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

+ **W.P.(C) 2091/2018 & C.M. Nos. 8677/2018 & 35544/2018**

JASVINDER SINGH CHAUHAN

..... Petitioner

Through: Ms Nandita Rao with Ms Iti Pandey,
Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Ms Anjana Gosain and Ms Rabiya
Thakur, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.09.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India praying for renewal of his passport bearing no. G1149580 and seeking direction to the respondent to issue a fresh passport.
2. The petitioner is an Indian Citizen and is working as a truck driver in Canada on a legal work permit. On 16.09.2016, the British Columbia Provincial Nominee Program, Ministry of Jobs, Tourism and Skills Training, Canada informed that the petitioner had been nominated under the Canada Provincial Nominee Program for permanent resident status.
3. On 28.10.2016, the petitioner applied for renewal of his passport at the Indian Consulate at Vancouver.
4. The respondent states that while processing the petitioner's application for renewal of the passport, it was found that another passport

(bearing no. P2161269), which was valid from 13.04.2016 to 12.04.2026 had been issued by the Consulate General of India (CGI), Atlanta. It is stated in the counter affidavit filed on behalf of the respondent that further inquiries revealed that one Sh. Jagdip Singh Dhillon, who is the brother-in-law of the petitioner, had manipulated the passport service sub system of the CGI at Atlanta and had dishonestly obtained a passport (Passport No. P2161269) by impersonating the petitioner. It is alleged that this was in collusion with the petitioner.

5. It is further affirmed in the counter affidavit that the petitioner was called for an interview with the CGI, Vancouver and the petitioner had identified the photograph on the passport no. P2161269 as that of his brother-in-law. The said passport was immediately revoked and a lost entry was also made in respect of the petitioner's passport bearing no. G1149580.

6. The respondent claims that the matter is still being investigated and the respondent is awaiting the outcome of such investigation.

7. The learned counsel appearing for the petitioner submits that the petitioner disputes the aforesaid allegation. He submitted that the petitioner had not accepted that the photograph on the passport bearing no. P2161269 issued by CGI, Atlanta was that of his brother-in-law. It is further contended that the original passport issued to the petitioner was in possession of the petitioner and was submitted for renewal to CGI, Vancouver. The petitioner claims that his brother-in-law, is an American Citizen and it is submitted that although the photograph on the passport (no. P2161269) issued by CGI, Atlanta bears some resemblances the petitioner's brother-in-law, there would be no reason for him to impersonate the

petitioner since he is already an American Citizen. It was further contended that the petitioner seeks the status of a permanent resident of Canada. Grant of such status would also permit the petitioner's family to join him in that country. It is stated that currently his application for the temporary resident status has been rejected, as the petitioner has been unable to provide a valid passport.

8. I have heard the learned counsel for the parties.

9. There is no dispute that the petitioner is a citizen of India and in normal circumstances would be entitled for the passport facilities. The grounds on which such facility can be refused are set out in Section 6 of the Passports Act, 1967, which reads as under:-

“6. Refusal of passports, travel documents. etc.

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

(a) that the applicant is not a citizen of India.,

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an

order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

10. Ms Gosain, the learned counsel appearing for the respondent did not dispute the grounds – except as stated in Clause (i) of Section 6(2) of the Act – were inapplicable in the facts of the present case. She submitted that the petitioner’s request for passport could be refused in terms of Clause (i) of Section 6(2) of the Act; that is, where the Central Government is of the opinion that issuance of a passport will not be in public interest. However, Ms Gosain also earnestly contended that no such decision had been taken by the concerned authorities as yet.

11. It is relevant to state that the petitioner had applied for renewal of his passport almost two years ago. It is also not disputed that the denial of the passport has put his residential status in Canada in jeopardy. The contention that the petitioner’s livelihood has been adversely affected has also not been disputed.

12. In *Maneka Gandhi v. Union of India: (1978) 1 SCC 248*, the Supreme Court had considered the relevance of a passport in the context of personal liberty of a citizen of India. Although, the constitutional validity of Section 10(3)(c) of the Passport Act, 1967 was upheld, Justice Bhagwati

(speaking for himself, Untwalia J and Fazal Ali J) observed that “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 Supreme court further observed as under:

“....There may be many such cases where the restriction imposed is apparently only on the right to go abroad but the direct and inevitable consequence is to interfere with the freedom of speech and expression or the right to carry on a profession. A musician may want to go abroad to sing, a dancer to dance, a rising professor to teach and a scholar to participate in a conference or seminar. If in such a case his passport is denied or impounded, it would directly interfere with his freedom of speech and expression.....

Examples can be multiplied, but the point of the matter is that though the right to go abroad is not a fundamental right, the denial of the right to go abroad may, in truth and in effect, restrict freedom of speech and expression or freedom to carry on a profession so as to contravene Article 19(1)(a) or 19(1)(g). In such a case, refusal or impounding of passport would be invalid unless it is justified under Article 19(2) or Article 19(6), as the case may be.”

13. In this case, denial of a passport – which is the effect of non-renewal for such an extended period – clearly impinges on the fundamental rights of the petitioner.

14. Although, Ms Gosain had earnestly contended that the respondent had not refused renewal of passport as yet, the fact that the petitioner’s passport has not been renewed in almost two years despite the petitioner’s compliance with all the formalities, leaves no room for doubt that the petitioner has been denied passport facilities. The fundamental rights of a citizen cannot be held hostage to an inordinately long inquiry being

conducted by the respondent or its agencies.

15. Even after expiry of two years, the respondent is not in a position to state that the Central Government has formed an opinion that it is not in public interest to deny passport facilities to the petitioner.

16. In the given facts, this Court is of the view that the petitioner's passport must be renewed immediately. In this case, non-renewal of the passport has seriously curtailed the petitioner's ability to carry on with his employment in Canada.

17. For the reasons stated above, the petition is allowed. All the pending applications are disposed of.

18. The respondent is directed to forthwith renew the petitioner's passport. However, it is clarified that in the event the inquiries reveal any ground to form an opinion that the petitioner should be denied a passport in the interest of general public; this order would not preclude the respondent from cancelling the passport in accordance with law.

19. Order *dasti* under signatures of the Court Master.

SEPTEMBER 11, 2018
MK/RK

VIBHU BAKHRU, J