(2014) 07 DEL CK 0190

Delhi High Court

Case No: W.P. (C) 5141 of 2013 and C.M. Appl. No. 11557 of 2013

Avikash		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: July 7, 2014

Acts Referred:

- Passports Act, 1967 - Section 6(2)

Citation: (2014) 3 RCR(Civil) 723

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Suman Kapoor, Advocate and Party-in-Person, Advocate for the Appellant

Final Decision: Allowed

Judgement

Manmohan, J.
Despite a pass over, none has appeared for the respondents. Consequently, this Court has no other option, but to proceed ahead with the matter. It is pertinent to mention that the present writ petition has been filed seeking re-issuance of Passport in favour of the petitioner or in the alternative issuance of fresh Passport in favour of the petitioner.

2. Admittedly, petitioner has lost his Passport thrice and the fourth time it has been returned in a damaged condition.

3. Respondents in their counter affidavit have taken the stand that petitioner has failed to keep a valuable Government document safely. They have drawn this Court''s attention to the Passport Manual 2010 which states that if an applicant loses his Passport thrice and thereafter damages his Passport, his name shall be placed in the ''Prior Approval Category'' for a maximum period of three years.

4. Learned counsel for petitioner states that petitioner has clear antecedents and had peacefully visited foreign countries on the Passport issued to him for short terms for

recreational purposes on visitor visas.

5. Learned counsel for petitioner states that though the petitioner has lost his Passport thrice, yet there was no mala fide on his part. She emphasises that the petitioner had not intentionally misplaced and/or damaged his Passport. She denies that petitioner has taken any benefit of any loss or damage to the Passport.

6. Having heard learned counsel for petitioner and having perused the paper book, this Court is of the view that every citizen has a Fundamental Right to travel abroad and to have a Passport issued in his name. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Supreme Court has held that "personal liberty" within the meaning of Article 21 includes within its ambit the right to go abroad and consequently, no person can be deprived of this right except according to procedure prescribed by law.

7. Section 6(2) of the Passports Act, 1967 stipulates the grounds on which a Passport can be refused.

8. It is not the stand of the respondents that the case falls in any of the grounds mentioned in (a) to (i) enumerated in Section 6(2) of the Passports Act, 1967.

9. As far as the Passport Manual 2010 is concerned, this Court finds that after loss of Passport on three occasions, the Ministry is empowered to place the name of the said individual in "prior approval category". However, the same is not mandatory. The power to place the name of the individual in "Prior Approval Category" is a discretionary one, to be exercised for valid and cogent reasons like mala fide intent as prescribed in paras. 3.11 and 3.12 of Passport Manual.

10. In the present case, no material has been placed on record to show that there was any mala fide intent on the part of the petitioner. No incident or event showing misuse of any of the lost/damaged Passport has been placed on record.

11. The fact that the damaged Passport was voluntarily got cancelled by petitioner through the respondents, proves the bona fide of the petitioner.

12. Since the petitioner"s brother is also stated to be settled in Australia, this Court is of the view that not issuing a Passport to the petitioner would amount to violation of his Fundamental Right.

13. Consequently, present writ petition and application are allowed and respondents are directed to re-issue Passport in favour of the petitioner or in alternative issue fresh Passport in favour of the petitioner. However, as the petitioner has been remiss in taking care of his Passport, the petitioner is directed to pay costs of Rs. 50,000/- to be paid to Lok Nayak Jai Prakash Narayan Hospital, New Delhi, within a period of four weeks.