
(2012) 01 P&H CK 0168
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14349 of 2010

Sher Singh

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2012) 01 P&H CK 0168

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—The only grievance of the petitioner is that no final decision has been taken on the application of the petitioner seeking passport i.e. File No. ASRF 00499008 dated 4.8.2008.

2. Regional Passport Officer, Amritsar, has filed his affidavit in reply to the petition. Paragraph No. 3 of the affidavit of the Passport Officer reads as under:-

3. That on 18.06.2010, petitioner made an enquiry at the Office Counter and was informed in writing to furnish copy of the Court judgment. On 21.06.2010, petitioner met the Passport Officer and submitted an Affidavit dated 19.06.2010, with a report from SP, Crime Zonal, Amritsar Zone. In the affidavit petitioner denied having any pending case against him. As the petitioner did not supply copy of the Court judgment, therefore, the opinion of Sh. Manjit Singh Chhinna, Advocate (CGSC) were sought CGSC opined to take a fresh police verification report before the issuance of Passport and as such the case was re-referred for police verification report to SSP, Tarn Taran along with affidavit and report from SP, Crime Zonal, Amritsar Zone. As and when the status report comes from SSP, Tarn Taran and thereafter decision will be taken.

3. Learned counsel for the petitioner states that respondent No. 2 has not taken any final decision on the application, therefore, he may be directed to take decision within such time as fixed by this Court. He has placed reliance on the

judgment of Calcutta High Court in the case of Sree Pradeep Kundalia Vs. Union of India and others, 1998 (3) AICLR 118. Learned Single Judge of Calcutta High Court in paragraphs No. 6 and 7 has observed as under:-

6. The intention of the legislature, as reflected in the language employed in sub-section (2) of section 6 of the Act, in the context of the scheme of Article 21 of the Constitution of India, and on the basis of the ratio laid down in the case of Maneka Gandhi v. Union of India & Others, as also in the case of Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, clearly suggests that the grounds mentioned in clauses (a) to (i) of sub-section (2) are only by way of enabling provisions in so far as a passport authority is concerned, authorising him to exercise his discretionary power to decide whether an applicant citizen should or should not be issued the passport, if he (the passport authority) comes across a report or information that one of the conditions specified therein exist in so far as such an applicant is concerned. The intention of the legislature cannot be construed, by any stretch of imagination or by adopting any process of logical reasoning, to mean that if the conditions specified in clauses (a) to (i) exist, the refusal of the passport is a rule and that the passport authority has no discretion but to refuse the passport in all such cases. 7. Coming to the specified instance of the pendency, of criminal proceedings as per clause (f) it is to be noted that it is not every pendency of all types of criminal cases which would automatically disentitle an applicant to refuse a passport. Each case depends on its own merits. The passport authority therefore, in the exercise of discretion in the light of material placed before him or made available to him has to decide as to whether the pendency of any case or cases is such an event which should disentitle the applicant to the issuance of the passport. There has to be always a link, a nexus between the criminal proceedings and the going abroad of the applicant it is not that whenever it is brought to the notice of the passport authority that a criminal case is pending against the applicant, he would automatically refuse to grant the passport. Such decision has to be taken by him, uninfluenced by any extraneous recommendation of any outside agency, but on objective consideration, on the basis of material available to him any by due application of mind. Applying the ratio of Maneka Gandhi and also in the case of Satwant Singh v. APO, New Delhi, the passport authority has an obligation, a constitutional and statutory duty, to also afford an effective and purposeful hearing to the applicant if it proposes to refuse the issuance of the passport. Right of hearing in a case of refusal of passport, before the order is passed is an essential concomitant of Article 21 of the Constitution of India. Actually this right has been expressly recognized in section 5 of the Act as well.

4. I am in full agreement with the observations made by learned Single Judgment of Calcutta High Court in the case of Sree Pradeep Kundalia (supra).

5. Learned counsel for the respondents states that a final decision shall be taken on the application of the petitioner in accordance with law within 60 days from

today.

6. Present petition stands disposed of with the direction to respondent No. 2 to take decision on the application of the petitioner in the light of the observations made by Calcutta High Court in the case of Sree Pradeep Kundalia (supra) within 60 days as undertook by learned counsel for the respondents.