

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 18.09.2013

+ W.P.(C) 3885/2013
ANAND TEWARI

..... Petitioner

Through: Mr. Madhav Khurana, Adv.

versus

UNION OF INDIA & ORS,

..... Respondent

Through: Mr. Saqib, Mr. Akshay Chandra,
Advs. for UOI

+ W.P.(C) 5153/2013
P.K. TEWARI

..... Petitioner

Through: Mr. Madhav Khurana, Adv.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Ms. Shipra Shukla, Adv. for R-
1&2

+ W.P.(C) 5155/2013
ABHISHEK TEWARI

..... Petitioner

Through: Mr. Madhav Khurana, Adv.
versus

UNION OF INDIA & ANR.

..... Respondent

Through: Ms. Shipra Shukla, Adv. for R-
1&2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner in W.P(C) No.3885/2013 holds a passport bearing number Z2038840 which came to be seized by the CBI in connection with a criminal case registered vide RC No.BD1/2012/E/0001-BS&FC. Vide show cause notice dated 14.3.2012, the Regional Passport Officer (RPO) called upon the petitioner to show cause as to why his passport be not impounded under Section 10(3)(e) of the Passport Act, 1967. The petitioner responded to the said notice on 26.3.2012. Vide notice dated 5.9.2012, which the petitioner claims to have received on 10.1.2013, he was asked with reference to some adverse police verification report, to furnish a proper explanation regarding the circumstances in which he had suppressed the material information in his passport application. He was also asked to show cause why action be not taken to impound his passport under section 10(3)(b) and 12(1)(b) of the Passport Act, 1967. The petitioner responded to the said notice on 14.1.2013, stating therein that the letter being responded by him was received only on 10.1.2013.

2. The petitioner submitted an application to the Special Judge – CBI seeking temporary release of his passport on the ground that he required the same for renewal of the passport of his minor son. In its reply to the said application, the CBI stated that it had been informed by the RPO that the said passport has been impounded by it on 14.9.2012. Vide letter dated 7.5.2013, the petitioner requested the RPO to provide him the decision/ order to impound the passport, alongwith the communications exchanged in this regard. The Office of RPO, vide letter dated 17.5.2013, informed the petitioner that his passport was impounded on 14.9.2012, on account of adverse recommendations of CBI in connection with a criminal case registered vide RC No.BD1/2012/E/0001-BS&FC. Being aggrieved from impounding of

his passport, the petitioner is before this Court seeking quashing of the order dated 14.9.2012 and release of the passport to him.

3. In their reply affidavit, the respondents have stated that the passport of the petitioner was impounded on 14.9.2012 under Section 10(3)(c)&(e) of the Passport Act, 1967, pursuant to the advice of CBI. It is further stated in the affidavit that impounding of the passport was necessitated on account of the petitioner being involved in a criminal case of financial fraud and as many as four FIRs involving hundred crores of rupees had been registered against him. It is further stated that pursuant to the letter dated 14.2.2012 received from CBI, a show cause notice dated 14.3.2012 (wrongly typed as “14.3.2013”) was issued to the petitioner and the grounds for impounding the passport were conveyed to him vide letter dated 17.5.2013.

4. The passport of Mr. P.K. Tewari, petitioner in W.P(C) No.5153/2013 was also seized on 9.2.2012 in a criminal case registered vide RC No.BD1/2012/E/0001-BS&FC and he was also served with a show cause notice dated 14.3.2012, which was identical to the notice issued to the petitioner in W.P(C) No.3885/2013. He was also issued the notice dated 5.9.2012 which he claims to have received on 10.1.2013 and he also came to know from the reply filed by the CBI that his passport had been impounded vide Circular dated 14.9.2012. In response to a letter from him, the RPO vide letter dated 28.6.2013 informed him that his passport was impounded on 14.3.2012, on the recommendations of CBI, in connection with the above referred case. Being aggrieved from impounding of his passport, Mr. P.K Tewari is before this Court seeking quashing of the aforesaid order dated 14.9.2012.

5. The passport of Mr. Abhishek Tewari, petitioner in W.P(C) No.5155/2013, was also seized by the CBI on 7.2.2012. He also was issued a show cause notice dated 14.3.2012, identical to the show cause notice issued to the other two petitioners. He also responded to the show cause notice, which was followed by a communication dated 5.9.2012 which he claimed to have received on 10.1.2013. In his case also, the CBI informed the Special Judge – CBI that the passport had been impounded vide impounding circular dated 14.9.2012 issued by the Regional Passport Office. Vide communication dated 28.6.2013, the RPO informed him that his passport was impounded on 14.9.2012 on the recommendation of CBI in connection with a case registered by it. He is also aggrieved from impounding of his passport and is seeking identical reliefs.

6. Section 10(3) of the Passport Act, 1967, to the extent it is relevant, reads as under:

“Section 10(3) in The Passports Act, 1967

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) xxx;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf; xxx]

(c) if the passport authority deems it necessary so to do 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 interests of the general public;

(d) xxx;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

7. The issue of impounding of on account of pendency of a criminal case came to be considered by me in W.P(C) No.4835/2013 ***Manish Kumar Mittal versus Chief Passport Officer & Anr.*** decided on 5.8.2013 and the following view was taken:

3. Sub-section (5) of Section 10 of the Act, to the extent it is relevant, provides that when the passport authority makes an order impounding or revoking a passport or travel documents under Sub-section 3, it shall record, in writing, a brief statement of the reasons for making such an order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be 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 interests of the general public to furnish such a copy.

xxx

5. In the celebrated case ***Smt. Maneka Gandhi v. Union of India and Another AIR 1978 Supreme Court 597***, the passport of the petitioner was impounded in the public interest and the Govt. of India declined, 'in the interests of the general public' to furnish the reasons in its decision. The reasons, however, were disclosed in the counter affidavit filed in the Supreme Court. She filed a writ petition challenging the Constitutionality of validity of Section 10(3)(c) of the Passports Act to the extent it authorized the passport authority impounding a passport in the interests of general public, on the ground that the said provision was violative of Article 14 of the Constitution, since it conferred vague and undefined power on the passport authority and did not provide for a hearing to the holder of the passport before the passport was impounded. It was also challenged

on the ground of being violative of Article 21 of the Constitution since it did not prescribe the procedure within the meaning of that Article. It was also submitted by the petitioner before the Supreme Court that if it is held that a procedure has been prescribed in the aforesaid section, that is arbitrary and unreasonable. The Court observed that even if there are no positive words in the statute requiring that the party shall be heard, the principle of *audi alteram partem* mandates that no one shall be condemned unheard being a part of the rules of natural justice and the said doctrine applies not only to quasi judicial functions but also to the administrative functions, the aim of both being to arrive at a just decision. The following view taken by the Court in the aforesaid judgment is pertinent:-

“62. Now, here, the power conferred on the Passport Authority is to impound a passport and the consequence of impounding a passport would be to impair the constitutional right of the holder of the passport to go abroad during the time that the passport is impounded. Moreover, a passport can be impounded by the Passport Authority only on certain specified grounds set out in Sub-section (3) of Section 10 and the Passport Authority would have to apply its mind to the facts and circumstances of a given case and decide whether any of the specified grounds exists which would justify impounding of the passport. The Passport Authority is also required by Sub-section (5) of Section 10 to record in writing a brief statement of the reasons for making an order impounding a passport and, save in certain exceptional situations, the Passport Authority is obliged to furnish a copy of the statement of reasons to the holder of the passport. Where the Passport Authority which has impounded a passport is other than the Central Government, a right of appeal against the order impounding the passport is given by Section 11, and in the appeal, the validity of the reasons given by the Passport Authority for impounding the passport can be canvassed before the Appellate Authority. It is clear on a consideration of these circumstances that the test laid

down in the decisions of this Court for distinguishing between a quasi-judicial power and an administrative power is satisfied and the power conferred on the Passport Authority to impound a passport is quasi-judicial power. The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport even on the orthodox view which prevailed prior to A. K. Kraipak's case. The same result must follow in view of the decision in A. K. Kraipak's case, even if the power to impound a passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences."

It was contended by the learned Attorney General that *audi alteram partem* rule must be held to be excluded in such cases because if notice were to be given to the holder of a passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the country and the object of impounding the passport would be frustrated. Rejecting the contention, the Apex Court, *inter alia*, held as under:-

"63.It would not, therefore, be right to conclude that the *audi alteram partem* rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport. The Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport

Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports- Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be right, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure 'established' by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article²¹ and does not fall foul of that article.”

8. The plea in the counter affidavit filed in W.P(C) No.3885/2013 is that the passport of the petitioner in the said case was impounded under clause (c) and (e) of sub section 3 of Section 10 of the Passport Act. However, the show cause notice dated 14.3.2012 contains absolutely no reference to clause (c) of the said sub section. Moreover, there is no mention in the said notice that it was necessary to impound the passport in the interest of sovereignty and integrity of India, security of India, friendly relations of India with any foreign country or in the interest of the general public. The only reason given in the show cause notice dated 14.3.2012 for the proposed revocation receipt of information report from CBI regarding registration of a criminal case against the passport holder. In fact, these communications sent by the Regional Passport Office to the petitioners do not contain any such averment and the only reason given for impounding the passport was the adverse

recommendation of CBI in connection with a criminal case registered by it. Therefore, it would not be correct to say that the passports were impounded under clause (c) of sub section 3 of Section 10 of the Passport Act, 1967.

9. As regards the applicability of sub clause (b), the counter affidavit is conspicuously silent as to the material information, if any, suppressed or the written information, if any, provided by the passport holder while applying for issue of passport. There is no reference to clause (b) of sub section (3) in the reasons conveyed to the petitioners. There is no averment in the said communication that the passport was obtained by suppressing the material information or providing wrong information. In the communicated dated 5.9.2012, which was dispatched only on 7.1.2013, as is evident from the postal stamp appearing on the communication, there is a reference to an adverse police verification report, but admittedly, no such report was provided to the passport holders at any point of time, nor did the communication referred to any suppression of material information or furnishing of wrong information at the time of obtaining the passport. More importantly, the passports according to the respondents were impounded vide circular dated 14.9.2012, whereas the communication dated 5.9.2012 was dispatched to the petitioners only on 7.1.2013. Therefore, the said communication dated 5.9.2012 in any case could not have been the basis for impounding the passport.

10. As noted earlier, the case of the respondents in the counter affidavit filed in W.P(C) No.3885/2013 is that the passport was impounded under clause (e) and the reasons for impounding were later communicated to the petitioner vide communication dated 17.5.2013.

Though no counter affidavit is filed in W.P(C) No.5153/2013 and 5155/2013, the same stand was taken by the respondents during the course of arguments, with respect to revocation of the passports of the petitioners in the said two writ petitions. As noted earlier, sub section (5) of section 10 mandates the authority revoking or impounding the passport to record reasons for making such an order and such reasons if demanded are required to be furnished to the passport holder, unless the Passport Officer is of the view that such a disclosure would be prejudicial to the sovereignty and integrity of India or its friendly relations with any foreign country or it would not be in the interest of general public to provide such reasons to the passport holder. However, there is no material on record to show that the reasons in terms of sub section (5) were recorded by the RPO while impounding the passports of the petitioners before this Court. If that be so, the order impounding the passports would be null and void and is liable to be quashed.

11. Admittedly, no opportunity of personal hearing was given to the petitioners before this Court despite their having duly replied to the show cause notice. In my view, the show cause notices issued to the petitioners should have been followed by an opportunity of personal hearing to them. No such hearing, however, was given to them either before or after passing the order impounding their passports. This is yet another reason why the impugned order dated 14.9.2012 cannot be sustained.

12. Clause (e) of Section 10 (3) applies only if the proceedings in respect of an offence alleged to have been committed by the passport holder are pending before a criminal court at the time the passport is revoked/ impounded. Mere registration of a criminal case against a

person does not amount to proceedings being pending against him before a criminal court. The proceedings can be said to be pending only when a charge-sheet is filed. During the course of arguments, the learned counsel for the respondents placed on record a communication dated 4.9.2013 received from CBI which shows that a charge-sheet against Mr. Anand Tewari and P.K. Tewari, the petitioners in W.P(C) Nos. 3885/2013 and 5153/2013 has been filed in the Court on 23.8.2013 whereas the remaining cases are still pending investigation. Thus, no charge-sheet has yet been filed against Mr. Abhishek Tewari, petitioner in W.P (C) No.5155/2013 and no charge-sheet either against Mr. P.K. Tewari or against Abhishek Tewari had been filed by the time their passports were impounded vide order dated 14.9.2012. The passports, therefore, could not have been impounded prior to 23.8.2013, when the charge sheet was filed. In fact, in Abhijit Sen Vs. Superintendent (Administration) Regional Passport Officer & Ors. 2004 Cri LJ 1281, a Division Bench of the Calcutta High Court was of the view that the criminal proceedings in terms of clause (e) can be said to be pending only from the date on which cognizance is taken, by the Court, after filing of a charge sheet.

13. As held by this Court in Manish Kumar Mittal (supra) even if a criminal case is pending against a person that by itself does not necessitate impounding/ revocation of passport in every case, though the power of Regional Passport Office to impound/ revocate passport, in appropriate cases, on account of pendency of a criminal case against the passport holder cannot be disputed. Of course, the Regional Passport Officer can pass such order only for the reasons which are cogent and objective, the order passed by him being liable to be subjected to judicial

scrutiny if challenged by the passport holder. The respondents have not placed the order dated 14.9.2012 before this Court and, therefore, it cannot be known whether the Regional Passport Officer had recorded reasons which justifies impounding of the passport. In the absence of the production of the reasons, if any, recorded by the RPO, it would be safe to presume that he recorded no reason except registration of the criminal case for revocation of the passport. The RPO, has to take an informed view in this regard, taking into consideration all the relevant facts and circumstances of the criminal case registered against the passport holder.

14. For the reasons stated hereinabove, the impugned order dated 14.9.2012 impounding the passports of the petitioners are hereby quashed. The passports of petitioners Mr. Anand Tewari and Mr. P.K. Tewari in whose case the criminal court has directed deposit of the passports in the court shall be deposited by the respondents in the concerned court, whereas the passport of the petitioner Mr. Abhishek Tewari, in whose case, there is no such direction, shall be released personally to him. The Regional Passport Officer is directed to pass appropriate orders under sub section (3) of Section 10 of the Passport Act within twelve weeks from the receipt of a copy of this order. He may, in his discretion, give a pre-decisional or post-decisional personal hearing to the passport holders. If the Regional Passport Officer decides to impound or revoke the passports, he shall pass a speaking order in terms of sub section (5) of Section 10 and supply a copy of the said order to the passport holders, if demanded by them.

However, in order to ensure that in the meanwhile, the petitioners do not flee from the country and continue to attend the criminal court, as and when required by the said court, it is directed that till a speaking

order under sub section (3) of Section 10 of the Passport Act is passed, the petitioners before this Court shall not leave the country without prior permission of the concerned criminal court. The respondents shall make necessary entries in the record including the records maintained at the airports, regarding this direction of the Court, to the petitioners.

The writ petitions stand disposed of accordingly. There shall be no order as to costs.

SEPTEMBER 18, 2013/*rd*

V.K. JAIN, J.