THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.12.2014

\+ **W.P.(C) 4574/2014**

KULVIR SINGH ..... Petitioner

versus

UNION OF INDIA AND ANR ..... Respondents

AND

\+ **W.P.(C) 5480/2014**

INDERDEEP CHUMBER ..... Petitioner

versus

UNION OF INDIA AND ANR ..... Respondents

AND

\+ **W.P.(C) 7109/2014 & CM 16665/2014**

BHUPINDER SINGH NIJJAR ..... Petitioner

versus

UOI AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Gupta in W.P.(C) 4574 & 5480/2014.
Mr Varun Mathur and Mr Lalit in W.P.(C) 7109/2014.

For the Respondents : Mr Hashmat Nabi in W.P.(C) 4574/2014.
Mr Kritika Mehra and Mr Jasmeet Singh, CGSC for UOI in W.P.(C) 4574/2014.
Mr Vikas Mahajan, CGSC with Mr S. S. Rai and Mr Rohan Gupta for UOI in W.P.(C) 7109/2014.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners impugn separate orders denying passports to the respective petitioners for the reason that the petitioners had applied for political asylum, while they were overseas. Since the controversy involved in these petitions is similar, the same were taken up together.

2. The relevant facts obtaining in various petitions are briefly stated as under:

2.1 The petitioner in W.P.(C) No.4574/2014 returned to India on an Emergency Certificate dated 19.04.2012 issued by the Embassy of India, Vienna. On his return, the petitioner applied for a passport, on 28.05.2012, at Passport Office, Chandigarh. By an order dated 03.07.2012, the Regional Passport Officer at Chandigarh rejected the said application and placed the name of the petitioner under the Prior Approval Category (hereafter 'PAC') for a period of five years from the date of his return on the ground that the petitioner had made a request to the Government of Austria for political asylum. The said request was, subsequently, rejected by the Austrian Government. By an order dated 05.08.2013, the appeal filed by the petitioner under Section 11 of the Passports Act, 1967 (hereafter also referred to as the 'Act') impugning the order dated 03.07.2012, was also dismissed by the Chief Passport Officer. The said order dated 05.08.2013 has been impugned by the petitioner in W.P.(C) No.4574/2014.

2.2 The petitioner in W.P.(C) No.5480/2014 returned to India on an Emergency Certificate dated 03.11.2011 issued by the Consulate General of

India, Frankfurt. On his return, the petitioner applied for a passport, on 23.04.2012, at Passport Office, Jalandhar. By an order dated 21.08.2013, the Passport Officer at Jalandhar rejected the said application and placed the name of the petitioner under the PAC for a period of five years from the date of his return on the ground that the petitioner had made a request to the Government of Germany for a political asylum. The said request was, subsequently, rejected by the German Government. By an order dated 25.04.2014, the appeal filed by the petitioner under Section 11 of the Act impugning the order dated 21.08.2013, was also dismissed by the Chief Passport Officer. The said order dated 25.04.2014 has been impugned by the petitioner in W.P.(C) No.5480/2014. It is relevant to note that wife of the petitioner is residing in Germany.

2.3 The petitioner in W.P.(C) No.7109/2014 returned to India on an Emergency Certificate dated 18.04.2011 issued by the Embassy of India, Vienna. On his return, the petitioner applied for a passport, on 10.05.2011, at Passport Office, Jalandhar. By an order dated 30.11.2012, the Passport Officer at Jalandhar rejected the said application and placed the name of the petitioner under the PAC for a period of five years from the date of his return on the ground that the petitioner had made a request to the Government of Austria for a political asylum. The said request was, subsequently, rejected by the Austrian Government. By an order dated 24.07.2014, the appeal filed by the petitioner under Section 11 of the Act impugning the order dated 30.11.2012, was also dismissed by the Chief Passport Officer. The said order dated 24.07.2014 has been impugned by the petitioner in W.P.(C) No.7109/2014. It is relevant to note that the

petitioner has stated in the petition that his wife and son are residing in Austria.

3. The orders dated 05.08.2013, 25.04.2014 and 24.07.2014 passed by the Chief Passport Officer rejecting the respective appeals of the petitioners are hereinafter collectively referred to as the 'impugned orders'. The impugned orders indicate that passports were denied to the petitioners, principally, for the reason as contained under Section 6(1)(a) of the Act; that is, *"the applicant may, or is likely to, engage in such country in activities prejudicial to, the sovereignty and integrity of India"*.

4. The controversy to be addressed is whether in the given facts and circumstances of the case, the petitioners could be denied a passport for the period of five years by virtue of Section 6(1)(a) of the Act.

5. At the outset, it is necessary to examine the nature of the rights that are sought to be curtailed. The Supreme Court in ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Govenment of India, New Delhi and Ors.*: AIR 1967 SC 1836** had examined the right of a citizen to travel aboard and held that this was a part of the fundamental rights guaranteed to a citizen and deprivation of such right would violate Article 21 and Article 14 of the Constitution of India. It is relevant to note that at the material time the Passport Act, 1967 had not been enacted. Subsequently, the Passport Act, 1967 was enacted to provide the law under which a citizen's right could be curtailed. This was also clearly spelt out by the 'Statement of objects and reasons' of the Act which reads as under:-

"Prior to the decision of the Supreme Court in *Satwant Singh Sawhney v. The Union of India* (W.P. No. 236 of 1966), passports were issued by the Government in the exercise of its executive power to conduct foreign relations. A passport was considered to be essentially a political document, issued in the name of the President of India to the Governments of, or authorities in foreign countries requesting them to afford facilities of safe travel to the holder in their territories and to provide him necessary assistance and protection. The presence abroad of a passport holder and the manner in which he conducts himself while there, the treatment meted out to him by foreign Governments and authorities necessarily bring into play the relations between India and the foreign countries concerned. Government might have to protect his interests abroad *vis-a-vis* the foreign State and might also have to arrange his repatriation to India at public expense, should he become destitute or a public charge. For all these and other reasons such as diplomatic and consular practice and usage and international practice and usage, Government had claimed an absolute discretion in the matter of issuance of passports though it had taken adequate precautions by issuing suitable administrative instructions to ensure that the power was not used in an arbitrary manner. The majority decision of the Supreme Court in the case aforementioned denied the Government any such absolute power though minority upheld Government's view point. The majority decision held *inter alia* that the right to travel abroad is a part of a person's personal liberty of which he could not be deprived of except according to procedure established by law in terms of article 21 of the Constitution and as there was no law establishing such procedure, the Government had no right to refuse a passport to any person who might have applied for the same. The majority also held that Government's claim for an absolute discretion in the matter of issuance of passports would also be violative of article 14 of the Constitution. It thus became urgently necessary to regulate the issuance of passports and travel documents by law. As Parliament was not in session, an Ordinance, namely, Passports Ordinance, 1967 was promulgated for the purpose."

6. The provisions of the Act - particularly, Section 10(3)(c) of the Act - were again examined by a Constitution Bench of the Supreme Court in the case of ***Maneka Gandhi v. Union of India***: **1978 (1) SCC 248**. Section 10(3)(c) of the Act enabled the Passport Authorities to impound or revoke the passport or travel documents *"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 interest of the general public*". The Supreme Court upheld the validity of the said Section, however, held that, that did not mean that any order made under Section 10(3)(c) of the Act would not violate Article 19(1)(a) or (g) of the Constitution of India. It was explained that even where statutory provisions empowering an authority to take an action are constitutionally valid, the action itself may offend a fundamental right. P.N. Bhagwati, J speaking for the majority stated the above principle in the following words:-

> "35. But that does not mean that an order made under Section 10(3)(c) may not violate Article 19(1)(a) or (g). .... even where a statutory provision empowering an authority to take action is constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory provision is valid, the action may be void. Therefore, 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 or the right to carry on a profession and where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6)."

The Supreme Court further observed that:-

> "There may be many such cases where the restriction imposed is apparently only on the right to go abroad but the direct and inevitable consequence is to interfere with the freedom of speech and expression or the right to carry on a profession. A musician may want to go abroad to sing, a dancer to dance, a visiting professor to teach and a scholar to participate in a conference or seminar. If in such a case his passport is denied or impounded, it would directly interfere with his freedom of speech and expression. ..... Examples can be multiplied, but the point of the matter is that though the right to go abroad is not a fundamental right, the denial of the right to go abroad may, in truth and in effect, restrict freedom of speech and expression or freedom to carry on a profession so as to contravene Article 19(1)(a) or 19(1)(g). In such a case, refusal or impounding of passport would be invalid unless it is justified under Article 19(2) or Article 19(6), as the case may be."

7. Section 3 of the Act mandates that *"No person shall depart from, or attempt to depart from India, unless he holds in this behalf a valid passport or travel document"*. Given that the right to travel overseas is an integral part of a citizen's fundamental right, any restriction imposed thereon must be in interpreted objectively and in the perspective of interest of general public.

8. The petitioners have been denied the passport solely on the ground that the petitioners are likely to engage in activities prejudicial to the sovereignty and integrity of India. The learned counsel for the respondent has strongly relied on the decision of the Punjab and Haryana High Court in ***Harjit Singh v. Union of India*: AIR 2009 P&H 1** which had upheld the decision of the passport authorities to deny passports to the petitioner therein on the ground that he had applied for political asylum in Germany. The Court had held that:-

> "11. In the present case the petitioner sought political asylum in Germany. Thus it cannot be said that the petitioner owes allegiance to India and to its sovereignty, unity and integrity. It is not denied by the petitioner that he made efforts to get political asylum in Germany. It is for this reason, the respondents have denied passport to him.
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> 12. Since political asylum is normally sought by persons by representing to another country that they fear persecution and oppression in their own country, the apprehension of the respondents that the petitioner does not owe allegiance to the sovereignty and integrity of India, is not entirely unjustified.
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> 13. We, thus, find nothing wrong with the decision of the respondents in denying the passport to the petitioner for five years and placing him on Prior Approval Category. The writ petition is accordingly devoid of any merit and is thus dismissed."

9. I am, most respectfully, unable to concur with the views of the Punjab and Haryana High Court. The action of a citizen in applying for political asylum may result in bad publicity for the country; his actions may also be construed as being disloyal to his country. But, the same cannot be held to be prejudicial to "the sovereignty and integrity of India". The expression *"activities prejudicial to the sovereignty and integrity of India"* must be read to mean activities that are derogatory to and/or could possibly result in affecting, the sovereignty and integrity of India. The Supreme Court in ***Sardar Govindrao v. State of M.P.*****: (1982) 2 SCC 414** explained the meaning the word "Sovereignty" as as under:-

> "**9.** "Sovereignty" means "supremacy in respect of power, dominion or rank; supreme dominion authority or rule". "Sovereignty" is the right to govern. The term "sovereignty" as applied to States implies "supreme, absolute, uncontrollable power by which any State is governed, and which resides

> within itself, whether residing in a single individual or a number of individuals, or in the whole body of the people". Thus, sovereignty, according to its normal legal connotation, is the supreme power which governs the body politic, or society which constitutes the State, and this power is independent of the particular form of Government, whether monarchial, autocratic or democratic. "

10. The conduct of the petitioners in applying for political asylum must be viewed in the above perspective. The, essential, test to be applied is whether such an act is derogatory to the supremacy of our Constitution or is prejudicial to this Nation's power of self governance. In the present case, there is no allegation that petitioners are indulging in any activities to insight divisive forces in India or activities that undermine the integrity or sovereignty of India.

11. Undoubtedly, the action of the petitioners in applying for a political asylum may result in bad publicity for a country but that does not mean that same is prejudicial to the sovereignty and integrity of India. In my view, the qualitative judgement on the conduct of the petitioners as citizens of this country ought not cloud the rule of law. The expression *"Sovereignty and Integrity of India"* cannot be read to be as fragile so as to be prejudiced by any bad publicity. However depreciable the action of petitioners in applying for political asylum may be, the same does not fall within the scope of "activities prejudicial to sovereignty and integrity of India". The the said action cannot be considered as a ground for denying passports to the petitioners.

12. The other aspect that is relevant to note is that all the petitioners have distanced themselves from the applications filed on their behalf for political

asylum and have asserted that the same was done without their concurrence. This may or may not be true. However, it is clear that a passport cannot be denied as a punition for the past acts of the petitioners. The passport authorities can deny the passport only if the applicant *'may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India'*. Assuming that the petitioners would again apply for political asylum after having applied once and having been deported, is to assume that the petitioner's would repeat their actions. There is no material to support this view. The only conclusion that one can draw is that the petitioners desire to reside overseas. It is possible that petitioners may legitimately endeavour to extend their stay overseas or may legitimately apply for seeking residence in foreign countries. It is not reasonable to assume that they would again endeavour to seek political asylum; a course of action with which the petitioners were unscessful.

13. Before concluding, it would also be necessary to consider the contention canvassed by the learned counsel for the respondent appearing in W.P.(C) 4574/2014. He contended that invoking the jurisdiction of this Court by the petitioner was *mala fide.* He submitted that the passport officer as well as the petitioner were in Punjab and the present petition had been filed only because the petitioner perceived that no relief would be granted by the Hon'ble Punjab and Haryana High Court. He also referred to the full Bench decision of this Court in ***Sterling Agro Industries Ltd. V. Union of India & Ors.***: **2011 (124) DRJ 633 (FB)** and submitted that exercise of power under Article 226 of the Constitution of India being discretionary ought not to exercise in favour of the petitioner.

14. It is not disputed that this Court would have jurisdiction to entertain the present petition. It is relevant to note that learned counsel for the respondents in W.P.(C) 5480/2014 and W.P.(C) 7109/2014 did not raise no objections with regard to exercise of jurisdiction by this Court. It is well settled that in certain cases, this Court may decline to exercise the jurisdiction on the ground of *forum non conveniens*. However, in the present case, there is no requirement of any additional material or evidence, which would necessitate the petitioner to be directed to the Courts in Punjab. I am also unable to accept that the petitioner has strategically avoided approaching the Punjab and Haryana High Court on account of the views already expressed by that Court. I, accordingly, find no reason to refrain from exercising jurisdiction in this matter.

15. Accordingly, the petitions and application are allowed and the impugned orders are set aside. The respondents are directed to process the applications filed by the petitioners for issuance of passports.

VIBHU BAKHRU, J

DECEMBER 17, 2014
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