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

Reserved on: 06.12.2017
Pronounced on: 12.01.2018

\+ **LPA 13/2016, C.M. APPL.593-594/2016**

UNION OF INDIA & ANR ..... Appellants

versus

SATNAM SINGH ..... Respondent

\+ **LPA 141/2016, C.M. APPL.7891/2016**

UNION OF INDIA & ANR ..... Appellants

versus

AMARDIP SINGH ..... Respondent

\+ **LPA 159/2016, C.M. APPL.8867/2016**

UOI AND ANR ..... Appellants

versus

VARINDER SINGH ..... Respondent

Present: Sh. Rajesh Gogna, CGSC with Ms. Vipra Bhardwaj, Advocate for UOI.
Shri Abhik Kumar, Advocate for respondent in LPA No. 13/2016.
Shri Varun Mathur and Shri Lalit Valecha, Advocates for respondent in LPA No.141/2016.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. Common issues are involved in these three appeals. The question that confronts this Court in LPA 13/2016, which is the lead case in this batch, is whether the activities of the passport applicant, while visiting a foreign country on an Indian passport and then applying in that country for asylum, can be construed as *"prejudicial to the sovereignty and integrity of India"* resulting in justifiable refusal to denial of passport to such individual on that ground under Section 6 (1) (a) of the Passport Act, 1967 (hereafter "the Act"). The decision by the Passport Office to deny passport was held to be illegal, by the learned Single Judge; the Union is consequently in appeal. The other two appeals involve identical facts.

2. The petitioner in W.P.(C) 1044/2014 (Satnam Singh, hereafter "Satnam") returned to India on an Emergency Certificate dated 08.04.2013 issued from the Consulate General of India, Vancouver (Canada). On his return, the petitioner applied for a passport on 08.07.2013, at Passport Office, Jalandhar. The Regional Passport Officer at Jalandhar rejected the said application and placed Satnam's name under the Prior Approval Category (hereafter 'PAC') for a period of five years from the date of his return to India on the ground that the petitioner had requested the Government of Canada for political asylum. The request was, however, rejected by the Canadian Government. By an order dated 24.07.2014, the appeal filed by Satnam under Section 11 of the Act, impugning the order of the Regional Passport Officer, was also dismissed by the Chief Passport Officer. The said order dated 24.07.2014 was then

challenged by Satnam in W.P. (C) 1044/2015, which was allowed by the learned Single Judge. The Union challenged the order dated 11.12.2015 passed by the learned Single Judge in Satnam's case whereby the learned Single Judge set aside the order dated 24.07.2014, which denied the passport facility to Satnam for 5 years.

3. The learned Single Judge relied upon order dated 17.12.2014 passed by a coordinate bench in W.P. (C) 4574/14 titled *Kulvir Singh vs. UOI & Anr* 2014 SCC OnLine Del 7206 ("*Kulvir*") whereby the passport facility was restored to Kulvir under similar circumstances, since an appeal against that decision was already pending before a Division Bench (DB) of this Court in *Union of India v. Inderdeep Chumber*. The Division Bench disposed of the appeal, being LPA No. 210/2015, referring to the judgment passed in *Kulvir (supra)* as the issue was rendered infructuous. The question of law was nevertheless kept open.

4. Similarly, in Varinder Singh's petition (W.P.(C) 11882/2015- hereafter called "Varinder"), the learned Single Judge followed the reasoning in *Kulvir (supra)* and quashed the decision of the authorities to keep the application under PAC. The Union has preferred an appeal, LPA 159/16 against that decision, dated 13.01.2016. In Amardeep Singh's case, (W.P.(C) 6254/2105, allowed on 08.01.2016), by following the decision in *Kulvir (supra)*, the Union has preferred its appeal, LPA 141/2016.

5. The Union argues that the reasoning in the impugned orders is erroneous. It urges that the learned Single Judge, in each of these cases, fell into error in following the reasoning in *Kulvir (supra)*. That

judgment, according to the appellant Union was decided on erroneous and flawed premises.

6. The Union of India in its appeal argues that the impugned judgments overlook that the result of bad publicity resulting in the behavior of an Indian citizen in foreign soil would inevitably tarnish its image. Learned counsel urges that international perceptions depend on statements made by nationals in foreign soil and may directly affect internal security of a country which dwells upon its integrity and renders the Nation vulnerable and impacts its sovereignty. It is not only by overt acts of divisive forces that the sovereignty of a Nation is prejudicially undermined but even by innocuous or insidious action by an individual or groups of individual that would ultimately succeed in undermining the sovereignty and integrity of India. For this purpose, learned counsel highlighted the expression *"may or likely to"* in Section 6(1)(a) of the Act.

7. It is submitted that the decision in *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi & Ors.* AIR 1967 SC 1836 and *Maneka Gandhi v. Union of India* AIR 1978 SC 597 cannot be considered as authorities for what constitutes acts prejudicial to the sovereignty and integrity of the country. Particular objection was taken to the observations of the learned Single Judge in *Kulvir Singh's* case that regardless of depreciable action of citizens in applying for political asylum, they would not fall within the scope of the expression "*activities prejudicial to the sovereignty and integrity of India*" and that it cannot be considered as a ground to deny a passport.

8. Mr. Rajesh Gogna, learned Standing Counsel appearing for the Union of India submitted that the very act of applying for political asylum meant that the applicant/writ petitioner vowed allegiance to the laws and Constitution of another country and disowned the laws and Constitution of his country of birth. This directly meant that he displayed overt disloyalty to the country of his birth, i.e. India. Learned counsel relied upon Section 2(o) of the *Unlawful Activities (Prevention) Act, 1967*, which defines unlawful activities of individuals as action by words either spoken or written or by signs, that "*causes or is intended to cause disaffection against India*". It was submitted that by applying for political asylum and swearing loyalty to the Constitution and value systems of another country and at the same time disowning that of India, each of the writ petitioners/applicants disowned their country and placed themselves in situations of voluntarily foreswearing India. Learned counsel highlighted Article 191(1)(d) of the Constitution which disqualifies anyone from being member of Legislative Council of a State if he or she voluntarily acquires citizenship of a foreign State or acknowledges allegiance to a foreign State. It is contended that the narrow interpretation placed upon the expression "*act prejudicial to the sovereignty and integrity*" of India is contrary to the plain intent of Parliament which had sought to address all kinds of behavior that were likely to prejudicially affect the country's interest and thereby reasonably restricting rights of citizens to obtain passport. It was submitted that the learned Single Judge fell into error in this regard distinguishing the reasoning in *Harjit Singh v. Union of India* AIR 2009 P&H 1 where under almost identical circumstances applying for political asylum was

held to constitute an act prejudicial to the sovereignty and integrity of India. It was submitted that notwithstanding the individual facts which may disclose hardship in the case of each of the applicant/writ petitioner, the learned Single Judge ought not to have interfered with the decision of the passport authorities as the orders placing them in "PAC" category was for a finite and limited duration.

9. Learned counsel for the applicant/writ petitioners contended that the impugned orders should not be interfered with and that the reasoning in *Kulvir Singh (supra)* is sound and should not be set aside. It is submitted that the right to travel abroad by virtue of the declaration of law in *Maneka Gandhi* (*supra*), is intrinsic of a citizen's right to liberty under Article 21 of the Constitution. The provisions of the Passports Act, to the extent that they regulate the issue of such documents were necessary on account of the previous decision in *Satwant Singh Sawhney (supra),* which had *inter alia* stated that denial of passport without any authority of law, is unconstitutional. Keeping in mind these facts, the learned Single Judge rightly concluded that the expression "acts prejudicial to the sovereignty and integrity" of India have to be necessarily construed narrowly. The broad interpretation of this expression would mean that any critic or adverse comment about India or anything done by the Indian authorities or the Executive Government can well potentially be construed as an act prejudicial to the sovereignty and integrity of India. It was highlighted thus that in order to fall within the threshold category which would disentitle an applicant to a passport, the act should be of such nature and satisfy such a threshold as to have an intrinsic bearing on the nexus with the threat to the sovereignty and

integrity of India. Thus, it would be overt acts such as waging war or creating terror, or inciting speech that could lead to imminent violence against established institutions that would fall within the mischief of the expression "prejudicial to the sovereignty and integrity" of India. Any interpretation which would fall short of such high threshold, would render the statutory provision, i.e. Section 6 susceptible to unconstitutionality.

10. It was contended that the mere act of securing asylum, cannot be isolated from the circumstances of the case. It was submitted that no facts indicating that any of the applicants at any time indulged in behavior that could lead to overt action or that they were part of any conspiracy with groups that sought to undermine the sovereignty and integrity of India were relied upon by the Union in denying them passports. In the cases of Amardip Singh and Satnam Singh what was apparent from the record was that both had married foreign citizens – as far back as in 2003 and 2004 (i.e. in Canada and United States of America respectively). Both of them had families, i.e. children who were foreign passport holders. All the three applicants/writ petitioners (i.e. Amardip Singh, Satnam Singh and Varinder Singh) had averred that they were unaware about the form they were signing in their anxiety to dive out foreign citizenship. These clearly showed that their intention was never to malign the country or undermine its sovereignty and integrity. At best, the act of applying for asylum in the circumstances was reprehensible and unwarranted. But that by itself should not render prejudicial the Nation's image or its estimation in the eyes of the international community. Thus, the submission by the learned counsel for the applicant/writ petitioners that the interpretation given in *Kulvir* and adopted in the impugned orders

is justified; for the same reasons the decision of the Punjab & Haryana High Court in *Harjit Singh* (supra), was correctly not followed.

Analysis and Conclusions

11. In *Kulvir*, after noticing the previous judgments of the Supreme Court in *Satwant Singh Sawhney (supra)*, *Maneka Gandhi v. Union of India* 1978 (1) SCC 248, as well as the Statement of Objects and Reasons for the Passports Act, the learned Single Judge held that denial of passport, or its renewal, by placing the application in PAC, was contrary to law, for the following reasons:

> *"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 MP (1982) 2 SCC 414 explained the meaning the word "Sovereignty" as as under:-*
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> *"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 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 unsuccessful."

12. Section 6 of the Passports Act, reads as follows:

"***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 foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and 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."

13. *Satwant Singh Sawhney (supra)* held that Article 21 takes in the right of locomotion and to travel abroad. *Hidayatullah, J.* in his dissenting judgment also considered that there was no doubt that there was a fundamental right to equality in the matter of grant of passports (subject to reasonable classifications). What is not in dispute in all these cases is that the applicants had applied for political asylum. The Passport Authority had denied the issue of passport on the ground that the act of seeking asylum in a foreign country by the Respondent falls within the purview of Section 6 (1) (a) of the Passport Act. The learned Single Judge had relied on *Kulvir (supra)* which stated that "*the action of applying for 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*

and that howsoever depreciable the action of applying for political asylum may be, the said act on the part of the applicant for the Passport does not fall within the scope of activities prejudicial to sovereignty and integrity of India within the meaning of Section 6(1) (a) of the Act and thus cannot be a ground for denying Passport."

14. It thus becomes crucial to determine the meaning of the phrase *'prejudicial to the sovereignty and integrity of India'* used in the Act. Apart from the Act, the phrase finds mention in clauses (2), (3), and (4) of Article 19 of the Constitution of India, where it was added as a ground for restriction on the freedom of expression. This was inserted by the Constitution (Sixteenth Amendment) Act, 1963, in order to combat secessionist agitation and conduct from organizations such as DMK in the South and Plebiscite Front in Kashmir, and activities in pursuance thereof which might not possibly be brought within the purview of the expression 'security of the State'. It was made to guard the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union.

15. It was pointed out that any legislation that is undertaken in this behalf, ought to be comprehensive and effective enough to check indirect devices to carry on such movements, such as the burning of the Constitution of India or the refusal to take the oath of allegiance, or the raising of flags in any way simulating the flag of a foreign State with a view to encouraging feelings of allegiance to such State and gathering people having such allegiance. [Vide Question in Parliament re. hoisting of the Plebiscite Front Flag in Kashmir (Statements, 11.12.64)]. It is to

curb the same menace that the *Unlawful Activities (Prevention) Act, 1967* was subsequently enacted which under Section 2(o) provides as follows:

> *"(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—*
>
> *(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*
> *(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or*
>
> *(iii) which causes or is intended to cause disaffection against India;"*

16. Since the mention of the phrase 'sovereignty and integrity of India' in both these provisions was with respect to secessionist activities, with one Act preceding, and the other succeeding, the enactment of the Passport Act, 1967, it is only reasonable to presume that the legislative intention with respect to the use of the phrase in the present Act is similar. In *Sardar Govindrao v. State of M.P.*, (1982) 2 SCC 414, the Court held that,

> "*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 non 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."

17. Rule 5 of Passports Rules, 1980 deals with the procedure for issuance of passport and Rule 5 prescribes the forms of application for applying for passport. The form has been set out in Part 1 of Schedule 3 of the Rules. Clause 19 of the application contains a self- declaration that the applicant owes allegiance to the sovereignty, unity and integrity of India. Unless a person gives a declaration of such allegiance, a passport cannot be issued to such person. The mention of the phrase 'sovereignty, unity and integrity of India' in the declaration must have the same meaning as in the Act, and therefore it cannot be said to have been breached by the applicant/writ petitioners in having applied for political asylum. In *Naresh Lalchand Bhagchandani* v. *Union of India and Others* 2007 SCC OnLine Bom 376, a Division Bench of the Bombay High Court held that:

"*The provisions which empowered the authorities to take action, as contemplated under section 6 or 10 of the Act, are required to be strictly construed before any action is taken against a passport holder; his acts of omission or violation should essentially fall within the contemplation of the provisions on their strict construction*."

18. The Court also referred the case of *Smt. Maneka Gandhi (supra)* where the Court held that:

"*A person cannot be deprived of his right to go abroad. There was a specific law enacted by the State in that regard. This being the settled law, obvious result is that the competent authority must have material to substantiate this objection on the basis of the record maintained by it in*

support of the objection for Issuance of the passport. Furthermore the Parliament having enacted a law specifying the grounds on the basis of which the authorities have wide power for refusing to issue a passport or travel document on the one hand and even right has been given to the said authorities to impound or caused to be impound or revoke the passport or travel document. But, once the grounds have been specified, then the authorities are obliged to bring their case within those grounds and cannot be permitted to add any ground to the specified ground or to forward an interpretation which, in substance, would tantamount to introduce a new ground which apparently is beyond the purview of the existing provisions."

19. This principle was further affirmed by the Punjab and Haryana High Court in *Rajinder Kaur v. Union of India,* AIR 2004 P & H 34*:*

"Under section 6(2)(b) of the Act it is stated that the passport authority shall refuse to issue a passport on the grounds that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India. A person can be denied the right to travel abroad if the authorities are satisfied that ingredients of this provision are satisfied. The language of the section indicates the gravity of the involvement or likely involvement of an applicant in activities which would be prejudicial to the sovereignty and integrity of the country. <u>These provisions, thus, must receive a strict construction as their consequences in law are not only serious but have the effect of taking away freedom granted to the petitioners in law</u>. Before it could be stated that a person is involved in activities which are prejudicial to the sovereignty of the country, there must be some reasonable and cogent material in possession of the respondents to show involvement of the petitioners in such activities. <u>The expression, "likely to" cannot be treated so lightly as to include every activity and relationship to be prejudicial to the sovereignty of the State</u>. Likelihood may take in its scope the apprehension which

essentially must be record based or founded on a reasonable cause, of course, may not be directly substantiated by written documentation. Surveillance, maintenance of appropriate registers under the Police Rules, entry of the name of the person therein and at least some reasonable analytical examination by the concerned quarters in the Union of India would normally be the records which should substantiate such reasonable apprehension."

20. In *Satwant Singh Sawhney (supra)*, 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 except according to the procedure established by law in terms of Art. 21 of the Constitution. *Maneka Gandhi (supra)* observed that:

"*National security, sovereignty, public order and public interest must be of such a high degree as to offer a great threat. These concepts should not be devalued to suit the hyper-sensitivity of the executive or minimal threats to the State. Our nation is not so pusillanimous or precarious as to fall or founder if some miscreants pelt stones at its fair face from foreign countries.*"

21. In the same case, in a concurring judgment, *Bhagwati, J* stated that:

"*…it is a basic human right recognised 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.*"

22. When called upon to adjudge the constitutionality of Section 124A of the Indian Penal Code -and whether it enacts reasonable restrictions

upon the right of free speech insofar as it penalizes action by words, representation "or otherwise" that *"brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India",* the Supreme Court resolved the cleavage of opinion between the decision of the Federal Court (in *Niharendu Dutt Majumdar v King Emperor,* (1942) F.C.R. 38, which had interpreted the expressions narrowly) and *King Emperor v Sadashiv Narayan Bhalerao* 1947 (LR 74 IA 89)- where the terms were construed broadly. The Supreme Court, in *Kedar Nath Singh v. State Of Bihar* AIR 1962 SC 955 held as follows:

> *"The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress."*

23. This Court is of the opinion, therefore, that sovereignty and integrity of the country are robust concepts that can withstand the actions of isolated individuals who may seek political asylum; their mere action in so seeking asylum- without more, by way of action tending to undermine the sovereignty, through actions that can result in disorder or violence- cannot be a ground for refusing passport to them.

24. The affidavit filed by the Appellants states that from the information received from the 37 RPOs, it is found that a total of 85 cases wherein the applicants came back to India or were deported by a foreign government after rejection of their requests for political asylum, are still pending from the year 2013 to 2015. Generally, political asylum in a foreign country is sought by people who fear persecution in their own country and are, therefore, unwilling to return and such an act might bring disrepute to India, given that instances of people seeking passport after having been refused political asylum by a foreign country have risen in the recent years as in terms of the data provided by the Appellants. However in these cases, this Court concurs with the view in the impugned orders (and *Kulvir*) that, however, condemnable the act of seeking political asylum in a foreign land, *ipso facto*, (i.e. by itself, and without any other fact showing that the applicant had involved himself or herself with activities of any individual or groups that plot, or had conspired, or are conspiring violence and other such activities to undermine the establishments in India or a section of its people) it cannot possibly be a ground to deny passport under Section 6 (1) (a) of the Act.

25. In light of the above case laws and provisions, it is clear that the provisions of the Act should be strictly construed as they have the

consequence of depriving a person of his essential rights, and such deprivation should not be done lightly, but within the confines of the legislative provision. This Court, therefore, holds that the impugned orders as well as *Kulvir (supra)* have correctly appreciated the law and the applicable principles. For the foregoing reasons, the appeals have to fail; they are dismissed. No costs.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

JANUARY 12, 2018