

(2014) 12 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1680 Of 2013 and CMP No. 2735 Of 2013

Ashraf Mir

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 278

Hon'ble Judges : Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : S.R. Hussain, Advocate, for the Appellant; R.A. Khan, AAG, for the Respondent

Final Decision : Disposed off

Judgement

Mohammad Yaqoob Mir, J.â?"From the perusal of the records it emerges that respondent No. 3 had issued Passport No. A-8957658 on

24.07.2002 in favour of the petitioner valid upto 23.07.2003, has been renewed, but finally expired in the month of December 2006. In the foreign

country i.e. Russia, petitioner has undergone MBBS course, which position is supported by the certificate No. 256 dated 26.08.1998 issued by

the 'Kazakhstan SEMEY State Medical University'. Furthermore, petitioner appears to have contracted marriage there with one Marina Lupareva;

two children are born out of the said wedlock, which is clear from the affidavit and photographs placed on record.

2. On the expiry of the validity of the Passport in the month of December 2006, petitioner had applied for its renewal vide key No. B-001088

under 'Tatkal' category; in view of no response one more application was filed in the year 2011 vide key No. M-000486, again without response,

which prompted him to file OWP No. 912/2013; vide order dated 11.09.2013, respondent No. 2 therein was directed to send the copy of the

report to respondent No. 3 within one week, thereafter respondent No. 3 was to take decision under the Passport Act, 1967.

3. In compliance of the said direction respondent No. 2 had forwarded the report to respondent No. 3 to the effect that the petitioner had crossed

over the line of control to Pakistan Occupied Kashmir in the year 1989 for obtaining arms training; on return was arrested in the year 1991 and

detained under the provisions of the Public Safety Act, 1978. On such basis grant of Passport has not been recommended.

4. The said petition (OWP No. 912/2013) came up again for consideration before the court on 01.10.2013 but since respondent No. 3 had taken

decision not to grant Passport, the writ petition was rendered infructuous so dismissed with liberty to the petitioner to work out the remedy under

law,

5. The order of refusal dated 24.09.2013 issued by respondent No. 3 under No. POSK/144R/B00108806-M00048608 is unsustainable for the

reasons to follow:-

(a) Respondent No. 3 has not applied his mind as was required because on the basis of the police verification report refusal order could not be

automatic, atleast Passport Officer was required to consider that the alleged activities pertained to the period 1989 to 1991;

(b) Petitioner had been granted Passport in the year 2002; had been in Russia for a quite long time where he has now family.

(c) Nothing had been brought on record to show that the petitioner in any manner remained connected with any unlawful activities from the year

1991 or during the long period he remained in Russia;

(d) Apprehension that the petitioner, if allowed to go abroad, may indulge in activities prejudicial to the sovereignty and integrity of the Country or

the State, is totally misplaced.

(e) Refusal of grant of Passport is in effect to push the petitioner to an uncertain situation, resultant effect of which is to subject his family i.e. wife

and two children who are residing in Russia, to disadvantageous position.

6. Respondent No. 3 (Passport Officer, Srinagar) in the reply has stated that the order of refusal is passed consciously. In the light of Section 6(2)

of the Passport Act 1967, the case of the petitioner was examined. He was personally involved in the militancy related activities, therefore there is a bonafide belief that his presence on foreign soil may not be in the interest of the Union of India.

Section-6 of the Passports Act, 1967 provides grounds for refusal of Passport, travel document etc. Section 6(2)(b) provides that the Passport

Officer shall refuse grant of Passport or travel document for visiting any foreign Country on various grounds which include likelihood of the

applicant to get engaged outside India in the activities prejudicial to the sovereignty and integrity of the Country.

7. The star question which arises for consideration is as to whether in view of the position of the petitioner having crossed the border, obtained

arms training; refusal of the Passport shall be just. Every case has to be judged on its own facts and features, there cannot be straight jacket

formula to be adopted.

8. Petitioner allegedly had crossed the border in the year 1989 for arms training, on return had been detained under the provisions of the Public

Safety Act but released in the year 1991. From the year 1991 till date nothing adverse attributable to the petitioner has been placed on records.

9. Petitioner had been granted Passport under No. A-8957658 valid from 24.07.2002 to 23.07.2003, its validity had been extended from time to

time till December 2006; in the intervening period on the basis of the said Passport had gone to Russia where he has spent 10 long years, got

married there. He has completed his degree in the year 2004 from 'Kazakhstan SEMEY State Medical University', had come back to India in the

year 2006. In the year 2007 again went to Russia on Tatkal Passport which was his last visit because thereafter he has been denied issue of

Passport.

10. The apprehension of the respondent-authority that on the foreign soil the petitioner may get engaged in the activities prejudicial to the

sovereignty and integrity of the Country or the State, is negated by the conduct of the petitioner. Human nature is such which sometimes especially

in young age gets influenced by the facts, circumstances and the position prevalent. If in the year 1989 petitioner deviated from the right path but

after the year 1991 he has not been shown to be involved in any activity

prejudicial to the sovereignty and integrity of the Country or the State. His position of having been granted Passport in the year 2002, then visit to Russia and stay there for 10 years where he has completed the degree of MBBS, then also contracted marriage having two children; his Passport being extended from time to time till December 2006, can such person be denied Passport so as to divest him of his normal life which he is living in Russia along-with his family.

11. In case Passport Officer would have applied mind to all these facts and circumstances, he would have taken independent decision. It is true

that the CID is a nodal agency on the basis of adverse report Passport Officer has to be loath to issue Passport so as to avoid any type of

unnecessary situation more particularly to avoid any person's activities prejudicial to the sovereignty and integrity of the Country or the State.

12. If the only circumstance i.e. petitioner had indulged in wrong acts in the year 1989-1901 is available against him then Passport should not have

been granted to him in the year 2002, and then extended upto December 2006. On the basis of the Passport so granted subsequent to what had

been attributed to him in the year 1989-1991 he has not shown any type of inclination towards any wrong activity in Russia and has not indulged in

the activities prejudicial to the sovereignty of the County or the State, instead has completed his degree from 'Kazakhstan SEMEY State Medical

University', then contracted marriage there and has two children.

13. Respondents No. 1 & 2 have not been able to produce anything so as to show that after the year 1991 petitioner has in any manner anywhere

remained connected with any activity prejudicial to the sovereignty and integrity of the Country or the State. When it is so, how can such a person

be denied issue of Passport. Can such person be denied right to live a normal life? Can such person be pushed to the position of uncertainty? Can

he be punished for reformation? If he had lost the normal path but has come back on right path, can such course of reformation be negated;

answer has to be no.

14. Simply on the basis of the nodal agency recommending that Passport should not be granted, the Passport Officer under the provisions of

Passport Act has not to shut his eyes and to act on that. Atleast Passport Officer should have, in the background of the facts and circumstances, if

required, asked the police and CID agency as to whether there is anything adverse against the petitioner from the year 1991 till date. Can't it be

termed as non-application of mind on the part of the Passport Officer? All the above referred facts and circumstances were to be looked into

along-with the report of respondent No. 2. Passport Officer has not to act as mouthpiece of the nodal agency. When an authority is vested with

the power, same is to be exercised judiciously not arbitrarily as has been done.

15. In the afore-stated, background, the order of refusal of Passport passed by the Passport Officer dated 24.09.2013 lacks application of mind.

Same is quashed. Passport Officer, in the facts and circumstances and the observations as made hereinabove, shall afresh accord consideration to

the case of the petitioner in accordance with the provisions of the Passport Act, 1967 and to pass appropriate orders thereon within a period of six

weeks from today. The result shall be conveyed to the petitioner. This Petition succeeds, as such, shall stand disposed of as above along-with

connected CMPs.