

(2020) 10 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 6573 Of 2019, Civil Miscellaneous No. 24100 Of 2020

Rajiv Saxena

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Passports Act, 1967 — Section 10, 10A, 10A(1), 10(3), 10(3)(c), 10(3)(e), 11
Indian Penal Code, 1860 — Section 420
Prevention Of Corruption Act, 1988 — Section 7, 8, 9, 12, 13(1), 13(2)

Citation : (2020) 10 DEL CK 0079

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : R.K.Handoo, Rajat Manchanda, Aditya Chaudhary, Ajay Dignpaul, Amit Gupta, Sahaj Garg, D.P Singh, Manu Mishra, Shreya Dutt

Final Decision : Allowed

Judgement

Navin Chawla, J

1. This petition has been filed by the petitioner challenging the order dated 25.01.2019 issued by the respondent no.1, suspending the passport of the petitioner, exercising powers vested in the respondent no.1 under Section 10A of The Passports Act, 1967 (hereinafter referred to as the 'Act').

2. The petition further challenges the order dated 01.05.2019 issued by the respondent no.1, extending the period of suspension of the passport of the petitioner till the proceedings relating to variation, impounding or revocation of the passport under Section 10 of the Act are concluded. As a consequent relief, the petitioner prays for return of his passport.

3. By the Impugned Order dated 25.01.2019, in exercise of powers under Section 10A of the Act, the passport of the petitioner was suspended for a period of four weeks. The Impugned Order reads as under:

"Whereas, the Central Government has received a communication from the Enforcement Directorate (ED) stating that under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) in a sensitive case under investigation registered by the ED bearing an ECIR No. DLZO/15/2014 dated 03.07.2014 against Shri Rajiv Saxena and that as the said person has not joined the investigation a request for his extradition has been made to the Government of UAE on 03.01.2019.

Whereas, the Central Government, on the basis of information available with it has sufficient reasons to believe that provisions of clause(c) of sub-section (3) of Section 10 of the Passports Act, 1967 are attracted against Shri Rajiv Saxena, son of Late Shri Samsherbahadur Saxena.

NOW THEREFORE, the Central Government has decided to suspend the passport No.Z3794664 and passport No.Z2148777 under the provisions of Section 10-A of the Passports Act, 1967 for a period of four weeks from the date of issue of this order.

This issues with the approval of JS(PSP) &CPO."

4. The petitioner was deported from Dubai, UAE on 30.01.2019. A Show Cause Notice dated 13.02.2019 was issued by the Consulate General of India, Dubai to the petitioner asking him to show cause as to why his passport be not revoked under Section 10(3)(c) and Section 10(3)(e) of the Act in view of the criminal proceedings pending against him. The petitioner represented against the order suspending his passport vide letters dated 05.03.2019 and 16.04.2019.

5. The respondent, however, by the Impugned Order dated 01.05.2019 extended the period of suspension of the passport of the petitioner till the proceedings under Section 10 of the Act are concluded. The Impugned Order dated 01.05.2019 reads as under:

"WHEREAS, the Central Government on the basis of information available with it had sufficient reasons to believe that provisions of clause (c) of sub-section (3) of Section 10 of the Passports Act, 1967 may be invoked against Sh.Rajiv Saxena S/o Shamsherbahadur Saxena, suspended the passport No.Z3794664 of Sh.Rajiv Saxena under the provisions of Section 10-A of the said Act, for period of four weeks from the date of issue of an order in this regard.

NOW, therefore, the Central Government keeping in view the circumstances of the serious allegations, in terms of the statutory provision of section 10-A of the said Act, has decided to extend the period of suspension of Passport No.Z3794664 of Sh. Rajiv Saxena, for a further period till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded.

This issues with the approval of Joint Secretary (PSP) & CPO."

6. The petitioner filed the present petition challenging the above orders before

this Court.

7. The learned counsel for the petitioner submits that the Impugned Orders are liable to be set aside as they do not give any reason for exercise of powers under Section 10A of the Act nor follow the procedure of granting a hearing to the petitioner. He further submits that the order of suspension of petitioner's passport cannot be indefinite as has been sought to be done in the present case. He submits that the proceedings under Section 10 of the Act have not culminated, in fact, not proceeded with till date.

8. He further submits that the Impugned Orders are in fact mala fide as they seek to achieve what could not be achieved by following the procedure established by law. In this regard, he submits that on an earlier occasion, vide order dated 08.12.2017, the passport of the petitioner was sought to be impounded by exercising powers under Section 10 of the Act. The said order was, however, set aside vide order dated 04.04.2018 in an appeal filed under Section 11 of the Act. Instead of issuing a fresh show cause Notice to the petitioner, resort to Section 10A of the Act was taken by the respondents in a mala fide manner and the show cause notice was issued only belatedly, on 13.02.2019.

9. On the other hand, the learned counsel for the respondents has contended that resort to powers under Section 10A was taken against the petitioner as information dated 25.01.2019 was received from the Directorate of Enforcement, Department of Revenue, informing that the petitioner had been named as one of the accused in investigations relating to a case lodged by the CBI under Section 420 of the Indian Penal Code, 1860 and Sections 7, 8, 9, 12, 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988. The Enforcement Directorate also conveyed that the investigations revealed that the petitioner, Director of M/s Interstellar Technologies Ltd., Mauritius, used his company to launder the proceeds of crime and route the same through Mauritius, Dubai and Singapore to India. A request for immediate cancellation of his passport was made in view of the extradition request made to the Government of UAE on 03.01.2019. He submits that in view of the seriousness of the charges and the likelihood of the petitioner fleeing from the process of the Court and to a third country, it was decided to suspend his passport in public interest. It has further been asserted that the action to suspend the passport of the petitioner was taken, keeping in view the urgent need for deportation of the petitioner from UAE with whom India has an extradition agreement and as it was apprehended that the petitioner may flee to a country from where it would have been difficult for him to be extradited ultimately hampering the investigations. The period of suspension of the passport was extended by the order dated 01.05.2019 due to continuing investigations and the need for the petitioner to be present for interrogation.

10. As far as the Show Cause Notice dated 13.02.2019, it has been contended by the respondents as under:

"The Show Cause Notice dated 13.02.2019 was as per laid down law that any passport suspended vide section 10(A) of the Passports Act 1967 should be followed by issue of written notice to the passport holder giving him an opportunity of hearing as to why the passport should not be revoked as per provisions of section 10(3)(c). Considering the investigations and the court proceedings in the Special Trial Court against the petitioner, it was felt expedient to further extend the suspension till the proceedings u/s 10(3) in respect of the passport are completed. As the petitioner had also filed a writ in the meantime, no further action was taken as regards the passport."

(Emphasis Supplied)

11. While the petition was being heard finally, an application being CM No.24100/2020, was filed by the Central Bureau of Investigation (CBI) seeking impleadment in the petition. It was contended by the applicant that the petitioner is involved in the Agusta Westland Helicopter Scam and had evaded the process of law in India right till his deportation from Dubai on 31.01.2019. A supplementary charge sheet dated 18.09.2020 has been filed inter alia against the petitioner and the learned Special Judge, CBI, vide his order dated 25.09.2020, has issued process against the petitioner. It is further contended that the petitioner had earlier sought permission to travel abroad, which was later withdrawn by the petitioner on the opposition of the applicant, as recorded in the order dated 26.08.2019 passed by the Supreme Court in SLP (Criminal) No.5342-43/2019. The petitioner again filed an application seeking permission to travel abroad before the learned Special Judge. The said application was opposed by the applicant by filing an application, however, the same was dismissed vide order dated 21.09.2020, while allowing the petitioner to travel abroad. The applicant, therefore, prayed for impleadment in the present petition to oppose the prayer made by the petitioner in the present petition.

12. I have considered the submissions made by the learned counsels for the parties.

13. At the outset, Section 10 and Section 10A of The Passport Act, 1967 are reproduced hereinunder:

"10. Variation, impounding and revocation of passports and travel documents.-
(1) The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or

a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

[Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.]

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, 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;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel

document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document: Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

10.A. Suspension of passports or travel documents in certain cases.- (1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so to do, it or he may,-

(a) by order, suspend, with immediate effect, any passport or travel document;

(b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks:

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded:

Provided further that every holder of the passport or travel document, in respect of whom an order under clause (a) or clause

(b) of this sub-section had been passed, shall be given an opportunity of being

heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section.

(2) The designated officer shall immediately communicate the order passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.

(3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order."

14. A reading of Section 10A of the Act would show that it is in the nature of an emergent action while the process of impounding/revocation of the passport is initiated/culminated under Section 10(3)(c) of the Act. The life of such an order is not to exceed four weeks. In terms of the first proviso to sub-section 1 of Section 10A of the Act, the period of suspension of the passport can be extended beyond four weeks till the proceedings relating to variation, impounding or revocation of passport under Section 10 are concluded, only by an order and for reasons to be recorded in writing.

15. The second proviso to sub-section 1 of Section 10A provides an important safeguard to the holder of the passport of being granted an opportunity of hearing 'within a period of not later than 8 weeks' from the date of the order, whereupon the Central Government may pass an order in writing modifying or revoking the order of suspension.

16. In *Satwant Singh Sawhney vs. D.Ramarathnam*, Assistant Passport Officer, AIR 1967 SC 1836, it was held that under Article 21 of the Constitution, no person can be deprived of his right to travel except according to the procedure established by law.

17. The position in law did not change with the promulgation of The Passport Act, 1967 and in *Maneka Gandhi vs. Union of India*, (1978) 1 SCC 248, the Supreme Court reiterated that no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was further held that the Rules of natural justice would be applicable in exercise of powers under Section 10(3) of the Act and while the passport authorities may impound the passport without giving any prior opportunity to the person concerned where the exercise of power itself may be frustrated by giving a prior notice of hearing, such hearing must be given immediately after the order is passed.

18. In *Suresh Nanda vs. Central Bureau of Investigation*, (2008) 3 SCC 674, the Supreme Court held that under Section 10A of the Act, retention of a passport by the Central Government can only be for four weeks and thereafter, it can be only retained by an order of the passport authority under Section 10(3) of the Act.

19. This Court in *Faizal Ibrahim vs. Union of India*, 2017 SCC OnLine Del 10426,

has held that the requirement of giving reasons for the extension of the orders suspending the passport is a vital safeguard against such suspension being whimsical or arbitrary and the same cannot be defeated by mechanically passing an order extending the period of suspension.

20. In *Rohit Goswami vs. Ministry of External Affairs & Anr.*, 2017 SCC OnLine Del 10566, this Court reiterated as under:

"12. It is apparent from the plain reading of Section 10A(1) of the Act that a passport of a citizen can be impounded or suspended only if the Central Government or any designated officer is satisfied that the passport is likely to be revoked under Section 10(3)(c) of the Act and it is necessary in public interest to do so. Moreover, the passport can only be impounded by an order, the term of which cannot exceed four weeks."

21. In *Sikandar Khan vs. Union of India & Anr.*, 2017 SCC OnLine Del 9159, this Court observed that the power of suspension of a passport under Section 10A of the Act is a serious restriction on the fundamental rights of a citizen of India and the same cannot be resorted to without sufficient cause and without complying with the express conditions as indicated under Section 10 or 10A of the Act or without following the principles of natural justice, in absence whereof, such order would be liable to be set aside.

22. In the present case, the Impugned Order dated 25.01.2019 has been reproduced hereinabove. The same indicates that the reason for suspension of the passport of the petitioner was him not joining the investigation and a request for his extradition having been made to the Government of UAE on 03.01.2019. The suspension of the passport was for a period of four weeks as stipulated under Section 10A(1) of the Act.

23. The petitioner was admittedly deported from UAE on 30.01.2019 and a Show Cause Notice as to why his passport be not revoked under Section 10(3)(c) and Section 10(3)(e) of the Act was issued on 13.02.2019. The said proceedings were stated in the counter affidavit filed on 09.08.2019, to be pending and not proceeded with, though reply against the impugned order was received from the petitioner vide letter dated 05.03.2019.

24. At the fag end of the oral arguments, the learned counsel for the respondents produced before this Court a copy of an order dated 30.05.2019 purportedly passed by the Consulate General of India, Dubai under Section 10 of the Act, impounding the passport of the petitioner under Section 10(3)(c) and Section 10(3)(e) of the Act. Admittedly, the said order has not been communicated to the petitioner and has remained only in the files. In fact, neither the CBI nor the counsel for the petitioner seem to have had any knowledge of such an order. There is no mention of this order in the counter affidavit filed by the respondent. As held by the Supreme Court in *Bachhittar Singh vs. The State of Punjab*, AIR 1963 SC 395, the said order is therefore, of no significance and cannot be treated as a binding or valid order in the eyes of

law.

25. Though, the petitioner, vide his letters dated 05.03.2019 and 16.04.2019, represented against the Impugned Order dated 25.01.2019 suspending his passport, no opportunity of hearing was admittedly granted to the petitioner. The order dated 01.05.2019 extending the suspension of the petitioner's passport was thereafter issued. The same has been reproduced hereinabove. It gives no reason for such extension. By this date the petitioner had already been deported on 30.01.2019. Giving of reasons is mandated in the first proviso to Section 10A of the Act. Therefore, there was a violation of the two important safeguards provided in Section 10A: (i) of grant of hearing; (ii) of giving of reasons.

26. As noted hereinabove, in fact, the proceedings under Section 10 remain pending till date with no order passed therein. Clearly, by simply passing an indefinite order of suspension while not proceeding further with the proceedings under Section 10 of the Act, the respondents could not have achieved indirectly what it could not achieve directly.

27. The submission of the learned counsel for the respondents that the proceedings under Section 10 of the Act were not proceeded with as the petitioner had obtained permission to travel abroad for medical treatment and such order having been granted in his favour, was challenged before the Supreme Court, whereafter the petitioner withdrew such request, cannot relieve the impugned orders of their illegality. In fact, those proceedings have no significance on the proceedings under Section 10 of the Act nor can grant exemption to the respondents from following the mandatory procedure as required under Section 10A of the Act or permit violation of principles of natural justice, which have to be necessarily read into the provisions of the Act.

28. At the fag end of the proceedings before this court, the respondents passed an order dated 31.07.2020, purportedly dismissing the appeal/representation dated 11.05.2019 of the petitioner against the order suspending his license. The said order, after making reference to the proceedings relating to the application of the petitioner to travel abroad for medical treatment, and orders passed thereon, records as under:-

"6. In view of the above fact that even before the appeal could be considered and a date of hearing given, the appellant had moved the courts and the orders of the High Court now lie challenged before the Supreme Court.

7. Hearing, if any, at this stage cannot be granted as the matter is sub-judice. Hence, the appeal has become infructuous and is closed."

29. The learned counsel for the respondent sought to contend that with the passing of the above order, and the order not being in challenge before this Court, the petition has been rendered infructuous.

30. I cannot accept the above submission of the counsel for the respondent. The above order, in fact, again highlights the violation of statutory safeguards

provided by the Act. It states that no hearing can be granted to the petitioner nor his appeal for revoking the suspension of his passport can be considered. The petitioner cannot be left prejudiced by such an order.

31. In view of the above, the orders dated 25.01.2019 and 01.05.2019 are set aside.

32. As far as the submission of the CBI is concerned, this Court is not considering the issue as to whether the petitioner can or cannot be granted permission to travel abroad due to the pending criminal proceeding against him. The dispute before this Court is one relating only to the suspension of the passport of the petitioner. Therefore, this Court refrains itself from making any comment on such submission, leaving it open to the parties to agitate the same in accordance with law in appropriate proceedings, while making it clear that any observation made hereinabove shall not prejudice either parties in such proceedings. Application, CM 24100/2020, is accordingly dismissed, granting leave to the applicant to take remedies as may be open to it in law.

33. It is further clarified that any observation made in this order shall also not prejudice the respondents from proceeding further with the proceedings under Section 10 of the Act, in accordance with the law, as the same are not subject matter of the present petition.

34. In view of the above, the present petition is allowed. The respondents are directed to return the passport to the petitioner forthwith. There shall be no order as to costs.