
(2004) 07 P&H CK 0072
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 839 of 2004

Rajinder Kaur and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 01-07-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Passports Act, 1967 — Section 6(2)

Citation : AIR 2004 P&H 347 : (2004) 138 PLR 715 : (2004) 3 RCR(Civil) 810

Hon'ble Judges : Swatanter Kumar, J;Amar Dutt, J

Bench : Division Bench

Advocate : C.M. Munjal, Addl. AG, Navkiran Singh and Gurpreet Singh, for the Appellant;

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—Rajinder Kaur and Gurdeep Kaur. wife and mother respectively. Of Gurbachan Singh, have approached this Court

under Articles 226/227 of the Constitution of India praying that the Regional Passport Officer, Chandigarh, should be directed to issue passport to

the petitioners. The action of the respondents in not issuing passports to the petitioners is entirely arbitrary and without any basis According to the

petitioners they had applied for issuance of a passport as they had Intention to travel abroad. For this purpose, they submitted the requisite

application forms after duly complying with rules and as stated in the application on 12-3-2003. Applications of both the petitioners were received

by the department against receipts Serial No. Chandigarh 00019 and Chandigarh 00015 respectively on the same date. The petitioners visited the

passport office on different dates Including 26-9-2003 and 17-11-2003. The passports were not issued to the petitioners and they were informed

that it had been reported on the enquiry slip that police report from the Senior Superintendent of Police; Patiala, was incorrect Petitioners claim

that they have never done any criminal act and they do not have any history of direct or indirect involvement of any crime. The respondents have

no reason, whatsoever, to deny this relief to the petitioners. Mr. Gurbachan Singh is stated to be avoiding trial in State of Punjab and is wanted by

the police and that is the basic reason why the State functionaries including the police are not quite inclined to issue the demanded passport to the

petitioners. The petitioners while relying upon the judgment of the Hon'ble Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India

(UOI) and Another, as well as judgment of a Division Bench of this Court in the case of Kamaljit Kaur v. Union of India CWP No. 4226 of 2001,

decided on 9-10-2001 concluded that they are really entitled to get the passports and the travel documents for travelling abroad in accordance

with the provisions of the Passports Act, hereinafter referred to as the Act.

2. This petition was contested by the respondents. Two different written statements were filed. One written statement was filed on behalf of the

Union of India and Regional Passport Officer together, wherein it was not disputed that application for issuance of passport was received by the

Passport Office but it is averred that it is mandatory before issuance of the passport that there should be clear investigation report in terms of the

instructions issued by the Government of India dated 28-10-1999, Annexure R, I to the writ petition. As per police report. Annexure R. 2 to the

reply, the police authorities have not recommended issuance of passport to the petitioners on the ground that Shri Gurbachan Singh was indulging

in terrorist activities and had gone abroad on a passport which he obtained by giving wrong address.

3. Other written statement was filed on behalf of the Deputy Superintendent of Police, Samana-respondent No. 3. In the preliminary submissions

of the written statement it has been stated that number of cases have been registered against Gurbachan Singh, the husband and son respectively of

the two petitioners. There are as many as eight cases registered against him, which are pending and he is wanted in these cases. Since the

petitioners also wanted to go to see Gurbachan Singh in America, therefore, it was not desirable to issue passport to them. The details of the cases

registered against him are as under :-

1. FIR No. 26 dated 19-2-1989, u/s 307/34, IPC 3, 4, 5, TADA Act, P. S. Patran.
2. FIR No. 67 dated 22-5-1989, u/s 302/307/34. IPC. 25/54/59 Arms Act, P.S. Patran.
- 3 FIR No. 74 dated 10-6-1989. u/s 302/34, IPC. P. S. Patran.
4. FIR No 321 dated 12-9-1989, u/s 307/148/149/120-B, IPC. 3, 4. 5 TADA Act. P.S. Guhia, District Kaithal.
5. FIR No. 160 dated 26-8-1989, u/s 436/452/427, IPC, 3,4, 5 TADA Act, P. S. Samana.
6. FIR No. 9 dated 20-1-1989, u/s 302/34, IPC 3, 4, 5 TADA Act, 25/54/59 Arms Act, P. S. Ghagga.
7. FIR No. 90 dated 15-5-1989, u/s 382, IPC. 3.4.5 TADAAct. P. S. Samana.
8. FIR No. 352 dated 8-7-2000, u/s 470/ 471/468/120-Band 12 of Passport Act, P.S. Civil Lines, Patiala.

In addition to the above it is also stated in the written statement that Gurbachan Singh, who had escaped from police, is residing in America and it

is apprehended that the petitioners may help the said person in anti-national activities. Gurbachan Singh is further stated to be a proclaimed offender.

4. As the written statement, particularly on behalf the police authorities, was vague and indefinite, the Court on 26-4-2004 passed the following

order :--

Two officers Mr. Shiv Kumar, Senior Superintendent of Police, Fatehgarh Sahib and Mr. A. S. Ral, Senior Superintendent of Police. Patiala, are

present in Court. They regret that proper affidavit had not been filed in this case and they assured the Court a record based affidavit complete in all

respects would be filed within one week from today with an advance copy to the learned counsel for the petitioners, who may, if so desires, file

counter-affidavit to the same within three days thereafter.

List this matter for hearing on 11-5-2004.

We make it cleat that the relevant record should be produced in Court on that date.

The officers have also informed the Court that they are in the process of finalising the guidelines/instructions which should be followed by various

districts in relation to personal particular verification by the police in response to the queries raised by the passport office.

5. After passing of the order, Punjab Police authorities filed additional affidavit of Shri Amardeep Singh Ral. IPS, Superintendent of Police, Patlala.

In this additional affidavit, further details of the various cases registered against Gurbachan Singh have been given and It Is stated that if the

passports are issued to the petitioners, it will hamper the proceedings of the criminal cases pending in the Court. Another sentence has been added

in this affidavit to say that the case of the petitioners would be hit by the provisions of Section 6 (2)(b) of the Act as the applicants may, or are

likely to engage outside India In for activities prejudicial to the sovereignty and integrity of India.

6. From the above noted facts, as they emerge from the pleadings of the parties, it is clear that there is no specific case registered against any of the

petitioners. They are not involved in any conspiracy or actual commission of any crime. It is true that satisfaction of any authority, involved in this

process is subjective but equally true is that such subjective satisfaction must be achieved objectively keeping in mind the purpose of the statute in

which the authorities are exercising the powers. Once a right is sanctioned In favour of a citizen, then it cannot be wiped out except for compelling

circumstances which are available to the authorities in position as per due process of law. In our order dated 26-4-2004 we had specifically

directed the respondents to produce the records in support of the averments made in the affidavit and the reply. No such record was produced.

7. Firstly, the averments made in the reply are vague and secondly they are not supported by any records of the State Police Authorities

maintained in its normal course of business. None of the petitioners have been kept under any surveillance by the respondent-department though

they have been in India for years together. They are not the history-sheeters or their names have been entered on the register in the police station

for overlooking the activities of these persons. Merely because Gurbachan Singh happens to be involved in certain criminal cases and has been

granted asylum in the foreign country per se can or cannot be the ground for denying the issuance of the passport to the petitioners, is the question

we are called upon to decide in the present petition.

8. In the case of *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, the Supreme Court expanded the scope of freedom to travel and equated the same to a fundamental right and a constitutional protection available, to the citizens of this country. This expansion of right of freedom has been reiterated with approval in various subsequent judgments. The Supreme Court also emphasised that every executive action which is or which may or is likely to operate prejudicial to the Interests of any person must be supported by legislative authority. In the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Court held that a person cannot be deprived of his right to go abroad. There was a specific law enacted by the State in that regard. This being the settled law, obvious result is that the competent authority must have material to substantiate this objection on the basis of the record maintained by it in support of the objection for Issuance of the passport. Further more, the Parliament having enacted a law specifying the grounds on the basis of which the authorities have wide power for refusing to issue a passport or travel document of the one hand and even right has been given to the said authorities to Impound or caused to be Impound or revoke the passport or travel document. But, once the grounds have been specified, then the authorities are obliged to bring their case within those grounds and cannot be permitted to add any ground to the specified ground or to forward an interpretation which, in substance, would tantamount to introduce a new ground which apparently is beyond the purview of the existing provisions. The authorities must deal with facts of the case and raise record based objections. The authorities, thus. must apply their mind in light of the grounds existing u/s 6 (2) of the Act before they decline to issue passport to the petitioners. Interdepartmental proceedings should be taken in a responsible manner so that constitutional protected right of a person is not infringed by an arbitrary action. The satisfaction to be recorded by the police department and/or even the passport authorities should be founded on some reasonable and cogent material. In the case of *Manjit Singh v. Union of India*, CWP No. 4073 of 2003, decided-on 20-5-2004. the Court held as under :-

.....Such a discretion must be exercised in consonance with the provisions of the Passport Act, 1967. They owe an obligation to the public

at large to discharge their duties in terms of the provisions of the said Act in accordance with law and fairly. No justifiable reason can be given why

an application should be kept pending for years together. If the competent authority is of the view that in consonance with the provisions , of the

Act, passport should be declined to an applicant he is bound by law to pass such an order and communicate the same to the person concerned

while adhering to the principle of Audi Alteram Partem wherever necessary. To grant or refuse to grant is the discretion of the authority to be

exercised in consonance with the settled principles of law but to keep the matter in abeyance would be an act which Is bound to invite judicial

castism on all quarters. The authorities are duty bound to apply their mind to the facts and circumstances of each case and take decision promptly

without any unnecessary delay. In the case of Ranjit Bajaj (supra) the Court held as under :-

However, we must also notice a pertinent aspect relatable to such cases. The authorities have a duty to strike a balance between the restricted

freedom available to the petitioner to travel abroad and the nature and grievousness of the crime committed by him. The development of law,

which is its basic and essential feature, has given wide magnitude to the expression of freedom. Enlargement of the concept of-freedom by judicial

pronouncement has an inbuilt effect of requiring the authorities to examine the matter with a greater caution and care rather than mechanically reject

request for issuance of passport. To illustrate this view we may refer to a case where a person may be involved in a minor offence of traffic

regulations and claims to be tried In the Court rather than paying fine at the spot, A case against him being registered u/s 11 read with. Section 183

of the Motor Vehicles Act, 1988 and even Section 323 of the Indian Penal Code simpliciter and challan presented in Court, should such person be

denied issuance of a passport merely because there is a case pending against him in the criminal Court, will be a matter of serious concern for the

passport authorities. In such cases. It will be expected of the passport authorities to consider the application for renewal/issuance of a passport

objectively and in consultation with the police authorities so as to prevent injustice being done to an applicant. Default in such objectivity Is in all

probabilities likely to result in Infringement of a fundamental protection and liberty granted to the applicant under the law of the land. The purpose

for which the petitioner had prayed for Issuance of the passport has lost its significance as the event at Bangkok itself is over.

Reverting back to the facts of the present case there is no denying the fact that when the police verification report was sent by respondent No. 3 to

respondent No. 2, the petitioner was not undergoing any sentence or conviction. In fact he had been released on probation by the Court of

competent jurisdiction. The period of bond had already expired In the year 2000. The report submitted by respondent No. 3 cannot be justified.

In fact the same is an unfair exercise of power. Keeping the application of the petitioner in abeyance by respondent No. 2 is again not permissible

on any ground as is clear from the records provided before us. The police authorities have acted unfairly and error has been personified by inaction

on the part of respondent.

..... .The authorities must advert themselves also to the fact that the police should apply Its mind and make correct reports to the passport

authority on the record available with the department. The applications should be processed properly and final orders granting the passport or

declining the request for issuance of the passport upon due application of mind should be passed by the passport authorities. Orders so passed,

essentially must be conveyed to the applicant. Such directions and or instructions must be issued by the concerned authorities at the earliest.

9. We have already noticed that according to the contentions raised on behalf of the respondents before us, the passports cannot be Issued to the

petitioners In light of the provisions contained In Section 6 (2)(b) of the Act. u/s 6 (2)(b) of the Act it is stated that the passport authority shall

refuse to issue a passport on the grounds that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and

integrity of India. A person can be denied the right to travel abroad if the authorities are satisfied that ingredients of this provision are satisfied. The

language of the section indicates the gravity of the involvement or likely involvement of an applicant in activities which would be prejudicial to the

sovereignty and integrity of the country. These provisions, thus, must receive a strict construction as their consequences in law are not only serious

but have the effect of taking away freedom granted to the petitioners in law. Before It could be stated that a person is Involved in activities which

are prejudicial to the sovereignty of the country, there must be some reasonable and cogent material in possession of the respondents to show

involvement of the petitioners in such activities. The expression, "likely to" cannot be treated so lightly as to include every activity and relationship to

be prejudicial to the sovereignty of the State.

10. Likelihood may take in its scope the apprehension which essentially must be record based or founded on a reasonable cause, of course, may

not be directly substantiated by written documentation. Surveillance, maintenance of appropriate registers under the Police Rules, entry of the name

of the person therein and at least some reasonable analytical examination by the concerned quarters in the Union of India would normally be the

records which should substantiate such reasonable apprehension.

11. We have already noticed that despite order of the Court no records were produced before us to substantiate the said apprehension of the

respondents. The only material before the Court is contained in the reply filed by the respondents in the shape of vague affidavit. The relevant part

of the reply is reproduced as under :-

On going through previous record of Gurbachan Singh it has revealed that he has criminal record and has even obtained Indian Passport by giving

false information, false address and without disclosing his criminal records and a criminal case is pending in the Court of JMIC, Patiala In which he

is a proclaimed offender. The above said passport has been obtained at the instance of maternal uncle Darbara Singh and all the above said facts

were also in the knowledge of his wife Rajinder Kaur and mother Gurdeep Kaur. Moreover, Joint Director Intelligence Bureau, New Delhi has

also been moved regarding absconding of Gurbachan Singh if the Passports are issue to the petitioners it will hamper the proceedings of criminal

cases pending in the Court. It will be worth while to mention here that surveillance and look out notices have also been issued against Gurbachan

Singh accused, husband and son of the petitioners.

12. The above averments do not satisfy any of the grounds specified in different clause of sub-section (2) of Section 6, much less that they would

satisfy even remotely the grounds stated in Section 6 (2)(b). Similar is the situation in CWP No. 610 of 2004 wherein the respondents have stated

in their reply that husband of the petitioner had links with extremists

organisations. The husband of the petitioner Rajinder Singh is residing in some foreign country and if the passports are issued to the petitioners, they would go and Join the husband, who then would never come back to India

and as such the criminal proceedings against the husband would be hampered and. thus, would prejudicially affect the sovereignty of India. These

allegations are equally vague and are not supported by any record, whatsoever.

13. Even during the course of arguments it has not been disputed before us that neither any case is pending against any of the petitioners in both the

above writ petitions nor there is any record much less a report of a competent investigating agency or force that during their long stay in India, the

petitioners are even suspected in some extremists activities or have links with the persons abroad. It is also not disputed that there is no record to

show that these petitioners have carried out any activities which are, in any way, prejudicial to the sovereignty of the country.

14. Learned counsel for the petitioners relied upon another Division Bench of this Court in the case of Kamaljit Kaur (*supra*) where In somewhat

similar circumstances the Court held that the Senior Superintendent of Police in that case had sent his report to the Regional Passport Officer on

conjectures and there was no material with the police against the petitioners to recommend the passport to be issued to them. We are cautious of

the fact that while exercising its powers under Article 226 of the Constitution of India this Court does not examine the material collected by the

respondent authorities while exercising such a power under the provisions of the Act as a Court of appeal, but there has to be some definite

material with the respondents which should leave to a person of common prudence to come to that conclusion while appreciating the said material

in Its normal course. Where not even lots of record or documents are available, we are afraid that the view taken by the respondents cannot stand

the judicial scrutiny. The Court Is obliged to examine the material produced before it to satisfy its conscious whether the denial of the passport is in

consonance with the provisions of Section 6(2) of the Act or not and whether the action of the respondents at the face of it is arbitrary. The

reliance placed by the learned counsel appearing for the respondents on the judgment of the Supreme Court in the case of Union of India (UOI)

and Others Vs. Smt. Charanjit Kaur, is of not much help to the authorities. In

that case their Lordships of the Supreme Court had specifically referred to the record produced before the Court including the letter of the Ministry of External Affairs, New Delhi, wherein it was stated that the petitioner in that case had links with six extremists and is likely to engage in activities detrimental to the security of the State. The passport had already been issued to Smt. Charanjit Kaur which was sought to be impounded by order of the passport authority. Permitting such Impounding, the Court in that case also specifically relied upon the report furnished by the Intelligence Bureau in its two independent letters. Once material is produced before the Court, then the Court may decline to interfere in exercise of discretion by the respondents, as sufficiency of material or otherwise would be a question which would normally fall in the domain of the administrative authority and can hardly be subjected to judicial review. But, where there is no material or totally irrelevant or insufficient material, in that event the Court would have no choice but to exercise its Jurisdiction to prevent violation of the freedom granted to the petitioners under Article 14 read with Article 21 of the Constitution of India.

Freedom to travel abroad can be circumvented on the premise and for the reasons which would strictly fall within the ambit and scope of the statutory provisions of the Act.

15. For the reasons aforesaid, we allow both these petitions and direct the respondents to consider the applications of the petitioners for issuance of passports and issue the same in accordance with law. Of course and unless the respondents have such material in their power and possession on the basis of which they can exercise their power u/s 6 (2) (b) of the Act in light of our above observations. However, the parties are left to bear their own costs.