

(2015) 11 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 15/2013

Rehana Ali

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Passports Act, 1967 — Section 12, 5, 5(2), 5(3), 6

Citation : (2015) 11 RAJ CK 0009

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : Tanvi Shah and Meenal Ghiya, for the Appellant; F.R. Meena, for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J.—This case is instructive of the omissions of the statutory authorities to perform their functions mandated by law. Here, the petitioner's application for issue of a passport filed on 24.05.2012 has not yet been addressed one way or the other, i.e. neither the passport issued nor the application rejected, for last about two and half years.

2. Facts relevant to the petition are that the petitioner, resident of Jammu & Kashmir, married one Dr. Syed Mohammed Ali, resident of Jaipur, on 25.11.1987 and has since been residing at Jaipur. To this end, a certificate of marriage issued by the Chief Qazi, Rajasthan as also copies of PAN card and Aadhar card have been annexed to the petition. The petitioner applied for a passport online on 24.05.2012 and as required visited the Passport Seva Kendra on 11.06.2012 to submit relevant documents in support of her application along with fee of Rs. 1,000/-. The File Number of the petitioner's application was then given out as JP1060374032112. The application not having been dealt with, within a reasonable time, the petitioner made inquiries and was informed that her application was put on hold as another passport in her maiden name "Rehana

Akhtar" showing the same age and common parents as hers in the application had been earlier issued by the Regional Passport Office, Delhi and thereafter by the Regional Passport Office, Chennai. The one issued by the RPO, Delhi was stated to be Passport No. A4926134, File No. DLHA-00344298, Date 02.02.1998 showing the said "Rehana Akhtar" wife of Javed Ahmed Shah resident of C-236, ADA, Hoz Khas, New Delhi and a further passport issued in the same terms by the RPO, Chennai was stated bear No. G-6928290, File No. MASV-008000907 Dated 27.12.2007 and current till 26.12.2017.

3. The petitioner surprised and shocked with the reason given out by the RPO, Jaipur for holding back her application for a passport, informed the Passport Office that she had never ever applied for a passport either at Delhi or at Chennai; that she was never resident of two cities and therefore the said passports did not relate to her. The petitioner thereafter received information under the Right to Information Act that the two passports, referred to above, issued in the name of "Rehana Akhtar" wife of Javed Ahmed Shah had been procured on false information by her sister one Nujhat Akhtar utilizing the petitioner's documentation and impersonating her. It was pointed out that the said Nujhat Akhtar was married to one Javed Ahmed Shah as indeed reflected in the two passports issued to her while the petitioner herself was married to Dr. Syed Mohammed Ali, resident of Jaipur. The petitioner stated that she had nothing whatsoever to do with the impersonation. Vide letter dated 05.07.2012, the petitioner requested the Regional Passport Officer, Jaipur to take requisite action for cancellation of passport obtained by "Rehana Akhtar" on false information and also for initiation of criminal proceedings against her. Thereafter the petitioner has been waiting for the processing of her application filed on 24.05.2012 for issue of a passport and despite repeated communications including a notice dated 19.09.2012 demanding justice addressed to the respondent No. 3 under the hand of her counsel, the passport has not been issued, nor her application rejected by a reasoned order as mandated under Section 6(3) of the Passport Act, 1967 (hereinafter "the Act of 1967"). Hence this petition.

4. Reply to the petition has been filed. The substance of the reply is that earlier passports having been issued in the name of "Rehana Akhtar" wife of Javed Ahmed Shah using documents relating to the petitioner with reference to her age and parentage, another passport could not be issued to the petitioner based on the documents pertaining to her age and parentage. It was submitted that the respondents have no reasonable belief that the petitioner was not complicit or had no clue about her sister Nujhat Akhtar misusing her documents and it was extremely likely that the said documents used by Nujhat Akhtar masquerading as "Rehana Akhtar" must have been used with the consent of the petitioner. A broad-brush defence of national security has also been taken without any material particulars. It has been submitted that an inquiry into the whole episode of "Rehana Akhtar" wife of Javed Ahmed Shah having obtained passports on false documentation is underway and till the inquiry is concluded the petitioner's

application for issue of a passport filed on 24.05.2012 has to be necessarily kept on hold. However, no specific defence based on Section 6 of the Act of 1967 or the Rules made thereunder has been taken.

5. Heard. Considered.

6. Section 5 of the Act of 1967 inter alia deals with applications for passports. Section 5(2) provides that on receipt of an application, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of the Act, by order in writing--

(a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

7. Section 5(3) of the Act of 1967 provides that where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application for the passport, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless it is of the opinion that the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or the interests of the general public will be adversely affected on such copy being furnished. Section 6 of the Act of 1967 deals with grounds on which an application for passport may be refused. It first provides that the application for issue of a passport can be refused only on the ground that the applicant may or is likely to engage, in the country which he visits on the strength of the passport, in activities prejudicial to the sovereignty and integrity of India or his presence in such country is likely to be detrimental to the security of India or prejudice the friendly relations of India with such country or that in the opinion of the Central Government the presence of the applicant in such country, he seeks to visit on the strength of passport, is not in the public interest.

8. Sub-section (2) of Section 6 further provides that the passport can be refused on an application made under clause (c) of sub-section (2) of section 5 on any one or more of the grounds detailed therein:-

(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.

9. Section 5 and Section 6 of the Act of 1967 cover the manner of dealing with an application for passport by any citizen of the country within the jurisdiction of the concerned Regional Passport Officer. It is no doubt true that Section 5(2) of the Act of 1967, a Passport Officer is entitled to make an inquiry, if warranted on an application filed for issue of a passport. Yet there is no gainsaying that the power to hold an inquiry should be reasonably and expeditiously exercised and mere suspicion or conjectured issues of National Security or potential undefined criminality cannot by themselves stall the processing of an application for issue of a passport for an unreasonably long and undefined period of time, as in the present case where the petitioner's application has been pending for the last over 29 months. The right to obtain a passport has been equated with a fundamental right in a Constitution Bench judgment in the case of *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, where the Hon'ble Supreme Court held that the right to travel abroad is a fundamental right under Article 21 of the Constitution of India. A similar view has been taken in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, where it has been reiterated that Article 21 of the Constitution of India safeguards a citizen's right to go abroad and no person can be deprived of such a right unless there is a lawful reason to restrain the exercise of that right. The lawful reasons for denial of a passport are encapsulated in Section 6 of the Act of 1967.

10. From the facts on record, nothing transpires which would even remotely bring the case of the petitioner within the ambit of Section 6(1) or even sub-section (2) of the Act of 1967 on which ground alone an application for issue of a

passport can be refused, or otherwise by extension kept pending for inordinate periods of time tantamounting in fact to an unreasoned and unreasonable refusal on the application for issue of a passport. The mere fact that the petitioner's sister Nujhat Akhtar used her documents to impersonate her for obtaining a passport first in the year 1998 from the RPO, Delhi and thereafter in the year 2007 from Chennai would by itself not denude the petitioner from her fundamental right of obtaining a passport on an appropriate application being made. It is also on record that Rehana Akhtar @ Nujhat Akhtar is wife of Javed Ahmed Shah whereas the petitioner was married to Dr. Syed Mohammed Ali in the year 1987, continues to be and this fact has not been disputed. Further admittedly the passport issued to Rehana Akhtar @ Nujhat Akhtar w/o Javed Ahmed Shah has since been impounded on 29.12.2014. She can be prosecuted under Section 12 of the Act of 1967. As far as the defence of a pending inquiry against the petitioner on her application for issue of a passport is concerned, except for generalized assertion of national security and raising of vague potentially for criminal activity, nothing concrete in the form material evidence, even allegation on that count against the petitioner, has been submitted. Nothing adverse to the petitioner appears to have obtained in the course of inquiry for the last over two and half years, nor has been brought on record with the reply to the petition. It is thus evident that the fundamental right of the petitioner to a passport as recognized by the Hon'ble Supreme Court in the case of Satwant Singh Sawhney (Supra) and reiterated in Maneka Gandhi (Supra) is being denied arbitrarily and unreasonably and with shocking insensitivity not only to the Act of 1967 but also the judgment of the Hon'ble Apex Court. It is well settled that the both fundamental and legal rights have to be found in the actual enjoyment thereof and not in their mere theoretical assertion.

11. Consequently, I would allow this petition and direct the Regional Passport Officer, Jaipur to dispose of the petitioner's application for issuing a passport filed on 24.05.2012 strictly in accordance with the Passport Act, 1967 and Rules made thereunder within a period of two months from the presentation of a certified copy of this order. Cost of Rs. 50,000/- are liable to be visited upon the respondent No. 2 for complete dereliction of duty in the instant case. Administrative callousness and unconcern for law even when clearly enunciated by the Apex Court is a major cause for the crowded docket of the Court and mere corrective adjudication cannot suffice. Costs have to be visited where a petitioner aggrieved of executive inaction files a petition before the Court and yet despite notice of the petition, necessary steps are not taken but a defenceless contest is set up before the Courts.

12. The cost aforesaid is to be paid to the petitioner within three months from today.

13. The writ petition stands allowed.