

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Case Number	Writ Petition No.5692/2020
Parties Name	Hardik Shah v/s Union of India & Another
Date of Order	07/12/21
Bench	<u>Single Bench:</u> Justice Sujoy Paul
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsel for parties	Shri Prateek Maheshwari, learned counsel for the petitioner. Shri Himanshu Joshi, learned Assistant Solicitor General for the respondent / Union of India.
Law laid down	<p>Principles of natural justice – in the previous round, this Court directed the respondents to furnish complain of wife and other documents to the petitioner for hearing of the matter. On 09.09.2019, the passport of the petitioner was impounded, and thereafter, documents were supplied and impugned order was passed. No pre or post decisional hearing was provided to the petitioner which violates principles of natural justice.</p> <p>Pendency of matrimonial / criminal cases – impounding of passport – the passport cannot be impounded merely because a case involving offence under Section 498-A etc. is pending or a red corner notice was issued. Impounding can take place if Investigating Officer has shown his satisfaction that accused may abscond which may disturb the routine legal proceedings. In absence thereof, as a routine, passport cannot be impounded.</p> <p>Gazette Notification dated 25.08.1993 – the notification is not an impediment in a case of this nature for renewal of a passport for a period of ten years.</p> <p>Article 21 of the Constitution of India – the</p>

	<p>petitioner, a travel blogger was deprived from the passport which certainly affects his fundamental right of livelihood.</p> <p>Relief – the Passport Authority was directed to renew the passport for a period of ten years notwithstanding pendency of matrimonial / criminal matter provided there exists no other legal impediment against the petitioner.</p>
Significant paragraph numbers	14 to 21

ORDER
07.12.2021

The petitioner, a travel blogger and consultant has visited this Court for the second time against the action of Regional Passport Authority, Bhopal in not issuing a regular passport for a period of ten years and on the contrary impounding his passport in utter violation of principles of natural justice.

02. Draped in brevity, the case of the petitioner is that being a travel blogger by profession, the petitioner is required to travel around the globe. The passport was initially issued to the petitioner on 05.09.1997. The said passport was renewed for a period of ten years on 02.06.2014 and a new passport valid till 01.06.2024 was issued.

03. There was a matrimonial discord of petitioner with his wife who allegedly left matrimonial house on 12.09.2016. The petitioner's wife took away the old passport of the petitioner with her. Petitioner filed the police complain regarding said action of his wife on 10.10.2016. Petitioner's wife also filed an F.I.R. in Crime No.729/2016 against the petitioner and his family members on 03.11.2016 alleging demand of dowry etc. The petitioner filed a petition for divorce under Section 13 of the Hindu Marriage Act which is still *sub judice*. The petitioner got bail in the said crime

number on 26.04.2017. No condition was imposed in the bail order restricting the petitioner to travel abroad.

04. In turn, on 31.07.2017, the petitioner made an application for re-issuance of passport because his earlier passport was taken away by his wife. The petitioner also filed a petition under Section 482 of the Code of Criminal Procedure, 1973 bearing No.8168/2019 before Allahabad High Court. On 08.03.2019, the High Court protected the petitioner, referred the matter to mediation and directed that no coercive steps shall be taken against the petitioner.

05. Shri Prateek Maheshwari, learned counsel for the petitioner submits that petitioner's wife sent an email to the Passport Authority alleging that petitioner was not attending criminal proceedings, and therefore, action may be taken under Section 10 of the Passport Act, 1967. Certain documents were sent to the Passport Authority through email by the wife of the petitioner. The Passport Authority directed the wife to remain present for verification of documents annexed with the complain. She did not turn up and all her complain sent through email were entertained and treated as gospel truth.

06. A show-casue notice under Section 10(3)(h) of the said Act was issued to petitioner on 07.06.2019 as to why his passport should not be impounded. Pausing here for a moment, Shri Maheshwari urged that notice was confined for impounding of passport and not for its revocation. The petitioner while submitting a preliminary reply on 27.06.2019 requested the authority to supply copy of complain and supporting documents. When petitioner's said request went in vain, he filed W.P. No.18354/2019 before this Court seeking supply of said documents and for other reliefs. Shri

Maheshwari submits that said writ petition was disposed of on 04.09.2019 (Annexure-P/9) and in view of this order, respondent No.2 was required to provide necessary document to the petitioner and to *conclude the hearing expeditiously*.

07. In turn, Shri Maheshwari submits that the petitioner approached respondent No.2 on 09.09.2019 and prayed for compliance of the order of this Court. The passport authority directed the petitioner to surrender the passport failing which, the passport will be cancelled. The passport was impounded without affording any hearing or opportunity. The document of Passport Office, Bhopal (page – 62) is relied upon to show that passport was in fact impounded on 09.09.2019. Para – 5.13 of the petition was relied upon to contend that the specific allegations / averments made in this regard in the petition have not been denied. Hence, there is no reason to disbelieve the contention of the petitioner.

08. Furthermore, it is submitted that on 09.09.2019 after impounding the passport, the complain and supporting documents of wife were supplied to the petitioner on 01.11.2019 (Annexure-P/13). It was informed that as per Gazette Notification dated 25.08.1993, passport facilities can be granted to the petitioner only after the submission of permission from the concerned Court.

09. Criticizing the action of impounding and passing the impugned order dated 01.11.2019, learned counsel for the petitioner raised four fold submissions : **(i)** the impugned action of impounding runs contrary to the order of this Court passed in W.P. No.18354/2019. No opportunity of hearing was given to the petitioner before impounding the passport. **(ii)** the passport was impounded without there being any justification which runs contrary to the settled legal position.

(iii) the gazette notification aforesaid cannot deprive the petitioner from getting his passport renewed for a period of ten years. (iv) the impugned action / order of respondents hits right of livelihood of petitioner, a travel blogger flowing from Article 21 of the Constitution.

10. In support of aforesaid points, Shri Maheshwari placed reliance on *Maneka Gandhi v/s Union of India* reported in (1978) 1 SCC 248, *Rajesh Sharma & Others v/s State of U.P. & Others* reported in (2018) 10 SCC 472, *Navin Kumar Sonkar v/s Union of India & Others* reported in ILR 2018 MP 677, *Mohd. Farid v/s Union of India & Others* (Writ No.59959/2016), *Sanjay Gupta v/s Union of India & Others* (W.P. No.2390/2015), *Neera Chandra v/s Union of India* (W.P. No.27307/2019), *Daler v/s Union of India & Others* (W.P. No.12143/2015), *Suresh Nanda v/s CBI* reported in (2008) 3 SCC 674, *Manish Kumar Mittal v/s Chief Passport Officer & Another* reported in 2013 SCC OnLine Del. 3007, *Narendra K Ambwani v/s Union of India* (W.P. No.361/2014) and *Sampit Nitin Ranjani v/s Union of India & Others* (W.P. No.12784/2015).

11. *Per contra*, Shri Himanshu Joshi, learned Assistant Solicitor General for the respondents supported the impugned order. He placed reliance on certain paragraphs of the reply. The bone of contention of Shri Joshi is that in the teeth of Gazette Notification dated 25.08.1993 (Annexure-R/1), the petitioner's passport can be issued for a period of one year only. Pending a criminal case, question of issuance or renewal of passport for a period of ten year does not arise. The respondents have acted in accordance with the said gazette notification.

12. No other point is pressed by learned counsel for the parties.
13. I have heard the parties at length and perused the record.
14. In previous round, this Court passed following order:-

“W.P. No.18354/2019

Hardik Shah v/s Union of India & ors.

Indore

04.09.2019

Shri Prateek Maheshwari, learned Counsel for the petitioner.

Ms. Ishita Agrawal, learned Counsel for the respondent No.2.

The petitioner has filed the present petition being aggrieved by the show-cause notice issued by respondent No.2.

According to the petitioner matrimonial dispute with the wife is going on and in order to pressurize the petitioner, the wife has made a complaint to the Passport Authorities for impounding the passport of the petitioner. Though the petitioner has appeared and submitted a brief reply but according to him, the copy of complaint and the documents have not been provided to him. He has made an application for supply of the documents.

Ms. Ishita Agrawal, learned Counsel for the respondent submits that she will instruct the respondent No.2 for providing necessary documents to the petitioner and to **conclude the hearing expeditiously.**

In view of above, the petition is disposed of.”

[Emphasis Supplied]

In view of this order, the respondents were certainly required to furnish necessary documents and complain of petitioner's wife to the petitioner. It goes without saying that an effective and meaningful hearing can take place only after such document and complain are furnished to the petitioner. The petitioner categorically pleaded in para – 5.13 of the petition that instead of hearing the petitioner and supplying the documents, the respondent No.2 chose to demand

passport of the petitioner and impounded the passport without any hearing and without passing any order on the same day i.e. 09.09.2019. The respondents have filed a sketchy reply. No parawise reply is filed. There is no iota of denial of these pleadings.

15. In *Naseem Bano v/s The State of U.P. & Others reported in 1993 Supp. (4) SCC 46*, the Apex Court held that if specific pleadings of petition are not denied by the respondents while filing reply, the averments can be treated to be admitted. Thus, I find substantial force in the argument of Shri Maheshwari that the passport was impounded on 09.09.2019 before furnishing the documents and without affording any opportunity of hearing.

16. In *Maneka Gandhi (supra)*, the Apex Court held that fair opportunity of being heard must be given following immediately the order impounding passport in order to satisfy the mandate of natural justice. Importantly, no post decisional hearing is also provided to the petitioner in the instant case.

17. In *Rajesh Sharma (supra)*, it was ruled for NRIs that in cases involving offence under Section 498 of the Indian Penal Code, impounding of passport or issuing of red corner notice should not be a routine. The said exercise can be done if the Investigating Officer is satisfied that the arrest is mandatory and the accused is absconding in order to disturb the routine legal proceedings.

This is not the case of the respondents that pursuant to any information given by investigating authority, the passport was impounded so that petitioner cannot abscond from legal proceedings. Thus, on this account, the impugned action cannot be countenanced.

18. The principal seat in *Navin Kumar Sonkar (supra)* opined that mere pendency of criminal case cannot be a ground to initiate action by the passport officer. The pendency alone can also not be a ground for impounding the passport. There is a need of application of mind by passport officer regarding the nature of the criminal case. In *Manish Kumar Mittal (supra)* the same principle was followed and it is expected that passport officer will apply mind while taking decision regarding impounding/revocation of passport. The Allahabad High Court in *Mohd. Farid (supra)* expected that passport authority will apply the principle of objective consideration relating to pendency of criminal case etc. In *Daler (supra)* the Punjab and Haryana High Court opined that since criminal court has not taken cognizance and charge has not been framed, the passport authority should re-issue the passport to the petitioner if there exists no other legal impediment. In *Neera Chandra (supra)*, the competent criminal court in which matter was pending granted permission for issuance of passport and the Regional Passport Officer was directed to reconsider the decision of impounding the passport of the petitioner without taking note of the pendency of a criminal case.

19. So far as the Gazette Notification dated 25.09.1993 is concerned, suffice it to say that this aspect was also dealt with in great detail by Bombay High Court. Relevant portion of judgment of *Roshan Lawrence Menezes v/s Union of India & Others (Writ Petition (Lodging) No.699/2020)* reads as under:-

“5. The Central Government has issued a notification purportedly under Section 22 of the Act, being G.S.R. 570(E) dated **25 August 1993**, exempting citizens of India against whom proceedings in respect of an offence alleged to have

been committed by them are pending before a Criminal Court in India and who produce orders from the concerned court permitting them to depart from India, from the operation of Clause (f) of Sub-section (2) of Section 6 of the Act subject to the conditions specified in the notification. The conditions inter alia require issuance of passport to such citizens for the period specified in the order of the court referred to above, if the court specifies such period. Alternatively, **if there is no period prescribed either for issuance of the passport or for travel abroad in such order, the passport may be issued for a period of one year.**

6. There are at least two separate judgments and orders of our court, making it clear that under the Rules framed under the Act, particularly Rule 12, a passport other than for a child aged less than 15 **years should be issued for a minimum period of 10 years.** The first of these two judgments was delivered in Writ Petition No.361 of 2014 in the case of Narendra K. Ambwani vs. Union of India on 13 March 2014. By this judgment, our court issued directions inter alia requiring the Passport Office in all cases where the Magistrate's court directs renewal of passport under the Rules, the Passports Rules, 1980 would apply and passports other than for a child aged less than 15 years **would have to be renewed for a period of at least 10 years.** If, on the other hand, the Magistrate were to pass an order making a reference to the Notification of 25 August 1993 (G.S.R. 570(E)), the passport would be renewed only for such period as the Magistrate may specify in his order or otherwise as specified in the notification, namely, one year. The second judgment is the case of Samip Nitin Ranjani vs. Union of India (Writ Petition No.12784/2016) where the Division Bench of our court (per V.M. Kanade and Nutan D. Sardesai, JJ.), by its order dated 30 November 2016, observed that **the Union Government was duty bound to follow the directions/guidelines in the earlier judgment and renew passports for a period of 10 years in all cases where the Magistrates have allowed applications for renewal as per the Passports Act and the Rules framed thereunder.** Our Court appears to have essentially proceeded on the footing that by allowing renewal as per the Act and Rules framed thereunder, the criminal court, in effect, allows renewal of passport for a period of 10 years (Rule 12 of Passports Rules, 1980). If, on the other hand, the Magistrate, whilst issuing his NOC, issues a

direction that the passport should be issued or renewed as per the notification of 25 August 1993 and the order does not specify any particular period for such issuance or renewal, the passport is, in default, liable to be renewed for a period of one year. **This being the law declared by our court, the Respondents in the present case could not have renewed the Petitioner's passport for any period less than 10 years. In the present case, the Magistrate's order does call for issuance/renewal of passport in accordance with the Rules. These Rules, it is nobody's case, are other than the Passports Rules, 1980. If that is so, under the law stated by our court, referred to above, the Passport office is bound to renew the Petitioner's passport for a period of 10 years."**

[Emphasis Supplied]

20. A plain reading of this judgment makes it clear that various Division Benches of Bombay High Court has taken consistent view that aforesaid gazette notification is not an impediment for renewing the passport for a period of 10 years. Indeed, it was observed that the Government is duty bound to follow the principles and directions laid down in the previous judgments and renew passports for a period of ten years.

21. I am in respectful agreement with the view taken by the various Division Benches of Bombay High Court. As noticed above, the petitioner was not afforded with any pre or post decisional hearing before impounding his passport. The impugned action and order, therefore, cannot sustain judicial scrutiny. The pendency of matrimonial cases alone cannot be a ground to decline renewal of passport. The gazette notification aforesaid cannot be a ground for not renewing the passport for a period of ten years or for impounding it or restricting it for a period of one year only. In absence of any report of Investigating Officer to the contrary and in absence of any other legal impediment, respondents were not justified

in impounding the passport. The action of respondents certainly affects right of livelihood of a travel blogger who keeps body and soul together by travelling abroad and earning his livelihood therefrom.

22. Resultantly, the impugned action of respondents impounding / cancelling the passport is set aside. Respondents are directed to issue a regular passport for a period of 10 years to the petitioner (if there is no other legal impediment). It is clarified that pendency of aforesaid criminal / matrimonial cases cannot be a ground to deny the passport. The aforesaid exercise of issuance of passport be completed within a period of three weeks from the date of production of copy of this order.

The Writ Petition is **allowed**.

(SUJOY PAUL)
J U D G E

Ravi

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