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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-15312-2020

Date of Decision: 01.02.2023

Harpal Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Navkiran Singh, Advocate,
for the petitioner.

Mr. Sudhir Nar, Sr. Panel Counsel,
for respondents No.1 to 3.

Mr. Sandeep, Addl. AG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ of *certiorari* or any other appropriate writ for quashing the impugned order dated 28.10.2019 (Annexure P-14) passed by respondent No.2-Joint Secretary (PSP) & Chief Passport Officer, New Delhi vide which respondent No.2 denied to adjudicate the appeal of the petitioner which was filed by him challenging the impounding of his passport with a further prayer seeking direction to respondent No.3-Regional Passport Officer, Chandigarh to release the passport of the petitioner which was seized on 01.12.2017 vide Seizure Memo (Annexure P-5) and was sent to the Regional Passport Officer,

Chandigarh or to issue a fresh passport.

The brief facts of the present case are that the petitioner was holding a valid passport and vide Annexure P-1 dated 10.10.2017, he was issued Show Cause Notice by respondent No.3-Regional Passport Authority, Chandigarh seeking clarifications regarding issuance of passport facilities to him. By way of the aforesaid Show Cause Notice, he was called upon to provide a suitable explanation and submit a fresh application with correct details regarding the circumstances under which he had suppressed the material information in his Passport Application and obtained the aforesaid passport. The said Show Cause Notice was issued due to the reason that in the interest of the sovereignty and integrity of India, the security of India and also friendly relations of India with any foreign country and also to state as to why action should not be taken to impound the passport No.N6507248 dated 07.01.2016, under Section 10(3)(c) "In the interest of the sovereignty and integrity of India and also the security of India" the contents of the aforesaid Show Cause Notice vide Annexure P-1 are reproduced as under:-

"To,

HARPAL SINGH

S/O HARJINDER SINGH VILL. LOHARI

KALAN TEH-BASSI PATHANA, FATEHGARH

SAHIB, PUNJAB, INDIA, PINCODE -140412,

TEL NO.-

*Subject: Clarifications required regarding issuance of
Passport facilities to Shri/Smt./Kumari/Master
HARPAL SINGH*

Dear Applicant,

This is in reference to receipt of an adverse Police

Verification report corresponding to your application for Passport issue, with file number CH2068702391815, dated 07/01/2016.

You are therefore, called upon to provide a suitable explanation and submit a fresh application with correct details. Please note that you are required to furnish a proper explanation regarding the circumstances under which you had suppressed the material information in your passport application and obtained the above said passport.

This Show Cause Notice is issued to you due to the reason mention below:-

In the interests of the sovereignty and integrity of India the security of India, friendly relations of India with any foreign country.

Also state why action should not be taken to impound the passport number N6507248 dated 07/01/2016, under Section 10(3)(c), “In the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country” of the Passport Act, 1967 and Section 12(1)(b) of the Passport Act, 1967 should not be initiated against you.

Please quote the reference number mentioned in the top block of this letter for further correspondence.

Yours Sincerely”

Thereafter, as per the learned counsel for the petitioner, the petitioner being an Officer of the Court/Advocate at District Court, Fatehgarh Sahib and also a Human Rights Activist, was to attend a conference at Bangkok, Thailand which was to be conducted by the United Nations Office on Genocide Prevention and the responsibility to protect along with other International Organizations and the invitation was issued

to the petitioner by the United Nations Organization dated 01.11.2017 vide Annexure P-4. The said invitation was extended to the petitioner by Under-Secretary-General, Special Adviser of the Secretary-General on Prevention of Genocide. Thereafter, the petitioner, who was holding a valid passport went to Bangkok on 27th/28th November, 2017 and returned on 1st December, 2017, since the conference was scheduled to be held on 29th/30th November, 2017. However, when he came back to India, his passport was confiscated by the Airport Authorities on the basis of information supplied by the Passport Authorities. A document in that respect is attached with the present petition as Annexure P-5 which shows that it has been seized on the ground that 'Drils Status Impounded' and further noted that passport seized and sent to the issuing authority concerned i.e. R.P.O., Chandigarh. A seal of Immigration India is also placed on the aforesaid document dated 01.12.2017 (Annexure P-5) which shows that the petitioner has arrived.

The aforesaid Show Cause Notice is of the date of 10.10.2017 and vide Annexure P-2, the petitioner replied to the aforesaid Show Cause Notice which is dated 08.11.2017 in which he stated that the petitioner has informed that he had never misled or concealed any facts from the Passport Authority and let the Passport Authority be specific about what concealment has he made according to them. The said reply was sent by the petitioner by way of a registered post regarding which a photocopy of the receipt has also been appended on the aforesaid Annexure P-2. In this way, the Show Cause Notice is dated 10.10.2017, reply by the petitioner by way of a registered post is dated 08.11.2017, petitioner went abroad on 27/28.11.2017 and he came back on 01.12.2017 to India where his passport was seized at the

airport.

Mr. Navkiran Singh, learned counsel for the petitioner has submitted that the entire action of the respondent-Authority was vitiated in view of the fact that there is no order in existence by the passport of the petitioner has been impounded. He made the following submissions:-

1. A perusal of the Show Cause Notice dated 10.10.2017 itself shows that explanation was being sought from the petitioner that he has suppressed material facts in the Passport Application which affects the sovereignty and integrity of India, and therefore, Show Cause Notice was issued to him but he immediately replied to the same on 08.11.2017 by stating that he did not conceal any fact and let the Passport Authority be specific about the same so that he can reply and give explanation but the Passport Authorities did not take any action whatsoever on the reply to the Show Cause Notice and no Order of Impoundment or any other order was passed by the Passport Authorities or any other Authority. However, when he came back to India on 01.12.2017 his passport was seized which was without the authority of law.
2. He further submitted that the petitioner had earlier approached this Court by filing a writ petition bearing CWP-25606-2018, by seeking a direction to the Ministry of External Affairs to decide his appeal dated 15.01.2018 which he had filed on the basis of action of the respondents by which his passport was seized and this Court vide Annexure

P-12, disposed of the aforesaid writ petition with a direction to the Chief Passport Officer, Ministry of External Affairs, Patiala House Annexe., Tilak Marg, New Delhi to consider and decide the appeal within six weeks and in case on consideration, the competent authority reaches to the conclusion that the benefit claimed by the petitioner is admissible to him, in such eventuality, the consequential relief be allowed to him, within a period of six weeks thereafter and in case the competent authority feels that the relief claimed by the petitioner is not admissible or made out, in that case, a speaking order be passed in the matter. He submitted that thereafter vide Annexure P-14, the Joint Secretary (PSP) & Chief Passport Officer, New Delhi passed an order on the appeal on 28.10.2019. He further submitted that a perusal of the aforesaid order would show that the order is not only cryptic, fanciful, arbitrary but *ex facie* non-speaking order. He also submitted that after recording the facts, as stated by the Regional Passport Authority, in the last para i.e. Para No.11, the appeal has been simply dismissed on the ground of non-maintainability. He further submitted that a perusal of the aforesaid order would show that in Para No.4, it has been so stated that the petitioner was issued Show Cause Notice dated 10.10.2017 and on 10.10.2017 his passport has been impounded under Section 10(3)(c) of the Passports Act, 1967. He submitted that the date on which the

Show Cause Notice was issued i.e. 10.10.2017 was the same date which has been shown where the order of impounding has been passed dated 10.10.2017 which is, therefore, not only an empty shell but also improbable and therefore, even the Joint Secretary (PSP) & Chief Passport Officer did not apply his mind and passed the order in a stereo-typed manner.

3. Learned counsel further submitted that in fact the factual position is that no order of impounding of the passport at all has been passed till date by any authority and the seizing/confiscation of the passport was without any authority of law and therefore, the petitioner was entitled for the return of the passport.

4. Learned counsel also submitted that the petitioner is not assailing or challenging the powers of the Passport Authorities or the Central Government but he is challenging the exercise of powers which has been done in the present case clearly in an arbitrary and fanciful manner. He submitted that right to travel abroad is a Fundamental Right and passport cannot be impounded without adopting just and fair procedure as held by a Seven Judge Constitution Bench of Hon'ble Supreme Court in “**Maneka Gandhi Vs. Union of India and another**” 1978(1) SCC 248. He further referred to another Five Judge Constitution Bench of Hon'ble Supreme Court in “**Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, New Delhi and others**” AIR

1967 SC 1836. He submitted that serious prejudice has been caused to the petitioner by the action of the respondents whereby the Passport of the petitioner has been seized without there being any order of impounding or any other order from any Court of law or under any provision of law, and therefore, he is entitled for the return of the passport. Furthermore, there had been serious infringement of *Principles of Natural Justice*.

5. Learned counsel further submitted that the petitioner is not facing any FIR or criminal trial at all. However, earlier he was convicted under the T.A.D.A. Act, but thereafter, the petitioner has since been acquitted by the Hon'ble Supreme Court vide Annexure P-3 dated 04.12.2007 and in this way the petitioner has no criminal track record.

On the other hand, Mr. Sudhir Nar, Senior Panel Counsel appearing on behalf of respondents No.1 to 3 has submitted that a Show Cause Notice was issued to the petitioner vide Annexure P-1 to which undoubtedly the petitioner replied vide Annexure P-2. But the Show Cause Notice was issued to the petitioner on the basis of inputs from the Intelligence Department that there was suspicion which was the reason as to why Show Cause Notice was issued by stating that as to why the passport of the petitioner be not impounded. He further submitted that the respondents-Passport Authorities as well as the Central Government have right to take action against anybody to whom the passport has been issued since the passport is the property of the Passport Department and can be impounded

and confiscated at any point of time if the authorities are satisfied in public interest as well as the sovereignty and integrity of India under the Passports Act. He also submitted that it cannot be said that the appeal which was decided by the Joint Secretary (PSP) & Chief Passport Officer was a cryptic order because it was held to be not maintainable as per the provisions of Section 11 of the Passports Act.

Mr. Sandeep, learned Additional Advocate General, Punjab has submitted that the matter pertains to the Passport Authorities and the Punjab State has got no role to play.

I have heard the learned counsel for the parties.

The present is a case where most of the facts are not in dispute. The petitioner was holding a valid passport and as of date he is neither involved in any FIR nor any criminal case. The petitioner was however earlier convicted in one case under the T.A.D.A. Act but thereafter the conviction has already been set aside by the Hon'ble Supreme Court vide Annexure P-7. Vide Annexure P-1, the petitioner was issued a Show Cause Notice dated 10.10.2017 seeking explanation that he had concealed and suppressed some facts in the Passport Application, and therefore, explanation was called for from the petitioner. Vide Annexure P-2, the petitioner gave a reply by way of a registered post dated 08.11.2017. Thereafter, the petitioner was invited by the United Nations Organization vide Annexure P-4 for attending a conference at Bangkok and the petitioner went to Bangkok on 27/28.11.2017 and came back after three days i.e. on 01.12.2017 and on the Airport his passport was seized by the Passport Authorities on the requisition sent by the Regional Passport Officer,

Chandigarh.

On 16.03.2021, learned counsel for the respondents-Passport Authority had submitted before this Court that the passport of the petitioner was impounded pursuant to certain classified information and which can be shared with the Court only in a sealed cover. Thereafter, on 23.01.2023, the sealed cover was opened by this Court and documents were perused and these are again perused today after opening the seal. One of the document is dated 28.10.2019, which is the order passed by the Joint Secretary (PSP) & Chief Passport Officer, which has already been attached with the petition as Annexure P-14 and the second document is a letter dated 11.09.2017 which has been written to the Regional Passport Officer by the Under-Secretary, Government of India whereby a recommendation has been made to the Passport Authorities that it will be in the interest of the national security to impound the passport of petitioner-Harpal Singh Cheema and the Passport Authority, Chandigarh was requested to straight away initiate the proceedings of impounding/revocation of passport of the petitioner under Section 10(3)(c) of the Passport Act and submit the action taken report. The aforesaid letter is of dated 11.09.2017 wherein only a recommendation has been made by the Central Government to the Passport Authorities, Chandigarh to 'initiate an action' against the petitioner for impounding his passport and in pursuance thereof, the Passport Authority vide Annexure P-1 issued Show Cause Notice to the petitioner on 10.10.2017 but till date no order for impounding of the passport has been passed by the Passport Authorities or any other authority.

On 23.01.2023, this Court had directed that some responsible

officer from the Regional Passport Office, Chandigarh shall remain present in the Court along with the entire record of the case on the next date of hearing.

Today, the concerned officer from the office of the Regional Passport Office has come present along with the record of the case. On a specific query being raised to the learned counsel for the respondents No.1 to 3 that as to whether any order has been passed by any authority including the Regional Passport Authority by which the passport of the petitioner has been impounded or not to which he, after referring to the record which the concerned officer has brought, has stated that till date no order has been passed for impounding the passport of the petitioner.

It is very surprising to note that a perusal of the appellate order dated 28.10.2019 would show that in Para No.4 it has been so stated by the Appellate Authority that Show Cause Notice was issued to the petitioner on 10.10.2017 and the same date i.e. on 10.10.2017, the passport was impounded which is not factually only incorrect but also improper. The aforesaid position has now been affirmed by learned counsel for respondents No.1 to 3 on the basis of record which was requisitioned by this Court that till date no order has been passed for impounding of passport of the petitioner by any authority at all.

The law with regard to the significance of a passport has been dealt in detail by a Seven Judge Constitution Bench of the Hon'ble Supreme Court in *Maneka Gandhi's case (supra)* wherein it was held that for impounding of the passport, the power has to be exercised in just and fair manner. In the present case, although Show Cause Notice was issued to

which the petitioner replied but admittedly, no order of impounding the passport of the petitioner has been passed by any authority.

On another query being raised to the learned counsel for respondent Nos.1 to 3 as to under what authority of law, the Regional Passport Authority had asked the Airport Authority to seize the passport of the petitioner, to which he submitted that the power of search and seizure is provided under Section 14 of the Passports Act. However, a perusal of the aforesaid would show that Section 14 will not apply in the present case since according to the aforesaid section, the officer of customs empowered by a general or special order of the Central Government in this behalf and any officer of police or emigration officer not below the rank of sub-inspector may search any place and seize any passport or travel document from any person against whom a reasonable suspicion exists that he has committed any offence punishable under Section 12. However, a perusal of Section 12 which deals with the offences and penalties, would show that the case of the petitioner does not fall in any of the categories. Therefore, the provision of Section 14 read with Section 12 will not apply in the present case.

In view of the aforesaid peculiar facts and circumstances, this Court is of the view that action of the respondents No.1 to 3 is vitiated on the ground of wrongful exercise of powers being arbitrary and oppressive. This Court is not making any observation with regard to the power of the respondents- Passport Authorities or the Central Government to take action in accordance with law. No doubt the powers exist under the provisions of Passports Act but here is a case where the exercise of power was bad in

view of the aforesaid facts and circumstances. Respondent No.3 has not only violated the *Principles of Natural Justice* i.e. the rule of *audi alteram partem* but has also violated the statutory provisions of Passports Act and in sharp contrast to the authoritative law laid down by the Hon'ble Supreme Court in ***Maneka Gandhi's case (supra)***. After serving Show Cause Notice, passport has been confiscated/impounded without considering reply filed by the petitioner or hearing him and without passing any order for impounding amounts to violation of *Principles of Natural Justice* and is also wrongful exercise of powers.

In view of the aforesaid facts and circumstances, the Show Cause Notice dated 10.10.2017 (Annexure P-1) and order dated 28.10.2019 (Annexure P-14) are quashed. The Passport Authorities are directed to return the passport of the petitioner within a period of three weeks from today.

Since the aforesaid orders have been quashed on the basis of wrong exercise of power and according to this Court, a power vests in the Central Government and the Passport Authority to proceed against any person in due process of law, a liberty is granted to the Regional Passport Authority that in case they are of the view that any fresh Show Cause Notice is required to be given to the petitioner, then the same can be done strictly in accordance with law and thereafter, to proceed again strictly in accordance with law.

The documents which were supplied in a sealed cover and opened in the Court, are returned back to the learned counsel for respondents No.1 to 3.

The present petition stands allowed.

01.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes |