

(2021) 03 J&K CK 0114

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 383 Of 2021, CM No. 1216 Of 2021

Gulshan Nazir

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 29-03-2021

Acts Referred:

Passports Act, 1967 — Section 6, 6(2)(c), 11
Constitution Of India, 1950 — Article 21

Citation : (2021) 03 J&K CK 0114

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Jahangir Iqbal Ganai, Humaira Shafi, Tahir Majid Shamsi, B. A. Dar

Final Decision : Dismissed

Judgement

1. The precise case of the petitioner is that she, on 14th of December, 2020, submitted an application for issuance of passport in her favour before the respondent No.4/Passport Officer, Regional Passport Office, Boulevard Road, Srinagar, against proper receipt under file No.SG1075060973220. It is contended that, as per circular instructions issued, in this behalf, by the Ministry of External Affairs, Government of India, the passport of an individual is required to be issued within 30 days from the date of receipt of application, but despite lapse of more than three months, no passport was issued in favour of the petitioner. The petitioner, upon enquiry from the official Website pertaining to issuance of Passport maintained by the Ministry of External Affairs, Government of India, claims to have come to know about the status of her application for seeking passport in her favour as under:

â??Pending for physical police verification at respective Thana under SP Office, District Srinagar.â??

Thereafter, the petitioner, faced with the above position, claims to have approached the respondent No.5/ Senior Superintendent of Police,

Srinagar, on 13th day of February, 2021 with the request to forward the Police Verification Report (PVR) to the Regional Passport Office,

Srinagar, but since no action with respect thereto was taken, the petitioner has knocked at the portals of this Court for the following

relief(s):

â??In the premises, it is therefore prayed that taking into consideration the above made submissions, this Honâ??ble Court may be pleased

to:

a) Issue an appropriate writ, order or direction, in the nature of Mandamus, directing the Respondents to issue Passport in favour of the

petitioner expeditiously;

b) Issue an appropriate writ, order or direction, in the nature of Mandamus, declaring the action of respondents in not allowing the

petitioner to travel abroad as illegal and unconstitutional violating petitionerâ??s fundamental right to travel abroad as guaranteed under

Article 21 of the Constitution of India; and

c) Any such order or direction which this Honâ??ble Court may consider appropriate in the given facts and circumstances of the case.â??

2. When this matter was taken up for consideration on the very motion hearing, viz. 8th of March, 2021, Mr Tahir Majid Shamsi, the learned

Assistant Solicitor General of India (ASGI), while entering appearance and on behalf of respondents 1 and 4, submitted that the respondent No.4-

Passport Officer, Regional Passport Office, Srinagar, has already sought information from the Additional Director General of Police (CID), J&K/

respondent No.3, in terms of communication No. POSK/Court/2021 (77&78)/100-02 dated 3rd of March, 2021. Besides, Mr B. A. Dar, the learned

Senior Additional Advocate General, who appeared in the matter on behalf of respondents 2, 3 and 5, was directed to expedite the Police Verification

Report. Thereafter, the matter was listed on 23rd of March, 2021, on which date, Mr Dar, learned Senior Additional Advocate General, while

appearing on behalf of respondents 2, 3 and 5, submitted that the Reply filed on behalf of respondent No.3 be treated as Reply on behalf of

respondents 2 and 5 as well. This submission of the learned Senior Additional

Advocate General was acceded to and the Reply filed by respondent

No.3 was treated as reply for and on behalf of Respondents 2 and 5 as well.

From the perusal of the said Reply, it emerged that the report/ PVR in relation to the case of the petitioner, as submitted by the Additional Director

General of Police, CID, J&K/ respondent No.3, stands forwarded to the Regional Passport Officer, Srinagar vide communication No.

CID/Final/21/017558-017559 dated 18th of March, 2021.

When apprised of the aforesaid situation, Mr Shamsi, the learned Assistant Solicitor General of India (ASGI), sought some time to come up with their

stand, whereafter, the matter was accordingly fixed for further consideration on 29th of March, 2021.

3. Today, when the matter came up for consideration, Mr Shamsi, the learned Assistant Solicitor General of India (ASGI), at the very outset, has

produced communication No. POSK/Court/2021/(77&78)/154-57 dated 26th of March, 2021, issued by the Passport Officer, Srinagar/ respondent

No.4, wherein it has been stated as under:

â??This has reference to your passport file No. SG1075060973220 dated 14th of December, 2020. In this regard it is to intimate as under:

â?¢ Whereas your fresh passport application was received on 14th of December, 2020 and as per norms forwarded for Police Verification Report

(PVR) on the same date, online mode;

â?¢ Whereas Clear Police Verification Report (PVR) in favour of all passport applicant belongs to J&K is mandatory and J&K CID, is the Nodal

Agency in this regard;

â?¢ Whereas the PVR received from Addl. Director General of Police, J&K-CID do not favour issuance of passport and returned as â??NOT

RECOMMENDED PASSPORT CASEâ??, vide No. CID/Final/21/017558-017559 dated 18th of March, 2021; and

â?¢ In view of the J&K CID report, your case was found to attract refusal under provisions of section 6(2)(c) of the Passport Act, 1967.

In light of the above, your application for issuance of passport is Refused.â??

Perusal of the contents of the communication supra brings it to the fore that the application of the petitioner for issuance of passport in her favour

stands refused with the observation as â??Not recommended passport caseâ?? in

the light of the Police Verification Report (PVR) received from the Additional Director General of Police, J&K CID/ respondent No.3. This communication, as produced by the learned Assistant Solicitor General of India, is taken on record, with a copy thereof provided to the learned Senior Counsel representing the petitioner in the open Court.

4. Given the above position, both Mr Shamsi as well as Mr Dar would submit that the Writ petition filed by the petitioner deserves to be dismissed

inasmuch as no direction can be issued by this Court in the matter of issuance of passport in favour of the petitioner which is contrary to the scheme

of the law governing the subject. Besides, Mr Shamsi further contended that the petitioner, given the attending facts and circumstances of the case,

has the remedy of appeal to Joint Secretary (PSP) and Chief Passport Officer, Ministry of External Affairs, Patiala House, New Delhi against the

refusal order made by the respondent No.4 within (30) days from the date of receipt of the order under Section 11 of the Passports Act, 1967, being

the appellate Authority under the said Act. It is also pleaded by Mr Shamsi that the petitioner has no absolute right to demand a passport in her favour

inasmuch as the passport, being a document that vouches for the respectability of the holder, stands to reason that the Government need not vouch for

a person it does not consider worthy.

5. Mr Jahangir Iqbal Ganai, the learned Senior Counsel, appearing on behalf of the petitioner, submitted that Section 11 of the Passports Act, 1967 is

not applicable to the case on hand inasmuch as the rejection/ refusal order of the passport of the petitioner has been purportedly issued by the

respondent No.4 under Section 6 of the Passport Act which is not covered for appeal under Section 11 of the Act of 1967.

6. Heard learned counsel for the parties and considered the matter.

I have also perused the record available on the file.

7. As per admitted position of the scheme of law governing the grant or otherwise of passport in favour of the citizens of India, the concerned

passport Authority, upon receipt of an application from an individual seeking issuance of passport in his/ her favour, has to seek appropriate report

from the Police/ CID authorities concerned and, on the basis of such report, the Authority has to issue or refuse passport in favour of the said

individual accordingly. In the case on hand, the Police Verification Report (PVR)

received by the Passport Officer, Srinagar/ respondent No.4 did not recommend grant of passport in favour of the petitioner, as such, the respondent No.4 has, consequently, refused issuance of passport in favour of the petitioner. In such circumstances, I am of the considered view that no direction can be issued by this Court for issuance of passport in favour of the petitioner. Even otherwise, the scope of this Court in the matter of grant or otherwise of passport in favour of an individual is very limited inasmuch as the Court, in this behalf, can only direct the concerned authorities to expeditiously consider the case of an individual in the light of the mandate of the scheme of law governing the subject. However, the respondents have already undertaken the said exercise in tune with the mandate of the scheme of law by, firstly, seeking report from the Police/ CID authorities, and, thereafter, passing the order in tune with such recommendations of the police/ CID authorities. Besides, the Court finds substance in the argument of Mr Shamsi qua the petitioner having no absolute right to demand a passport in her favour, which is also substantiated by the law laid down by the Honâ??ble Supreme Court in case titled â??Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi & Ors.; AIR 1967 Supreme Court 1836.

8. In the above background, I do not find any reason to interfere with the course of action adopted by the respondents in this case, as a sequel thereto, the petition of the petitioner is hereby dismissed, alongwith the connected CM(s). Interim directions(s), if any subsisting as on date, shall stand vacated. It is, however, made clear here that dismissal of the Writ petition shall not come in the way of the petitioner for availing the remedy as may be available to her in accordance with the law.