

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 526 OF 2017

Ms.Chandbibbi Zaidi .. Petitioner

Vs.

Union of India and anr. .. Respondents

WITH
CHAMBER SUMMONS NO. 99 OF 2017
IN
WRIT PETITION NO. 526 OF 2017

Adv.Kiran Rasiklal Mehta .. Applicant

In the matter between

Ms.Chandbibbi Zaidi .. Petitioner

Vs.

Union of India and anr. .. Respondents

WITH
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 841 OF 2017

Ms.Chandbibbi Zaidi .. Petitioner

Vs.

State of Maharashtra and anr. .. Respondents

Mr.Kiran Mehta, Applicant in-person in CHSW/99/2017 –
Intervenor present.

Mr.Arshad Shaikh a/w Mr.Prashant Goyal I/b Mr.Gautam
Yadav, for Original Petitioner in Both Petitions.

Mr.Manish Jagtap, for Respondents No. 1 & 2 in WP/526/2017
and for Respondent No.2 in Cri.WP/841/2917.

**CORAM : R.M.SAVANT &
M.S.KARNIK, JJ.**

DATE : 18th SEPTEMBER, 2018

P.C. :

. The above Chamber Summons has been filed by the Applicant – Kiran Rasiklal Mehta seeking his impleadment in the above Writ Petition.

2. The above Writ Petition has been filed challenging the order dated 23/04/2013 - Exhibit 'Q' passed by the Regional Passport Officer and the order dated 05/02/2016 - Exhibit 'U' passed by the Appellate Authority under the Passports Act, 1967. By the said order dated 05/02/2016, the Appellate Authority has dismissed the Appeal filed by the Petitioner impounding the passport of the Petitioner. Hence, the above Writ Petition has been filed challenging the orders passed by the Passport Authorities under the Passports Act, 1967.

3. The above Writ Petition is heard along with companion Writ Petition being No. 841 of 2017. The said Writ

Petition has been filed challenging the order dated 26/12/2016 passed by the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai in C.C. No. 430/PW/2007. The said proceedings have arisen out of FIR which has been registered at the behest of the Applicant herein and amongst the offences alleged against the Petitioner is one of forgery and cheating.

4. Insofar as the said Criminal proceedings being C.C. No. 430/PW/2007 are concerned, the Petitioner it seems had filed an application before the learned Metropolitan Magistrate for being issued a passport of short duration. The said application came to be rejected by the learned Metropolitan Magistrate by the said order dated 26/12/2016 resulting in filing of the above Writ Petition No.841 of 2017. In the said Writ Petition, Applicant herein had filed an application being Criminal Application No. 191 of 2017 for seeking intervention in the said Writ Petition. The said application filed by the Applicant came to be rejected by a learned Single Judge of this Court Smt. Anuja Prabhudessai, J. by order dated 22/02/2018.

The learned Single Judge has relied upon the order passed by a Division Bench of this Court in Writ Petition No. 723 of 2014. The learned Single Judge has reproduced the excerpt from the said order in her order dated 22/02/2018. For the sake of ready reference, we reproduce the said excerpt -:

“9. At the outset, though we have given sufficient time to Mr.Kiran Mehta and to bring to our notice the relevant information, we do not think that section 10 and particularly section 11 of the Passports Act, 1967 can be construed so as to confer a right and in all cases of the present nature on the Applicant to remain present before the Appellate authority and make submissions. The Passport authority has been conferred with powers of issuing a passport or travel document and thereafter to prescribe their duration. It is conferred with the powers to refuse a Passport. In all such matters, the aggrieved parties are identifiable and can be legally recognized. The “holder of the Passport” are the words employed and some meaning will have to be given to them. Eventually, it is the Petitioner to whom the Passport has been issued. Eventually, the Petitioner who is the holder of the Passport. It is the Petitioner who has surrendered the Passport and it is the Petitioner to whom notice to show cause came to be issued. It is the Petitioner who is visited with the order passed by the Passport authority and it is the petitioner who has moved the Appellate authority against an adverse order. It may be that this Applicant has provided vital information and details to the Passport authority and a show cause notice has been issued at his instance or on his complaint but, beyond that we do not think that the Applicant should be given any opportunity and at a hearing which will be held by the Appellate authority once again or afresh. Xxx

14. All contentions of the Petitioner in relation to the Appeal are kept open. We clarify that the Appellate authority is free

to take into consideration and while deciding the petitioner's Appeal all materials that were before the Passport authority including the complaint in writing made by the Applicant Mr.Kiran Mehta in the Chamber Summons. All documents which were provided by Mr.Kiran Mehta may be taken into consideration by the Appellate authority while deciding the Appeal before it. The authority must allow an opportunity to the Petitioner and if sought to inspect the entire record and obtain copies of such documents as are placed by Mr.Mehta and then to meet the contents thereof.

15. Our order and direction will not oblige the Appellate authority in any manner to grant a personal hearing to the Applicant Mr.Kiran Mehta nor we are inclined to do so in the facts and circumstances of the present case. Beyond that we do not decide the issue of right or locus of a party like Mr.Kiran Mehta to participate in the proceedings under the Passports Act, 1967 and of the present nature.”

5. The learned Single Judge has also adverted to the fact that the Applicant had also filed an intervention application before the learned Metropolitan Magistrate. The learned Single Judge has observed that the said application was dismissed by the learned Metropolitan Magistrate whilst holding that the Applicant is not an aggrieved person. The learned Single Judge thereafter has gone on to observe that the the Applicant does not enjoy an indefeasible right to be heard in the matter. The learned Single Judge has further gone on to observe that as held by the Division Bench of this Court, the issue of renewal of

passport is exclusively within the domain of the Passport Authorities. Hence, whilst dealing with the application for intervention filed by the Applicant, the learned Single Judge has placed reliance on the order passed by the Division Bench of this Court. It would therefore be opposite to refer to the order dated 01/07/2015 passed by the Division Bench of this Court. The said order was passed in a Writ Petition being Writ Petition No. 723 of 2014 which was filed by the Petitioner in the earlier round challenging the order passed by the Appellate Authority on the ground that the said order was a non-speaking order. In the said Writ Petition, the Applicant had also filed an application for intervention being Chamber Summons No.71 of 2014. The Division Bench whilst hearing the Chamber Summons noted the submissions of the Applicant in the said matter and thereafter had concluded in the manner as appearing in the order, excerpt of which we have already reproduced hereinabove. The Division Bench of this Court therefore was of the view that the Applicant cannot be permitted to intervene in the Appeal which arises out of the order passed by the Passport Authority as issuance or non-

issuance of the passport is within the domain of the Passport Authorities.

6. The learned Counsel appearing on behalf of the original Petitioner Mr. Shaikh during the course of his submissions opposing the above Chamber Summons would place reliance on the order passed by the learned Single Judge wherein the excerpt of the order passed by the Division Bench has been reproduced. It was the submission of the learned Counsel that since the application for intervention in the companion Writ Petition has been rejected placing reliance on the order passed by the Division Bench dated 01/07/2015 in Writ Petition No. 723 of 2014, the said order impinges upon the right of the Applicant to intervene in the above Writ Petition.

7. Per contra, it was the submission of the Applicant who is appearing in-person that whilst placing reliance on the said order passed by the Division Bench dated 01/07/2015 the learned Counsel for the original Petitioner has sought to

misinterpret and misread the order so as to contend that the application for intervention has been rejected by the Division Bench. The party in- person sought to draw our attention to parts of the said order wherein the submissions of the Applicant have been noted by the Division Bench, so as to contend that since the submissions have been noted, the Division Bench has accepted the fact that the Applicant should be allowed to intervene. The party in-person Mr.Mehta sought to draw our attention to the alleged illegalities committed by the Petitioner in the matter of obtaining the passport. The party- in- person would draw our attention to the fact that the Applicant is a complainant in as many as 3 complaints which have been filed by him against the original Petitioner alleging the offences which are inter alia of cheating, forgery etc. The party-in-person would therefore submit that his presence is necessary during the hearing of above Writ Petition No. 526 of 2017.

8. We have heard learned Counsel for the original Petitioner Mr. Shaikh and the party- in- person Mr.Mehta. The

issue that arises whether the Applicant should be allowed to intervene in the above Writ Petition. As indicated above the above Writ Petition has been filed challenging the order passed by the Regional Passport Authority as confirmed by the order passed by the Appellate Authority under the Passports Act, 1967. The said orders have been passed for the reasons which have been stated in the said orders.

9. Insofar as the Applicant is concerned, no doubt, he is the complainant against the original Petitioner and at whose behest, 3 criminal cases are pending out of which in one, original Petitioner has been discharged, against which the proceeding is pending in this Court filed on behalf of the State. It is required to be noted that the Applicant in the companion Writ Petition being No. 841 of 2017 had filed an application for intervention which as indicated above came to be rejected by a learned Single Judge of this Court. The said Writ Petition can be said to arise out of an issue which can be said to be cognate to the issue raised in the above Petition.

10. Insofar as the issue which arises in the above Writ Petition No. 526 of 2017 is concerned, the learned Single Judge has, as we have mentioned in the earlier part of this order, relied upon the order passed by the Division Bench of this Court dated 01/07/2015. The order passed by the Division Bench is eloquent insofar as the intervention sought by the Applicant is concerned, the Division Bench in terms has observed that presence of the Applicant is not at all necessary before the Passport Authority as issuance or non-issuance of the passport is within the domain of the said Authority. The instant Petition having arisen out of orders passed by the Passport Authorities observations made by the Division Bench in the earlier round therefore assume importance. The findings of the Division Bench that the presence of the Applicant is not necessary before the Passport Authorities would therefore impinge upon the right of the Applicant to seek his intervention in the instant Writ Petition.

11. Now coming to the submissions of the party-in-person Mr.Mehta that there are observations in the order passed by the Division Bench dated 01/07/2015 wherein the right of the Applicant has been recognized and thereby the Division Bench has accepted the fact that the Applicant is required to be impleaded in the said Writ Petition, we do not find any such observations made by the Division Bench. The excerpts which were shown by the party-in-person is only recording of the submissions that were made by the party-in-person before the Division Bench. The said submissions have been recorded as undoubtedly the Division Bench was hearing the Chamber Summons filed by the Applicant before it for intervention.

12. In our view having regard to the issue which arises in the above Writ Petition, the Applicant, as rightly observed by the Division Bench in the earlier round, has no locus as grant or otherwise of the passport is within the domain of the Passport Authorities and the Applicant cannot have any say in the same. In that view of the matter, the Chamber Summons is required to

be rejected and is accordingly rejected.

13. List the above Petitions for admission on
03/10/2018.

(M.S.KARNIK, J.)

(R.M.SAVANT, J.)