

8th August,
2023
(AK)
06

WPCRC 138 of 2023
in
W.P.A 5249 of 2022

The Court on its Own Motion
Vs.
The Under Secretary, Government of India

Ms. Sayanti Santra
...for the petitioner.

Ms. Chandreyi Alam
...for the Union of India.

Re: WPCRC 138 of 2023

From the previous order, it is seen that the Under Secretary, Government of India, Ministry of External Affairs, in brazen nonchalance, has not made himself represented before this court despite repeated reminders that he has been impleaded as a party to the writ petition.

A Rule was issued, bearing WPCRC 138 of 2023, which, however, culminated in precious nothing, since the Under Secretary was not represented for hearing.

It is made clear that since no allegation of deliberate violation of any order of this court pertaining to the merits of the matter has been made against the Under Secretary, this court chose not to issue a warrant of arrest against the Under Secretary despite the Under

Secretary having not appeared, more so since the tenor of the direction of this court was merely to ensure that the Under Secretary is represented, as the passport of the petitioner, as admitted by the respondents, is lying with the Under Secretary.

However, in the last order of this court, it was recorded that in view of the abstinence of the Under Secretary in the hearing, adverse inference shall be drawn against him.

In view of the above observations, WPCRC 138 of 2023 is discharged on the above observations.

The writ petition itself is taken up for hearing.

Re: WPA 5249 of 2022

The petitioner alleges that the petitioner is the holder of a passport which was duly issued to the petitioner.

It is evident from the annexures to the writ petition that the petitioner has furnished photocopies of all relevant papers regarding the petitioner's birth in India and other documents, which clearly indicate that the petitioner is an Indian citizen.

Moreover, the passport issued to the petitioner itself shows that the respondent authorities, that is, the

passport authorities were satisfied as to the credentials and qualifications of the petitioner to get the passport.

Thereafter, in an unthinkable manner of gross exhibition of State muscle, the petitioner's passport was seized, without any rhyme or reason being disclosed to the petitioner.

The passport authorities, on the query of court through counsel, disclose that the passport is lying now with the Under Secretary of the Government of India, Ministry of External Affairs, who chose not to remain unrepresented.

In such scenario, there is nothing on record, apart from the bald allegation of the respondents that the petitioner, at some unknown time and in some unknown location, had admitted that the petitioner is a Bangladeshi National.

The word "Bangladeshi National" is not a magic charm which will sway the considerations of court in upholding the brazen arbitrary action of the State.

It is clear from the records that there is nothing whatsoever which indicates that the petitioner was ever a Bangladeshi National.

Rather, no reason has been furnished by the respondent authorities as to why the petitioner's passport

was seized in a random manner and without giving any hearing to the petitioner and/or cancelling the same.

Another alarming facet here is that the petitioner's passport has allegedly reached the Under Secretary of the Government of India, Ministry of External Affairs without any reason for such transit being disclosed by the respondents.

This court expected the passport authorities to at least know as to how the passport reached the Under Secretary of the Ministry of External Affairs.

However, no explanation comes forth as to why no materials have been produced to back up the action of the authorities in seizing the petitioner's passport.

In the absence of any representation and/or reply by the Under Secretary, it is obviously presumed that there is no allegation whatsoever against the petitioner but it is the mere whim and fancy of the respondent authorities which prompted the authorities to ensure that the passport is detained with the Under Secretary.

In tune with the previous order of this court, due to the absence of the Under Secretary, adverse inference is drawn against the Under Secretary with regard to the allegations against the petitioner. It is presumed that there is no material to justify the seizure of the petitioner's passport.

Hence, WPA 5249 of 2022 is allowed, thereby directing the respondents, including the added respondent, that is, the Under Secretary, to immediately release the passport of the petitioner in favour of the petitioner.

The same should reach the petitioner within three weeks from the date of communication of this order to the added respondent, that is, the Under Secretary.

The parties shall act on the written communication of the learned Advocate-on-record for the petitioner, coupled with a server copy of this order, without insisting upon prior production of a certified copy, to ensure compliance.

The petitioner, upon return of the passport, shall be entitled to apply for renewal of the same in due process of law and, if so applied, the concerned authorities shall process the same in due process of law.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities

(Sabyasachi Bhattacharyya, J.)