

(1996) 08 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1002 of 1996

Deepak Dwarkasingh Chhabria

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 32
Passports Act, 1967 — Section 10(3), 22, 6(2), 8
Penal Code, 1860 (IPC) — Section 109, 120, 12B, 21
Prevention of Corruption Act, 1947 — Section 2, 5(1)(c), 5(2)

Citation : AIR 1997 Bom 181 : (1996) 2 MhLj 877

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : N.H. Seervai and Pooniwala, instructed by M/s. Mehta and Girdharlal, for the Appellant; D.R. Zaiwala and R.C. Master, for the Respondent

Judgement

A.P. Shah, J.—By this petition under Article 226, the petitioner seeks to challenge the order passed by the Regional Passport Officer, Mumbai refusing the passport to the petitioner u/s 6(2)(f) of the Passports Act, 1967 ("Act" for short). Briefly, the facts are that the petitioner is a citizen and national on India. The petitioner was issued passport on 5th July, 1984. When the validity of this passport had expired on 4th July, 1989, the same was renewed for a further period of five years i.e. upto 4th July, 1994.

2. Sometime in 1986 the State had filed Special Case No. 4 of 1986 in the Court of the Special Judge at Pune against the petitioner and other for offences under Sections 120B, 109, 420, 467, 471 and 477-A of the Indian Penal Code, 1860 (IPC) and Section 5(2) read with Section 5(1)(c) & (d) of the Prevention of Corruption Act, 1947 and Sections 147(o) and 147(p) of the Maharashtra Co-operative Societies Act, 1960. Accused No. 1 in the said Special Case No. 4 of 1986 made an application for discharge on the ground that he was not a public servant u/s 2 of the Prevention of Corruption Act, 1947 or u/s 21 of the IPC. The application was dismissed by the learned Special Judge. Accused No. 1 then field

Writ Petition No. 738 of 1992 before this Court. The said Writ Petition No. 738 of 1992 and the other companion petitions were disposed of by the Division Bench (Coram : A.C. Agarwal & I.G. Shah, JJ.) by judgment dated 12th/13th January, 1994 wherein the Bench held that the officers of the co-operative societies, as defined u/s 2(2) of the Maharashtra Co-operative Societies Act, would not by virtue of Section 161 of the said Act, become public servants u/s 21 of the IPC and u/s 2 of the Prevention of Corruption Act, 1947. On 29th March, 1994 the petitioner, who was accused No. 7, and accused Nos. 6, 8, 9 and 10 made an application to the Special Judge in view of the decision of the Division Bench submitting that the accused are not public servants u/s 2 of the Prevention of Corruption Act, 1947 or u/s 21 of the I. P. C. and, therefore, they should be discharged from Special Case No. 4 of 1986. The application filed by the said accused was disposed of by order dated 22nd November, 1994 wherein the learned Special Judge, after referring to the decision of the Division Bench dated 12th/13th January, 1994 held that the accused in Special Case No. 4 of 1986 were not public servants and, therefore, they could not be tried for offences committed by them as public servants and, therefore, they could not be tried for offences committed by them as public servants and therefore the Special Court had no jurisdiction to try the said case. The learned Special Judge also ordered that as far as other offences not relating to public servants were concerned, they should be returned to the Anti-Corruption Bureau (ACB), Pune for presenting the same either to the Chief Judicial Magistrate or the Judicial Magistrate, First Class having jurisdiction. The learned Special Judge also ordered discharge of all the accused with direction to remain present before the concerned Court, after they receive the summons for appearance before it.

3. In the meanwhile, the validity of the petitioner's passport expired on 4th July, 1994. The petitioner, therefore, made an application to the Regional Passport Officer, Mumbai for renewal of his passport which had expired on 4th July, 1994. By letter dated 2nd November, 1995 the passport authority informed the petitioner that he proposed to refuse the passport facility to the petitioner u/s 6(2)(f) of the Act on account of pending criminal case against the petitioner in the Court of the Chief Judicial Magistrate, Pune. By the said letter the petitioner was given opportunity to lead his case before the passport authority. It is the case of the petitioner that thereafter he had several meetings with the passport authority and the petitioner requested the passport authority to give inspection or furnish photo copies of the documents upon which he has drawn inference that a case against the petitioner was pending in the Court of the Chief Judicial Magistrate, Pune. By letter dated 14th February, 1996, the petitioner again called upon passport authority to give inspection or to furnish photo copies of the documents upon which he had proposed the rejection of the petitioner's application for renewal of passport. By letter dated 22nd February, 1996 the Regional Passport Officer called the petitioner at his office on any working day between 10.00 a.m. to 12.00 noon. It is the case of the petitioner that despite several efforts to contact the passport authority to seek an appointment, the

petitioner got an appointment, the petitioner got an appointment only on 15th April, 1996 wherein the passport authority intimated to the petitioner that passport could not be issued to him as the passport authority has received information that a criminal case is pending against the petitioner. Aggrieved by the refusal of the passport authority to renew his passport, the petitioner has filed the present petition.

4. In pursuance of the notice issued by this Court, the Regional Passport Officer appeared through his counsel. After hearing the counsel for the petitioner and the Regional Passport Officer, this Court passed order dated 28th June, 1996 directing the passport authority to decide the petitioner's application within two weeks. On 11th July, 1996 the passport authority gave a hearing to the petitioner wherein the petitioner's Advocate made certain legal submissions. The passport authority, however, adjourned the matter on the ground that he has already taken up the matter on priority with the office of the Additional Deputy Commissioner of Police, ACB, and the case will be decided after hearing from them. Thereafter, the passport authority fixed the hearing refused to attend the hearing on the ground that this Court has already issued suo moto contempt notice to the passport authority for not passing orders within two weeks and therefore the passport authority should not decide the matter since the period granted by the Court has already expired. The passport authority however proceeded ex parte and passed order dated 22nd July, 1996 refusing to grant the passport to the petitioner u/s 6(2)(f) of the Act on the ground that Regular Criminal Case No. 39 of 1995 is pending against the petitioner and that he is accused No. 7 in the said case under Sections 120B, 409, 420, 465, 468, 471 and 109, I. P. C., In view of this order, the petitioner amended the petition so as to incorporate challenge to the final order passed by the passport authority.

5. The grievance made by the petitioner is two-fold. Firstly, it is contended that the passport authority was not right in deciding the application ex parte. Secondly, it is contended that it was not proper on the part of the passport authority to refuse the issue of a passport merely on the ground of pending criminal prosecution. It is contended that after his discharge by the Special Judge at Pune, the petitioner has not been served with any notice or summons or proceedings of any Criminal Court. It is contended that the passport authority had kept the matter pending for nearly one-and-half years without even intimating the petitioner the particulars about the pending criminal prosecution. It is contended that the right to travel abroad is a fundamental right guaranteed by Article 21 and, therefore, the passport authority was not justified in depriving the petitioner of his right by unnecessarily keeping the application pending for unreasonably long period. It is also contended that although Section 6(2)(f) provides for rejection of the application for passport if a criminal case is pending against the applicant, it is not permissible for the passport authority to reject the application mechanically without applying his mind to the pending criminal case. It is urged that if the interpretation of the passport authority is accepted, Section 6(2)(f) will have to be declared as violative of Article 14 because such

mechanical process of rejection of the passport application by the passport authority will be completely arbitrary and unreasonable. It is, therefore, prayed that the impugned order be set aside and the passport authority be directed to issue the passport to the petitioner.

6. The short question which falls for my consideration is whether the passport authority was right in rejecting the petitioner's application for renewal of the passport u/s 6(2)(f) of the Act. The passport authority has produced a letter dated 18th July, 1996 from the Additional Deputy Commissioner of Police/ Additional S.P., ACB, Pune, enclosing a certificate issued by the Chief Judicial Magistrate, Pune, confirming that Regular Criminal Case No. 39 of 1995 is pending against the petitioner under Sections 12B, 409, 420, 465, 471 and 109 of the IPC and the case is fixed on 19th August, 1996. The Additional Deputy Commissioner has opined that issuance of passport of the petitioner was not recommenced. It is the case of passport authority that in view of the said letter, he had no option but to reject the petitioner's application u/s 6(2)(f) of the Act. It will be useful to state briefly the legislative background of the Act before considering the relevant provisions of Section 6(2)(f). The Act was enacted on 24th June, 1967 in view of the decision of the Supreme Court in the case of *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, . Prior to coming into force of the said Act, there was no law in India regulating the issue of passport for leaving India and going abroad. The issue of passport was entirely within the discretion of the executive and this discretion was unguided and unchallenged. In *Satwant Singh Sawhney's* case (Supra) the Supreme Court by a majority held that the expression "personal liberty" in Article 21 of the Constitution includes the right to travel abroad and under Article 21 no person can be deprived of his right to go abroad except according to the procedure established by law, and since no law had been made by the State regulating or prohibiting the exercise of that right, the refusal to issue a passport was in violation of Article 21 of the Constitution. It was held by the Supreme Court that the discretion with the execution in the matter of refusing or issuing a passport being unchanneled and arbitrary, it was plainly violative of Article 14 of the Constitution and hence the order refusing passport of the petitioner was also invalid under that Article. This decision was accepted by the Parliament and the infirmity pointed out by it was set right by enactment of the Act. Section 6(2) of the said Act lays down 9 separate grounds on which the passport authority can refuse to issue, inter alia, a passport. By virtue of Section 8, the same grounds apply to a case for renewal of passport. Therefore, by virtue of the said Section 6(2) read with Section 8 of the said Act, it is made obligatory for the passport authority to refuse to renew the passport if one out of nine grounds mentioned in Section 6(2) is present. The relevant portion of Section 6(2) reads as follows :

"6(2) 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 grounds, namely :

(a)

(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).....

7. The Supreme Court considered the constitutional validity of some of the provisions of the Act in the land-mark case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . In that case the petitioner's passport was impounded "in public interest" by an order dated 2nd July, 1977. The Government of India declined "in the interest of the general public" to furnish the reasons for its decision. Thereupon, the petitioner filed writ petition under Article 32 of the Constitution before the Supreme Court. The challenge was founded on various grounds. The constitutional validity of Section 10(3)(c) was also questioned. It is not necessary to deal with the judgment in detail as far as challenge to Section 10(3)(c) is concerned. Suffice it to say that the validity of Section 10(3)(c) was upheld by Supreme Court. However, it is necessary to note the law laid down by the majority in the context of Articles 14 of the Constitution. It was held that the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. Such procedure must be right and just and fair and not arbitrary, fanciful or oppressive; otherwise, it should be no procedure at all and the requirement of article 21 would not be satisfied. The decision of the Supreme Court in Maneka Gandhi was delivered in 25th January, 1978.

8. Now I shall refer to certain notifications issued by the Central Government u/s 22(a) of the Act which were brought to the notice of this Court by the learned counsel for the passport authority during arguments. It seems that after the Supreme Court judgment of Maneka Gandhi's case, the Central Government in exercise of the powers conferred by clause (a) of Section 22 of the said Act, issued a notification dated 16th August, 1979 exempting citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before any 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 the clause (f) of sub-section (2) of Section 6 of the Act, subject to the following conditions, namely.

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

(i) where the order of the Court referred to above, gives such permission for a period not exceeding three months, for a period of three months and an observation will be made on the passport that the holder may travel abroad for a period not exceeding that specified in such order; or

(ii) if no period is specified in such order, the passport shall be issued for a period for six months and may be renewed for a further period of six months, if the

order of the Court is not cancelled or modified; or

(iii) in any other case, for the period for which such permission is given by such order;

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

9. By the notification dated 25th August, 1993, the earlier notification was substituted granting exemption to the citizens 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 order from the Court concerned permitted them to depart from India, from the operation of the provisions of clause (f) of sub-section (2) of Section 6 the said Act, subject to 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 specifies 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 of 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 exceeding one year, and does not specify the 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)(ii) and (a)(iii) above 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) the passport issued in terms of (a)(i) above can be fresh, order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport 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.

10. In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if

the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority of bring the relevant notification to apply to concerned Criminal Court for permission to the travel abroad. If the applicant obtains such permission from the Criminal Court where his case of pending, the passport of authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case the passport authority has failed to bring the relevant notification to the notice of the applicant inspite of the fact that the application was pending before the authority for more than one-and-half years. In fact it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens form the operation of Section 6(2)(f). It is matter if regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of the citizen. At no point of time the passport authority had informed the petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that till today the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens" application for passport are not unnecessarily delayed on account of pending criminal cases.

Accordingly, it is directed that in all cases covered by Section 6(2)(f), the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission of travel abroad in terms of the notification dated 25th August, 1993. In case the applicant demands a copy of the notification, same shall be supplied by the passport authority subject to payment of charges. Needless to mention that it will be open for the applicant to approach the Criminal Court, where criminal case against him is pending, for permission to travel out of India. Even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and/or renewal of passport. Considering the fact that the matter involves the fundamental right of the applicant, the concerned Court shall decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. In case of Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned and notification but without making any endorsement on the passport about the pending criminal case.

11. Now coming back to the case of the petitioner it is necessary to quash the

order of rejection passed by the passport authority and, accordingly, the impugned order dated 22nd July, 1996 is quashed and set aside. The petitioner will be at liberty to make an application to the Pune Court for permission to travel abroad. Mr. Seervai states that the petitioner will make the necessary application before the Chief Judicial Magistrate, Pune within the two weeks from today. The learned Magistrate and decided the application expeditiously and in any event within four weeks from the date of receipt of such application. Needless to mention that in case the learned Magistrate permits the petitioner to travel abroad, the passport authority shall forthwith issue passport in terms of the order of the Magistrate subject to terms and conditions mentioned in the notification dated 25th August, 1993.

The concerned Magistrate to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

12. Petition allowed.