

CONSTITUTIONAL WRIT**Present: The Hon'ble Mr. Justice Syamal Kanti Chakrabarti****Judgement on : 18.06.2010****W. P. No. 22000(W) of 2000****with****C. A. N. 5773 of 2009****with****C. A. N. 6125 of 2006****Malay Kumar Ghoshal, Kumar of Sundarbans****Vs****Regional Passport Officer, Calcutta & Anr.****POINTS**

PASSPORT, PHOTOGRAPH – Passport authority establishes one uniform procedure throughout India in the matter of acceptance of passport size photograph- Whether it violates the personal liberty and identity of a citizen -Constitution of India, Art.21

FACTS

Writ petitioner filed an application for grant of a new passport since the passport granted to him earlier was going to expire soon. Writ petitioner supplied four copies of photographs exactly as required/ instructed by the respondent no. 1 he was asked to supply two additional photographs. On 22nd June, 2000 the petitioner had been to the office of the respondent no. 1 and again handed over two copies of the photographs as demanded. But the respondent no. 1 did not deliver his passport for which he was compelled to file a writ petition being W. P. No. 22000(W) of 2000. In the said

writ petition it was contended by the respondents that four passport size photographs were required for issuing the passport. In such view of the matter the Hon'ble Court on 06.09.2001 disposed of the said writ petition with the following directions: "*if the petitioner complies with the requirement, as above, the respondent authorities shall dispose of the matter with regard to grant of passport expeditiously.*" In pursuance of such order the respondent no. 2 by letter dated 16th November, 2001 asked for four copies of recent photographs of the writ petitioner without uniform. Ultimately the respondents granted passport being No. F6045590 dated 24.01.2006 and sent it to the petitioner by registered post. On receipt of such passport the writ petitioner found that the same was issued on his photograph contrary to the order of the Hon'ble High Court and the commitment made by Mr. M. M. Mukherjee, the Departmental Superintendent. It is also found by the writ petitioner that in one place his name has been mistyped as 'KUMA' in place of 'KUMAR'. This error and deviation from the order of this Hon'ble Court was brought to the notice of the passport officer by registered letter dated 30.06.2006 but to no effect. Therefore, the instant application has been filed with a prayer to direct the respondent to take back the passport and to redeliver it after affixing the original photograph sent with the application for passport or with the copy of the photographs sent as per directions of the respondents by their letter dated 11th November, 1999 and to correct the name of the petitioner in every place of the passport.

HELD

The liberty claimed by the writ petitioner in establishing his identity by ancestral royal attire in the passport is a demand of his constitutional right and liberty contemplated under Article 21 of the

Constitution but admittedly such liberty of an individual can be curtailed by procedure established by law. Therefore, if the passport authority establishes one uniform procedure throughout India in the matter of acceptance of passport size photograph of an applicant in granting passport it can safely be said to be a procedure established by law and should be honoured and given much importance than the individual desire of an applicant to present himself in a particular manner according to his social status and ancestral glory. With due regard to his past glory and its present assertion through conduct and behaviour in the manner a citizen desires to express it, such a desire must be compatible with the procedure established by law in the country and every citizen should respect and follow such procedure sacrificing his idiosyncrasy regard being had to new procedure established in the country with the advancement of science and technology as well as the adaptability and quicker methodology for catering the growing demands of the citizen. In this sense passport is a document to prove identity of a person only and not a platform to display his social status and past glory.

Para 10

CASES CITED

1. AIR 1998 SC 1801 M/s. Springs Meadow Hospital and Anr. – Vs. – Harjol Ahluwalia through K. S. Ahluwalia and Anr., respondents.

2. 2008(1) CLJ(Cal) page 88.

For the Petitioner : Mr. Malay Kumar Ghoshal,
(appearing in person).

For the Respondent authority: Mr. Kamal Kumar Chattopadhyay.

Syamal Kanti Chakrabarti, J.:

In the instant application being CAN No. 6125 of 2000 arising out of W. P. No. 22000(W) of 2000 the writ petitioner Malay Kumar Ghoshal, Kumar of Sundarban has prayed for compliance of the order dated 6th September, 2001 passed by Hon'ble Justice M. H. S. Ansari in W. P. No. 22000(W) of 2000. It is contended that on 30th December, 1998 the writ petitioner filed an application for grant of a new passport since the passport granted to him earlier was going to expire soon. Though the writ petitioner supplied four copies of photographs exactly as required/ instructed by the respondent no. 1 he was asked to supply two additional photographs. On 22nd June, 2000 the petitioner had been to the office of the respondent no. 1 and again handed over two copies of the photographs as demanded. But the respondent no. 1 did not deliver his passport for which he was compelled to file a writ petition being W. P. No. 22000(W) of 2000. In the said writ petition it was contended by the respondents that four passport size photographs were required for issuing the passport. In such view of the matter the Hon'ble Court on 06.09.2001 disposed of the said writ petition with the following directions: "*if the petitioner complies with the requirement, as above, the respondent authorities shall dispose of the matter with regard to grant of passport expeditiously.*" In pursuance of such order the respondent no. 2 by letter dated 16th November, 2001 asked for four copies of recent photographs of the writ petitioner without uniform. Ultimately the respondents granted passport being No. F6045590 dated 24.01.2006 and sent it to the petitioner by registered post. On receipt of such passport the writ petitioner found that the same was issued on his photograph contrary to the order of the Hon'ble High Court and the commitment made by Mr. M. M. Mukherjee, the Departmental Superintendent. It is also found by the writ petitioner that in

one place his name has been mistyped as 'KUMA' in place of 'KUMAR'. This error and deviation from the order of this Hon'ble Court was brought to the notice of the passport officer by registered letter dated 30.06.2006 but to no effect. Therefore, the instant application has been filed with a prayer to direct the respondent to take back the passport and to redeliver it after affixing the original photograph sent with the application for passport or with the copy of the photographs sent as per directions of the respondents by their letter dated 11th November, 1999 and to correct the name of the petitioner in every place of the passport by correctly writing the word 'KUMAR' or 'KR' in place of 'KUMA' as wrongly written in the passport. Since the matter was pending for a long time, in another application being C. A. N. 5773 of 2009 the writ petitioner has asked for expeditious hearing of this application and, therefore, both these applications are now taken up for consideration.

2. The respondents, however, has denied the allegation and claimed that the passport has been rightly issued in accordance with relevant rules and so far as the error in writing 'KUMA' in place of 'KUMAR' is concerned, it is contended that the same is the outcome of computerised printout which failed to incorporate all the words for want of adequate space in the prescribed format.
3. From the submissions made by the Learned Counsel for both the parties it appears to me that the prayer for correction of the 'KUMAR' in place of 'KUMA' either by writing the entire word 'KUMAR' or abbreviation thereof as 'KR' is feasible and should be conceded to.
4. The other aspects of the claim relates to the question of using photograph of an applicant for passport in the manner he wants or in the manner the passport authorities desire which is the

real bone of contention in the instant application. The writ petitioner being Kumar of Sunderbans has urged for his identification with the attire of his Royal ancestry as of right and for its establishment in foreign countries while travelling out of India with this type of passport. It is the claim of the petitioner that earlier this type of photograph was accepted and he obtained his passport in 1979 by renewing his original passport from time to time while stayed in different countries in Europe. He has claimed that the dress with which his photograph was taken is not any 'uniform' since the same is not worn by any person in carrying out his profession, education or training. He has also drawn my attention to Rule 10(b) and 10(c) of the "Passport Application Forms" as well as to page 2 of his former passport which required that the colours of eyes and hair must be explicitly stated. In fact at the time of renewal of his earlier passport with royal dress no such objection was raised by the passport authorities of UK and Germany.

5. The learned lawyer for the respondent has argued that the passport in favour of the writ petitioner was issued according to adaptability of computerised system prevailing all over India and for introduction of such computerised system the applicant was called on and requested to fill up a computerised sheet to issue passport in his favour. It is further contended that passport is not a field to show anybody's standard and social status etc. It is a travel document required for verification of his identity and as such it cannot be treated as a document to display one's social status, profession and ancestral family glory. From the specimen of such computerised application form it appears that in relevant column for specimen verification certificate "Applicant's Photo" is to be pasted and attested by specified authorities. The photograph initially given by the applicant has not been accepted by the passport authority on technical grounds of failure of their computerised system to adopt the

same. It is admitted fact that earlier when there was no such computerised system the photograph of the writ petitioner with his ancestral royal attire was accepted by the passport authority. Therefore, the subsequent change of system and issuing passport through computer cannot be treated as a curse upon the society rather it is a benefit given to the citizen out of advancement of science and technology. Adaptability is the *sine qua non* of human survival and in course of state administration such adaptability should never be treated as arbitrary in respect of any individual whose insistence for establishment of his identity in his passport is an idiosyncrasy which can otherwise be styled as ego satisfaction which has no connection or bearing on the object of scrutiny of the passport application form duly filled in by the applicant. While granting passport it is the discretion of the issuing authority to be objectively satisfied regarding identity of a person disclosed through his photograph which is to be attested by a competent authority. Therefore, claim of any photograph without any uniform or with uniform in the strict sense of the term is not the criteria demanded by the passport authority in the instant case. Their object is to maintain in form and feature one mode of acceptance of photograph at national level. Their minimum expectation was of a passport size photograph of the applicant through which he can be easily identified without any chance of disguise. In a complex social set up security of the country as well as uniformity in the matter of granting passport to all the citizens is a sound state policy which should not be interfered with by Writ Court. If the passport authorities follow in principle one set pattern of photograph for the purpose of issuing passport through computerised system according to the available mechanical device and adaptability it can neither be treated as arbitrary nor any act of negligence bereft of the duty to take care of the applicant's cherished desire accepted earlier while mechanical process of issuing passport was in vogue in our country.

6. The writ petitioner had drawn my attention to the principle laid down in paragraph 9 of the case reported in AIR 1998 SC 1801 M/s. Springs Meadow Hospital and Anr. – Vs. – Harjol Ahluwalia through K. S. Ahluwalia and Anr., respondents. In the said paragraph the view of the Lord Denning was placed on record to determine the error of judgement and it was held that an error of judgement could be negligence if it is an error which could not have been made by a reasonable competent professional man acting with ordinary care. This has been cited to refute the argument advanced by the learned lawyer for the respondents to the fact that Hon'ble Justice M. H. S. Ansari in His Lordship's order dated 06.09.2001 in W. P. No. 22000(W) of 2000 has only placed on record the demand of the passport authority to furnish four passport size photographs as required in the instructions. Therefore, as per instructions the respondent authority demanded the passport size photograph which cannot be treated as defiance of the order of the Hon'ble Court in demanding any passport size photograph other than those supplied by the writ petitioner/ applicant along with his application for passport. The writ petitioner, Learned Advocate himself, has claimed that it is an error apparent on the face of record that the Learned Judge while placing on record his demand has omitted to mention the nature of passport size photograph to be used in the instant case. Admittedly the writ petitioner has not moved for necessary correction of such order within prescribed time after 06.09.2001 till his receipt of the passport granted in pursuance of such order and detection of some errors for which he has filed the application in 2006 for necessary rectification. Therefore, the above principle is inapplicable in the instant case.
7. From the facts and circumstances of this case I do not find that the Learned Single Judge committed any error in His Lordship's order dated 06.09.2001 in placing on record the demand of the respondent authority in the following manner:

“It is stated that the petitioner was requested to furnish four pass-port size photographs as required in the instruction.

In such view of the matter the instant application is disposed of with the observation that if the petitioner complies with the requirements as above, the respondent authorities shall dispose of the matter with regard to the grant of pass-port expeditiously.”

8. From a plain reading of such order it appears that the Learned Court insisted for compliance of the applicant with the **requirements of the passport issuing authority** which is not an error on His Lordship’s part rather a guidance given to the applicant to extend cooperation **in the manner desired by the passport authority** for expeditious settlement of his claim. This does not affect the liberty of the writ petitioner though he has drawn my attention to paragraph 7 of the case reported in 2008(1) CLJ(Cal) page 88.
9. It is set at rest in the above case that while vindicating the cherished liberty of the citizen by the association for protection of democratic rights, it was pointed out that liberty occupies a place of pride in our socio-political order and who knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law.

10. I conceive that this case though cited by the writ petitioner rather lends support to the defense contention. The liberty claimed by the writ petitioner in establishing his identity by ancestral royal attire in the passport is a demand of his constitutional right and liberty contemplated under Article 21 of the Constitution but admittedly such liberty of an individual can be curtailed by procedure established by law. Therefore, if the passport authority establishes one uniform procedure throughout India in the matter of acceptance of passport size photograph of an applicant in granting passport it can safely be said to be a procedure established by law and should be honoured and given much importance than the individual desire of an applicant to present himself in a particular manner according to his social status and ancestral glory. With due regard to his past glory and its present assertion through conduct and behaviour in the manner a citizen desires to express it, I hold such a desire must be compatible with the procedure established by law in the country and every citizen should respect and follow such procedure sacrificing his idiosyncrasy regard being had to new procedure established in the country with the advancement of science and technology as well as the adaptability and quicker methodology for catering the growing demands of the citizen. In this sense I hold that passport is a document to prove identity of a person only and not a platform to display his social status and past glory. Learned petitioner has tried to emphasis on the etymology of dress and uniform to bring forth its real meaning and practical use in administration. Since the work only 'photograph' has been used in the prescribed form, I hold that there is no relevancy of deciding such a question importing new words in the form which is impermissible in law.
11. Therefore, I do not find any merit in this application so far as change of photograph is concerned but so far as the other typographical error is concerned in writing the words

‘KUMAR’ in the passport I hold that there is ample scope for correction and inserting the word ‘KUMAR’ or ‘KR’.

12. Therefore, I allow the prayer in part and direct the respondent authorities to take back the passport of the applicant for the purpose of correction of the word ‘KUMA’ by substituting “KR” therein which will take lesser space within the permissible available space under the computerised system and for this purpose if any fresh photograph is required the petitioner shall have to supply the same in the manner demanded by the respondent passport authorities. Since the matter is pending for long time I direct that this process shall be completed by the respondent within a period of one month from the date of communication of this order subject to compliance of all other formalities by the present applicant.
13. Thus both the applications are disposed of.
14. I make no order as to costs.
15. Urgent photostat copy of this order, if applied for, be given to all the parties upon compliance of all necessary formalities.

(Syamal Kanti Chakrabarti, J.)