

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 3rd May, 2021
+ **W.P.(C) 9595/2020 & CM APPL. 30760/2020**
AKSHAY VINOD KULKARNI Petitioner
Through: Ms. Kanchan Kaur Dhodi, Advocate.

versus

CHIEF PASSPORT OFFICER & ANR. Respondents
Through: Mr. Ajay Dignpaul, CGSC with Mr.
Kamal R. Dignpaul, Advocate for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioner - Mr. Akshay Vinod Kulkarni, who was married to Ms. Neha Ahuja in 2012. The Petitioner's case is that he and his wife have matrimonial disputes and are living separately in the U.S.A.
3. The Petitioner was an Indian passport holder having passport bearing No. M - 4819805, which was issued on 30th January, 2015 by the Consulate General of India, Houston, U.S.A. The Petitioner is working as a Senior Implementation Manager in a company in the health sector. The Petitioner and his wife had various matrimonial disputes. From the facts narrated hereinafter, it appears that it is during the matrimonial proceedings that the Petitioner was informed that his passport has been suspended by the Indian Consulate in Houston, U.S.A, pursuant to a complaint filed by his wife. The said information was learnt by the Petitioner sometime in September, 2019,

though suspension of the passport is alleged to have taken place on 17th September, 2018.

4. Immediately upon acquiring knowledge of the suspension of passport from documents filed by the wife in the matrimonial proceedings, the Petitioner engaged in long drawn correspondence, initially with the Regional Passport Officer in Kozhikode and thereafter, with the Indian Consulate in Houston, U.S.A., both, at their passport division, as also with their community affairs division. The said emails and the replies thereto have been placed on record. Email dated 24th September 2019 was written to the RPO – Kozhikode, who informed him that the passport was revoked by the Indian Mission at Houston.

5. The Petitioner filed an appeal on 15th October, 2019, which was not processed and was in defects as the copy of the passport denial order was not available with him. He again entered into correspondence with the Consulate General of India, Houston, U.S.A via email dated 5th November 2019, 17th December 2019 and he was finally informed on 17th January, 2020 that there was, in fact, no denial order at all. The Petitioner again pursued his appeal, which has now been dismissed vide the impugned order dated 8th May, 2020. The prayer in the present petition is for quashing the impugned order dated 8th May, 2020 and for restoration of the Petitioner's passport.

6. Notice in the petition was issued on 8th December, 2020, on which date time was given to the Respondents to file their counter affidavits. Till date, however, neither the counter affidavits nor any documents have been filed on record by the Respondents.

7. Mr. Ajay Digpaul, Id. CGSC appearing for the Respondents submits

that in the impugned order itself, the Petitioner has been permitted to apply afresh for his passport and the same would be considered expeditiously.

8. The crux of the dispute in this case, as per the Petitioner is that prior to the suspension of the passport of the Petitioner, no notice was given to the Petitioner. Moreover, he was also not afforded a hearing. While his wife is continuing to live in the USA, merely because of her complaint, his passport could not have been suspended – that too without notice to him and without hearing him. Till date the denial order has not been served on him. The petitioner's job requires him to travel and hence enormous injury is being caused to him. The case of the Respondents is that an email was sent on 5th November, 2018, after suspension but there was no response and hence the suspension order was confirmed.

9. While the order is being dictated, Mr. Digpaul submits that the order of suspension has been passed under Section 10A of The Passports Act, 1967 (*hereinafter, "Act"*) and thereafter, the proceedings were commenced and an email was written to the Petitioner on 5th November, 2018. However, none of these facts are on record either on affidavit or through documents.

10. Insofar as email dated 5th November, 2018 is concerned, ld. counsel for the Petitioner admits that this email was received by the Petitioner and in fact, a detailed reply was also sent on 28th November, 2018, which has been placed on record. However, it is submitted that email dated 5th November, 2018 did not mention any action proposed to be taken for the suspension of the Petitioner's passport.

11. In the opinion of this court, the shocking part of the present case is that, despite long drawn correspondence the Respondents have not served the passport suspension order or the denial order to the Petitioner. He was

shuttled between the RPO-Kozhikode who informed him that it was the Indian Mission in Houston which revoked his passport. It is not even the case of the Respondents that the Petitioner was heard. The passport of the petitioner has been suspended on the basis of a complaint by the wife due to matrimonial disputes for more than two and half years. The correspondence on record reveals that the Petitioner has repeatedly approached various authorities seeking revival of his passport as also for a copy of the denial order, but in vain. Even before this court the Respondents have not filed any affidavit or document on record till date, despite having more than five months to do so. The Indian Mission or the other authorities have not filed a single document to show whether it is a case of revocation of passport or suspension of passport and if so on what grounds was the action taken. During the Covid-19 pandemic, the Petitioner has been unable to travel to India. It is the case of the Petitioner that his old mother, who is a widow, lives alone in Bangalore and that he wishes to travel both in the U.S.A. and in India, in relation to his job assignments. It is clear that the Petitioner is suffering immensely both personally and professionally due to the suspension/revocation of his passport. The Petitioner's appeal has also now been dismissed, without the said orders being made available to him. The submission is that even if the suspension order is stayed, the passport does not come back into operation.

12. In the order in appeal dated 8th May, 2020, which is under challenge in the present petition, the Appellate Forum proceeds on the basis that since the email dated 5th November, 2018 was sent to the Petitioner, it is presumed that the Petitioner was aware of the suspension of his passport. Such a conclusion cannot be arrived at unless and until, the Respondent establishes

on record that proper notice was issued and a reply was called for and the Petitioner did not respond to the same.

13. Ld. Counsel for the Respondents now submits that due to the pandemic, the file of this case is also not available and so he could not place any documents on record.

14. The Petitioner cannot be made to live without a passport indefinitely. This Court has given adequate time to the Respondents to file an affidavit/documents on record, however, not a single shred of paper has been placed on record. On merits, whether the suspension/revocation was justified or not would be the subject matter of final adjudication. However, the Petitioner cannot be made to suffer further especially due to the pandemic that is currently raging which may require him to travel to India to meet his mother who is in India, owing to her age etc., Accordingly, subject to further orders, the following directions are issued:

- (1) The impugned order dated 8th May, 2020, as also the alleged suspension order dated 17th September, 2018, shall remain stayed.
- (2) The Petitioner shall apply within a period of two days for a fresh passport to the Consulate General of India in Houston, Texas, U.S.A. on or before 6th May, 2021 by the end of working hours in the USA. The same shall be processed and the passport issued to the Petitioner on or before 15th May, 2021.
- (3) If there are any defects/ documents found to be wanting in the application, subject to the Petitioner furnishing an undertaking that the defects would be rectified within a specified period, the passport shall be issued.

- (4) If there are no defects, the passport shall be issued for the period sought for in the application. If there are any defects, the passport shall be issued with a validity period of one year. The defects etc., shall be pointed out in the counter affidavit to be filed before this Court on or before 25th May 2021. A copy of the passport issued shall also be placed on record before the next date of hearing.
- (5) The Passport Office shall communicate the order passed today to all the relevant authorities, so that the order suspending the Petitioner's passport does not act as an impediment to the Petitioner travelling on the new passport.
- (6) The travel of the Petitioner shall be subject to any international restrictions relating to the Covid-19 pandemic. However, the issuance of the passport shall not, in any manner, be delayed due to the Covid-19 travel restrictions.

15. The digitally signed copy of this order shall act as the certified copy of the order for the purposes of issuance of the new passport by the authorities as also for being used before immigration authorities, if the need so arises. If the passport of the Petitioner is not issued in terms of the directions issued above, for any grounds that are not valid, the concerned officers at the office of the Consulate General of India in Houston, Texas, U.S.A. and in the Regional Passport Office in India would be liable to be held personally responsible.

16. List on 3rd June, 2021.

PRATHIBA M. SINGH, J.

MAY 3, 2021/dk/T