

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8272 OF 2019

Shaikh Habeeb Shaikh Hamid,
aged about , Occupation :-
R/o Gaibee Nagar, Near Alfala Masjid,
Ward No. 19, Nandura, Buldhana – 443404
Maharashtra.

PETITIONER

.....VERSUS.....

1. Union of India,
through Office of Joint Secretary (PSP) &
Chief Passport Officer, PSP Division, Patiala House Annexe,
Tilak Marg, New Delhi – 110001.
2. Regional Passport Officer,
Passport Office, C.G.O. Complex,
1st Floor, Seminary Hills, B Block,
Nagpur.
3. The Superintendent of Police,
Buldhana, Dist. Buldhana.

RESPONDENTS

Shri R.V. Gahilot, Advocate for the petitioner.
Shri N.S. Deshpande, Assistant Solicitor General of India for respondent Nos.1
and 2.
Ms. K.R. Deshpande, Assistant Government Pleader for respondent No.3.

CORAM : A.S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : JULY 29, 2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The petitioner who is a citizen of India had made an
application for grant of passport in the office of the Regional Passport

Officer on 21/1/2014 along with the requisite documents. After completing the necessary formalities, the petitioner was issued a passport on 28/4/2014. Shortly thereafter, on 5/5/2014, a show cause notice was issued to the petitioner under Section 10(3)(c) of the Passports Act, 1967 (for short “the Act of 1967”) in which it was stated that as per the report of the Superintendent of Police, Buldhana, the petitioner was an activist of a banned organization ‘SIMI’. It was further stated that since suspicious activities related to the organization were noted, it was proposed to impound the petitioner’s passport. Pursuant to the said notice, the petitioner surrendered his passport on 19/5/2014. Thereafter on 21/1/2014, the petitioner made an application for grant of passport facility. On 28/12/2018, the Passport Officer issued a communication to the petitioner stating therein that his case was referred to the Superintendent of Police, Buldhana for verification. Based on that report, the petitioner’s case was not recommended for grant of passport facilities. The petitioner was informed that it was proposed to refuse passport facilities under Section 6(2)(c) of the Act of 1967. The petitioner was informed that for having a clear report, he may contact the Superintendent of Police after which his request could be considered. The petitioner being aggrieved by the said communication preferred an Appeal under Section 11 of the Act of 1967. The Appellate Authority on 7/11/2019 heard the petitioner’s Counsel and passed an order upholding

the action of the Passport Officer of rejecting the passport facilities under Section 6(2)(c) of the Act of 1967 in view of the adverse police verification report as received.

Being aggrieved, the petitioner has challenged the aforesaid order.

3. Shri R.V. Gahilot, learned Counsel for the petitioner submitted that there was no basis whatsoever for the Police Authorities to have submitted an adverse police verification report. Though the petitioner was an accused in three criminal proceedings, he had been acquitted in all the said proceedings. The alleged offences were stated to have occurred much prior to the grant of passport facility to the petitioner. The reason mentioned by the Passport Officer based on the report of the Police Authorities that the petitioner was an active sympathizer of a banned organization was too general in nature and without any substance. Neither was any offence registered against the petitioner nor was any material collected to indicate the petitioner's connection with the banned organization. There was no reason for the Police Authorities therefore to have submitted an adverse police report. Placing reliance on the decisions in i) *Deepak Sadashiv Nikalje Vs. Union of India and others* [2003(2) Mh.L.J. 44]; ii) *Ms. Akanksha Amar Naik*

Vs. Government of India, Ministry of External Affairs & Ors. [2007 Cri. L.J. 575] and; iii) Naresh Lalchand Bhagchandani Vs. Union of India and others [2007(5) Mh.L.J. 56], it was submitted that the petitioner could not be denied the passport facilities merely on the basis of apprehension which was unsubstantiated. Right to travel abroad was recognized as a fundamental right and if the same was to be curtailed, there ought to be sufficient material to justify the same. It was thus submitted that the impugned action of refusing passport facility to the petitioner was liable to be set aside.

4. Shri N.S. Deshpande, learned Assistant Solicitor General of India for respondent Nos. 1 and 2 as well as Ms. K.R. Deshpande, learned Assistant Government Pleader for respondent No.3 supported the impugned action. It was submitted on behalf of the Passport Officer that since an adverse police report was received, it had denied passport facilities to the petitioner. The learned Assistant Government Pleader referred to the affidavit-in-reply filed on behalf of the Superintendent of Police in which it was stated that after making discreet enquiries, it was found that the petitioner was an active sympathizer of a banned organization and his activities were being monitored by the security agencies. It was for that reason that an adverse report was given. Attention was invited to paragraph 8 of the said affidavit to submit that if

required, the confidential report prepared by respondent No.3 would be tendered for perusal. It was thus submitted that no interference was called for with the impugned action.

5. On 14/7/2022, when the learned Counsel for the parties were heard, the learned Assistant Government Pleader was directed to produce the aforesaid confidential report from the Superintendent of Police for perusal. Accordingly, the said confidential report has been produced in a sealed cover. Today we have perused the same and in that backdrop, we have heard the learned Counsel for the parties.

6. The factual aspects with regard to the initial grant of passport to the petitioner, subsequent issuance of a show cause notice and surrender of the passport by the petitioner is not in dispute. When the petitioner sought release of his passport, the case was referred to the Superintendent of Police for verifying the petitioner's antecedents. In that report, the Police Authorities stated that the petitioner was an active sympathizer of a banned organization and hence an adverse report was being submitted. It is thus clear that only on account of the said adverse report, the petitioner has been denied passport facilities.

7. Perusal of the aforesaid confidential report indicates that the petitioner was an accused in Crime Nos. 3120/1998, 3110/2001 and

101/2000. Criminal trial was held with regard to the said offences and the petitioner has been acquitted in all the three cases in the years 2005 and 2007. Thereafter, it has not been stated that the petitioner is an accused in any other criminal proceeding or that any such trial is pending. Besides this, there is also a communication dated 26/11/2019 issued by the Superintendent of Police to the Commissioner, State Intelligence Department, Mumbai. In that communication, it has been stated that a list of 41 persons who were stated to be the members of the said banned organization was being annexed and presently the said 41 persons were inactive and were not indulging in any activities. The name of the petitioner in the said list is at Sr.No. 18. From this report, it becomes evident that in November-2019, the Superintendent of Police found that all the 41 persons who were alleged to be the sympathizers of the banned organization in which the name of the petitioner was also mentioned were not active with regard to any activities connected to the banned organization. This communication dated 26/11/2019 is after passing of the order in the Appeal preferred under Section 11 of the Act of 1967. The appellate order is dated 7/11/2019. It thus becomes clear that when the Appeal was decided, the Appellate Authority considered the earlier report of the Police Authorities in which it was stated that on making discreet enquiry, it was noticed that the petitioner was a sympathizer of the said banned organization and hence an adverse report

was being submitted.

8. We find from the aforesaid that the petitioner had made an application on 21/1/2014 for grant of passport facility. The same was proposed to be refused by the Passport Officer under Section 6(2)(c) of the Act of 1967 on 28/12/2018. The Appeal therefrom has been decided on 7/11/2019. Considering the subsequent report of the Superintendent of Police dated 26/11/2019, we find that the petitioner's request for grant of passport facility is required to be re-considered in the light of the material contained in the confidential report. The fact that after the aforesaid three offences, there has been no other offence registered against the petitioner is also a relevant fact. The decisions relied upon by the learned Counsel for the petitioner support his submission that in the absence of any adverse material, there would be no occasion to deny passport facility to the petitioner. In these facts therefore we are inclined to direct the Passport Officer to re-consider the petitioner's request for grant of passport facility in terms of his application dated 1/8/2018. Accordingly, the following order is passed :

ORDER

i. The order dated 28/12/2018 passed by the Passport Officer, Nagpur refusing to grant passport facility under Section 6(2)(c) of the Act

of 1967 as well as the order passed by the Appellate Authority under Section 11 of the Act of 1967 on 7/11/2019 is set aside. The Passport Officer, Nagpur shall re-consider the petitioner's application dated 1/8/2018 in the light of the communication of the Superintendent of Police, Buldhana dated 26/11/2019 issued to the Commissioner, State Intelligence Department, Mumbai. It would be open for the Passport Officer to obtain a fresh report from the Police Authorities if it deems the same necessary. After considering all the relevant aspects, the petitioner's application for return of the passport as made on 1/8/2018 shall be considered. A decision thereon be taken within a period of two months from receipt of copy of this judgment. The decision taken be communicated to the petitioner.

ii. Rule is made absolute in the aforesaid terms with no order as to costs.

(URMILA JOSHI – PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT