
(2009) 10 J&K CK 0008
In the Jammu And Kashmir High Court

Ashiq Hussain Sheikh

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Passports Act, 1967 — Section 5

Citation : (2010) 1 JKJ 324

Hon'ble Judges : H. Imtiyaz Hussain, J

Bench : Single Bench

Judgement

H. Imtiyaz Hussain, J.—Petitioner Ashiq Hussain Sheikh holds a passport bearing No. A-3094962. The validity of the passport has expired

on 22.3.2008. He has now applied for its renewal. While as other members of his family possess valid passports, his application for renewal has

not so far been cleared by the respondents. Hence the present petition.

2. Respondent Passport Officer has stated that nodal agency i.e. CID J & K, Srinagar has not cleared the case of the petitioner for grant of

passport in his favour. The record submitted by the Passport Officer would show that vide Communication No. CID/PP/NR/08/0117 dated:

30.8.2008 Director General of Police CID J & K, Srinagar has informed the Passport Officer that the verification of the individual is not complete

as yet but the reports collected so far do not favour him for recommendation of issuance of passport. They have further said that till opinion is

formed his case is sent as 'not recommended'.

3. Petitioner's counsel has referred to the entries made in the passport, copies of which been placed on file and the visas granted to the petitioner

which would show that the petitioner has visited Singapore, Saudi Arabia,

HonKong, Malaysia and China in connection with business. The learned Counsel has also referred to judgment and order of this Court in HCP No. 956/91 decided on 5.8.92 which would show that petitioner had earlier been put under preventive detention but the detention order stands quashed by this Court. Relying on the provisions of the Passport Act and a judgment of this Court in Anwar-ul-Haq Vs. Union of India (UOI) and Others, , learned Counsel would submit that under the Manual, 2001 issued by the Government of India the Passport Officer has not to go by the police report but take its own decision regarding issuance or otherwise of the passport to any applicant. Under the provisions of the Passport Act and the Manual the Passport Officer has to call the report for a period of only one year before the date of application, the enquiry in this respect is to be conducted from all places of residence during the period of one year only.

Heard.

4. Section 5 of the Passport Act 1967 deals with the application for passport/travel documents and orders thereon. It provides as under:

Application for passports, travel documents, etc, and orders thereon.

(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as

may be specified in the application may be made to the passport authority and shall be specified in the application may be made to the passport

authority and shall be accompanied by such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination

and other connected miscellaneous service in issuing passports and other travel documents.

5. Guidelines to regulate the grant of passport have been laid down in Manual, 2001 Clause 7 deals with the verification by police authority.

6. A conjoint reading of Section 5 and Clause 7 of the Manual, 2001 would show that when the matter regarding issuance of Passport is referred

by the Passport Officer to the police authorities for verification the Passport Officer should call the report for a period of one year only before the

date of application. The manner in which the report is obtained is contained in Clause a & p of Clause 7 of the Manual. On receipt of the report

the Passport Officer should take its own decision in the facts and circumstances

of the case. In this behalf the Passport Authority should not treat the police report as adverse unless it is clearly negative. Passport cannot be refused on a negative police/CID report unless it is supported by evidence, which can be defended in a Court of law. Thus the period of police verification should be confined to one year only before the date of application and if any negative report is received pertaining to the said period the same cannot be acted upon unless supported by cogent evidence. The time limit for receipt of verification report has been fixed as 30 days and if no verification report is received within this period and all documents are in order, the passport should be issued without waiting for the police report over due basis. While doing so the passport authority shall be guided by the instructions of the Chief Passport Officer in this regard issued from time to time. If such a passport is issued, the PIA would ensure that appropriate action is taken in case an incomplete or adverse police report is received.

7. In the present matter the police has not forwarded a complete report but has only informed the passport officer that verification collected do not favour him for recommendation of issuance of police. No details have been given nor has the report been supported by any evidence. On the facts I find undue delay has been committed by the CID department while dealing with the case of the petitioner.

8. In the circumstances this petition is disposed of with a direction to the State respondents to submit a complete verification report of the case of the petitioner to the Passport Officer within ten days from the date this order is served on the Director General of Police CID J & K Srinagar. The Passport Officer shall thereafter pass appropriate orders in terms of Section 5 of the Passport Act and clause(c) of the Manual, 2001 within one week from the receipt of the report of the CID department.

9. Order accordingly.

The record produced by Ld. A AG is returned to him in the open court.