

**IN THE HIGHCOURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 11186 of 2018 (O&M)

Date of Decision: 14.10.2020

Anil Kumar Kotwal

..Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D. S. Sandhu, Advocate,
for the applicant/petitioner.

Mr. Aditya Sanghi, Advocate,
for respondents No.1 and 2.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

1. Petition herein is under Article 226/227 of the Constitution of India, inter alia, seeking issuance of a writ in the nature of mandamus directing the respondents to issue passport to the petitioner.

2. Petitioner's case is that he had gone abroad (Germany) and lost his travel documents. The petitioner was deported/sent back in 1998 on emergency travel documents issued by Consulate General of India in Frankfurt, Germany. Since then he is living in India. After being deported to India, he once again applied for a passport. His passport was wrongly declined vide letter dated 27.05.2013 (Annexure P-7) on the ground that he is an asylee. The stand of the respondents for refusing passport to the petitioner is that since he had sought political asylum in Germany and therefore, being an asylee he has to approach the

foreign government concerned for issuance of travel document (passport).

3. Learned counsel for the petitioner vehemently argues that in somewhat similar circumstances, a Division Bench of Delhi High Court in an intra court appeal titled as ***Union of India and another Vs. Satnam Singh¹***, upheld the Single Bench judgement quashing the action/order of passport authority to decline passport to an applicant. Applicant therein too was earlier declined political asylum in Canada. Speaking for DB of Delhi High Court HMJ S. Ravindra Bhat (as his Lordship then was) observed as below:

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“16.Since the mention of the phrase ‘sovereignty and integrity of India’ in both these provisions was with respect to secessionist activities, with one Act preceding, and the other succeeding, the enactment of the Passport Act, 1967, it is only reasonable to presume that the legislative intention with respect to the use of the phrase in the present Act is similar. In Sardar Govindrao v. State of M.P., (1982) 2 SCC 414, the Court held that, The term “sovereignty” as applied to States implies “supreme, absolute, uncontrollable power by which any State is governed, and which resides within itself, whether residing in a single individual or a number of individuals, or in the whole body of the people”. Thus, sovereignty, according to its non legal connotation, is the supreme power which governs the body politic, or society which constitutes the State, and this power is independent of the particular form of Government, whether monarchial, autocratic or democratic.”

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23.This Court is of the opinion, therefore, that sovereignty and integrity of the country are robust concepts that can withstand the actions of isolated individuals who may seek political asylum; their mere action in so seeking asylum-without more, by way of action tending to undermine the sovereignty, through

actions that can result in disorder or violence-cannot be a ground for refusing passport to them.

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25. In light of the above case laws and provisions, it is clear that the provisions of the Act should be strictly construed as they have the consequence of depriving a person of his essential rights, and such deprivation should not be done lightly, but within the confines of the legislative provision. This Court, therefore, holds that the impugned orders as well as Kulvir (supra) have correctly appreciated the law and the applicable principles. For the foregoing reasons, the appeals have to fail; they are dismissed. No costs.”

4. Per contra, Mr. Aditya Sanghi, Advocate appearing for respondents No.1 and 2 submits that the reliance placed by learned counsel for the petitioner on the judgment *ibid* is totally misplaced. His case stands on a different footing. He points out that in an affidavit filed before passport office, the petitioner has admitted himself that he was granted political asylum in Germany which implies that his status is that of a refugee in Germany. Being refugee/aslyee he was rightly advised to approach the foreign government which has granted him asylum, to get passport from Germany.

5. The submission of learned counsel for the respondents flies in the face of respondents' own contradictory stand in the counter affidavit. It is deposed therein that petitioner was issued passport no.U-239955 in year 1995 from the office of regional passport officer, Jalandhar. It is further deposed that petitioner travelled on the said passport to Germany but was deported by Government of Germany back to India on the strength of an emergency certificate bearing EC No.515412 dated 28.10.1998 issued by Consulate General of India, Frankfurt.

6. The aforesaid stand taken by the respondents clearly reflects that the petitioner had though sought political asylum in Germany, but same was declined, resulting in his forcible deportation to India in year 1998. Petitioner was deported by German government goes on to show that he was declined asylum in Germany. The fact, that Indian government issued him emergency travel document at the time of deportation certifies that Government of India acknowledges that he was/is citizen of India.

7. It is not denied by the respondents in its counter affidavit that that petitioner has been residing in India (SBS Nagar, Punjab) since the time of deportation from Germany and prior to his leaving India for Germany. It is also not denied that petitioner has been issued ration card (P/1), driving licence (P/2), arms licence (P/3) and aadhar card (P/4) by the respective competent government authorities, which bear testimony to the fact that petitioner is a citizen of India.

8. Notwithstanding, the reason for not issuing a passport to the petitioner, as given in letter dated 27.05.2013 (P/7) read with letter 16.05.013 (P/6), is that he is an “asylee”. To my mind, refusal of a passport to the petitioner on this ground is not sustainable in law, more particularly in view of the DB judgement of Delhi High Court, supra.

9. Under section 6(2) of the Passports Act, 1957, the passport authority shall refuse to issue a passport 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) the 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 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. In view of the aforesaid categorical restrictive provision in the Act, the passport authority cannot refuse to issue a passport on any other ground except as those enumerated therein. In present case, the reason for refusal of passport to the petitioner as given in letters dated 27.05.2013 (Annexure P-7) read with letter 16.05.2013 (Annexure P-6) is that he is an asylee.

11. The grounds specified in section 7 *ibid*, do not include any such disqualification for issuance of a passport. Neither the grant nor refusal of asylum in foreign country a ground permissible under the Act *ibid* for refusal of passport. What is to be seen is whether an applicant is citizen of India or not ? The petitioner cannot be refused a passport either, because he is an asylee or he had sought but was declined political asylum in Germany. In my opinion, the ratio in **Satnam Singh** judgement is fully applicable to the instant case.

12. Learned counsel for respondents also argues that the petitioner had admitted in his affidavit filed with the application that he was granted political asylum in Germany. At worst, on that account, the petitioner may be guilty of a false declaration/misstatement. For that, the concerned authority may, if it considers necessary/proper, proceed appropriately against the petitioner, in the manner as may be permissible under law.

13. In the premise, order/letter dated 27.05.2013 (Annexure P-7), asking petitioner to approach foreign government, is set aside with direction to the respondents to process the application of the petitioner for issuance of passport in accordance with law.

14. Allowed in the aforesaid terms.

OCTOBER 14, 2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable

Yes/No
Yes/No