

(2003) 11 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2277 of 2001

Pawan Deep Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Passports Act, 1967 — Section 6, 6(2)

Citation : AIR 2004 P&H 106 : (2004) 1 ILR (P&H) 137 : (2004) 136 PLR 587 : (2004) 1 RCR(Civil) 459

Hon'ble Judges : Binod Kumar Roy, C.J.;V.K. Bali, J;N.K. Sodhi, J

Bench : Full Bench

Advocate : Mahabir Sandhu, for the Appellant; M.S. Guglani, Addl. Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy, C.J., N.K. Sodhi and V.K. Bali, JJ.—The petitioner Pawan Deep Singh who is a minor and it is asserted that he is an adopted son of Satpal Singh—his own Uncle, has really come up with following two prayers:-

(i) to quash the order as contained in communication dated 29.11.2000 of the Superintendent for Regional Passport Officer, Chandigarh to his father's sister Mrs. Surjit Kaur, that since he was adopted by his uncle, who has two natural sons and thereby ineligible for the adoption and consequently his prayer for grant of Passport cannot be considered and (ii) to command the Respondents to issue Passport to him forth.

2. The portrayal of relevant facts are in narrow compass:-

2.1. According to the petitioners he is resident of Bhattian, Tehsil and District Ludhiana and citizen of India. He was born on 27.8.1989 in the aforesaid village. The mother died on 31.8.1991 and his father died on 7.10.1998 leaving him alone. Mohinder Singh and Surinder Kaur, his real grand father and grand mother agreed to give him in adoption to their another son Satpal Singh and their

daughter in law Inderjit Kaur (wife of Satpal Singh) who is his own uncle and are living in Italy. He was duly adopted by his own Uncle and Aunt vide adoption deed dated 17.5.1999, which was registered in the office of Sub Registrar, Ludhiana (copy appended as Annexure P1). They executed legal power of attorney dated 8.3.1999 in favour of his father's sister Surjit Kaur at Milan (Italy) which was registered with the Punjab Government on 31.3.1999, On the basis of adoption deed, Surjit Kaur, on the strength of aforesaid power of attorney, applied for a Passport for the Petitioner in September, 1999 in prescribed form and deposited requisite fee with the Respondents. On being asked, an affidavit dated 6.1.2000 was also filed stating to the effect that the name of the Petitioner was neither included in any other Passport or any valid travel document; that his natural parents had died whose death certificates were also attached and that he was never adopted by anybody earlier; he is school going child and his adopted parents are willing to give him education at Italy since they are residing there permanently; due to the non issuance of Passport the Petitioner is suffering for natural love and affection of parents and that of his education career. The grant Passport, however, has been declined vide the communication as contained in Annexure R3. Had the Passport been issued he could have got his admission in the higher class in Italy in time. The action of the Respondents is illegal, unjust, unfair, unconstitutional, arbitrary, against the mandatory provisions of the Act; that the Respondents authority was bound to issue the Passport to him and in refusing to do so a grave and manifest injustice has been caused.

2.2. In their written statement, Respondents assert, inter alia to this effect:-

Under the provisions of the Hindu Adoptions and Maintenance Act, 1956 since Sat-pal Singh and Inderjit Kaur have their own sons, therefore the adoption of the petitioner was invalid; since his adoption was invalid and thus prayer for grant of Passport could not be considered on that ground alone; reasons for not granting the Passport was informed to his legal guardian Mrs. Surjit Kaur; even though his antecedents were found correct; their action is valid; they are not bound to issue the Passport unless condition and eligibility for grant of Passport facility are fulfilled; no injustice has been caused to him; and the writ petition be dismissed with costs.

3. When this writ petition came up for hearing before one of us (V.K. Bali, J.) a request was made for constituting a Larger Bench vide order dated August 9, 2002, which reads as under:-

"Petitioner, who is stated to be only 13 years of age, has unfortunately lost his parents. Father's brother of petitioner made an endeavour to mitigate this misfortune of the petitioner by adopting him vide registered deed dated 17.5.1999 (Annexure P1). He is residing in Italy. Petitioner aged 13 years could have led better life so as to be looked after by his real uncle, if, pursuant to the adoption, he could go to Italy and live with his uncle. Indeed, he applied for Passport but the same has been refused. It is in these circumstances, present

petition for grant of Passport has been filed.

The only ground on which the prayer contained in the petition has since been opposed is that uncle of the petitioner has two natural born sons and, therefore, adoption deed (Annexure P1) is illegal.

Prima facie, it appears strange to this Court as to how, even if it is assumed that adoption is not valid, the Passport Authority can refuse to grant Passport on this ground. Nothing at all has been suggested that migration of petitioner to Italy would in any way affect the interest of the State or in any other manner jeopardise the security of the country.

Mr. Rai, learned counsel representating the respondents-Union of India relies upon a Division Bench judgment of this Court in Harjit Singh and Ors. v. Union of India 1991(1) C.L.J.158. The plea of Union of India in opposing grant of passport on the precise ground as specified in the present case was upheld primarily on the basis of provisions of Sections 11 and 16 of the Hindu Adoption and Maintenance Act, 1956. Section 6 of the Passport Act, 1967 which deals with grounds on which passport can be refused was not discussed at all. This Court is of the view that petitioner could be refused passport only on the grounds enumerated in Section 6 of the Passport Act and passport could not be refused only if the adoption of the petitioner was not in accordance with Sections 11 and 16 of the Hindu Adoption and Maintenance Act, 1956. However, inasmuch as, there is a direct Division Bench judgment, which has taken a view in tune with the defence projected by Union of India, which, in my opinion with utmost respect does not appear to be correct, this matter needs to be decided by a Larger Bench. The Court at one stage had thought to distinguish the judgment in Harjit Singh's case on the basis that Section 6 of the Passport Act, 1967 was not discussed at all but it would not be appropriate to do so in view of the fact that the question involved in the present case is absolutely identical to the one involved in case of Harjit Singh (supra).

Let the papers of this case be placed before Hon"ble the Acting Chief Justice for constituting a Larger Bench. Inasmuch as, going of petitioner to Italy is urgent where alone he can be looked after and in this country, he is rotting and is without any support, the court finds considerable merit in the prayer made by the counsel for the petitioner for constituting a Larger Bench as early as possible."

4. Apart from reiterating the submissions noted in the reference order, it has been highlighted that the petitioner though minor has a fundamental right to have education of his choice and secure a dignified meaningful life as guaranteed under Articles 19(1)(a) and 21 of the Constitution of India. Request for grant of Passport can be refused only on the grounds mentioned in Section 6 and not on any other ground. His application could not have been thrown out and/or refused to be considered as none of the prohibition mentioned in the afore-mentioned Section were attracted in his case. Thus, refusal to grant Passport is not only

violative of the fundamental rights of the petitioner as enshrined in Articles 19(1) (a) and 21 of the Constitution of India but also of Section 6 of the Passport Act, 1967.

5. Mr. M.S. Guglani, learned Addl. Central Government Standing Counsel of Union of India representing Respondents Nos. 1 and 2 on the other hand contended as follows:-

Reasons given for refusal to grant Passport are valid, in view of the Division Bench judgment of our own High Court in Harjit Singh and Ors. v. Union of India 1999(1) CLJ 158 no interference is required; in the public interest, as mentioned in Section 6(2)(i), there was justification for not granting the passport, in many cases adoption deeds have been found to be fake by the Passport authorities justifying refusal to grant Passport in such cases. The Government will have to bear costs to the petitioner from Italy to India if he is not kept by his Uncle or Aunt in Italy.

6. In regard to the apprehension expressed by Mr. M.S. Guglani, the learned counsel for the Petitioner took up a stand that any apprehension in regard to who will bear the responsibility of the petitioner in Italy is wholly unfounded inasmuch as the Aunt and Uncle of the Petitioner have already shown their preparedness in this regard.

7. The short question for our consideration is what is true scope of Section 6 of the Passport Act, 1967? and whether the Respondent No. 2 in particular was justified in refusing Passport to the Petitioner?

8. Section 6 of the Act 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 the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court of India;
- (g) that a warrant of 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 to 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."

9. A bare perusal of Section 6 afore-mentioned shows that except on four grounds mentioned in Sub Section 1 and nine grounds mentioned in Sub-section 2 of Section 6 on no other ground there could be refusal to grant Passport or travel document.

10. In *Ganapathi National Middle School Vs. M. Durai Kannan (dead) by LRs. and others, and State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others*, the Hon'ble Supreme Court has held that a child has got a fundamental right of education. In *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, it was held to the effect that Article 21 takes in the right of locomotion and to travel abroad. Hidayatullah, J. in his dissenting judgment also considered that there is no doubt a fundamental right to equality in the matter of grant of passports (subject to reasonable classifications). In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Apex Court laid down the applicable tests under Article 19 in relation to impounding of passport. Under our constitutional scheme the fundamental right enshrined under Article 21 is available not only to adults or non citizens but also to the minors. The Government cannot deprive the

minor's right to have a better education or to live a dignified life, apart from love and affection of his own uncle and Aunt though the stand taken by the Respondents that adoption was not valid is correct since the Aunt and Uncle are having their own sons. This significant aspect of the matter was not considered earlier by the Division Bench. The judgment of the Division Bench has also not considered the provisions of Section 6 of the Act. It is, thus, per incuriam. We are, thus, constrained to overrule this decision.

11. We have no hesitation in holding that the action of the Respondent No. 2 in refusing to grant Passport to the Petitioner in the peculiar facts and circumstances of the case, is in teeth of Article 14 which is antithesis to any arbitrary action and against the Petitioner's fundamental rights enshrined under Articles 19 and 21 of the Constitution of India.

12. From the averments made in the counter affidavit no other infirmity has been disclosed justifying refusal to grant Passport by Respondent No. 2. Respondent No. 2 has asserted Smt. Surjit Kaur the Petitioner's father's sister as his legal guardian.

13. For the reasons afore-mentioned, we quash the decision of the Respondents No. 2 as contained in Annexure R3 and command the Respondents to issue the desired Passport to the Petitioner expeditiously preferably within one month from today through his (i) Father's sister who according to the respondent No. 2 is his legal guardian or (ii) Grand Father or (iii) Grand Mother.

14. By way of removal of any doubt we direct filing of an appropriate affidavit by the petitioner's father's sister or his Grand Father or Grand Mother before Respondent No. 2.

15. We thus allow this writ petition.

16. Let a copy of this order be handed over to Mr. M.S. Guglani, learned Additional Central Government Standing Counsel within a week for its intimation to and follow up action.