

**(1999) 05 DEL CK 0065**  
**In the Delhi High Court**  
**Case No : C.W.P.No.298 of 1998**

Hajra Iqbal Memon

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 13-05-1999

**Acts Referred:**

Constitution of India, 1950 — Article 21, 226  
Passports Act, 1967 — Section 6

**Citation :** (1999) 3 AD 801 : AIR 1999 Delhi 271 : (1999) 80 DLT 185 : (1999) 50 DRJ 17 : (1999) ILR Delhi 430

**Hon'ble Judges :** Chander Mohan Nayar, J

**Bench :** Single Bench

**Advocate :** Mr. Mukul Rohtagi, Mr. Saurabh Kirpal and Mr. N.A. Alvi, for the Appellant; Mr. Maninder Singh, for the Respondent

## Judgement

C.M. Nayar, J.—This petition has been filed for issuance of a writ in the nature of certiorari for setting aside the restriction placed on travel on passport of the petitioner, such as, restricting her travel from India to United Arab Emirates only as well as a writ of mandamus seeking direction or commanding the respondents to issue passport valid for 20 years for all the countries of the world.

The petitioner is stated to be an Indian citizen and is presently residing in Dubai. She was holding an Indian Passport bearing No.A-992578 which expired in July 1996. She submitted her application for renewal on June 6, 1996 to respondent No.4 and on June 10, 1996 the petitioner went to collect the renewed passport from the said respondent. However, it was not delivered to her and she was told to come again. Consequently, she again visited the Consulate General of India at Dubai on June 12, 1996 on which date again it was not delivered to her. Thereafter, the petitioner made several such visits to the Consulate General and each time she was alleged to have been told to visit after one or two days. The petitioner has also mentioned that a similar incident happened in 1994 when passports of the petitioner and her three children were withheld by the Consulate General of India in Dubai for about a year and it was only after legal notice dated

March 31, 1995 sent to respondent No.2 the passports were returned to the petitioner and her three children. The petitioner thereafter submitted a representation dated July 1, 1996 to the Ministry of External Affairs wherein she requested for early return of her passport. There was again no response.

2. The petitioner moved this Court seeking a writ of mandamus to direct the respondents to renew her passport. During the pendency of the petition the petitioner received a letter dated September 25, 1996 from the office of respondent No.4 informing the petitioner that her passport had been impounded u/s 10(3)(c) of the Passport Act, 1967 (hereinafter referred to as "the Act"). The petitioner preferred an appeal against the said order which was also rejected vide order dated January 1, 1997. As a consequence the petitioner amended her writ petition in the High Court and challenged the order impounding her passport. By judgment dated February 18, 1997 in Civil Writ Petition No.3088/96 this Court allowed the writ petition of the petitioner and set aside the order for impounding the passport as well as the Appellate order and concluding part of the judgment may be reproduced as under:

"The question now arises as to whether the order impounding the passport is mala fide or that the reasons for making the order are extraneous or they have no relevance or they cannot possibly support the making of the order in the interests of the general public. The order dated September 25, 1996 impounding the passport does not give any reasons for making such an order now the Appellate Authority has applied its mind relevant to the issues. There is, Therefore, total non-application of mind. The usual position is that in case a person travels to India and his or her passport is impounded this will obviously deny him or her right to leave this country so that in case some actions are contemplated he or she may be available. The admitted facts in this case are that there is no case which is pending against the petitioner. The plea that her husband is holed up in London from where he has not been extradited for the alleged crime he has committed in India cannot also form the ground on which the order of impounding the passport of the petitioner can be justified.

The provisions of Section 10(3) of the Act which makes it mandatory for reasons to be recorded in writing, have not been complied with and the impugned action cannot be sustained on this basis as well. The Order of the Appellate Authority specifies no better reasons to support the Order. The law is well settled by the judgments as cited above that the reasons have to be communicated to the petitioner for impounding and refusal of issuance of the passport. This has not been done in the present case. The writ petition was filed in this Court and respondents have hurriedly issued the impugned Order which will indicate that the reasons now stated are extraneous and irrelevant. Therefore, the court in this situation has no choice but to strike down the impugned orders as the plea of the Passport Authority that it would not be in the interest of the general public to disclose the reasons, has not been substantiated by any cogent grounds. The learned counsel for the respondents has also not been able to support the order

on the basis of law as referred to in the judgments cited above. The reliance on the judgment as reported in Union of India (UOI) and Others Vs. Smt. Charanjit Kaur, to reiterate that the respondents are at liberty to impound the passport of the wife of an alleged extremist leader stationed abroad is misplaced. That case was rendered on its own facts and relevant material was placed on record for taking action u/s 10(3)(c) of the Act. The impounding Order was issued while the wife was in this country for her alleged links which were held against the interest of general public.

The impugned Orders in view of the above reasons cannot, therefore, be sustained and have to be set aside. It is always, however, open for the respondents to exercise powers u/s 10 of the Act to vary or cancel the endorsements on the passport or travel documents and may vary or cancel the conditions subject to which passport or travel documents have been issued by following the procedure as permissible in law."

3. The petitioner was granted a passport for one year consequent to the above judgment but it restricted her passport to travel between Dubai and India only. It carried the following endorsement:

"This Passport is valid for travel only to United Arab Emirates"

4. The petitioner again represented and requested the respondents to give her passport without any restriction vide letters dated May 10, 1997 and May 19, 1997. The petitioner raised her objection to the restricted passport sent to her and respondent No.4 vide communication dated May 4, 1997 declined her request without giving any reasons which reads as follows:

"CONSULATE GENERAL OF INDIA DUBAI (U.A.E.) Duba/815/2/95-PT.II May 4, 1997 Smt. Hajra Iqbal Memon, Post Box No.52444 Dubai(UAE) Madam,

Please refer to your letter of 22.4.1997 regarding your passport No.A-2061662 of 29.3.97 issued at Dubai.

We regret our inability to further extend the validity of your passport or to change any of the endorsement on your passport.

Yours faithfully,

Sd/-

(R.B. Lal)

Consul (P)"

5. The petitioner represented again and was told that she will get her renewed passport but despite number of visits no information was forthcoming from respondent No.4. It is alleged that the petitioner is being deliberately harassed and humiliated by the respondents as she is entitled to issuance of passport for validity of 20 years for all the countries. The petitioner alleges that she has received on April 11, 1998 a copy of the order dated January 23, 1998 passed by

Shri K. C. Singh , Joint Secretary and Chief Passport Officer which is filed as Annexure P-14 to the writ petition. The said order reads as under:-

"Government of India

Ministry of External Affairs

(CPV Division)

No.VI/405/I/68/93-Pt.V January 23, 1998

ORDER

Mrs. Hazra Iqbal Memon wife of Iqbal Mohd. Memon @ Iqbal Mirchi, the holder of passport No.A-992578 dated 9.7.1986, applied for renewal/additional visa sheets to the Consulate General of India (CGI), Dubai on 10.6.96. In terms of Section 5(2) of the Indian Passports Act, 1967, CGI Dubai caused an inquiry on her applica corporation through the government channels. In the course of this enquiry, it was brought to the notice of the government that her husband Mr. Iqbal Mohd. Memon @ Iqbal Mirchi was wanted in India in connection with a large number of criminal cases. It was also reported that her husband had acquired a number of benami properties in India and abroad in his wife's name. Narcotics Control Bureau was in the process of freezing Mr. Iqbal Mohd Memon's property. The Government was also in touch with the authorities in the United Kingdom for extradition of her husband Iqbal Mirchi. In view of this it was decided to impound passport of Mrs. Hazra Iqbal Memon as issuance of a passport to her was not in the interest of the general public. Her appeal was heard by me, but turned down.

2. In exercise of her right to appeal against the decision of the Chief Passport Officer, Mrs. Hazra Iqbal Memon approached the Delhi High Court. The hon"ble High Court vide its order of February 18, 1997 set aside order No.VI/405/1/68/93-Pt.V of January 1, 1997. However, the high court also ordered that in exercise of powers u/s 10 of the Indian Passports Act the endorsements made on the passport could be varied or cancelled subject to the procedure permissible under the law. The relevant extract is given below:

.."It is always, however, open for the respondents to exercise powers u/s 10 of the Act to vary or cancel the endorsements on the passport or travel documents and may vary or cancel the conditions subject to which passport or travel documents have been issued by following the procedure as permissible in law."

3. In deference to the order of the hon"ble High court and in exercise of powers u/s 10 read with Section 6(1) of the Passports Act, 1967, Mrs. Hazra Iqbal Memon's passport was renewed for one year and was endorsed for travel to United Arab Emirates only where she is residing at present. Aggrieved by the decision to issue a short validity passport with restricted endorsements. Mrs. Hazra Iqbal Memon represented to the Government of India both directly and through our Ambassador at Abu Dhabi for restoration of full validity passport to

her along with endorsements for all countries. Her representations dated 10.5.97, 19.5.97, 4.6.97, 26.8.97 & 28.12.97 have been examined by me. The following grounds have been given by Mrs. Hazra Iqbal Memon for issuance of a full validity passport without any restrictions:-

(i) She has stated in her representations that she requires immediate and advance medical treatment both for herself and her son in support of which she has furnished a medical certificate from Dr. Shah's Clinic, Dubai, dated 8.5.97 & 4.6.97 in which Dr. M.D. Shah has certified that Mrs. Hazra Iqbal Memon is under his treatment for chronic peptic ulcer with sero-negative arthritis. Dr. M.D. Shah in his certificate has also certified that her 8 year old son Master Junaid Memon is suffering from chronic allergic rhinobronchitis and sinusitis requiring a naso-palatal surgery. She has requested for passport valid for travel to all countries to enable her to undergo treatment in presence of her husband in the United Kingdom.

(ii) She has specifically requested for endorsement to travel to the United Kingdom as she along with her children wants to visit her husband who is presently in the United Kingdom.

(iii) She has also expressed her desire to go for Umrah for Saudi Arabia.

4. Her representation has been examined very carefully. The central agencies have confirmed that the cases against her husband Iqbal Mirchi are still pending and he is a fugitive from law in India. The process of freezing of benami properties held in his & his wife's name is still going on. The arguments given by Mrs. Hazra Iqbal Memon have been examined very carefully in the light of the certificate furnished by her. After examining the various documents and representations placed before me, I K.C. Singh, Joint Secretary to the Government of India and Chief Passport Officer in exercise of powers conferred upon me u/s 10(1) read with Section 6(1)(d) reject the various representations made by Mrs. Hazra Iqbal Memon as there is reason to believe that, Mrs. Hazra Iqbal Memon may use the opportunity to travel freely all over the world to run her husband's illegal business activities on his behalf. There is also reason to believe that if she is allowed to go to the United Kingdom, she will take detailed instructions from her husband to dispose of his benami property in India and abroad. It is, Therefore, felt that issue of a full validity passport valid for travel to all countries is at this stage will not be in the interest of general public. Her passport may Therefore be renewed for another year. Additional endorsement for travel to Saudi Arabia to perform Umrah may be made on production of return air ticket. Since advance medical facilities are now available in India, her request for endorsement for the United Kingdom for undertaking treatment in presence of her husband is turned down. She is free to come to India for treatment. She can apply for renewal after expiry of her passport.

Sd/-

(K .C. Singh)

Joint Secretary and Chief Passport Officer

Copy to:

1. Mrs. Hazra Iqbal Memon, Post Box No.52444, Dubai, UAE.

2. Consulate General of India, Dubai, UAE."

6. The petitioner has assailed the order dated January 23,1998 on various grounds as well as for violation of the fundamental right to travel abroad as guaranteed by Article 21 of the Constitution of India. The impugned order was passed, it is contended, without issuance of any show cause notice or personal hearing and, Therefore, suffers from the vice of arbitrariness and unreasonableness and is violative of Article 14 of the Constitution of India. The factual averments as made in the order are stated to be incorrect. The relevant facts are stated in paragraphs 25, 26 and 27 of the amended writ petition which read as under:

"25. Further the said order referred to a totally incorrect statement of fact namely relating to forfeiture of the properties of the petitioner. Further the said order is on the same basis of his earlier order and ignores the Delhi High Court judgment dated 18.2.1997. A few relevant facts may be pointed out namely; that the husband of the petitioner was sought to be extradited in extradition proceedings before the Magistrate in London, U.K. Two charges were proposed in the year 1995, by the Government of India before the Magistrate. First being the alleged charge of dealing in Narcotic which the Government of India itself withdrew before the Magistrate in London U.K. as they could not substantiate their claim. Hereto annexed as Annexure P-15 is copy of Bow Street, Magistrate's order discharging the husband of petitioner from the said charge. The next charge of alleged murder was also discharged by Bow Street Magistrate in London U.K. Hereto annexed as Annexure P/15 is a copy of the order. Further attention is invited to warrant of the extradition which clearly specified that the husband of the petitioner would not be proceeded within India for any offence except as specified before the Magistrate. The record indicates on both counts the Bow Street Magistrate discharged the petitioner's husband and substantial costs were awarded against the Government of India by the said Court.

26. However, in spite of this, proceedings under NDPS Act for forfeiting the petitioner and their family members' properties, were started u/s 68 of the NDPS on the strength of NDPS allegation which the government of India itself withdrew before the Bow Street Magistrate in London U.K.

27. It may be pointed here that the Central Government through its officers being the Competent Authority, NDPS u/s 68-I of the NDPS Act, passed an order dated 20.10.1997 accepting as legitimate and legal the property of the petitioner hereto annexed as Annexure P-16 a copy of the order dated 20.10.1997.

It is surprising Therefore, that the order of the Joint Secretary, Ministry of External Affairs who was aware of the order of the another office i.e. Senior

Central Government Officer to take a view that the forfeiture proceedings against the petitioner were still pending as on 23.1.1998 and took the view that this pending proceedings was the basis for holding property of the petitioner as illegally acquired and that, Therefore, drawing an adverse inference such as disposal of the said asset and, Therefore, consequently withholding the normal passport valid for 20 years and also valid for travel for all countries.

In view of the fact that Competent Authority being a Senior Government of India Officer had already accepted the property of the petitioner as legitimate, the order passed on 23.1.1998 ignoring the order dated 20.10.1997 renders the order of the Joint Secretary dated 23.1.1998 arbitrary and liable to be struck down, as rendered without application of mind to the relevant facts."

7. The learned counsel for the petitioner has contended that the order passed by the respondents, as referred to above, is clearly an arbitrary exercise of power and is unconstitutional and vocative of the principles of natural justice. The petitioner has merely been granted a limited right to travel between India and United Arab Emirates though she and her children are entitled to passport valid for 20 years as well as for travel in all countries of the world. Reference is made to the provisions of Section 6 of the Act which relates to refusal of passports or refusal to make an endorsement for visiting any foreign country. This provision reads as follows:

"6. Refusal of passports, travel documents etc.- (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(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 ground, namely:-

(a) that the applicant is not a citizen of India;

(b) that the applicant, may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(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) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

8. The reading of sub-section (1) specifies the grounds for restricting the passport or for making limited endorsement which will imply that on no other grounds the Passport Authorities can decline to grant passport to the petitioner without any endorsement except on the grounds as stated above, such as, "that the applicant was likely to or engage in such country in activities prejudicial to the sovereignty and integrity of India; the presence of the applicant in such country may, or is likely to, be detrimental to the security of India, the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country and in the opinion of the Central Government the presence of the applicant in such country is not in the public interest." It is, Therefore, contended that the petitioner was again restricted in her right to travel by endorsement in the passport on the grounds which are not germane to the statutory provisions, as referred to above. The grounds as specified by the petitioner for issuance of a full valid passport without any restriction are that the petitioner required immediate and advance medical treatment both for herself and her son and in support of which she furnished a Medical Certificate from the concerned Doctors. She along with her children requested for endorsement to travel to United Kingdom to meet her husband/father who is presently in that country as well as the petitioner expressed desire to go for Umrah to Saudi Arabia.

9. The representation of the petitioner was stated to be examined carefully and the following reasons have been assigned to decline her request:



(A) the Central Agencies have confirmed that the cases against her husband Iqbal Mirchi are still pending and he is a fugitive from law in India;

(B) the process of freezing of benami properties held in his and his wife's name is still going on;

(C) there is reason to believe that the petitioner may use the opportunity to travel freely all over the world to run her husband's illegal business activities on his behalf if she is granted full passport;

(D) there is also reason to believe that if the petitioner is allowed to go to United Kingdom she will take detailed instructions from her husband to dispose of his Benami properties in India and abroad;

(E) since advance medical facilities are now available in India the petitioner was free to come to India for treatment and it was not necessary for her to travel to U.K.

10. The following pleas have been taken by the respondents in their counter affidavit filed in this Court:

"1. The petitioner is the wife of a fugitive from law in India, who was/is involved in various heinous offences. The petitioner has a passport bearing No.A-992578 dated 9.7.86 and has applied for renewal/additional visa sheets to the Consulate General of India (CGIU), Dubai on 10.6.96. In terms of Section 5(2) of the Indian Passports Act, 1967, an enquiry was conducted through the Governmental channels, on the application, by CGI Dubai. In the course of this enquiry, it was brought to the notice of the Government that her husband Mr. Iqbal Mohd. Memon @Iqbal Mirchi was wanted in India in connection with a large number of criminal cases. It was also reported that her husband had acquired a number of benami properties in India and abroad, in his wife's name. Narcotics Control Bureau was in the process of freezing Mr. Iqbal Mohd Memon's property. The Government was also in touch with the authorities in the United Kingdom for extradition of her husband Iqbal Mirchi. In view of this, it was decided to impound the passport of Mrs. Hajra Iqbal Memon as issuance of a passport to her was not in the interest of the general public. Her appeal was heard but was rightly and legally rejected.

2. In the exercise of her right to appeal against the decision of the Chief Passport Officer, Mrs. Hajra Iqbal Memon approached the Delhi High Court. The Hon'ble High Court, vide its order of February 18, 1997 set aside order VI/405/1/68/93-Pt.V of January 1, 1997. However, the High Court also ordered that in exercise of powers u/s 10 of the Indian Passports Act, the endorsement made on the passport could be varied or cancelled subject to the procedure permissible under the law. The relevant extract is given below:

"It is always, however, open for the respondents to exercise powers u/s 10 of the Act to vary or cancel the endorsement on the passport or travel documents and may vary or cancel the conditions subject to which passport or travel documents

have been issued by following the procedure as permissible in law."

"3. In deference to the order of the Hon"ble High Court and in exercise of powers u/s 10 read with Section 6(1) of Passports Act, 1967, the petitioner's passport was renewed for one year and was endorsed for travel to United Arab Emirates only where she is residing at present. Aggrieved by the decision to issue a short validity passport with restricted endorsement, the petitioner represented to the Government of India both directly and through the Indian Ambassador at Abu Dhabi for restoration of full validity passport to her along with endorsement for all countries. Her representations dated 10.5.97, 19.5.97, 4.6.97, 26.8.97 and 28.12.97 have been duly examined by the authorities. After due examination of the said representations of the petitioner the relevant agencies of the Government of India have confirmed that the cases against her husband Iqbal Mirchi are still pending and he is a fugitive from law in India. The process of freezing of benami properties held in his and his wife's name is still going on. The authorities, in view of the above facts, have considered/observed that the petitioner may use the opportunity to travel freely all over the world to run her husband's illegal business activities on his behalf. There is also reason to believe that if she is allowed to go to the United Kingdom, she will take detailed instructions from her husband to dispose of his benami properties in India and abroad."

11. With regard to the averment that the Competent Authority, SAFEMA/NDPC, Mumbai has released some of the properties belonging to the petitioner the counter affidavit gives the following reply in paragraph 27:

"It is true that the Competent Authority, SAFEMA/NDPC, Mumbai, has passed the order dated 20.10.97 releasing some of the property belonging to the petitioner and her relatives which are found by the Competent Authority to be illegally acquired and some of the property forfeited to the Government of India. However, the said order of the Competent Authority dated 20.10.97 has been challenged in the High Court of judicature at Mumbai in the writ petition No.277/98 and the Hon"ble High Court was pleased to grant interim stay in the matter on 4.3.1998. The matter is pending before the Hon"ble High Court and the writ petition has not been finally decided.

"On 23.1.1998, proceedings for attachment of the property belonging to the petitioner's husband were pending before the Chief Metropolitan Magistrate, Esplanade, Mumbai, for initiating action u/s 83 of the Criminal Procedure Code, 1973 vide Proc- lamation No.1/95."

12. Reliance is placed on the judgment of the Supreme Court reported as Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, to reiterate that the refusal of full passport to the petitioner affects her personal liberty and there cannot be an arbitrary, unfair and/or unreasonable exercise of power by the Authorities. Rules of natural justice must be followed in this regard. Paragraph 25 of this judgment reads as follows:

"25. There is also another consideration which leads to the same conclusion. The right to go abroad is, as held in *Satwant Singh Sawhney*'s case, included in 'personal liberty' within the meaning of Article 21 and is thus a fundamental right protected by that article. When the State issues a passport and grants endorsement for one country, but refuses for another, the person concerned can certainly go out of India but he is prevented from going to the country for which the endorsement is refused and his right to go to that country is taken away. This cannot be done by the State under Article 21 unless there is a law authorising the State to do so and the action is taken in accordance with the procedure prescribed by such law. The right to go abroad, and in particular to a specified country, is clearly right to personal liberty exercisable outside India and yet it has been held in *Satwant Singh Sawhney*'s case to be a fundamental right protected by Article 21. This clearly shows that there is no underlying principle in the constitution which limits the fundamental rights in their operation to the territory of India. If a fundamental right under Article 21 can be exercisable outside India, why can freedom of speech and expression conferred under Article 19(1)(a) be not so exercisable?"

13. Next reliance is placed on paragraph 36 of the judgment to highlight the rights of the citizens under Articles 19(1)(a) and 19(1)(g). The operative portion of this paragraph reads as follows:

".....Another ground of challenge urged on behalf of the petitioner was that the impugned Order has the effect of placing an unreasonable restriction on the right of free speech and expression guaranteed to the petitioner under Article 19(1)(a) as also on the right to carry on the profession of a journalist conferred under Article 19(1)(g), inasmuch as it seeks to impound the passport of the petitioner indefinitely, without any limit of time, on the mere likelihood of her being required in connection with the Commission of Inquiry headed by Mr. Justice J. C. Shah. It was not competent to the Central Government, it was argued, to express an opinion as to whether the petitioner is likely to be required in connection with the proceeding before the Commission of Inquiry. That would be a matter within the judgment of the Commission of Inquiry and it would be entirely for the Commission of Inquiry to decide whether or not her presence is necessary in the proceeding before it. The impugned Order impounding the passport of the petitioner on the basis of a mere opinion by the Central Government that the petitioner is likely to be required in connection with the proceeding before the commission of Inquiry was, in the circumstances, clearly unreasonable and hence violative of Article 19(1)(a) and (g). This ground of challenge was vehemently pressed on behalf of the petitioner and supplemented on behalf of Adil Sahariar who intervened at the hearing of the writ petition, but we do not think there is any substance in it. It is true, and we must straightaway concede it, that merely because a statutory provision empowering an authority to take action in specified circumstances is constitutionally valid as not being in conflict with any fundamental rights, it does not give a carte blanche to the authority to make any order it likes so long as it is within the parameters laid

down by the statutory provision. Every order made under a statutory provision must not only be within the authority conferred by the statutory provision, but must also stand the test of fundamental rights. Parliament cannot be presumed to have intended to confer power on an authority to act in contravention of fundamental rights. It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights."

14. The learned counsel for the respondents on the other hand has contended that there is limited scope of judicial review and it will not be open for this Court to substitute its own findings and interfere with the conclusions as recorded by the Authorities if two views are possible. Reliance is placed on the judgment of the Supreme Court reported as Apparel Export Promotion Council Vs. A.K. Chopra, . Para- graphs 16 and 17 of this judgment have been referred to which read as follows:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* observed:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."

"17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

15. The question now arises as to whether the impugned order suffers from the vice of arbitrariness and as to whether the principles of natural justice have been violated. The petitioner has contended in the writ petition that no show cause notice was issued to her nor she was granted any opportunity of personal hearing. The impugned order merely states that the Central Agencies have confirmed the cases against her husband which are still pending and he was a fugitive from law in India. The process of freezing of Benami Properties held in his or his wife's name are still going on and lastly there was reason to believe that if the petitioner was allowed to go to United Kingdom she would take detailed instructions from her husband to dispose of his Benami properties in India or abroad. Therefore, the full passport valid for travel to all the countries was declined. During the course of arguments, it has been stated that the properties of the petitioner have since been released by the Competent Authority, SAFEMA/NDPC, Mumbai by an order passed on October 20, 1997. The plea has been taken in the counter affidavit by the respondents that this Order has been challenged in the High Court of Judicature at Mumbai in Criminal Writ Petition No. 277/98 and an interim order of stay was granted in the matter on March 4, 1998. The Division Bench of the Mumbai High Court has since upheld the Order passed by the Competent Authority by a detailed judgment written on October 8, 1998 by which some of the properties of the petitioner were released and show cause notices were dropped. This judgment has been subsequently upheld by the Supreme Court in Special Leave to Appeal (Criminal) No. 4028/98 on February 25, 1999. These subsequent developments have not been considered by the respondents.

16. The reason for declining for issue of full passport to the petitioner on the above ground has, Therefore, become non-existent. The Appellate Authority has given another reason that there was reason to believe that if the petitioner was allowed to go to United Kingdom she would obtain detailed instructions from her husband to dispose of Benami properties in India and abroad. Such reasons cannot be sustained in the eyes of law as it is assumed that the respondents will exercise the power in a reasonable and responsible manner. The instructions, if

any, can still be obtained by the petitioner without traveling to United Kingdom and there is no specific charge against her which has been even remotely discussed in the impugned Order. In any case some of the properties have since been released by the Authorities in India and the challenge to the Order passed by the Competent Authority has been repelled up to the Supreme Court. The provisions of subsection (1) of Section 6 of the Act which prescribes the grounds for restricting the passport and refusing to make an endorsement are clearly specified and they have not been taken into consideration by the respondents in assessing the case of the petitioner. There is no dispute with the settled proposition of law with regard to the limited scope of interference in judicial review. This Court cannot normally substitute its own conclusion but it is open to exercise power of review when the orders are made either on no evidence or on evidence which is irrelevant and does not exist. The purpose of judicial review is, Therefore, to ensure that an individual receives fair treatment and principles of natural justice are fully complied with.

17. In view of the above facts and taking into consideration the judgment of the Mumbai High Court and dismissal of SLP by the Supreme Court, it will be appropriate that the Passport Authorities re- consider the matter justly and fairly after providing an opportunity to the petitioner as no sufficient grounds have been made out in the impugned order to curtail or restrict the right of the petitioner to travel. The Order dated January 23, 1998 is, accordingly, set aside. The respondents shall examine the matter afresh and decide and dispose of the same within a period of one month from today.