

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 14280 of 2019

Rahul Saraff
Vs.
Union of India & Ors.

For the writ petitioners	:-	Mr. Amritam Mandal, Adv. Mrs. Kabita Saraf, Adv. Mrs. Ananya Chakraborty, Adv.
For Union of India	:-	Mr. Rajashree Roy, Adv.
Heard on	:-	29.07.2024
Judgment on	:-	23.08.2024

Amrita Sinha, J.:-

The petitioner is aggrieved by the order dated 9th October, 2018 passed by the Assistant Passport Officer impounding his passport under Section 10(3)(b) & (e) of the Passports Act, 1967, herein after referred to as 'the Act' for the sake of brevity.

The **brief facts of the case** are as follows:

The petitioner was issued a passport in the year 2008 which was due to expire on 3rd December, 2018. In the year 2012 the petitioner was implicated in a criminal case under Sections 406/420/120B of the Indian Penal Code, 1860. Prior to the expiry of the passport, he applied for renewal of the same disclosing that he was not charged with a criminal proceeding

by any criminal Court in India. Relying upon the aforesaid information his passport was renewed with validity till September, 2028.

After renewal of the passport police verification report was received, which revealed pendency of a criminal case against the petitioner. On receipt of the adverse police report a clarification was sought from the petitioner to submit explanation regarding the circumstances under which he suppressed the material information in his passport application and obtained the said passport. The petitioner was directed to state why action should not be taken against him for impounding the passport under Section 12(1)(b) of the Act.

On receipt of the adverse police verification report a show cause notice dated 10th September, 2018 was issued to the petitioner which was duly replied by him on 13th September, 2018. Vide communication dated 17th September, 2018 the petitioner was directed to appear for a personal hearing on 25th September, 2018.

By a communication dated 3rd October, 2018, the authority imposed penalty of Rs.5,000/- (five thousand only) for not disclosing proper information at the time of applying for renewal of the passport. Fourteen days' time was given to the petitioner for filing his show cause as to why action should not be taken against him for submitting incorrect information for renewal of the passport.

The petitioner duly paid the penalty amount of Rs. 5,000/- on 3rd October, 2018. Vide communication dated 9th October, 2018 the petitioner

was intimated that the authority decided to impound his passport under Section 10(3)(b) & (e) of the Act on the ground of non-disclosure of pendency of a criminal case against him. The petitioner was requested to submit the passport in the office immediately. He is aggrieved by the same.

Submissions of the petitioner:

The petitioner submits that the action to impound the passport is illegal and erroneous. The petitioner was given fourteen days' time to submit representation as to why action should not be taken against him, but prior to the expiry of the said time limit, the authority in a hasty manner passed the order for impounding the passport.

On the day the application for renewal was filed by the petitioner there was no criminal charge against him. The petitioner did not provide any wrong or false information at the time of renewal of the passport.

It has been contended that the authority ought not to refuse renewal of the passport if the activity of the petitioner is not prejudicial to the sovereignty and integrity of India. There is no reason detrimental to the security of India and the presence of the petitioner is not likely to prejudice the friendly relation of India with any foreign country if his passport is renewed.

The criminal case that is pending against the petitioner arises out of a family dispute and though the case commenced in the year 2012 but till date there has not been any substantial progress. There is no likelihood of

the said case to go for trial in the immediate future and it may take a considerable period of time for the said criminal proceeding to get over.

It has been submitted that the petitioner intends to go abroad for obtaining medical treatment and he is willing and agreeable to follow the reasonable restrictions that may be imposed upon him for using his passport.

It has been argued that the impugned order is an unreasoned one. No reason has been furnished apart from mentioning of the provision of the Act for impounding the passport. An order which does not bear any reason is liable to be set aside.

Relying upon the report of an external agency i.e the police verification report, the passport ought not to have been impounded.

Precedents relied upon by the petitioner:

Reliance has been placed on the following judgments in support of the petitioner:

- 1. Vangala Kasturi Rangacharyulu –vs- Central Bureau of Investigation** reported in **2021 SCC Online SC 3549**.
- 2. Kamal Kumar Narottam Dash Parekh –vs- Superintendent of Regional Passport Authority** reported in **2009 SCC Online Cal 1892**.
- 3. Haran Chandra Halder –vs- Union of India & Ors.** reported in **2014 SCC Online Cal 7848**.

4. *Sumit Mehta -vs- State (NCT of Delhi)* reported in (2013) 15 SCC 570.

5. *Mrs. Maneka Gandhi -vs- Union of India & Ors.* reported in (1978) 1 SCC 248.

6. *Ranjit Singh -vs- Kolkata Municipal Corporation* reported in AIR 2017 (NOC 752) 255 : 2017 SCC Online Cal 5039.

Prayer of the petitioner:

Prayer has been made for setting aside the impugned order of impounding the passport and, consequently, release the same.

Submissions of the Union of India:

Learned advocate representing the Union of India opposes the prayer of the petitioner. It has been submitted that the petitioner has intentionally and deliberately furnished false and incorrect information at the time of making application for renewal of his passport. The police verification report clearly indicates that the petitioner was facing a criminal charge before the Court of law and the said criminal case was pending on the date the application for renewal was made. The petitioner was arrested in connection with the said case. Cognizance of the offences was taken by the Court and charge sheet was also filed against the petitioner way back in the year 2013. Despite being a charge sheeted accused, the petitioner suppressed the fact of pendency of the criminal case against him.

It has been submitted that law provides for impounding the passport if the passport is obtained by suppression of material information or on the basis of wrong information provided by the holder of the passport or if the proceeding in respect of an offence alleged to have been committed by the holder of the passport is pending before a criminal Court in India. In the instant case both the two conditions for impounding being attracted under Section 10 (3)(b) and (e) of the Act, the authority rightly impounded the passport of the petitioner.

It has been argued that the order impugned is an appealable one and the petitioner ought to have approached the appellate forum for relief instead of approaching this Court under Article 226 of the Constitution of India.

Prayer of the respondent authority:

Respondents pray for dismissal of the writ petition.

The legal position:

The provision of law which has been invoked for impounding the passport is Section 10 (3)(b) and (e) of the Act. Section 10 deals with variation, impounding and revocation of passports and travel documents. Section 10 (3) prescribes that the passport authority may impound or cause to be impounded or revoke a passport or travel document if the passport or travel document was obtained by suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or 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.

Section 12 deals with offences and penalties under the Act. S.12 (1)(b) of the Act lays down that whoever knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under the Act shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

Section 11 of the Act provides for appeal. Any order passed under S.10 (3) is an appealable one.

Section 6 of the Act lays down the grounds for refusal of passports, travel documents etc. S.6 (2) mentions that subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-Section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a).....

(b).....

(c).....

(d).....

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a Court

in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court;

(h)

(i)

Deliberation by the Court:

I have heard and considered the rival submissions made on behalf of both the parties.

Admittedly, in the instant matter a criminal case, where the petitioner has been arraigned as an accused, is pending consideration before the criminal Court. The petitioner was in custody for some time. From the order sheets of the criminal case annexed to the writ petition, it appears that the case is at the stage of framing of charges. The petitioner approached the learned Court in seisin of the matter praying for a direction upon the regional passport officer to release his impounded passport. The learned Court, vide order dated 26th November, 2018, rejected the said prayer on the ground of availability of an adverse police verification report.

The application filed under Section 156(3) CrPC by the de facto complainant pursuant to which the criminal case was initiated is annexed to the writ petition. It appears therefrom that the petitioner was impleaded as accused no. 2 in the said application. Allegation is with regard to sale of certain shares of a company. The dispute which led to the filing of the complaint is absolutely private in nature. The offences are no ground for refusal for issuance of passport in favour of an applicant in terms of Section 6(1) of the Act.

The petitioner being aware of the pendency of the criminal case against him ought not to have suppressed or furnished false/incorrect information at the time of making application for renewal of passport. The criminal case in which the petitioner is implicated is pending since 2012 and charge sheet was filed against him in the year 2013. Charge may not have been framed and trial may not have started, but the same does not mean that the criminal case becomes non-existent or stands disposed of. The criminal case remains pending in the records of the Court.

The petitioner contends that the impugned order is liable to be set aside on the ground of non-disclosure of reasons. The Court cannot accept such contention of the petitioner. The section or the provision of law relied upon for impounding the passport is clearly mentioned in the impugned order. The section itself discloses the ground for impounding. When the law invoked for passing a particular order discloses the reason, the said administrative order cannot be said to be an unreasoned one. Had the section or the provision of law under which action is taken not been

mentioned, then the impugned order would have been hit being a non-speaking one; but as the provision clearly mentions the ground for impounding, accordingly, the allegation of non-mentioning of reason for impounding the passport cannot be taken to be a valid one.

Providing reason does not mean that an essay or a paragraph mentioning ground(s) for passing an order is required to be mentioned. If the basic minimum reason for taking an action is made known and one is able to decipher the cause for taking such action, then the same cannot be alleged to be an unreasoned one.

The ratio laid down in the case of Ranjit Singh (*supra*) will not be applicable in the facts and circumstances of the instant case particular because it cannot be said that the impugned order is an unreasoned one.

The next contention of the petitioner is that as the authority granted opportunity to the petitioner for filing his explanation within a specified period, accordingly, the authority ought to have waited till the expiry of the stipulated time period to permit the petitioner to come up with an explanation for his action. Despite granting opportunity to the petitioner to file reply, the authority, in hot haste, passed the order for impounding his passport. The same is violation of principle of natural justice making the impugned order liable to be set aside.

The Court is one with the aforesaid submission of the petitioner. When a particular time limit was fixed by the authority permitting the petitioner to come up with an explanation as to why action should not be taken against

him, the authority ought to have waited till the expiry of the said time limit and should not have jumped to take a decision prior to the petitioner filing any response to the explanation sought for. The same has certainly infringed the right to natural justice.

The respondent authority has harped upon the point that the impugned order is an appealable one and the writ petition ought not to be entertained. True that the order impugned is an appealable one, but the petitioner has not only approached the learned criminal Court where the criminal case is pending, but on rejection of his prayer for releasing his passport by the criminal Court, he has also invoked the extra ordinary high prerogative writ jurisdiction of the High Court for relief citing violation of the principle of natural justice.

In usual course of events such action on the part of the litigant is not accepted by the Court. Had the petitioner been aggrieved by the order passed by the Criminal Court, then the remedy available under the criminal law ought to have been availed. Here the petitioner has invoked the writ jurisdiction on the ground of violation of principles of natural justice.

A writ petition is maintainable when there is violation of a fundamental right. From the facts of the case it does not appear that any fundamental right of the petitioner has been infringed. Right to travel abroad is certainly not a fundamental right. The allegation of violation of natural justice, the very ground for moving the instant writ petition have to be

relatable to a fundamental right which is alleged to be infringed by the authority.

In *Maneka Gandhi (supra)* the Court was of the opinion that the right to go abroad is not a guaranteed right under any clause of Article 19 (1) of the Constitution. Imposition of restrictions on the right to go abroad by impounding of passport cannot be held to be void as offending Article 19 (1) (a) or (g).

In *Sumit Mehta (supra)* the Hon'ble Supreme Court observed that law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.

Similarly in this case, as on date, there is no order convicting the petitioner of any offence and hence, he is liable to be treated as innocent.

In *Vangala Kasturi (supra)* the Hon'ble Supreme Court held that refusal of a passport can be only in case where an applicant is convicted during the period of five years immediately preceding the date of application for an offence involving moral turpitude and sentenced for imprisonment for not less than two years.

In the instant case the criminal proceeding is yet to go for trial. Charge has also not been framed.

In *Kamal Kumar (supra)* this Court was examining as to whether the writ petition ought to be rejected on the ground of existence of alternative

remedy under the Passports Act. The Court while deciding the issue took into consideration the law laid down in the case of ***Whirlpool Corporation vs. Registrar of Trademarks; (1998) 8 SCC 1*** and in *Maneka Gandhi (supra)*. The Court opined that since the writ petition is founded on the allegation of violation of the principle of natural justice, the writ petition may be entertained.

In the same judgment the Court was also adjudicating the issue as to whether an effective opportunity of hearing is required to be afforded before the impounding order is issued. The Court relied upon *Maneka Gandhi (supra)* where it was held that the passport authority may proceed to impound the passport without giving any prior opportunity of hearing to the person concerned but as soon as the order of impounding the passport is made, an opportunity of hearing, remedial in aim, should be given.

In *Kamal Kumar (supra)* the Court was of the considered opinion that the power under Section 10 (3) of the Passports Act is discretionary as the word 'may' is used. Law does not mandate that pendency of a criminal case against the holder of a passport would automatically result in impounding of his passport. The passport authority has to decide, upon exercising its discretion, whether pendency of such criminal case should result in impounding of the passport or not. The principle that such power cannot be exercised at the dictate of an external agency is applicable in such case.

In the instant case the passport authority blindly relied upon the report of the police and took the decision to impound the passport. There

has been no independent application of mind as to whether, under facts and circumstances of the instant case, impounding is necessary. The authority unilaterally and mechanically impounded the passport of the petitioner without giving a reasonable opportunity of hearing.

In Haran Chandra Halder (*supra*) the Court held that in case of refusal to re-issue passport, the applicant has a right of hearing before the order of refusal is made and denial of hearing amounts to violation of principles of natural justice making the order untenable. The Court also held that in such case exercise of writ jurisdiction on the ground of availability of alternative remedy cannot be questioned. The Court also held that the pendency of a criminal case is not an automatic bar in re-issuing the passport.

Here, the authority ought to have applied its mind prior to impounding the passport especially, keeping in view the stage of the criminal proceeding. The proceeding in question is pending for more than ten years and none can say with certainty the period within which the proceeding may come to an end. Pendency of the criminal proceeding, in such a situation, may not stand as a bar for an applicant to travel abroad.

There may be various reasons for a person to travel abroad. It may be for the purpose of service, business, education, treatment, vacation or otherwise. The Act lays down the conditions under which passport can be refused or impounded. If the purpose infringes the sovereignty and integrity

of the country or the security, friendly relation with any country or in the interest of the general public, the passport can certainly be impounded.

Such is not the case at hand. Non-disclosure of the pendency of a criminal case is the primary reason to impound the passport. The petitioner has not been convicted by any Court and he has to be presumed 'not guilty', as of now. Right to life includes right to modern medical treatment. The petitioner has disclosed that he intends to go abroad for medical treatment.

The very idea for issuance of passport is to regulate departure from India. The authority is to ensure that the passportee does not turn out to be an escapee. There is nothing on record to suggest that the petitioner would take steps to escape from the country and immediate action is required to be taken by impounding his passport. The criminal case was pending against the petitioner for more than five years prior to renewal of his passport. Had the renewal not been due, the police report would not have been called for and the question of impounding would not have arisen.

The authority granted time to the petitioner to show cause within a particular period. The order of impounding the passport was passed prior to the said period being over. The same has to be taken as a breach of natural justice. The authority ought to have waited for the explanation from the petitioner on this issue and thereafter could have taken a decision. There was no emergency or urgency to pass the impugned order of impounding the passport prior to obtaining an explanation from the petitioner.

There may be an instance where a criminal case is registered against any person with mala fide intention and the said case remains pending in Court for years together, would then the pendency of such criminal case ipso facto stand as a bar in either issuing or renewing the passport of an applicant?

It is common knowledge that judicial proceeding in the Courts of our country may remain pending for years together for diverse reasons. Should such pendency of a criminal proceeding be a bar for an applicant to travel abroad? The purpose of the passport is only to regulate travel and not bar travel altogether. A person can, after the purpose for travelling abroad is over, return to the country. It is not necessarily that a person for jumping bail or to avoid criminal proceedings would require a passport to flee abroad. There is nothing to suggest that the petitioner was trying to avoid any criminal proceeding or he intended to run away from the country by using his passport.

The primary object to restrict foreign travel of an accused person against whom criminal proceeding is pending is to ensure that the criminal proceeding is not held up and, in the event the said accused is ultimately convicted, then he can undergo the punishment. It is basically to ensure that the criminal proceeding is not frustrated. As long as the requirement to restrict travel does not achieve the desired result, then there is no point in impounding the passport mechanically.

In view of the above, the Court is of the considered opinion that the order impugned is liable to be set aside and is, accordingly, set aside. The passport authority is directed to grant an opportunity of hearing to the petitioner to submit his explanation and to disclose the reason for his travelling abroad. Now that it has come to the knowledge of the authority that a criminal case is pending against the petitioner, as such, mere pendency of a criminal case shall not be the assigned reason to impound his passport. If the petitioner can satisfy the authority that he has genuine reason(s) to travel abroad and he would return to the country within a specified period, then the authority shall take a decision to return his passport. The authority shall ensure that the provisions of the Act are not violated in any manner. A decision shall be taken and communicated to the petitioner at the earliest but positively within a period of six weeks from the date of communication of this order.

Writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)