

July 22, 2024
Sl. No.3
Court No.9
s.biswas

WPA 6885 of 2024

Narinder Singh Ahluwalia
vs.
The Union of India and others

Mr. Goutam Misra
Mr. Vaskar Pal

... for the petitioner

Mr. Asok Kr. Chakraborti, ld. ASGI
Mr. Kumar Jyoti Tewari

... for the respondents

1. The petitioner is the constituted attorney of Hardev Singh Ahluwalia.
2. The writ petition has been filed challenging the order passed by the competent authority, impounding passport no.K5199475, belonging to Hardev. The petitioner contends that such order was passed illegally, behind the back of the passport holder and also without granting any opportunity of hearing.
3. Hardev went to Canada for higher studies and continued to remain in the said country. He also embraced Canadian citizenship. Under the Indian law, Hardev cannot have dual citizenship.
4. The order impounding the passport is an appealable order. Either the petitioner or Hardev were at liberty to prefer an appeal, in accordance with law, if they were aggrieved by the said order, impounding the Indian passport. However, the passport has since expired. The order

impounding the passport has become an act of the past. Hardev wants to visit India.

5. The next question is whether the Hardev can get the Overseas Citizen of India Card (hereinafter referred to as OCI Card).
6. It appears that Hardev approached the Consulate General of India at Vancouver, Canada for an OCI card, and submitted his passport.
7. Allegedly, Hardev was for the first time intimated that his passport had been impounded, owing to pendency of some criminal cases against him. It is contended by the petitioner that Hardev did not have any knowledge about the pendency of the criminal cases. The government is of the view that the pendency of the criminal cases had been suppressed from the authority, but it is contended that an alleged tenant had initiated the cases when Hardev was in Canada.
8. In any event, there are decisions of High Court and the Supreme Court where it has been held that mere pendency of criminal cases should not be a ground for impounding a passport. Moreover, there is also an allegation of violation of the principles of natural justice.
9. The admitted position is that:-
 - a) Hardev is a Canadian citizen,

- b) Hardev's passport has been impounded without hearing him, when he was staying at Canada.
 - c) Hardev has a right to appeal against the order of impounding, and also allege violation of the principles of natural justice.
 - d) Hardev has a right under the law, to get an OCI card, upon compliance of formalities.
 - e) The passport was surrendered for the purpose of issuance of the OCI card, but the process could not be completed as the passport had been impounded by an order issued in India. Hardev's passport also expired in 2022.
 - f) Hardev was intimidated by the Indian Consulate in Canada that unless there was a clearance from the competent authority, the OCI card could not be granted by the Indian High Commissionerate at Vancouver.
 - g) Hence the writ petition.
10. The matter is now pending before the Ministry of External Affairs. The situation is a tricky one. The validity of the petitioner's passport had also expired two years ago. The order of impounding is an act of the past. The person is not an Indian citizen, but of Indian origin who wants an OCI.
11. Either Hardev or his constituted attorney will file a detailed representation before the respondent no.2, i.e., the Chief Passport Officer, PSP Division,

Ministry of External Affairs, via e-mail or physically. The authority will decide the matter, in accordance with law, upon granting an opportunity of hearing to either Hardev Singh Ahluwalia through virtual mode or to the petitioner, physically. The matter shall be decided upon taking into consideration the fact that only because a tenant had initiated criminal proceedings, whether the clearance certificate should be denied to Hardev Singh Ahluwalia. Hardev Singh Ahluwalia claims to be of Indian origin, but had been residing in Canada. He has a right to get an OCI in order to visit his country and engage in such activities which are permissible, as per the card. It is also submitted that Hardev's parents and the relatives are residing in India and he needs to come to India to contest the proceedings. Moreover, Hardev's case is that he was residing in Canada and he could not have been impleaded in any criminal case.

12. The decision shall be taken by the authority, within six weeks from receipt of the representation, and communicated to the applicant. A fair, prudent and reasonable approach should be adopted by the authority, upon perusal of all relevant documents.
13. The writ petition is accordingly disposed of.

14. All the parties are directed to act on the basis of the order of this court.

(Shampa Sarkar, J.)