
(2004) 09 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7485 of 2004

Balwinder Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Passports Act, 1967 — Section 6(2)

Citation : (2005) 139 PLR 346

Hon'ble Judges : Swantaner Kumar, J;Surya Kant, J

Bench : Division Bench

Advocate : T.P. Singh, for the Appellant; Gurpreet Singh, Addl. Central Govt. Standing Counsel for Respondent No. 1 and C.M. Munial, Addl. A.G. for Respondent Nos. 2 and 3, for the Respondent

Judgement

Swantanter Kumar, J.—The petitioner was holder of Passport No. Q-27936 which was to expire on 8.9.2003. The petitioner submitted an application for issuance of a new passport on 19.8.2002 during the currency of that passport. The petitioner was granted one month's Tourist Visa for U.K. till 19.9.2002. He went to U.K. and returned from there before the expiry of the period specified in the Visa. On 4.12.2002, FIR No. 273 was registered against the petitioner and 13 other persons, under Sections 447, 427, 148 and 149 of the Indian Penal Code at Police Station, Tanda, on the complaint of one Sh. Kartar Singh. The police investigated the matter and filed its report u/s 173 Cr.P.C. before the Illaqa Magistrate on 15.4.2003. In the challan filed, the name of the petitioner was shown in column No. 2.

2. The application submitted by the petitioner for renewal/issuance of the passport was marked by the Regional Passport Officer for enquiry to the Senior Superintendent of Police, Hoshiarpur. In the report submitted, reference of the case was given, However, no specific police report was submitted in regard to the petitioner by the police authorities to the Passport authorities respondent no. \1. Vide letter dated 11.3.2004 respondent no. I required the petitioner to submit

certain documents including ration card etc. as well as Court documents, within 15 days of the issuance of the said letter. On the basis of the report filed in the Court by the police 13 of the accused other than the petitioner filed a Criminal Misc. No. 31737-M of 2003, where notice of motion was issued and further proceedings before the trial Court were stayed. The passport authorities have not passed any order declining the issuance of the passport and have not even issued the passport to the petitioner. According to the petitioner, the inaction on the part of the respondents is entirely unjustified, arbitrary and beyond the provisions of the Passport Act, 1967. Aggrieved from this action, the petitioner has filed the present writ petition.

3. In reply filed by the respondents, the facts as pleaded by the petitioner are hardly in dispute, the respondents mainly contended that respondent No. 2 and 3 have not recommended the case of the petitioner despite the fact that a specific report was asked for them. It is not denied in the written statement that no passport has either been renewed or fresh passport issued to the petitioner so far. However, while relying upon a judgment of the Bombay High Court in the case of Deepak Dwarkasingh Chhabria Vs. Union of India and another, it is contended that the renewal of the passport is possible only if the petitioner takes leave/permission from the concerned criminal Court for travelling outside India.

4. This cannot be disputed that to receive a passport in accordance with law is a fundamental right of a citizen, of course, subject to such reasonable restrictions as are prescribed in law. u/s 22 of the Act, the Central Government has the power to exempt person or class of persons from operation or not of the provisions contained in the Act. In furtherance to exercise of such power, the Central Government issued a notification on 25.8.1993, which reads as under:-

MINISTRY OF EXTERNAL AFFAIRS.

New Delhi the 25th August, 1993.

"No, GSR 570(E) - In exercise of the powers conferred by clause (1) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R.(E), dated the 14th April, 1970, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal Court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of clause (f) of sub section (2) of Section 6 of the said Act. Subject to the following conditions, namely;-

(a) the passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred to above, if the court specified a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is

specified in such order," the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a)(i) and (a)(n) can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the Laid citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued."

5. The purpose of the above notification was obviously to liberalise the existing provisions of Section 6 of the Passport Act as the notification was issued in a public interest and to provide a kind of the exception to clause (f) of sub-section (2) of Section 6. The ground on the basis of which the person could be denied issuance of the passport by the competent authority, thus, was liberalised to an extent that if the permission was granted by the Court and the conditions stipulated in the Act in the notification were satisfied, there could be issuance/ renewal of passport in favour of the petitioner. In regard to the right of the person who apply for passport and receive the same in accordance with law, reference can be made to a judgment of Division Bench of this Court in the case of *Ranjit Bajaj v. Regional Passport Authority, Chandigarh* CWP No. 3897 of 2004, decided on 13.5.2004, wherein it was held as under:-

"In the case of *Maneka Gandhi (supra)* their Lordships in no uncertain terms held that the expression "personal liberty" in Article 21 must be so interpreted as to avoid overlapping between that Article and Article 19(1). The expression is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some such freedom has been raised to the level of fundamental right. While holding that to travel abroad was a fundamental protection available to a person, their lordships duly accepted the applicability of principle of reasonableness in placing certain restriction under the due process of law including Section 10(3)(c) of the Act. Of course, it was subjected to the basic rule of law of *Audi Alterant Partem*.

The basic enunciated principles in the afore-referred cases describe a common dictum that freedom to travel abroad is a fundamental protection or right

available to a person under the expanded meaning under Article 21 read with Article 19 of the Constitution. The grant of such right is certainly subject to restrictions placed by due process of law. The Passports Act defines a process of law by which, the restriction could be placed upon leave to a person to travel abroad and claim protection on the terms and conditions of the passport issued in the name of the Constitution of India. Issuance of a passport is intended to provide harmony and amicability of international relations.

Clause (f) of Sub-Section (2) of Section 6 of the Act empowers the Passport authority to refuse to issue a passport or travel documents for going abroad in the event the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India. This provision does not offend the constitutional mandate in any way. It also does not vest the authorities with arbitrary power. Pendency of a case before the criminal Court, seen in the light of police report, would be a sufficient ground for the authorities to act and in its wisdom even decline issuance of the passport. Exercise of such jurisdiction would hardly be open to judicial review unless such decision was palpably erroneous or was offending the basic rule of law. If the element of arbitrariness ex-facie vitiates the order, then alone it may be a case of interference by the Court in exercise of its writ jurisdiction."

6. There is no dispute to the fact that the petitioner has made an application and the same is pending final decision before the authorities concerned. We are unable to understand the logic of the respondent No.1 that the case has to be recommended for issuance of passport by the police authorities. This does not appear to be the scheme under the passports Act. The application of mind has to be by the Regional Passport Officer, of course, it could be assisted by such opinion/information as it considered appropriate by the concerned authorities. But to shift the responsibility to another department despite the fact that there is a statutory obligation upon respondent No.1 to deal with such applications and dispose them off by accepting or by declining to issue passport, as the case may be, would apparently be violative of the statutory obligation imposed upon the authorities as well as would frustrate the fundamental protection granted to the persons in light of the various judicial pronouncements. The methodology adopted by the respondents cannot get approval of the Court. There must be certain set procedure and no authority including the police should be permitted to keep the application pending indefinitely. Expeditious steps in this regard would be necessary and everyone who is concerned with such matter, must keep in mind the need to act urgently.

7. The name of the petitioner has been reflected in column No. 2 of the report submitted by the police u/s 173 Cr.P.C. Apparently, according to the prosecution he is not the suspect or the accused who is alleged to have committed a crime. But, at the same time, the Court has to keep in mind the provisions of Section 319 Cr.P.C. under which the Court is fully empowered and when during the course of any enquiry into or trial of an offence it may appear to the Court from

the evidence before it that a person who has not been named as accused in the challan and has committed any offence for which the person should be tried, the Court may summon such a person and proceed against him in accordance with law. In other words, the learned trial Court before whom the matter is pending, would obviously be the appropriate Court to examine the matter in its correct perspective and pervasively. It could be very safely argued that since the petitioner has been found to be not a suspect or accused by the investigation itself, thus," there could be no ground for rejecting his application for issuance of passport. In fact he may be placed at par with any free citizen and entitled to be considered at parity for issuance of the passport.

8. In the circumstances afore-noticed. We are of the considered view that respondents must deal with and dispose of such matters expeditiously and not make futile attempts to shift their responsibility to the other wings of the State. The police should equally be responsible and act with urgency in such matters and not remain unresponsive or delay the matters for a considerable time, that too without any justification or cause. Reference can also be made to another judgment of this Court in the case of Manjit Singh v. Union of India and Ors. CWP No. 4073 of 2003, decided on 20.5.2004, wherein it was held as under:-

"One of the basic obligation of a welfare State is to prevent unnecessary litigations in courts. The administrative procedure should be mutable to the fact of the changing demands of the public so as to tackle the pervasive difficulties in effective implementation of its scheme and statutory duties. The circumstances aforenoticed compel us to observe that all is not well in the affairs of the concerned departments and requires immediate attention of the higher authorities. The higher authorities are most competent to examine their procedures and issue such directions which would serve as linchpin to the proper administration and functioning of the departments concerned. Thus we direct the Secretary, Ministry of External Affairs, Govt. of India, New Delhi as well as the Director General of Police for the States of Punjab and Haryana and Inspector General of Police Chandigarh to issue upon consideration such directions as they deem necessary to ensure that the applications submitted by the public at large for issuance of passport in accordance with the provisions of the Act are dealt with and disposed of finally expeditiously and preferably within a time bound programme. The authorities must advert themselves also to the fact that the police should apply its mind and make correct reports to the passport authority on the record available with the department. The applications should be processed properly and final orders granting the passport or declining the request for issuance of the passport upon due application of mind should be passed by the passport authorities. Orders so passed, essentially must be conveyed to the applicant. Such directions and or instructions must be issued by the concerned authorities at the earliest."

9. In view of the above reasoning, we allow this writ petition to the limited extent that respondents shall consider the application of the petitioner for

issuance of passport and dispose of the same within a period of three months from the date a certified copy of this order is brought to their notice. We further make it clear that the respondents shall issue passport to the petitioner provided he places on record the permission from the Court of competent jurisdiction wherein the proceedings in relation to FIR No. 273 afore-referred are pending. The petition is, accordingly, disposed of in the above terms, leaving the parties to bear their own costs.