

Amarjit Singh Vs Union of India and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 1, 2011

Acts Referred: Arms Act, 1959 â€” Section 25, 27

Constitution of India, 1950 â€” Article 19(1)(a), 21

Explosives Act, 1884 â€” Section 3, 4, 5

Passports Act, 1967 â€” Section 11, 2, 5, 5(2), 5(3)

Penal Code, 1860 (IPC) â€” Section 121, 121A, 122, 123, 124A

Citation: (2012) 4 RCR(Civil) 141

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Navkiran Singh, for the Appellant; Karminder Singh, Advocate for the Union of India and Mr. Navdeep Sukhna, DAG, Punjab, for the Respondent

Judgement

K. Kannan J.

The petitioner challenges the order of the Ministry of External Affairs through Passport Officer rejecting petitioners

application for grant of passport. The impugned order makes reference to the Ministrys reply dated 16.06.2010 that proposed to deny to the

petitioner a favourable consideration. The contention in the writ petition is that the provision for appeal itself is made only in respect of

circumstances that result in denial of passport u/s 6(2)(b), (c) and (d) of Passport Act, and the impugned order, being one which falls outside the

scope of the above provisions, the writ petition was being filed. The petitioner would contend that there are no proper reasons spelt out in the

order as to why, he was being denied the passport. The State has filed its reply contending that the petitioner had been associated with a terrorist

outfit and in the year 1989, he had gone to New Zealand and later to Pakistan in the year 1994 from New Zealand. During his stay in Pakistan, he

had been engaged in promotion of insurrection against Government of India via radio and in the year 1996 when he was trying to enter into India

through Kathmandu, he had been apprehended by the concerned police. All these facts would prove that the petitioner had been engaging in

activities that endangered the solidarity and security of India. As a matter of record, the 3rd respondent would also said that a case had been

registered against the petitioner in FIR No. 133 dated 06.09.1996 for alleged offences under Sections 121, 121-A, 122, 123, 124-A IPC and

under Sections 3, 4 and 5 Explosive Act and u/s 25, 27, 54, 59 Arms Act at Kharar, District Ropar but he was later acquitted by the Additional

District Judge, Ropar. He had been earlier registered for a case in FIR No. 47 dated 19.04.1988 under Sections 307, 302, 34 IPC but

discharged by the trial Court. The principal contention on behalf of the State is, therefore, that the petitioner who had been connected with terrorist

group and engaging in anti-India activities could not be given the passport.

2. The reply of the Union reiterates the contentions taken by the State and makes an issue of the fact that the petitioner had been formerly the

President of the International Sikh Youth Federation (Bittoo), New Zealand. It is also stated that the impugned order has been passed rejecting the

petitioners claim for a passport on the grounds set forth u/s 6(2)(b) and (c) and there is a provision for appeal and the reading of the provisions as

set out by the petitioner is not correct. The respondent would explain that their own denial of passport to the petitioner was on account of the fact

that the Ministry of Foreign Affairs declined the issue of passport to the petitioner. Since the order of the petitioner says no more than the fact that

the Ministry of Foreign Affairs declined the issue of passport and the reply also stated no more than that the Ministry declined the passport, it

became necessary to secure better details and I had called upon the Union to produce in a sealed cover any classified information relating to the

intelligence report on petitioner only to satisfy myself that the ultimate decision had some tangible basis, without still compromising on national

security issues.

3. A sealed envelop had been produced on 11.11.2011 and I had urged the learned counsel for the petitioner to make his submission on an issue

of how the petitioner could make a claim for issuance of a passport if there were security issues and the extent of the information that the petitioner

could seek relating to secret classified information that the Government might have against the petitioner. Learned counsel appearing on behalf of

the petitioner states that it is undeniable that if there is any material to say that he had been engaged in any activity prejudicial to the sovereignty and

integrity of India and the presence of the petitioner in any foreign country was likely to be detrimental to the security of India or prejudicial to the

friendly relations of India with any other country, the passport could be definitely refused. The petitioner would concede that he had set up a radio

broadcast in New Zealand and he had definitely broadcast information that there were serious human right violations taking place in India and the

minorities rights were being trampled upon. This, according to him, was very much within his freedom of right of expression and free speech and

the activity must be seen only as a democratic expression and permissible by the width of freedom guaranteed under Article 19(1) (a) of the

Constitution. According to him, ever since his return to India, he has been always under the state surveillance and there was not any one incident

where any of his activities came under cloud. The cases that he had been registered against him had also vindicated his innocence.

4. Learned counsel would further submit that the State need not necessarily disclose secret information which they might to hold but there could be

nothing against him, which he himself does not know. There is nothing likely to be said against the petitioner except his past involvement when he

was in New Zealand having some radio broadcast and present denial ought to be possible only if his activities still go to cause any prejudice to the

national interest. The information supplied to the Court recalls his past activities in New Zealand, Pakistan and Nepal and claims that he has still

contacts with some hard-core terrorists. Terrorist activities are a global menace and by the very nature of activities, they are done covertly before

they fulminate to large scale destruction and mayhem. It is not possible for me to see that the information shared with the Court has anything

substantial but lines have to be clearly drawn between what State in its executive wisdom decides to do or what the Court could compel any public

authority to do. The task of taking a decision for grant of passport is entrusted with Officers, who have sensitive duties to perform in certain cases.

The Passport Officer himself could not have done anything beyond putting it through the Ministry of Foreign Affairs since the State

recommendations did not come in his favour and the State had given information about his past terrorist links and if the Ministry of Foreign Affairs

was not prepared to take his conduct as not irrelevant and his own present links were still perceive as suspicious, it shall not become possible for

me to still override their objections and direct an issue of passport. All that could be done is to see whether the decision has come after following

the process, which is laid down by law. The reasonableness of restriction is always a subject of appraisal by the Court. The dispensation in Mrs.

Maneka Gandhi Vs. Union of India (UOI) and Another, is a significant sign post in understanding the content of reasonableness in restrictions. In

the felicitous expressions of the Hon'ble Supreme Court: "personal liberty makes for the worth of the human person. Travel makes liberty

worthwhile. Life is a terrestrial opportunity for unfolding personality rising to a higher scale moving to fresh woods and reaching out to reality which

makes our earthly journey a true fulfillment. The spirit of Man is at the root of Article 21. Absent liberty, other freedoms are frozen The freedom of

foreign travel, Which is included under Article 21 can be fettered or forbidden by procedure established by law but the quality of fairness in

procedure is emphasized by the strong word established which means settled firmly not wantonly or whimsical. If it is rooted in the legal

consciousness of the community it becomes "established" procedure. The compulsion of constitutional humanism and the assumption of full faith in

life and liberty cannot be so futile or fragmentary that any transient legislative majority in tantrums against any minority, by three quick readings of a

bill with the requisite quorum can prescribe any unreasonable modality and thereby sterilise the grandiloquent mandate Procedure which deals with

the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to

effectuate, not to subvert the substantive right itself. Thus understood, "procedure" must rule out anything arbitrary, freakish or bizarre..

5. In this case, there is reasonably a fair procedure adopted. When the State did not recommend the issue of passport by the past links of the

petitioner with terrorists outfit and his own activities, they were perceived as causing disaffection against the integrity and solidarity of India, the

Passport Officer had sought for the Ministry's views in the matter. The Ministry has given the cryptic information that by their own intelligence and

with the available information, they will not recommend the issuance of passport.

6. Even when the Menaka Gandhi's case (supra) made a significant stride in understanding that right to personal freedom guaranteed under Article

21 cannot be merely a satisfaction that there was a law which restricted any of the freedoms and then the reasonableness of such restriction itself

will be a matter for judicial appraisal, it was said again in the context of how even earlier in Satwant Singh Sawhney Vs. D. Ramarathnam,

Assistant Passport Officer, Government of India, New Delhi and Others, , the Supreme Court had ruled by majority that the expression ""personal

liberty"" which occurs under Article 21 of the Constitution includes the right to travel abroad and no person can be deprived of that right except the

procedure established by law. The Passport Act which was enacted by Parliament in 1967 in order to comply with that decision prescribes a

procedure whereby an application by the passport may be granted fully or partially with or without endorsement and the passport once granted

may later be revoked or impounded. But the mere prescription of some kind of procedure cannot ever meet the mandate of Article 21. The

procedure prescribed by law be fair, just and reasonable and not fanciful appraisal or arbitrary. There is no dispute now that the grounds for

refusal of a passport, as spelt out through Section 6 itself, are not in challenge. If a person may or is likely to engage in activities prejudicial, a

passport could be denied. It is not merely that a person must be actually engaging in activities prejudicial. The possibility of what he could do is

also relevant. What a person could do in future is invariably measured by what he had done already. While it is easy to philosophise that every day

is a new day blossomed and every future activity could be unsullied by diabolical past deeds, authorities impressed with the duty to verify the

antecedents could verify only the past. Verification of a future could never be a human endeavour except for the person, who plans for his future. If

any objective assessment were to be made on a subject by the State, it has to inevitably be what the past activities have been. It is just as well

likely that a person has turned to a new leaf or perhaps, he has carried conviction that what he already did was nothing wrong. They are bound to

be varying perceptions but at least I have satisfied myself that it is not merely some whimsical official fiat that runs supreme here. It has gone

through a process before a letter of rejection was handed down to the petitioner.

7. While Section 6 sets out the grounds when a passport could be refused, it is Section 5 which deals with the exercise of power through

application for a passport. Section 5(2) deals with the exercise of that power that results in issue of passport or travel document with endorsement

and that includes making an endorsement that would include the refusal to make an endorsement on the passport or travel document. Sub section

(3) states that where a Passport Authority makes an order under Clause (b) or (c) under Sub-Section (2) on the application of any person, it shall

record in writing every statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case

the passport authority 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 copy. The additional power given u/s 5(3) is that in

cases where a refusal is made on issues of activities contracted with the interest of the sovereignty and integrity of India, reasons in writing need not

be given. In either case, a refusal that takes place does not come u/s 6. It is done only u/s 5. Section 11 of the Passport Act enables any person

aggrieved by the order of the Passport Authority under Clause (b) or (c) of Sub Section 2 of Section 5 to prefer an appeal. In every case where a

passport is refused on any of the grounds under clause (b) or (c) of Sub-Section (2), such a person has always a remedy u/s 11. Indeed, the Union

has filed the counter stating that proper procedure must have been only to prefer an appeal and not to challenge the same before this Court. I

would find an additional reason not to interfere with the decision only because the petitioner has not fully exhausted his remedy by preferring an

appeal and he has opted for a writ petition by a reading of Section 11, which, in my view, is not correct. Even while dismissing the writ petition, I

would still give an opportunity to the petitioner to prefer an appeal against the decision communicated to him so that the case obtains fresh

appraisal by the authority constituted under the Act. The writ petition is disposed of as above.