

AD-07
Ct No.09
26.08.2022
TN

WPA No. 19583 of 2021

Gaur Hari Guchhait
Vs.
The Union of India and others

Mr. Debashis Banerjee,
Mr. Supreem Naskar

.... for the petitioner

Mr. Hemonta C. Mitter

.... for the Union of India

Learned counsel for the petitioner contends that although Section 10(3)(e) of the Passports Act, 1967 envisages that, if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India, the passport authority may impound or cause to be impounded or revoke a passport or travel document, a coordinate Bench of this court, vide order dated April 21, 2021 passed in *W.P.A. 8637 of 2020 (Souvik Mukherjee vs. The Additional Secretary and Chief Passport Officer, Passport Seva Programme Division, Ministry of External Affairs, Union of India and Others)*, held that there was an Office Memorandum dated December 11, 2017 issued by the Chief Passport Officer, which made it clear that impounding/revoking of passport under the

relevant Sections of the Passports Act, 1967 is purely discretionary in nature.

More importantly, the learned Single Judge went on to observe that the impounding of passport should be based on the explanation given by the passport holder in response to the show cause notice issued by the authority. A passport should not be impounded, it was held, simply because a criminal case is said to be pending. The relevant Passport Officer should weigh the merit of the case and use his discretion for impounding the passport.

Learned counsel for the petitioner places reliance also on a judgment of a learned Single Judge of the Delhi High Court, reported at *2013 SCC OnLine Del 3007 (Manish Kumar Mittal vs. Chief Passport Officer)*, wherein the same proposition was iterated.

With utmost respect, I agree with the proposition laid down by the learned Single Judges of this court and the Delhi High Court, as cited by the petitioner.

Although learned counsel for the respondent-authorities points out that the Passports Act, 1967 merely contemplates the satisfaction on Section 10(3) of the said Act and Clause (e) thereof provides that if proceedings in respect of an offence alleged against the holder of a passport is pending before a criminal

court, the passport can be revoked or impounded, such argument does not cut ice, since the ratio laid down in the judgments cited by the petitioner are crystal clear on the issue that mere pendency of a criminal proceeding against the passport holder would not be a sufficient reason to prompt the Passport Authority to take the serious step of revocation and/or impoundment of the passport.

Apart from the fact that in the present case the petitioner, in answer to his show cause, clearly indicated before the authorities that the petitioner was a septuagenarian and has been suffering from several ailments and, being a widower, he seeks to visit his son, residing in Japan, immediately, primarily for the purpose of treatment and support, the Appellate Authority and/or the Passport Authority, while issuing the show cause, did not consider such explanation on merits at all.

Moreover, since the relevant Passport Officer in the instant case did not weigh the merit of the case before exercising his discretion for impounding the passport but mechanically relied on the mere pendency of the criminal proceeding against the petitioner to impound the passport, the order of the Appellate Authority as well as the first authority cannot stand the scrutiny of law.

However, since the writ court is not a fact-finding forum, appreciation of the contentions of the petitioner on merits ought not to be done by this court.

Accordingly, WPA No. 19583 of 2021 is disposed of by directing the Chief Passport Officer and Appellate Authority, CPV Division, Ministry of External Affairs, Government of India (respondent no.2 herein) to rehear the appeal bearing No. VIII/402/App-33/2021, preferred by the petitioner before the said authority, afresh and to pass a fresh decision thereon, upon taking into consideration the yardsticks stipulated in the coordinate Bench judgments as indicated above, as expeditiously as possible and upon giving another opportunity of hearing to the petitioner.

Such exercise of rehearing and taking a decision afresh on the said appeal shall be concluded positively within one month from this date. Immediately upon a decision being taken thereon in the light of the above observations, the Appellate Authority shall intimate its order to the petitioner by any expedient mode.

The parties shall act on the written communication by the learned Advocates for the parties, accompanied by a server copy of this order,

without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)