
Ranjit Bajaj Vs Regional Passport Authority

C.W.P. No. 3897 of 2004

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 13, 2004

Acts Referred:

Constitution of India, 1950 " Article 226#Passports Act, 1967 " Section 6, 6(2)

Citation: AIR 2004 P&H 327

Hon'ble Judges: Swatanter Kumar, J; Rajive Bhalla, J

Bench: Division Bench

Advocate: Vishal Sharma, for the Appellant; Anil Sharma, Addl. CGSC, for the Respondent

Judgement

Swatanter Kumar, J.

Ranjit Bajaj petitioner raises a challenge to the vires of Section 6(2)(f) of The Passports Act. 1967. Hereinafter

referred to as the Act. on the ground that the same are ultra vires to the constitutional provisions being discriminatory, arbitrary and amounting to

unreasonable restriction on the right of the petitioner to travel. Further the petitioner prays for issuance of a writ of mandamus directing the

respondents to renew the passport of the petitioner or in alternative issue a fresh passport to him in accordance with law. In order to examine the

merits or otherwise of these contentions, reference to basic facts would be necessary.

2. On 5-4-1990 the Regional Passport Authority, Chandigarh issued a passport to the petitioner. On the basis of this passport, the petitioner went

abroad on number of occasions and took part in sports events. The petitioner claims that he is an up-coming sportsman having represented India in

Under-19 Asian Schools Football Tournament held in Kuala Lumpur (Malaysia). The petitioner alleges that during the period 1996-2001 he was

attacked by certain persons and criminal cases were inflicted upon him. The details of the criminal cases, as stated in the petition, are as under :-

(a) FIR No. 236 of 2000 u/s 332/353, IPC pending in the Court of Sh. Jaswinder Singh, JMIC. Chandigarh;

(b) FIR No. 83 of 2000 u/s 420/467, IPC pending in the Court of Sh. Sandeep Singia, JMIC, Chandigarh;

(c) FIR No. 103 of 1996 u/s 332/353 pending in the Court of Sh. Sanjay Sandhir, JMIC, Chandigarh;

(d) FIR No. 115 of 2001 u/s 435/406 pending in the Court of Ms. Harpreet Kaur, JMIC, Chandigarh;

3. The validity of the passport issued to the petitioner expired on 4-4-2000. For the purposes of getting the said passport renewed and a fresh

passport issued, the petitioner visited the Regional Passport Office. It is the case of the petitioner that upon such enquiry, the petitioner was orally

informed that his passport can neither be renewed nor any fresh passport would be issued to him unless there was a specific Court order. The

petitioner wanted to participate in a Cricket Match as a Captain of the Minerva Academy, Delhi that had received invitation to participate in the

20th RBSC international Cricket Tournament to be held at Bangkok (Thailand) with effect from 30-3-2004 to 4-4-2004. The Regional Passport

Office neither renewed the passport of the petitioner nor issued fresh passport to him. Thus, the petitioner has approached this Court by filing the

present petition under Article 226/ 227 of the Constitution of India.

4. It is contended on behalf of the petitioner that non-issuance of a passport to the petitioner amounts to an unreasonable restriction and violates

Article 14 of the Constitution of India inasmuch as other offenders are permitted to travel abroad. The petitioner has a fundamental right to travel

abroad which cannot be curtailed by the respondents in an arbitrary manner. Relying upon the Judgments of the Supreme Court in the cases of

Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, and Mrs. Maneka

Gandhi Vs. Union of India (UOI) and Another, it is argued that within the provisions of Article 21 of the Constitution of India travelling abroad

being a fundamental right, restrictions spelt out in Section 6(2)(f) of the Act amounts to unreasonable restrictions and in fact tantamount to

frustrating a right granted to the petitioner under the Constitution and as such are ultra vires of the constitutional provisions.

Upon notice, the respondent has filed a short reply. The facts are hardly in dispute. It is contended that for issuance of a passport. clear police

verification report is condition precedent as the respondent has no internal independent verification agency and as per the report of the police,

number of cases were registered and are pending against the petitioner, as such passport could not be issued to the petitioner. The passport being

a political document issued in the name of the President, tantamounts to the request of a foreign country and authority to afford the facility of safe

travel to the holder of the passport in their territories. It is conceded that travel abroad is a part of the personal liberty of which he cannot be

deprived except according to the procedure established by law in terms of Article 21 of the Constitution of India. There is no absolute right and

this right is subject to limitations of the Passport Act as it is a procedure established by law.

We have already noticed that the factual matrix of the present case is hardly in dispute. Learned counsel for the petitioner relied upon the cases of

Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer,

Government of India, New Delhi and Others, and People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, in

support of his contentions.

5. There is no dispute that afore-noticed criminal cases are pending against the petitioner and pendency of such cases, seen in the light of the police

report, is the main ground which is being treated by the respondent as an impediment to issue passport to the petitioner. The Hon"ble Supreme

Court in the case of Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, held

as under (at p. 1845) :-

This doctrine of equality before the law is a necessary corollary to the high concept of the rule of law accepted by our Constitution. One of the

aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative

authority. See State of Madhya Pradesh v. Thakur Bharat Singh, C.A. No. 1066 of 1965, D/- 23-1-1967 : (AIR 1967 SC 1170). Secondly,

such a law would be void, if it discriminates or enables an authority to discriminate between persons without just classification. What a Legislature

could not do, the executive could not obviously do. But in the present case the executive claims a right to issue a passport at its discretion, that is to

say, it can at its discretion prevent a person from leaving India on foreign travel. Whether the right to travel is part of personal liberty or not within

the meaning of Article 21 of the Constitution, such an arbitrary prevention of a person from travelling abroad will certainly affect, him prejudicially.

A person may like to go abroad for many reasons. He may like to see the world, to study abroad, to undergo medical treatment that is not

available in our country, to collaborate in scientific research, to develop his mental horizon in different fields and such others" An executive

arbitrariness can prevent one from doing so and permit another to travel merely for pleasure. While in the case of enacted law one knows where he

stands, in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine

of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive; The argument that the said

discretionary power of the State is a political or a diplomatic one does not make it anytheless an executive power. We, therefore, held that the

order refusing to issue the passport to the petitioner offends Article 14 of the Constitution.

We may notice that in this case the Hon"ble Supreme Court was not concerned with the vires of the provisions of any of the Sections of the

Passports Act and their Lordships were primarily concerned with the freedom to travel as postulated in Article 21 of the Constitution of India and

its limitations.

6. In the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, their Lordships in no uncertain terms held that the expression

personal liberty"" in Article 21 must be so interpreted as to avoid overlapping between that Article and Article 19(f). The expression is of widest

amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some such freedom has been raised to the level of

fundamental right. While holding that to travel abroad was a fundamental protection available to a person, their Lordships duly accepted the

applicability of principle of reasonableness in placing certain restriction under the due process of law including Section 10(3)(c) of the Act. Of

course, it was subjected to the basic rule of law of *Audi Alteram Partem*.

7. The basic enunciated principles in the afore-referred cases describe a common dictum that freedom to travel abroad is a fundamental protection

or right available to a person under the expanded meaning under Article 21 read with Article 19 of the Constitution. The grant of such right is

certainly subject to restrictions placed by due process of law. The Passports Act defines a process of law by which the restriction could be placed

upon leave to a person to travel abroad and claim protection on the terms and conditions of the passport issued in the name of the Constitution of

India. Issuance of a passport is intended to provide harmony and amicability of international relations.

8. Clause (f) of sub-section (2) of Section 6 of the Act empowers the Passport Authority to refuse to issue a passport or travel documents for

going abroad in the event the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal

Court in India. This provision does not offend the constitutional mandate in any way. It also does not vest the authorities with arbitrary power.

Pendency of a case before the criminal Court, seen in the light of police report, would be a sufficient ground for the authorities to act and in its

wisdom even decline issuance of the passport. Exercise of such jurisdiction would hardly be open to judicial review unless such decision was

palpably erroneous or was offending the basic rule of law. If the element of arbitrariness *ex-facie* vitiates the order, then alone it may be a case of

interference by the Court in exercise of its writ jurisdiction.

9. The Delhi High Court in the case of *The Commissioner of Income Tax, Delhi Vs. Hindustan Industrial Corporation, New Delhi*, , while deciding

an appeal against the judgment of the learned single Judge of that Court accepted the contentions of the Passport Authorities and upheld the

validity of the provisions of Section 6(2) of the Act being a due process of law. The Court held as under :-

It is well known that the doctrine of ""due process"" as developed in the American Constitutional law was originally intended to protect ""liberty"" in

the Indian Constitution. But Justice Frankfurter of the U.S. Supreme Court advised the late Shri B. N. Rau that in his opinion the power of review

implied in the "due process" of vetoing legislation enacted by the representatives of the nation was not only undemocratic, but also threw an unfair

burden on the Judiciary. This view was communicated by B. N. Rau to the Drafting Committee of the Constituent Assembly which introduced a

far-reaching change in the clause, which is now Article 21 of the Constitution, by replacing the expression "without due process of law" by the

expression "except according to procedure established by law" (Framing of the Indian Constitution (1968) 218).

The expression "procedure established by law" does not necessarily have ethical overtones. It is true that such procedure must be "established by

law". So long, however, as such procedure is not contrary to clauses (1) and (2) of Article 22, it cannot be said that any procedure enacted by a

new law as distinguished from a long standing old law would not be procedure "established by law". The word "established" cannot necessarily

refer to old standing law. As recognised by Sastri, J. himself in Gopalan's case an amendment of old standing law would still be "established

procedure. In that sense, the Passports Act, 1967 may also be said to be "established" procedure. For long before its enactment, the requirements

of the procedure regulating the grant and refusal of passports were the same. It is only because such procedure was executive and was not

embodied in a statute that it could not satisfy the requirement of Article 21. The same procedure was therefore, "put into the form of a statute." But

there is no material change in the procedure. An application for a passport was liable to be rejected if a criminal case was pending against the

applicant both before and after the enactment of the Passports Act, 1967. We are of the view, therefore, that the Passports Act, 1967 is

procedure established by law" within the meaning of Article 21. It is not, therefore, ultra vires Article 21.

10. For the above reasons, we do not consider it necessary to direct the respondents to issue passport to the petitioner. However, we must also

notice a pertinent aspect relatable to such cases. The authorities have a duty to strike a balance between the restricted freedom available to the

petitioner to travel abroad and the nature and grievousness of the crime committed by him. The development of law, which is its basic and essential

feature, has given wide magnitude to the expression of freedom. Enlargement of the concept of freedom by judicial pronouncement has an inbuilt

effect of requiring the authorities to examine the matter with a greater caution and care rather than mechanically reject request for issuance of

passport. To illustrate this view we may refer to a case where a person may be involved in a minor offence of traffic regulation and claims to be

tried in the Court rather than paying fine at the spot. A case against him being registered u/s 112 read with Section 183 of the Motor Vehicles Act.

1988 and even Section 323 of the Indian Penal Code simpliciter and challan presented in Court, should such person be denied issuance of a

passport merely because there is a case pending against him in the criminal Court, will be a matter of serious concern for the Passport Authorities.

In such cases, it will be expected of the Passport Authorities to consider the application for renewal/ issuance of a passport objectively and in

consultation with the police authorities so as to prevent injustice being done to an applicant. Default in such objectivity is in all probabilities likely to

result in infringement of a fundamental protection and liberty granted to the applicant under the law of the land. The purpose for which the petitioner

had prayed for issuance of the passport has lost its significance as the event at Bangkok itself is over.

11. Another aspect of the case in hand is that the petitioner has not placed any order on record vide which the respondents have refused to issue

the passport or travel documents in favour of the petitioner. He has raised a grievance in the writ petition challenging the action of the respondents

in not issuing/renewing the passport for which the petitioner had submitted an application. However, the factum of denial has not been disputed

before us by the learned counsel appearing for Union of India or by the Passport Authorities. In view of this, apparently the petitioner may even

have a right to prefer an appeal u/s 11 of the Act as an order refusing to issue passport or travel documents u/s 5(2)(c) of the Act is appealable

statutorily under the provisions of Section 11. The matter has been pending before us and a larger question is involved in the present case. Thus.

we do not propose to dismiss this writ petition for availability of effective, equally efficacious and alternative remedy to the petitioner.

12. Argo, we are unable to grant any relief to the petitioner, and would dispose of this petition but with specific liberty to the petitioner to approach

the respondents by filing a detailed representation for issuance/ renewal of the passport in accordance with law. If such a representation is moved,

we have no reason to doubt that the concerned authorities will deal with the same expeditiously and as per rules.