
(2010) 04 GAU CK 0063
In the Gauhati High Court
Case No : Writ Petition (C) No. 6663 of 2003

Sunil Jaiswal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Constitution of India, 1950 — Article 19(2), 19(6)
Essential Commodities Act, 1955 — Section 7
Passports Act, 1967 — Section 10, 10(3), 10(5)
Penal Code, 1860 (IPC) — Section 120B, 379, 427
Prevention of Damage to Public Property Act, 1984 — Section 3(2)(B)

Citation : (2010) 3 GLT 775

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : A.K. Bhuyan, B. Bhuyan and R. Chakraborty, for the Appellant; R. Bora and M. Sharma, for the Respondent

Final Decision : Allowed

Judgement

H.N. Sarma, J.—The subject matter of challenge in this writ petition is an order dated 26.4.02 passed by the Regional Passport Officer, Guwahati thereby impounding the passport of the Petitioner under the provisions of Section 10(3) (c) of the Passport Act, 1967.

2. I have heard Mr. A.K. Bhuyan, learned Counsel for the Petitioner and Ms. R. Bora learned Central Govt. Counsel appearing for Respondent Nos. 1 to 4. Also heard Mr. M. Sharma, learned Govt. Advocate on behalf of Respondent No. 5.

3. The Petitioner has come up with this writ petition pleading inter alia that he is the holder of a valid passport being No. S-307273 and on number of occasions he used to travel out of India/abroad on account of business and family purposes. The Petitioner having married on 1.12.02 decided to go abroad for honeymoon and for such purpose he approached Respondent No. 4 by complying with necessary formalities of such foreign trip. But on such approach, he was

surprised to know that his passport was impounded by an order dated 26.4.02 and on being requested, a copy of the impugned order was furnished to him which disclose that the authority has decided to impound/revoke the passport u/s 10(3)(c) of the Passport Act, 1967 and necessary intimation to that effect were issued to different authorities.

4. The Petitioner by filing an application dated 12.2.03 requested the authority to furnish an official copy of the impugned order along with the reasons for passing the said order. But no action whatsoever was taken by the authority. It is further alleged that before impounding the passport of the Petitioner no opportunity to show cause or otherwise was provided to the Petitioner and nothing has been done for effective disposal of his representation. Accordingly, the Petitioner for such violation of his fundamental and other legal rights, has approached this Court by filing this writ petition.

5. A counter has been filed on behalf of Respondent No. 4. The stand of the Respondent in support of the impugned action is that two criminal cases being Jalukbari PS Case No. 155/01 registered under Sections 379/427 IPC and Jalukbari PS Case No. 62/02 registered u/s 7 of the Essential Commodities Act were registered against the Petitioner. The allegation in Jalukbari PS Case No. 155/01 is that some miscreants had made preparation for committing theft and pilferage of crude oil from the main carrying pipeline of DDL at Tetelia under Jalukbari Police Station. The allegation levelled in Jalukbari PS Case No. 62/02 is that the informant/police officer received a secret information that two oil tankers loaded with some stolen petroleum commodity would proceed towards north bank of Brahmaputra from Gorchuk side for delivery at some petrol pumps in unauthorised manner indulging in illegal business. It is further stated that during investigation of the cases, a prima facie case being well established under Sections 120(B)/379/427 IPC read with Section 3(2)(B) of the Prevention of Damage of Public Property Act of 1984 was found against the Petitioner and others. On completion of the investigation necessary chargesheet has been filed vide Chargesheet No. 48/02 and Chargesheet No. 52/02 by the Jalukbari Police against the Petitioner. In view of the aforesaid information received from the Superintendent of Police (City), Guwahati, the passport of the Petitioner was impounded.

The further contention of Respondent No. 4/Passport Officer is that the impugned order has been passed in the interest of general public and also in the interest of sovereignty and integrity of India together with the security of India. In view of the report of the Superintendent of Police (City), Guwahati, the impugned order cannot be revoked.

6. The stand of Respondent No. 5 as reflected in its affidavit is that the Petitioner is an accused in connection with the aforesaid two criminal cases and accordingly intimation was given to the passport officer for impounding the passport in question.

7. A reply affidavit has also been filed by the Petitioner against the aforesaid stand of the Respondents. The basic grievance of the Petitioner in the instant case as highlighted in the pleadings and during the course of argument is that the Respondent authorities passed the impugned order without compliance of the provisions of Section 10(3) and 10(5) of the Passport Act, 1967.

8. Section 10 of the Passport Act lays down the provision regarding variation, impounding and revocation of passports and travel documents which is authorised to do so by the concerned authority on fulfillment of certain conditions, as reflected therein.

Sub-Section 3 of Section 10 provides that the passport authority may impound or cause to be impounded or revoke a passport or travel document in the event of fulfillment of certain conditions as contained in Clauses-(a) to (h) of Sub-Section 3 of Section 10 of the Act.

As per Section 10(3)(c) of the Act, 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, a passport issued to a person may be impounded.

Section 10(3)(e) provides that 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 of India.

Sub-Section 10(5) provides that where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel documents 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 documents and on demand a copy of the same to the holder of the passport unless in any case the passport officer 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.

9. In the case in hand, the stand of the Respondent authority is that in view of the pendency of the aforesaid two criminal cases and the letter written by the Superintendent of Police (City), Guwahati, the impugned order has been passed impounding the passport of the Petitioner.

10. It is submitted by Mr. Bhuyan that out of the aforesaid two criminal cases, in Jalukbari PS Case No. 62/07 the Petitioner has been charged under Sections 379/427 IPC read with Section 3(2)(B) of Prevention of Damage of Public Property Act whereas in the other case the Petitioner has been charged u/s 7 of the Essential Commodities Act. It is contended that the former case is fixed for argument on 6.4.2010 and the other case, though was fixed today, prosecution could not cause to appear any witness. Both the two criminal cases are pending

since 2002 in the Criminal Court at Guwahati. It is contended that no charge u/s 120(B) IPC as claimed by the Respondents has been framed against the Petitioner. Consequently, the ground of threat to sovereignty and integrity of India together with the security of India as projected by the Respondents is not tenable in the absence of any charge to that effect.

11. One of the important features of the case as has been unearthed from the pleadings and arguments made by the learned Counsel for the parties is that although it is statutorily incumbent upon the Respondent authorities to record in writing a brief statement of the reasons for making the order impounding the passport of the Petitioner u/s 10(3)(c) of the Act and to furnish such ground and statement to the Petitioner, that was not followed. No ground with brief statement of the reasons has been produced before me by the learned Counsel for the Respondents. On specific query, Ms. Bora, the learned CGC submits that whatever ground is there it is reflected in the impugned order itself and no separate ground or reasons recorded.

On the other hand the impugned order disclose that the authority decided to impound or revoke the passport of the Petitioner u/s 10(3) of the Passport Act. On scrutiny of the order, it is clear that as per the impugned order it was decided to impugn the passport of the Petitioner and to complete the process at later point of time. But nothing has been produced before the Court in this regard as to what action even at later point of time has been taken by the authority.

12. In the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, a constitutional Bench of Seven Judges of the Apex Court interpreting Section 10(3) (c) relating to the procedure for impounding the passport have held that exercise of power u/s 10(3)(c) is not dependent on the subjective opinion of the passport authority as regards the necessity of exercising it on one or more of the grounds stated in the section, but the passport authority is required to record in writing a brief statement of reasons for impounding the passport and, save in certain exceptional circumstances, to supply a copy of such statement to the person affected, so that the persons concerned can challenge the decisions of the passport authority before the higher authority who can examine whether the reasons recorded by the passport authority are correct, and if so, whether they justify the making of the order impounding the passport.

In the above cited case, the Supreme Court further held even though Section 10(3)(c) is valid, the question would always remain whether an order made under it is invalid as contravening a fundamental right. The direct and inevitable effect of an order impounding a passport may, in a given case, be to abridge or take away freedom of speech and expression and where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6) of the Constitution.

13. As discussed above, in the case in hand, the impugned action has been taken in gross violation of the provisions of Section 10(5) of the Passport Act by not

recording the brief statement of the reasons in support of making the order and furnishing the same to the Petitioner which is mandatory requirement of law under the Act. The impugned order having been passed not following the mandatory provisions, in my considered opinion, the same has no legs to stand and liable to be set aside and quashed. The provision relating to record in writing a brief statement of reasons for impounding a passport is incorporated by the legislature in its wisdom for observance of the basic principle of Natural Justice. It is statutory provision incorporated in the statute having mandatory impact. Non-compliance of the order would certainly vitiate the action.

14. In view of what has been discussed, the impugned order dated 26.4.02 is stand set aside and quashed.

15. Mr. Bhuyan has undertaken that the Petitioner shall not evade the process of the Court and duly make himself available in the pending cases before the Criminal Courts referred to above and would face any consequence. The cases are, in fact, in its fag end as stated at the Bar and both the cases are expected to be completed within a short period of time.

The aforesaid submissions/undertaken of the learned Counsel for the Petitioner is recorded herein.

16. The writ petition stands allowed as indicated above.

17. No costs.