
(1997) 08 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8717 of 1997

Hassan Ali Khan

APPELLANT

Vs

The Regional Passport Officer, Passport Office

RESPONDENT

Date of Decision : 18-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Passports Act, 1967 — Section 10

Citation : AIR 1998 AP 232 : (1997) 6 ALD 820 : (1997) 3 AnWR 726

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; A. Chaya Devi, A.S.C. for Central Govt., for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—The petitioner in the instant writ petition prays for issuance of an appropriate writ particularly one in the nature of writ of Mandamus declaring the action of the respondent in retaining the passport of the petitioner as illegal, arbitrary and violative of fundamental rights guaranteed by Article 19(1)(a) and 19(1)(a) of the Constitution of India. The petitioner also prays for issuance of a consequential direction to the respondent to release the passport bearing No. 31575/86 after renewing the same.

2. The petitioner in this case, admittedly, is involved in more than one criminal case. Bail is stated to have been granted to him. However, in Cr. No. 67/1992 the learned XXI Metropolitan Magistrate, Hyderabad passed an order granting bail to the petitioner on 1-8-1992 on condition of the petitioner executing a personal bond for a sum of Rs. 10,000/- with two sureties for a like sum each on condition that the petitioner shall appear before the Police, C.C.S. to assist in completing the investigation and the petitioner should surrender his passport before the Court. The passport is surrendered by the petitioner pursuant to the said order passed by the Court. However, the said order passed by the learned Magistrate is

modified by this Court by an order D/- 31-3-1995 in Crl. Petition No. 1199/95 directing the release of the passport in favour of the petitioner on condition of the petitioner depositing a sum of Rs. 25,000/- in the lower Court. This Court further directed that in case the petitioner wants to leave India he has to take permission of the learned Magistrate and also bring to the notice of the Passport authority that the prosecution is pending against him. On depositing the amount, the passport is already released to the petitioner.

3. The petitioner once again submitted the passport to the respondent for adding visa leaves to the passport and the same is received by the respondents on 17-4-1995. The respondent having received the passport did not release the same in favour of the petitioner. Hence this writ petition.

The complaint in the instant writ petition is that the respondent herein having received the passport did not take any decision in the matter and return the same. No order is communicated to the petitioner. The petitioner placed reliance upon the order passed by this Court in Crl. Petition No. 1199/95 D/- 28-7-1995 directing the passport to be released in favour of the petitioner. It is stated that the respondent has no jurisdiction whatsoever to retain the passport. On account of the impugned action of the respondent, the petitioner is not in a position to leave the Country, even if the Court grants permission to leave the Country. The action of the respondent, according to the petitioner, is not only illegal and arbitrary but violative of the fundamental rights guaranteed by Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India.

4. In the counter-affidavit, it is stated that the respondent has passed orders impounding his passport u/s 10(3)(e) of the Passport Act, 1967 as the petitioner is facing number of criminal cases relating to cheating in a Court of law. The respondent is alleged to have received request from not only the Police but also from the State Bank of India to impound the passport of the petitioner, as he is habitually involving in criminal cases. It is stated that the petitioner did not obtain any order from the learned Magistrate permitting him to leave the Country. The petitioner, according to the respondent did not make any request for release of the passport setting out the details as to what happened pursuant to the order passed in Crl. Petition No. 1199/1995. It is specifically stated that the respondent has not received any direction whatsoever either from this Court in the said Criminal petition or from the Metropolitan Magistrate Court. It is stated that the petitioner is entitled to prefer an appeal before the appellate authority in case he is aggrieved by the action taken by the respondent in impounding the passport.

5. The petitioner filed an additional affidavit stating that he has learnt for the first time that the order impounding the passport from what is stated in the counter-affidavit. No notice has been issued to the petitioner before passing an order of impounding. The order is stated to have been passed basing on the letter written by the Additional Director General and Commissioner of Police, Hyderabad in the year 1992 and the letter of the State Bank of India D/-

15-2-1990, It is also slated that the order passed by this Court in Crl. Petition No. 1199/1995 D/- 28-7-1995 was communicated to the respondent-Passport Officer. The fact that he is not a party to the case does not absolve him of his responsibility in complying and implementing with the order passed by this Court is the submission. The petitioner also filed an application to amend the prayer and raise additional grounds challenging the impugned action of impounding the passport by the respondent.

6. In the additional counter-affidavit, it is stated that it was decided to impound the passport of the petitioner and consequently an impounding circular was also issued on 14-5-1993 which conclusively establishes the fact of impounding of the passport. It is however, accepted and conceded about procedural lapse on the part of the respondent and the decision was not recorded which is the usual practice.

7. Pursuant to the directions of the Court, the records are produced by the respondent and the record also does not disclose that any decision as such was recorded in the file. It is rather difficult to appreciate as to how the respondent could have dealt with the matter in such a casual fashion. The record also does not disclose any proceeding except the request made by the Police Department to impound the passport of the petitioner. The passport appears to have impounded even while the passport was in the custody of the Court. It is settled law that the respondent herein could not have taken steps for impounding the passport without issuing notice to the petitioner and affording him an opportunity to submit his explanation. Opportunity of hearing is required to be given to a passport holder before the decision to impound the passport is taken. The passport holder is entitled for a reasonable opportunity of being heard. The respondent-Passport Officer would not have adopted the present method of straightway issuing a circular impounding the passport. The action is totally illegal and arbitrary. The action of impounding the passport could not have been taken by the respondent herein on the basis of some information furnished by the Police alone. The petitioner should have been put on notice as to why the passport should not be impounded in exercise of the power conferred upon the Passport Officer under the provisions of the Passport Act, 1967. No such procedure is followed. The Circular Dt. 14-5-1993 issued declaring as if the petitioner's passport is impounded is to be declared as non est in law.

8. Evidently the respondent has not chosen to consider the request of the petitioner for the return of the passport on the ground that the same had already been impounded through the Circular Dt. 14-5-1993. The said action also cannot be countenanced. The method and procedure adopted by the respondent in dealing with the case of the petitioner is totally illegal and arbitrary. The action of the respondent is required to be fair and reasonable and free from arbitrariness. Nothing prevented the respondent from issuing appropriate notice to the petitioner based upon the information available with him and directing him to show-cause as to why appropriate action should not be taken against him. If no

such procedure is adopted by the respondent, the action is not only ultra vires the provisions of the Passport Act, 1967 but also violative of principles of natural justice. However, no direction as prayed for by the petitioner to straightway issued and return the passport can be granted, the matter is required to be reconsidered by the respondent. It is open to the respondent to issue an appropriate notice to the petitioner herein giving him an opportunity of explanation and then decide as to whether his passport could be returned by including the visa. It is also open to the respondent to issue notice to the petitioner if there is any need for impounding the passport of the petitioner. A detailed enquiry is required to be made by the respondent and after affording reasonable opportunity to the petitioner and then only decide the matter in accordance with law.

9. The writ petition is accordingly allowed setting aside the action of the respondent in impounding the passport through the Circular Dt- 14-5-1993.

The respondent is directed to consider the request of the petitioner for return of the passport in accordance with law. The whole process in this regard shall be completed within a period of three months from the date of receipt of a copy of this order.

10. The writ petition is accordingly allowed with costs quantified at Rs. 500/- (Rupees five hundred).