

*Before Ashutosh Mohunta and Rajan Gupta, JJ.*

**HARJIT SINGH,—Petitioner**

*versus*

**UNION OF INDIA AND OTHERS,—Respondents**

C.W.P. No. 4519 of 2008

19th August, 2008

*Constitution of India, 1950—Art.226—Passports Act, 1967—S.6(1)(a)—Petitioner seeking political asylum in Germany—Apprehension that petitioner does not owe allegiance to sovereignty and integrity of India—Denial of passport for five years and placing on Prior Approval Category—Passport Authority has power to refuse to issue passport on being satisfied that particular applicant may or is likely to engage in activity prejudicial to sovereignty and integrity of India—No illegality with decision in denying passport to petitioner—Petition dismissed.*

*Held*, that a perusal of provisions of Section 6(1)(a) shows that legislature has vested a power in the Government to refuse to make an endorsement for visiting a foreign country in respect of an applicant who may or is likely to engage in such country in activities prejudicial to the sovereignty and integrity of India. This power has to be exercised by the authority which has power under the Act to grant the passport. The same authority on being satisfied that a particular applicant may or is likely to engage in activity prejudicial to the sovereignty and integrity of India, can refuse to issue the passport. A plain reading of Section 5(2)(b) and (c) of the Act, to which reference has been made in Section 6 also, shows that the passport authority has a discretion to issue passport or travel document in respect of one or more foreign countries and refuse in respect of some other country or countries. Under clause (c) thereof, the passport authority may completely refuse to issue passport or travel documents and thus decline permission to travel abroad.

(Para 10)

*Further held*, that 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. 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.

(Paras 11&12)

D. R. Punia, Advocate, *for the Petitioner.*

K. K. Kahlon, Advocate, *for respondent No. 1.*

Naveender P. K. Singh, Advocate *for respondents No. 2 and 3.*

***RAJAN GUPTA, J.***

(1) The petitioner has preferred this writ petition with a prayer for quashing of letter/order dated 14th August, 2006 whereby it was communicated to him by the Passport Officer, Jalandhar that a decision had been taken not to issue passport to him for a period of five years from the date of receipt of letter by him. The petitioner has impugned the said decision and has also sought a writ of mandamus for a direction to the respondents to issue a passport to him.

(2) The petitioner has stated that he was issued a passport bearing No. R680357 on 23rd December, 1993. Thereafter, the petitioner went to Berlin in Germany and sought a political asylum there. However, the German Government refused political asylum to the petitioner. As a result, he had to travel back on emergency certificate dated 14th November, 2005 and he arrived at New Delhi on 3rd February, 2006. According to the petitioner, he applied for issuance of a duplicate passport on 22nd February, 2006 as he had lost his earlier passport. This request was, however, declined on 14th August, 2006.

(3) In reply, the respondents have stated that the petitioner had applied for political asylum in Germany which was declined. According to the stand taken by the respondents in their reply, no foreign country easily grants political asylum to a foreign national, particularly a national of India. By seeking political asylum, the petitioner had tried to obtain refugee status in another country for personal gains. This, according to the respondents, attract substantial adverse publicity against India. Since the petitioner had already expressed his displeasure/annoyance against the Indian Administration, to a foreign country, he cannot now claim that he owes allegiance to the sovereignty, unity and integrity of India. It is due to this reason that it was decided not to issue passport to the petitioner and he was placed on PAC (Prior Approval Category) for five years. The respondents have further placed reliance on Section 6(1)(a) of the Passports Act, 1967 to contend that the petitioner had been rightly declined issuance of a passport and that the Government was within its power to impose reasonable restriction on right to travel abroad as vested in it by legislation i.e. The Passports Act, 1967 (hereinafter referred to as 'the Act').

(4) We have heard learned counsel for the parties and perused the record.

(5) While addressing the arguments, counsel for the petitioner has relied upon a judgment of the Apex Court reported as **Satwant Singh Sawhney versus D. Ramarathnam, Assistant Passport Officer, New Delhi and others (1)**, wherein according to the majority view, right to travel abroad is a fundamental right and deprivation of such right violates Articles 21 & 14. The Apex court also held that since there is no law regulating or depriving a person of such a right to travel abroad, refusal to give passport or withdrawal of one already given, violates Articles 21 and 14. A perusal of the judgment clearly shows that the case before the apex court was not a case relating to political asylum. The matter was considered in reference to Passport (Entry Into India) Act (34 of 1920) and not the Passports Act, 1967.

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(1) AIR 1967 S.C. 1836

(6) However, in a later judgment, reported as **Maneka Gandhi versus Union of India**, (2) provisions of the Passports Act were considered and following observations were made by Their Lordships :—

“(1) The position which obtained prior to the coming into force of the Passports Act, 1967 was that there was no law regulating the issue of passports for leaving the shores of India and going abroad. The issue of passport was entirely within the descretion of the executive and this discretion was unguided and unchannelled. The Supreme Court by a majority in **Satwant Singh Sawhney versus D. Ramarathnam**, [(1967) 3 SCR 525: AIR 1967 SC 1836] held that the expression “personal liberty” in Article 21 takes in the right of locomotion and travel abroad and hence no person can be deprived of that right except according to the procedure established by law and since no law has been made by the State regulating or prohibiting the exercise of the right, the refusal of passport was in violation of Article 21 and the discretion being unchannelled and arbitrary was violative of Article 14. This decision was accepted by Parliament and the infirmity was set right by the enactment of the Passports Act.”

(7) It is, thus, obvious that the Passports Act, 1967 was enacted subsequent to the judgment delivered in **Satwant Singh Sawhney’s case** (*supra*). It was felt by the Parliament that it was imperative to enact a law to regulate foreign travel and issuance of travel documents in respect thereof. This also necessitated that a machinery for this purpose be set up. This was done by enacting the Passports Act, 1967 which received the assent of the President on India on 24th June, 1967. The Statement of Objects and Reasons thereto is of special relevance for the purpose of decision of this case, which reads thus :

“Prior to the decision of the Supreme Court in **Satwant Singh Sawhney versus The Union of India** 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 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 except according to procedure established by law in terms of Art. 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 the Government's claim for an absolute discretion in the matter of issuance of passports would also be violative of Art. 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.

(2) The Ordinance prohibited the departure from India of any person without a passport or travel document. It provided for the machinery necessary for the issuance of passport. It also provided for the procedure for obtaining passports and travel documents and clearly defined the grounds on which passports or travel documents or endorsements on passports or travel documents for visit to any foreign country might be refused. The Ordinance also made provisions for impounding or revocation of passports or travel documents and clearly defined the grounds for the such impounding or revocation. Suitable provisions were incorporated in the Ordinance as to appeal against orders of refusal of passports or endorsements, revocation or impounding of passports etc. (Emphasis supplied).

(8) A perusal of statement of objects and reasons particularly para 2 above, clearly show that the Passports Act was also intended to define the grounds on which it could be refused. It made provisions for impounding or revocation of passports or travel document and the criteria therefor. The Act made provisions for refusal of passports, endorsements, revocation of passports etc.

(9) After the enactment of the Passports Act, foreign travel has been mainly governed by this enactment. In the present case, respondents have relied upon Section 6(1)(a) of the Passports Act for refusing the grant of passport to the petitioner for a period of five years. Section 6(1)(a) of the Passports Act on which the respondents have placed reliance reads thus :

“(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under Cl. (b) or Cl. (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely :

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to, the sovereignty and integrity of India;”

(10) A perusal of the aforesaid provision in the Act shows that legislature has vested a power in the Government to refuse to make an endorsement for visiting a foreign country in respect of an applicant who may or is likely to engage in such country in activities prejudicial to the sovereignty and integrity of India. This power has to be exercised by the authority which has power under the Act to grant the passport. The same authority on being satisfied that a particular applicant may or is likely to engage in activity prejudicial to the sovereignty and integrity of India, can refuse to issue the passport. A plain reading of Section 5(2)(b) and (c) of the Act, to which reference has been made in Section 6 also, shows that the passport authority has a discretion to issue passport or travel document in respect of one or more foreign countries and refuse in respect of some other country or countries. Under clause (c) thereof, the passport authority may completely refuse to issue passport or travel documents and thus decline permission to travel abroad. Section 5(2)(b) & (c) are reproduced hereunder :

“(2) On receipt of an application (under this section the passport authority, after making such enquiry, if any, as it may consider, necessary, shall, subject to the other provisions of this Act, by order in writing,—

- (b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or
- (c) refuse to issue the passport or travel document or, as the case may be refuse to make on the passport or travel document any endorsement.”

(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.

(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.

(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.

(14) The writ petition is accordingly devoid of any merit and is thus dismissed.

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**R.N.R.**

***Before Satish Kumar Mittal & Jaswant Singh, JJ.***

**ISHAQ,—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

CWP NO. 13011 OF 2008

12th September, 2008

***Constitution of India, 1950—Art. 226—Punjab Municipal (President & Vice President) Election Rules, 1994—Rl.5(c)—Election of President & Vice President of M.C.—Two candidates for each post obtaining equal number of votes—Whether Presiding Officer can postpone meeting without conducting draw of lots in presence of Members attending meeting—Held, no—Rl.5(c) requires P.O. to immediately conduct draw of lots between two candidates in presence of Members attending meeting—Action of PO in postponing meeting without conducting of draw of lots contrary to rules and not sustainable—Petition allowed, PO directed to again convene meeting for holding draw of lots.***

*Held*, that the Presiding Officer was not legally justified to postpone the meeting on 23rd July, 2008 without declaring any result and thus, has committed grave illegality by not conducting the draw of