

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1793/2022

Reserved on: 14.12.2022

Pronounced on: 31.12.2022

Gulshan Nazir

...Appellant/Petitioner(s)

Through: Mr. Jehangir Iqbal Ganai, Sr.Adv.,with
 Mr. Muzaffar Nabi Lone, Adv.

Union of India & Ors.

...Respondent(s)

Through: Mr. T.M.Shamsi, DSGI, for R-1, 2 & 5.
 Ms. Asifa Padroo, AAG for R- 3, 4 & 6.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner, through the medium of this Writ Petition, challenges the Order No.VIII/402/App-24/2021 dated 04.08.2022 (for short ‘impugned order’) passed by respondent No.2-Joint Secretary, PSP and Chief Passport Officer, New Delhi (hereinafter referred as ‘appellate authority’) and the communication No. POSK/Court/2021/(77&78)/154-57 dated 26.03.2021 issued by respondent No.5-Passport Officer Srinagar, whereby the petitioner has been refused issuance of Passport in her favour, on the ground that the provisions of Section 6(2) (c) of the Passport Act, 1967 were attracted in her case.

2. The petitioner who claims to be a senior citizen, applied for issuance of fresh Passport before respondent No.5-Passport Officer Srinagar

against a proper receipt on 14.12.2020 who in turn sought police verification from respondent No.4 - Additional Director General of Police CID J&K and respondent No.6 - Senior Superintendent of Police Srinagar. It is stated that despite efflux of more than three months, police verification report was not submitted constraining the petitioner to file representation before respondent No.6, requesting therein to forward the police verification report to respondent No.5 at an earliest, which report however, was not submitted.

3. Thereafter, the petitioner approached this Court through WP(C) No. 383/2021 seeking direction upon the respondents to issue Passport in her favour expeditiously. Respondent Nos. 3, 4 and 6 -(local Police/CID), in their reply submitted that the Police Verification Report (PVR) in relation to appellant-petitioner stands forwarded to the respondent-Regional Passport Officer Srinagar vide No. CID/Final/21/017558-017559 dated 18.03.2021. Respondent-Passport authority also produced a communication vide No. POSK/Court/2021/(77&78)/154-57 dated 26.03.2021 issued by Passport Officer Srinagar informing that issuance of Passport to the petitioner-appellant was 'refused' as the same was "not recommended passport case" by Nodal Agency J&K CID, which was mandatory.
4. The said petition was considered and dismissed by this Court vide order dated 29.03.2021, which order was challenged before the Division Bench of this Court through the medium of LPA No. 49/2021. On consideration of the said appeal, Division Bench was pleased to dispose of the appeal by providing liberty to the petitioner to approach the appropriate authority to avail the proper remedy

available to her under the Scheme and on receipt of the appeal, the authority concerned was directed to consider and decide the same on its merits strictly under rules, regulations and the provisions of the Passport Act, uninfluenced by the observations made in the judgment dated 29.03.2021 impugned therein.

5. As a sequel to the liberty granted to the petitioner by the Division Bench, she filed an appeal before respondent No.2 under Section 11 of the Passport Act, challenging the communication dated 26.03.2021 of respondent No.5-Passport Officer Srinagar, refusing issuance of Passport to the petitioner. However, as submitted by learned counsel for the petitioner, respondent No.2 chose not to decide the appeal for the reason best known to him, compelling the petitioner to again approach this Court through Writ Petition WP(C) No. 2543/2021 and this Court vide order dated 08.12.2021 directed respondent No.2 to ensure that the appeal stated to have been filed by the petitioner is considered and finally disposed of by or before 11.02.2022.
6. Thereafter, observing non-compliance of the order dated 08.12.2021, petitioner filed a Contempt Petition CCP(S) No. 132/2022. Respondent-appellate authority, however rejected the petitioner's appeal, vide impugned Order No. VIII/402/App-24/2021 dated 04.08.2022.
7. Petitioner aggrieved of the impugned order passed by the appellate authority has challenged the same through the medium of this Writ Petition.
8. Objections filed on behalf of respondent Nos. 1, 2 and 5 are suggestive of the fact that the petitioner had applied for re-issue of

Passport vide File No. SG1075060873220 dated 14.12.2020 in lieu of her previous Passport bearing No. J4359020 dated 26.11.2010 issued by the competent authority. The police verification report in respect of the petitioner was received from J&K CID in a sealed/confidential envelop vide No. CID/Final/21/017558-17559 dated 18.03.2021 containing report therein “not recommended for issuance of Passport” due to security clearances withheld. On the basis of the said police report, the respondent-Passport Officer issued a ‘refusal order’ under Section 6(2)(c) of Passport Act 1967.

The appeal of the petitioner was also rejected by the appellate authority. It is submitted by the respondents that in view of the police verification report this petition has become infructuous, as such, is liable to be dismissed.

9. On the other hand, respondent No.4 in its reply has submitted that the petitioner has wrongly impleaded respondent No.4 in the instant matter, as the CID is an intelligence wing of the Government and has a limited role to the extent of discreetly verifying the character/antecedents of persons as required by the Passport/competent authorities. The role of CID is completed as soon as the report is forwarded to the Passport authority. The CID has no prerogative of deciding whether or not to issue Passport, which is the sole domain of Passport authorities having statutory mandate to that extent. The report of the CID has only an assistive and not decisive role in such instances.

10. While arguing the matter, Mr. Jehangir Iqbal Ganai, learned senior counsel for the petitioner vehemently argued that there are no allegations against the petitioner in the CID report and the Passport

Officer has not applied mind while rejecting the request of the petitioner for issuance of Passport. He further argued that the petitioner is a senior citizen of more than 80 years of age and what security threat can the Country have in issuing Passport in her favour for travelling aboard. Further contention of learned senior counsel is that the petitioner is not a member of any banned organization and has a right to travel anywhere in the world being the peace loving citizen of India. Further argument of learned counsel is that right to travel abroad is a part of person's personal liberty as enshrined under Article 21 of the Constitution which could not be denied except in accordance with the procedure established by law.

11. On the contrary, Mr. T.M.Shamsi, learned DSGI, contends that the Passport Officer has to rely on the police verification report while issuing Passport in favour of any person. CID recommendation is essential for issuance of Passport or otherwise. Learned DSGI submits that the Passport authority has to act under law after getting 'clearance' for issuance of Passport in favour of a person. When there is a negative report from the CID against any person, the Passport authority cannot issue a Passport in favour of that person.

12. Submission of Ms. Asifa Padroo, learned AAG, appearing for respondent No.4, is that the CID has a limited role in the matter as the role of the CID completes as soon as the report is forwarded to the Passport authority, which has a decisive authority whether to issue a Passport or not in favour of a person who applied for the same.

13. Heard learned counsel for the parties at length and considered.

14. During the course of arguments, this Court found it imperative to call for the CID Police Verification Report (PVR), for perusal relating to the petitioner, accordingly, learned counsel for respondent No.4, in terms of order dated 14.12.2022, was directed to produce the CID report, on the basis of which the Passport Officer has based his opinion. Pursuant to the direction of this Court issued in terms of order dated 14.12.2022, Ms. Asifa Padroo, AAG has produced the report formulated by J&K CID, on perusal whereof, it appears that the police verification report was formulated in reference to two cases bearing No. SG1065057682420 and No. SG1075060973220, as both the applications moved by the petitioner and her daughter- Ms. Mehbooba Mufti were dealt with together and in respect of both the applications, PVR remarks were recorded as: '*Passport service not recommended and connected security clearance withheld*'.

15. On further perusal of the report which has been classified as 'top secret', it reveals that the police verification report has been formulated indicating the security angles for Passport clearance of Ms. Mehbooba Mufti only. So far as the petitioner is concerned, there is not even an iota of allegation which may indicate with regard to any security concerns of the State. The only aspect with regard to the petitioner is the reference of investigation by two agencies; Enforcement Directorate and CID CIK with regard to some of the transactions regarding some bank accounts maintained by the petitioner either separately or jointly with Ms. Mehbooba Mufti.

16. On going through the report, produced by learned AAG, as a whole, there cannot be any concern with regard to security risk which has been based by the Passport Officer as well as the appellate authority

to deny issuance of Passport in favour of the petitioner. The only point with regard to the investigation of the case under PMLA is with regard to the petitioner herein and in view of the involvement of the petitioner, in case she has been facing charge before a court under some provisions of law particularly PMLA, ‘no objection’ has to be sought from the trial court. However, there is nothing on record to say that charge-sheet has been laid against the petitioner or not.

17. Right to travel abroad inheres in the right to life and liberty guaranteed under Article 21 of the Constitution of India. This right can be curtailed by the Passport Officer on the basis of the available material and after entering into satisfaction that either Passport could not be issued or if already issued, the same is to be impounded. The Passport Officer, in all situations has to take the decision strictly in accordance with the provisions of Passport Act 1967.

18. Hon’ble Supreme Court in a case reported as ‘**AIR 1967 SC 1836 Satwnat Singh Sawhney Vs. D. Ramarathnam**’, observed that the right to travel abroad was a part of person’s personal liberty as enshrined under Article 21 of the Constitution, which could not be denied except in accordance with the procedure established by law.

The Court has held:-

“...that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law.”

19. A similar view is reiterated in the decision rendered by 7-Judge Bench of the Hon’ble Apex Court in a case ‘**Maneka Gandhi Vs. Union of India & Anr. (1978) 1 SCC 248**’, wherein it was held that:-

“....the expression "personal liberty" in Article 21 takes in the right of locomotion and travel abroad and under Article 21 no person can be deprived of his right to go abroad except according to the procedure established by law and since no law had been made by the State regulating or prohibiting the exercise of such right, the refusal of passport was in violation of Article 21 and moreover the discretion with the executive in the matter of issuing or refusing passport being unchannelled and arbitrary, it was plainly violative of Article 14 and hence the order refusing passport to the petitioner was also invalid under that Article. This decision was accepted by Parliament and the infirmity pointed out by it was set right by the enactment of the Passports Act, 1967. This Act, as its preamble shows, was enacted to provide for the issue of passports and travel documents to regulate the departure from India of citizens of India and other persons and for incidental and ancillary matters.”

The Court has further held that:-

“.... We, however, wish to utter a word of caution to the Passport Authority while exercising the power of refusing or impounding or cancelling a passport. The Passport Authority would do well to remember that it is a basic human right recognized in Article 13 of the Universal Declaration of Human Rights with which the Passport Authority, is interfering when it refuses or `impounds or cancels a passport. It is a highly valuable right which is a part of personal liberty, an aspect of the spiritual dimension of man, and it should not be lightly interfered with. Cases are not unknown where people have not been allowed to go abroad because of the views held, opinions expressed or political beliefs or economic ideologies entertained by them. It is hoped that such cases will not recur under a Government constitutionally committed to uphold freedom and liberty but it is well to remember, at all times, that eternal vigilance is the price of liberty, for history shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely corrode the foundations of liberty.”

20. In essence a Passport is a document which identifies the holder and provides evidence of his nationality. The refusal of the Passport or

travel documents is dealt with by **Section 6 of the Passport Act 1967**, which for facility of reference is reproduced hereunder:-

“6. Refusal of passports, travel documents. etc.—

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (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;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (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 is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

21. Sub Section(2) of Section 6 of the Passport Act clearly provides that application for grant of renewal of passport shall be refused only on the grounds mentioned in the Section and on no other ground. Apart from other grounds, Clause (c) of Sub Section (2) of Section 6 provides that request for grant or renewal of passport or travel documents can be refused, if departure of the applicant from India may, or is likely to, be detrimental to the security of India.

22. There appears no ground to refuse issue or renewal of Passport requested by the petitioner. Even, there is not an iota of allegation against the petitioner which may point out to any security concerns. The police verification report formulated by CID CIK cannot override the statutory provisions of Section 6 of the Passport Act 1967. Otherwise also in the report relied upon by the respondents,

nothing adverse has been recorded against the petitioner, with regard to any security concerns. The only aspect with regard to the petitioner is the reference of investigation by two agencies; Enforcement Directorate and CID CIK with regard to some of the transactions regarding some bank accounts maintained by the petitioner either separately or jointly with Ms. Mehbooba Mufti.

23. Simply on the basis of the report of the J&K CID, which did not recommend to issue Passport, the Passport Officer under the provisions of Passport Act has not to shut his eyes and to act on that. Since the Passport applied for by the petitioner has not been issued as the same was not recommended for security clearance by the CID, the decision taken by both, Passport Officer as well as the appellant authority, is misplaced on account of security. Atleast Passport Officer should have, in the background of the facts and circumstances, if required, asked the police and CID agency as to whether there is anything adverse against the petitioner. In such a situation without going into the PVR, refusal on part of the Passport Officer simply be termed as non-application of mind. All the above referred facts and circumstances were to be looked into along-with the report of CID. Passport Officer has not to act as mouthpiece of the CID (nodal agency). When an authority is vested with the power, same is to be exercised judiciously and not arbitrarily as has been done in the instant case.

24. It appears that the Passport Officer had acted on the forwarding letter of CID, instead of analyzing its report in detail. The PVR prepared by J&K CID was with regard to two applications one by the petitioner and other by her daughter. The report has exhaustively dealt with regard to petitioner's daughter making references to her ideology and activities which were termed as risk to the security of India, however, there is no mention with regard to the petitioner in the report in question, on the basis of which recommendation was

not made to re-issue Passport in favour of the petitioner and the Passport Officer refused to issue the same for the reason of 'security'. The appellate authority also seems not to have perused the Police Verification Report and upheld the order of the Passport Officer, on the wrong premise of security without any foundation.

25.Viewed thus, this Court is of the considered opinion that the ground on which the request of the petitioner for re-issue of the Passport has been rejected is totally untenable and unsustainable in the eyes of law. The petitioner, who claims to be an octogenarian, in absence of any adverse security report, cannot be deprived of her fundamental right guaranteed to her under Article 21 of the Constitution of India, to travel abroad as an India citizen.

26. For the reasons mentioned hereinabove and the legal position discussed on the subject, the petition on hand is allowed. The orders impugned are set aside. Respondent-Passport Officer, shall consider the entire matter afresh and pass orders thereon within a period of six weeks from the date copy of this order is served upon the said respondent. CID report, pertaining to the petitioner, as was produced by Ms. Asifa Padroo, learned AAG for the perusal of the Court, is returned back to her.

27. Petition, along-with pending application(s), if any, is disposed of accordingly.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
31.12.2022
Muzammil. Q

Whether the order is reportable: Yes / No