
(2003) 12 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 759 of 2002

Balvinderpal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Citation : (2004) 136 PLR 840 : (2004) 3 RCR(Criminal) 314

Hon'ble Judges : S.S. Nijjar, J;S.S. Grewal, J

Bench : Division Bench

Advocate : Harsh Aggarwal, for the Appellant; M.S. Guglani, Addl. Central Govt. Standing Counsel for Respondent Nos. 1 and 2 and Palika Monga, A.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner has filed this writ petition for issuance of writ of mandamus directing respondents No. 1 and 2 to issue the passport. The petitioner claims to be a business man. He applied for obtaining a passport in June, 2001. Column No. 16 of the application provides as follows;-

"16.(i) Has the applicant at any time during the period of five years immediately preceding the date of this application been convicted by a Court in India for any criminal offence and sentenced to imprisonment?

(ii) Are any criminal proceedings pending against the applicant before a court in India?

iii) has a warrant of summons for appearance or warrant for arrest or any order prohibiting the applicant's departure from India been issued by a Court?

2. Respondent No. 2 made enquiry through the Police Department and ultimately, the petitioner received a letter dated 18.10.2001 in which it was stated that it had been reported that a criminal case is pending against the petitioner. He was directed to explain as to why he suppressed the information in

the passport application. The petitioner sent a reply by letter dated 27.11.2001. He stated that the information against column No. 16 had been faithfully supplied. The petitioner stated that no criminal proceedings were pending against him. He further stated that he had been falsely implicated in two cases vide FIR No. 136 dt. 30.3.1987, Police Station Yamuna Nagar and in case FIR No. 229 dt. 5.6.1987, registered at Police Station Yamuna Nagar. In both the cases, the petitioner had been acquitted. The judgments have been attached as Annexures P3 and P4. In case FIR No. 136 30.3.1987, the petitioner was tried under Sections 397, 398 of the Indian Penal Code Section 25 of the Arms Act read with Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The petitioner was acquitted on 20.2.1991. Again in case FIR No. 229 dt. 5.6.1987, the petitioner was tried u/s 292 and 297 IPC read with Section 34 IPC Sections 34 and 27 of the Arms Act read with Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. Herein the petitioner was acquitted on 20.2.1991. In spite of having been acquitted the name of the petitioner seems to have continued on the wanted terrorists list maintained by the Police."

3. Written statement has been filed in which it is stated that on police verification it has been reported on 25.9.2001 that the name of the petitioner figures in the Terrorists list, therefore, his name cannot be recommended for issuance of passport. Copy of the report is attached as Annexure R1.

4. We have considered the submissions made by the learned counsel for the parties.

5. We are of the opinion that on the basis of the report Annexure R1, the passport cannot be denied to the petitioner. A perusal of this report shows that it is within the knowledge of the Superintendent of Police that the petitioner has been acquitted in both the criminal cases mentioned above. The report also mentions as follows:-

"At this point of time no activity has been noticed of this person. The name of this person figures in the Terrorist list. Therefore, his name is not recommended for grant of passport facilities.

6. A person's right to travel abroad has been held to be a fundamental right by the Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . Furthermore, this view of ours also finds support from a Division Bench judgment of this Court rendered in the case of Amarjit Singh Vs. Union of India and another, . In that case, the petitioner had in fact been convicted and sentenced to 4 months rigorous imprisonment where the case against the petitioner was subsequently withdrawn. The report made therein had also stated that the petitioner had been a Nexalite Activist but no material was placed on the record to show the basis of such opinion. In view of the above, the Division Bench observed as, follows:-

"Such being the circumstances, we cannot, but hold that the justification exists for refusing a passport to the petitioner on the ground of his antecedents."

7. In the present case, excepting report Annexure R1, there is no material on the record to show that the petitioner was ever involved in terrorist activities. Fundamental rights of the citizens of this country cannot be permitted to be trampled upon at the whims of the officers, be they the police or the executive officers. The opinions of the officers which would deprive a citizen of his legal rights must be based on cogent evidence on the record. A grave and solemn duty is cast upon officers to be fair in the investigation, before branding an individual as a Terrorist. No evidence has been placed on the record to indicate that the petitioner was even remotely connected with the terrorist activities.

8. Consequently the petition is allowed. Respondent No. 2 is directed to issue the passport to the petitioner within 14 days from the date of receipt of a certified copy of this judgment.

Sd/-

S.S. Grewal, J.