

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 5685/2010 & CM APPL 19825/2010 (for direction)

BALWINDER SINGH Petitioner
Through : Mr. Ajay Kumar Pipaniya, Advocate.

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Virender Mehta, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
29.04.2011

1. The prayer in this writ petition filed on 17th August 2010 is for a direction to Respondent Nos. 2 and 3, i.e. Foreigner Regional Registration Offices ('FRRO') and the Regional Passport Officer ('RPO'), Jalandhar to release all the documents seized from the Petitioner on 22nd February 2010; to make arrangements for departure of the Petitioner to Spain and for a direction to the Respondents to pay compensation for the mental agony and torture suffered by the Petitioner.

2. The Petitioner holds an Indian passport issued by the Regional Passport
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Officer ('RPO'), Jalandhar (Respondent No. 13 herein) on 17th February 2006, valid upto 16th January 2016. The Petitioner was unemployed and had a desire to work abroad. He applied for a job at Jarona in Spain in 2007. The Petitioner was considered for the post of peon by a company at Jarona in Spain. He submitted necessary documents with the Embassy of Spain at New Delhi for issuance of work visa for Jarona in Spain. It is stated that the documents were verified by the officers of the Embassy at Spain. The Petitioner's credentials were also checked by the police and a certificate to that effect was issued on 6th July 2007. It was specifically stated in the said certificate as under:

“There is no adverse information against Shri/Smt/Kum. BALWINDER SINGH S/o, D/o W/o Jit Singh SPOUCE NAME.....HOLDER OF Indian Passport No. F6537221 issued at Jalandhar on 17th Feb 06 which would render him/her ineligible for the grant of travel facilities including visa for SPAIN.”

3. The Petitioner received a call from the Embassy of Spain in October 2007 confirming the genuineness of his work permit. He was asked to produce the medical certification. The Petitioner underwent the medical test. After completion of all formalities work Visa No. 200700/7041 INE was issued by the Embassy of Spain at New Delhi on 16th April 2008 for three months which was further extended to 2011. It is stated that the Petitioner went to Spain and worked as a peon in a shop at Jarona in Spain.

The Petitioner states that the Petitioner was registered under the Social Security Scheme in Spain and was also given tax identity number. The relevant documents in this regard have been enclosed with the petition. On 25th November 2009, the Petitioner returned to India to meet his family during the vacation. On 21st February 2010, he boarded a flight from Indira Gandhi International ('IGI') Airport at New Delhi to return to Spain, with one stoppage at Brussels Airport at Belgium. While in Brussels, when he was about to take the connecting flight to Spain, officials of the Jet Airways, (Respondent No. 4), began questioning the Petitioner in English and Belgium languages. It is stated that the Petitioner being illiterate could not answer the queries posed. Although he informed the officials that he had a valid work permit, he was kept in illegal confinement at Brussels Airport and was not allowed to fly at Spain. Finally, he was deported to India on 22nd February 2010.

4. The Petitioner states that on return to India his trauma increased. Instead of verifying the genuineness of his work permit from the Embassy at Spain the airport authority in Delhi kept the Petitioner in illegal confinement till the evening of 22nd February 2010. They took away all the personal documents of the Petitioner, including his passport, the residential permit, medical cards, driving licence and bank card etc. Thereafter, the Petitioner kept approaching the Respondents for return of his documents but in vain.

Thereafter he filed the present petition.

5. This petition was first listed on 20th August 2010 when notice was issued to the Respondents. The FRRO, Delhi filed a status report dated 24th September 2010 in which it is stated that the deportation papers issued by the Belgium Immigration Department ('BID'), Brussels dated 21st February 2010 stated that the Petitioner had been refused entry into Belgium for the reason that he was an "imposter" who held a "fraudulent" visa and resident permit. The FRRO stated that on his arrival in India, the Petitioner's passport was seized along with the arrival card, the letter issued by the BID and these were sent to the Police Station ('PS'), IGI Airport. Thereafter, FIR No. 119 dated 7th March 2010 under Sections 419/420/468/471 IPC was registered against the Petitioner at PS IGI Airport. On 10th January 2011, the following order was passed by this Court:

"1. Learned counsel for the Petitioner points out that he was deported on the basis of a report from the Belgian authorities that his Spanish travel document was fabricated. He submits that there was no verification got done by the Respondents of the genuineness of that document by the authorities in Spain.

2. Learned counsel for the Respondent states that he will seek instructions on whether any verification was sought from the authority in Spain on the genuineness of the travel document.

3. List on 9th March, 2011.”

6. Thereafter, Respondent No. 2 filed an affidavit on 5th April 2011 enclosing the following letter dated 21st February 2011 from the Embassy of Spain:

“New Delhi, 21st February 2011

To,

The Officer Incharge,
Foreigners Regional Registration Office,
New Delhi.

Reference : No. X/25/2011/1123/For (F-3), dated 11/02/2011.

Dear Madam/Sir,

With reference to the above mentioned query, I inform you that the Spanish residence card X8340054-R corresponds to Balwinder Singh as per the archives of the competent Spanish authorities.

Kind regards,

Head of Consular Section

-sd-

Laura Oroz”

7. The affidavit of the FRRO also enclosed a copy of a letter dated 23rd February 2011 issued by the Embassy of Spain to the Station House Officer (‘SHO’), PS IGI Airport to the following effect:

“Nueva Delhi, 23rd February 2011

To,

The Officer Incharge,
Office of the Station House,
PS IGI Airport,
New Delhi.

Reference: 1360/R-SHO/PS IGI A, New Delhi, dated, the
22/2/2011.

Dear Madam/Sir,

With reference to the above mentioned query, I inform you
that the Spanish residence card X8340054-R corresponds to
Balwinder Singh as per archives of the competent Spanish
authorities.

Kind regards,

Head of Consular Section

-sd-

Laura Oroz”

8. Meanwhile, on 8th March 2011, the following order was passed by the
learned Additional Sessions Judge at Dwarka in the case arising out of the
aforementioned FIR:

“08.3.2011

Present: Applicant in person.
APP for State with IO.

IO has stated that visa and resident permit connected
with this case have been found genuine.

APP for State and IO, both have submitted that no
case is made out against the applicant. They will make

immediate attempts to get the case cancelled as against the applicant.

Under these circumstances, no merit in the application, and is, dismissed.”

9. This was followed by an order of the Additional Chief Metropolitan Magistrate, Dwarka on 26th March 2011 accepting the cancellation report filed by the Police. The said order reads as under:

“FIR No. 119/2010
P.S. IGI Airport
26.3.2011

Present: Ld. APP for State.
S.I. Antriksh Alok present.

This is a cancellation report.

Briefly stated allegations are that in the intervening night of 22/23.2.2010, one pax Balwinder Singh arrived as deportee at IGI Airport on the allegation that pax has impersonated and was found in possession of forged residence permit of Spain. FIR was registered. The passport and the residence permit of Spain was got verified which was found to be genuine. Accordingly, no case is made out against the accused.

Heard and perused the record.

In view of the submission made, the present report is accepted as cancelled. Accused stands discharged. Surety of the accused also stands discharged. Documents, if any, be released after cancellation of endorsement.

File be consigned to record room.”

10. On 8th April 2011, this Court passed the following order:

“1. The affidavit filed by Respondent No. 2 makes it clear now that there was no basis whatsoever to doubt the veracity of the Petitioner’s Spanish residence card which led to his being detained in Brussels and thereafter being deported to India. This is clear from the letter dated 21st February 2011 written by the Spanish Embassy to the Officer Incharge, FRRO, New Delhi. A copy thereof has been enclosed with the affidavit.

2. The affidavit filed by Respondent No. 2 is however sketchy and does not explain the circumstances under which such a doubt came to be raised in the first place.

3. Counsel for Respondent No. 2 states that he will file a detailed affidavit giving para-wise reply along with all relevant documents within a period of three weeks and in any event not later than 28th April 2011.

4. List on 29th April 2011.”

11. Pursuant to the above order, a further affidavit dated 5th April 2011 has been filed by the FRRO. This merely reiterates what has been stated earlier.

12. The affidavits of the FRRO and the documents placed on record show that an inquiry was made by the FRRO from the Spanish Embassy about the genuineness of the Petitioner’s travel documents only on 10th January

2011 for the first time. Another reminder appears to have been sent on 11th February 2011, in response to which the Embassy of Spain, by the letter dated 21st February 2011 informed that the residence card of the Petitioner was a genuine document. It is also evident from the letter dated 23rd February 2011 of the Embassy of Spain addressed to the SHO, PS IGI Airport that the letter sent a query in that regard only on 22nd February 2011. In other words, only after notice as issued in the present petition, did the FRRO and the SHO made the first move to write to the Embassy of Spain . This was almost a year after the Petitioner was deported to India and the criminal case instituted against him.

13. Mr. Ajay Kumar Pipaniya, learned counsel appearing for the Petitioner submits that due to arbitrary action of the Respondents in seizing the Petitioner's passport, instituting a criminal case and not making any inquiries for over a year, the Petitioner has been subjected to irreversible hardship and mental agony. Since he was illegally deported to India from Brussels he could not report for work at Spain. The validity of the residence permit has also expired in the meanwhile. A false criminal case was lodged against the Petitioner and was kept pending for over a year. All this was on account of the failure of the Respondents to take prompt action to conduct a simple inquiry. It is prayed that the Petitioner should be awarded exemplary costs.

14. Appearing for the Respondents, Mr. Virender Mehta submits that since a criminal case had been instituted, no verification was done by the Respondents with the Embassy of Spain. He submitted that the Respondents went on the basis of the deportation papers sent by the BID.

15. The conduct of the Respondents in the present case displays utter callousness in dealing with the life and liberty of the citizen. The Petitioner had valid travel papers and work permit for employment in Spain. He had already commenced his employment in Spain. He was returning to Spain to resume his employment after briefly visiting India during vacations. During the stop-over of his flight from New Delhi to Spain at Brussels, he was stopped and subsequently deported to New Delhi on 22nd February 2010. He was not permitted to travel by the BID, on the ground that he was an ‘imposter’ and that he held a “fraudulent” visa and fraudulent residence permit. It is now clear that this determination by the BID, which formed the basis of the Petitioner’s deportation, was wholly erroneous.

16. What is unfortunate is that when the Petitioner arrived in New Delhi, pursuant to such deportation no effort was made by the airport immigration authorities in New Delhi to make any proper inquiry. A copy of the seizure report of the Indian Immigration Control at the IGI Airport, (which is at Annexure P-5 to the petition), gives the reasons for seizure of the

Petitioner's passport and travel documents as under:

“The residential permit of Spain seems to be doubtful.”

17. The affidavits and documents placed on record in this petition by the FRRO shows that there was no basis for the above 'doubt' as to genuineness of the Petitioner's residence permit. No attempt was made to verify this from the Embassy of Spain. Instead, the FRRO straightway sent the papers to the police and an FIR was registered against the Petitioner under Sections 419/420/468/471 IPC. The present petition was filed on 17th August 2010. Notice was issued on 20th August 2010 and accepted by counsel for the Respondents on that date. Yet till 10th January 2011 no attempt was made by the FRRO to write to the Embassy of Spain to verify the genuineness of the Petitioner's residence permit. The Police on its part also made no effort to make inquiries with the Embassy of Spain till 22nd February 2011. Within ten days of such inquiry, Embassy of Spain confirmed the genuineness of the Petitioner's documents. This then led to the immediate closure of the criminal case. Had this inquiry been made soon after the deportation of the Petitioner, the criminal case would have been unnecessary. He may have been able to immediately return to Spain to resume his employment. On account of the utter negligence and callousness on the part of the Respondents, the Petitioner had to needlessly undergo the trauma of a false criminal case against him for over one year and suffer the deprivation of his passport and travel documents. He was unable to return

to Spain to resume his employment. The direct consequence of the arbitrary action of the Respondents has been irreversible loss of employment and earning of the Petitioner, apart from the mental trauma undergone as a result of the false criminal case.

18. This Court expresses its displeasure with the manner in which the Respondents have violated the life and liberty of the Petitioner. There has been an undoubted violation of the Petitioner's fundamental rights under Article 14 and Article 21 of the Constitution. The Petitioner has needlessly suffered hardship and trauma due to the arbitrary acts of the Respondents. In the circumstances, this Court considers it appropriate to direct that Respondents shall compensate the Petitioner in the sum of Rs. 50,000/- which will be paid by the Union of India in the Ministry of External Affairs to him within a period of four weeks from today. The Respondent Union of India will also pay to the Petitioner litigation expenses of Rs. 5,000/- within a period of four weeks from today. The Respondents will immediately return to the Petitioner, if not already done, all the documents seized from him.

19. It is clarified that it is open to the Petitioner to institute other appropriate proceedings in accordance with law for recovery of damages for the loss and hardship suffered by him. The passport of the Petitioner as

stated by him is valid upto 16th January 2016. However, if the Petitioner requires any re-validation of the passport or new passport, upon his making application in that regard the needful be done by the RPO, Jalandhar, Respondent No. 3, expeditiously and in any event not later than four weeks from the date of making of such application.

20. The writ petition and the pending application are disposed of with the above directions. A certified copy of this order be sent forthwith to the Secretary, Ministry of External Affairs and the RPO, Jalandhar for immediate compliance.

S. MURALIDHAR, J

APRIL 29, 2011

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