521/2017

1. Exemptions are allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 5315/2017 and CM Nos. 22520/2017 & 22522/2017

3. The petitioner has filed the present writ petition *inter alia* challenging the order dated 18.10.2016 (hereafter 'the impugned order') passed by the Chief Passport Officer (respondent no.2), extending the original order of suspension of his passport (Passport No. K-9730692) till proceedings relating to impounding / revocation of the passport under Section 10 of the Passports Act, 1967 (hereafter 'the Act') are concluded by the Embassy of India in Riyadh.

4. The petitioner states that he is working as a Marketing Specialist in Riyadh Kingdom of Saudi Arabia since 2006. It is further stated that the petitioner has three sons aged six years, four years and fourteen months. Two of his sons are studying in Indian School, Riyadh.

5. It is stated that the petitioner came to India on a visit on 12.09.2016 on leave for a period of six months along with his family.

6. Apparently, there were certain complaints against the petitioner and an order suspending the petitioner's passport was passed on 20.09.2016. The said order reads as under:-

“Whereas, the Central Government on the basis of information available with it has the sufficient reasons to believe that provisions of clause (c) of sub-section (3) of Section 10 of the Passport Act, 1967 may be invoked against **Shri-Sikandar Khan S/o Ranjit Khan**.

Now therefore, the Central Government, has decided to suspend the Passport No. K-9730692 of Shri Sikandar Khan S/o Ranjit Khan under the provisions of Section 10-A of the Passport Act, 1967, for a period of four weeks from the date of issue of this order.”

7. Thereafter, the petitioner was issued a show cause notice dated 12.10.2006, which reads as under:-

“SHOW CAUSE NOTICE

It has come to notice that Shri Sikandar Khan has been indulging in unlawful activities against Indian emigrants working in Saudi Arabia. His attention is also drawn to Order No. VI/405/2/6/2016(Vol. IV) dated September 20, 2016 suspending his Passport No.K9730692 in this regard.

2. Shri Sikandar Khan is hereby required to show cause as to why his passport should not be revoked under Section 10(3)(c) of the Passports Act, 1967. His reply should reach the undersigned within 21 days of issue of this Show Cause Notice.”

8. The petitioner responded to the aforesaid show cause notice as under:

"That I Sikandar Khan S/o Ranjit Khan, having passport No. K9730692 is resident of Mangluna Sikar, Rajasthan.

That my abovementioned passport have been suspended on 20.09.2016 by the Embassy of India under section 10(A) of Passport Act 1967.

Thereafter I have been issued a Show Cause Notice by Embassy of India, Riyadh, regarding suspension of my passport on dated 12.10.2016 under section 10(3)(c) of Passport Act 1967.

Section 10(3) (c) in The Passports Act, 1967.

"If the passport authority deems it necessary so to do 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;

1. I was issued the above mentioned passport, on 18.08.2013, from Embassy of Riyadh.
2. That I have travelled on the said passport from Saudi Arabia to India on 12.09.2016 and stayed at Delhi, where my passport was suspended on 20.09.2016.
3. That on the instance of someone I have never applied for Political Asylum during the period of stay in Riyadh.

4. That during the above mentioned period of stay, I have not worked illegally. I am very responsible person. I never involved in politics nor worked illegally under section 10(3)(c) of Passport Act 1967. I will obey the all type of Rule and regulation in Riyadh. I will contact to Riyadh Embassy as earliest after entering in Riyadh.

5. It is humbly requested to restore the suspension of my passport and allow to go me to Riyadh."

9. Thereafter, respondent no.2 had passed the impugned order, extending the order suspending the petitioner's passport.

10. The respondents have filed a short affidavit wherein it is stated that complaints have been received in the Ministry that "*the Petitioner is involved in looting/robbery in Saudi Arabia with the help of local police friends in Riyadh*". It is further stated that complaints have been received against the petitioner of having cheated certain Indians residing in Saudi Arabia. It is stated that certain criminal cases have been registered by the police authorities in Rajasthan. The petitioner stated that all the police complaints were motivated and the same have been investigated and nothing adverse had been found against the petitioner as yet. In all the four cases, closure reports have also been filed.

11. Section 10A of the Act provides for the suspension of passport or travel documents in certain cases and reads as under:-

"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.

(2) The designated officer shall immediately communicate the orders passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.

(3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order.”

12. It is apparent from the plain language of Section 10A(1) of the Act

that an order to suspend the passport or travel documents can only be passed where the designated officer is satisfied that (a) the passport or travel document is likely to be impounded or caused to be impounded or revoked under Section 10(3)(c) of the said Act; and (b) it is necessary in public interest to do so. Section 10A(1) of the Act also expressly provides that the order of suspension can be passed for a period not exceeding four weeks.

13. The learned counsel appearing for the respondents has also referred to the proviso to Section 10A(1) of the Act which provides that the Central Government or the designated officer may, if it is considered appropriate, extend by order and for reasons recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding and revocation of the passport and travel documents are concluded.

14. Section 10 of the Act *inter alia* empowers the Passport Authority to impound the passport or travel documents on any of the grounds as set out in clauses (a) to (h) of Section 10(3). Section 10(3)(c) of the Act is set out below:-

“10. Variation, impounding and revocation of passports and travel documents.—

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(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;”

15. It is apparent from the above that under clause (c) of Section 10(3) of the Act, Passport Authority could impound or revoke a passport only if the Passport Officer deems it necessary to do so in the interests of (i) the sovereignty and integrity of India; (ii) the security of India; (iii) friendly relations of India with any foreign country; and (iv) in the interests of general public.

16. In the present case, the initial order of suspension was issued on 20.09.2016. A plain reading of the said order indicates that it is completely bereft of any reasons. In *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi and Ors: AIR 1967 SC 1836*, the Supreme Court held that the right to travel overseas and hold a passport is part of the fundamental right guaranteed under Article 21 of the Constitution of India. In *Maneka Gandhi v. Union of India and Anr.: 1978 SCC (1) 248*, the Supreme Court upheld the constitutional validity of Section 10(3)(c) of the Passports Act, 1967. However, Justice P.N. Bhagwati (speaking for himself, Justice Untwalia and Justice Murtaza Fazal Ali) observed as under:-

“... even though Section 10(3)(c) is valid, the question would always remain whether an order made under it is invalid as contravening a fundamental right. The direct and inevitable effect of an order impounding a passport may, in a given case, be to abridge or take away freedom of speech and expression or the right to carry on a profession and where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6).”

17. In the present case, the suspension or revocation of the passport would prevent the petitioner from travelling overseas to continue with his employment and, thus, such action of the Passport Authority would - unless it falls within the exceptions specified under Article 19(6) of the Constitution of India - plainly fall foul of Article 19(1)(g) of the Constitution.

18. The power to revoke or suspend a passport under Section 10 and Section 10A of the Act is a serious restriction on the fundamental rights of a citizen of India and it is plainly clear that any order revoking or suspending the passport without sufficient cause and without complying with the express conditions as indicated under Sections 10 or 10A of the Act or without following the principles of natural justice, would be liable to be set aside.

19. In the present case, there is no whisper of any allegation or any circumstance which would indicate that it is necessary to impound/revoke the petitioner's passport in the interests of the sovereignty and integrity of India, the security of India or friendly relations of India with any foreign country. The only allegation is that a complaint was received that the petitioner was involved in looting/robbery in Saudi Arabia with the help of local police friends in Riyadh and information was received that some criminal cases were being investigated.

20. There does not seem to be any material to establish that the petitioner is involved in looting and robbery in Riyadh. Almost nine months have elapsed since the petitioner's passport was suspended and the affidavit filed by the respondents only indicates that a complaint was received from one

Mr Usman; it does not refer to any other material. *Prima facie*, it is difficult to accept that the petitioner would want to travel to a country like Saudi Arabia (where the laws regarding robbery are very strict) in case, he was accused of any such activity. Clearly, a bald allegation, would clearly be insufficient to fetter/deprive a valuable fundamental right of a citizen. Insofar as criminal cases are concerned, the petitioner affirms that closure reports have been filed; more importantly, there is no order from any concerned agency or any court restraining the petitioner from travelling overseas.

21. The order dated 20.09.2016 does not indicate any reason for suspending the petitioner's passport. Apart from merely referring to Section 10(3)(c) of the Act, it does not indicate any reason which would support invoking of the said provision. Thus, this Court is unable to sustain the said order.

22. The show cause notice dated 12.10.2016 has been framed without application of mind and it is clear that it has been issued as a mere formality. In *Maneka Gandhi v. Union of India* (*supra*), the Supreme Court had authoritatively held that the principles of natural justice were required to be read in any action under Section 10(3)(c) of the Act. The petitioner has a right to be heard to oppose the grounds on which his passport is sought to be revoked. In the present case, the show cause notice is vague and completely bereft of any particulars. It only mentions that the petitioner is indulging in “*unlawful activities*”. This Court is hard pressed to imagine as to what response could be given to such a notice apart from denying the allegation. The right to be heard cannot be reduced to a meaningless formality. In the given facts, it is *ex facie* apparent that the show cause notice has been issued

without application of mind.

23. In view of the above, the impugned order, extending the suspension of passport is liable to be set aside.

24. Although, the petitioner has not made specific prayers for quashing of the show cause notice and the order dated 20.09.2016, in view of the above discussion, the order dated 20.09.2016 and the show cause notice is also set aside.

25. Given the cavalier manner in which the orders (orders dated 20.09.2016 and 18.10.2016) and show cause notice have been issued, the allegations of malafide as made in the petition, *prima facie*, appear to be merited. However, it is not necessary for this Court to examine the same same as, *ex facie*, the impugned order cannot be sustained.

26. The respondents are directed to forthwith return the passport to the petitioner and to not to restrain the petitioner from travelling overseas. However, this would not preclude the respondents from initiating any action in future, after due application of mind, and only if the necessary grounds are made out, with sufficient credible material to support such grounds.

27. The petition and the pending applications are disposed of with the aforesaid observations.

28. Order *dasti*.

VIBHU BAKHRU, J

JULY 06, 2017
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