

(1998) 06 CAL CK 0019
In the Calcutta High Court
Case No : Writ Petition No. 1143 of 1998

Shree Pradeep Kundalia

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-06-1998

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Passports Act, 1967 — Section 5, 6(2)

Citation : (1998) 2 CALLT 415

Hon'ble Judges : Vinod Kumar Gupta, J

Bench : Single Bench

Judgement

1. The petitioner's case is that he was holding an Indian passport and while he was on a visit to Hong Kong, this passport was lost. On his return to India, the petitioner applied for the issuance of a duplicate passport but the respondent No.2 by his communication dated 27th April 1998 Intimated to the petitioner his inability to Issue the said passport to him on the ground that the respondents Nos. 3 and 4 did not clear the name of the petitioner for the grant of such a passport. It is this order of respondent No.2 which the petitioner has assailed in this petition filed under Article 226 of the Constitution of India.

2. Grant of passport undoubtedly is a valuable right of every citizen of India. Refusal to grant a passport undoubtedly is an act which has to be preceded by objective considerations and principles of fair play and natural justice. If a citizen of India is being denied the right of the grant of a passport, the cardinal principles of audi alterem partem immediately come into play with the result that a right of hearing Immediately accrues to the person who is sought to be denied the grant of a passport. Unless, therefore the person being deprived of this right is afforded a reasonable opportunity of being heard, no order refusing to grant the passport can be passed. This is the basic and cardinal principle of law.

3. In the Instant case, I find that the respondent No.2 passed the order of refusal of granting passport to the petitioner only on the ground that he had

been informed by respondent Nos.3 and 4 that since certain cases were sub judice against the petitioner, the passport facilities should not be granted to him at present in fact, the communication dated 27th April 1998 makes an observation about some recommendations made by respondent Nos. 3 and 4 for denying to the petitioner the facility of the grant of a passport and apparently it is on the basis of this recommendation made by respondent Nos. 3 and 4 to respondent No.2 that the passport has been refused to the petitioner.

4. The learned Advocate for respondent Nos. 3 and 4 produced before me the original record to show that in fact some criminal cases have been pending against the petitioner. I have seen this record and find that a list of five cases, all relating to some sections of the Indian Penal Code, has been mentioned as the cases pending against the petitioner. Out of these five cases. I find that only one case is pending trial in the court of learned Additional Sessions Judge (wrongly mentioned in the list as learned Additional District Judge), 4th Court. Alipore. In other four cases, what appears to me is that either the proceedings against the petitioner have been dropped or that the matter is at the stage of investigation or that the State has challenged the order passed by a subordinate court to a superior Appellate/Original forum. Whether the pendency of one trial under some sections of the Indian Penal Code is a bar for a citizen of this country to obtain a passport is for the respondent No.2 to consider. Similarly, whether the mere fact that some criminal cases were pending before the police at some stage, the same having since been either dropped or being under some stage of investigation also operate as a bar for grant of passport is again a matter for the consideration of respondent No.2 alone. As far as respondent Nos.3 and 4 are concerned, they will be well within their rights to submit their report and comments, along with as much supporting reasoning and documents as possible, to argue before respondent No.2 that, based on this material and reasoning the petitioner is not entitled to the grant of a passport, but the ultimate decision has to be taken by respondent No.2 whether In fact the petitioner can be denied the right of getting a passport, specially in the light of law laid down by the Supreme Court of India in various Judgments on the subject. Including in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . What appears to me patently is that respondent No.2 merely acted on the recommendation of respondent Nos.3 and 4 and, without perhaps his own application of mind, passed the order denying the passport facility to the petitioner. That was not permissible in law.

5. When I am saying so, I am not oblivious to the legal provision contained in section 6(2)(f) of the Passports Act, 1967 which does empower the passport authority to refuse the issuance of a passport on the ground of pendency of criminal proceeding against the applicant. Even though the expression used in sub-section (2) of section 6 of the Act is "shall refuse". In the context in which it is used, the refusal to issue passport on the grounds mentioned in that sub-section is not mandatory requirement of law nor is it compulsory in all cases. What is provides is that if one or more of the conditions specified in clauses (a)

to (1) of sub-section (2) exist, the passport authority has a discretion to refuse to issue a passport. It does not mean that if such conditions exist, the passport has to be refused in all cases, without any consideration or without any application of mind. The discretion however has to be exercised fairly, properly and objectively, by a proper application of mind and on the basis of the material available to the passport authority.

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 *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, 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 (1) 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 specific 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 bright 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 and by due application of mind. Applying the ratio in *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 recognised In section 5 of the Act as well.

8. For the aforesaid reasons, therefore, I quash and set aside the order impugned in this petition and, based upon the aforesaid observations, direct the respondent No.2 to decide afresh as to whether the petitioner is entitled or not entitled to the grant of the passport. While taking this decision, in the light of the observations made hereinabove, the respondent No.2 shall also take into consideration whatever information, material and reasoning is advanced and produced before him by respondent Nos. 3 and 4. If, however, respondent No.2 is prima facie of the view, in the light of the observations made hereinabove, that the petitioner is not entitled to the grant of a passport, he shall afford an opportunity of hearing to the petitioner and pass a detailed speaking order.

9. To enable the matter to be disposed of expeditiously, I direct that the respondent No.2 shall complete the proceedings in all respects and take consequential action within three weeks from today. If respondent Nos. 3 and 4 wish to provide any information or furnish any material or other documents to respondent No.2, they may do so within one week from today.

10. The application is thus disposed of. Since the respondents have not filed any affidavit-in-opposition, the allegations made in the application against them shall not be deemed to be admitted.

All parties to act on a Xeroxed signed copy of this dictated order on the usual undertakings.

11. Application disposed of