

Form No.HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P NO.256/2020

MST. GUL PAREEN JAN, ETC.

Versus

FEDERATION OF PAKISTAN, ETC.

Sr.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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24.02.2020

Syed Ishfaq Hussain Naqvi, Advocate for Petitioner.
Syed Junaid Jaffar, Advocate for Respondent
No.3/NADRA
Malik Shifaullah, AD (Legal) Immigration Department.
Mr. Zainullah, AD, Incharge Immigration Department.

Petitioners have invoked the Constitutional Jurisdiction of this Court by way of filing instant petition, under Article 199 of the Constitution, contending therein that Petitioners have to proceed for Umrah and the Respondent No.2 is reluctant to issue new passport to Petitioner No.1 and renew the passport of Petitioner No.2.

2. Brief facts, as per petition, are that Petitioner No.1 is a household lady of 76 years of age and Petitioner No.2 is her son. Petitioner No.2 is a laborer, who intend to perform Umrah with her mother and for that purpose applied for a new passport for Petitioner No.1 and renewal of his own passport to Respondent No.2, on 12.09.2018 through a routine procedure whereby they were issued token slips bearing Nos. 10101844422 & 10101844412, respectively wherein, expected date of delivery of the Passports was mentioned as 25.09.2018. However, on the date of delivery, the Petitioners were informed that their documents have been forwarded to Islamabad Police, Special Branch for verification of their status and after such

verification their passports will be issued, but after running from pillar to post and losing hope for issuance of Passports by the Respondents in time, Petitioners approached this Court for redressal of their grievance.

3. Learned Counsel for the Petitioners submitted that the Petitioners belong to the poor segment of the society and intend to perform Umrah, being a religious obligation, applied for Passports. Learned Counsel further submitted that Petitioner No.2 born on 12.12.1984 at Mansehra, Pakistan having CNIC No. 61101-9794474-7, and was issued Passport bearing No. A8719127, by the Ministry of Interior on 01.06.2009, whereas, his elder brother namely Muhammad Khan born on 17.07.1978 in Karachi having CNIC No. 42501-1591334-7 and his younger brother Bashir Khan born on 17.06.1990 in Karachi, having CNIC No. 13504-2338568-9 who also possess Passport No. C847319 issued on 02.07.2014. Learned Counsel contended that Petitioner No.2 is residing with his family in a house registered in his name, situated at Islamabad for more than 15 years, therefore, Respondent No.2 has no ground to hold his Passport on the pretext of so-called verification which is still awaited since, September, 2018. Learned Counsel apprised that a complaint has also been filed to Prime Minister's Performance Delivery Unit (PMDU), Pakistan Citizen's Portal for issuance of the Passports. Learned Counsel asserted that the impugned action of the Respondent is not only against the provisions of Passport Act, 1974 but also violative of the fundamental rights guaranteed under Articles 4, 9 & 15 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Learned Counsel for Respondent No.3/NADRA submitted that no objectionable material is found in Petitioners' record, therefore, they issued CNIC's to Petitioners' family members.

5. Learned Counsel for Respondent Nos. 1 & 2 filed parawise comments on their behalf, whereby, passport policy/passport and visa manual, 2006 along with copies of letters sent for verification of Petitioners' status were attached which are illegible. Learned Counsel stated that Petitioners' Passports have been withheld for verification of their national status by the Assistant Director, Regional Passport Office, Islamabad, who issued letter dated 12.09.2018 to Assistant Inspector General of Police, Special Branch, Islamabad, for verification of the national status of both the Petitioners and in reply thereof, vide letter dated 30.10.2018, it has been informed that a discreet inquiry was conducted by the Special Branch, Islamabad, regarding the Petitioners who are found residing in Islamabad for last 18 years, however, he suggested that letter be also sent to Petitioners' permanent residential district for determination of their national status, therefore, Assistant Director, Regional Passport Office, Islamabad, issued separate even dated letters on 07.11.2018 in this regard and thereafter, reminders dated 24.12.2019 to Additional Inspector General, Special Branch, Peshawar and Karachi, however, no reply has so far been received. Learned Counsel submitted that as per para No. 23 of the Passport and Visa Manual, 2006 the officer is authorized to refer any doubtful case for verification to the relevant security agencies regarding national status of the applicant

and submitted that the verification regarding Petitioners' national status is under process.

6. Learned Counsel for Petitioners has drawn attention of this Court towards sub para (ii) of para No. 23 of the Visa Policy, Passport and Visa Manual, 2006 filed with the comments by Respondents wherein it has been mentioned that only in case of doubt about applicant's national status, Passport Office will make reference to the Special Branch for verification, however, the Passport Office has to justify in writing by giving reasons in this regard and no such reference should be made unnecessarily in routine. Learned Counsel submitted that no reason whatsoever has been mentioned by Respondent No.2 while forwarding letters for verification of Petitioners' nationality to the Inspector General Police, Special Branch, Islamabad/Peshawar/Karachi. Learned Counsel relied on case law reported as "Naseem Akhtar Mehmood Chaudhry Vs. Secretary M/O Interior (2011 CLC 875), Ijaz Ahmad Khan Vs. Government of Pakistan (2000 MLD 551), Government of Pakistan Vs. Dada Amir Haider Khan (PLD 1987 SC 504), Federal Government of Pakistan Vs. Government of the Punjab (PLD 1991 SC 505), Pakistan Muslim League (N) through Khawaja M. Asif and others Vs. FOP through Secretary, M/o Interior (PLD 2007 SC 642), Syed Sami Ullah Al Qaudri Vs. Federation of Pakistan through Secretary, M/o Interior (2009 CLC 1314) and an unreported judgment of Hon'ble Sindh High Court titled "Mst. Shabana Noor Ahmed Vs. DG Immigration and Passport etc" bearing CP No. D-4506 of 2018 dated 12.10.2018.

7. Petitioners' case is that after duly processing the applications to issue new/renewed Passports, regional passport office, issued token of delivery to the Petitioners, whereas, no objection whatsoever was communicated while submission of computerized application, however, on the date of delivery of the said Passports, it was informed that that their cases have been sent for verification of their national status. It is noted that process of verification was initiated on 12.09.2018 which has not so far been completed. I have gone through the Passport Policy vide para No. 23 sub-para (i) of the Visa Policy, Passport and Visa Manual, 2006, referred by counsel for Respondent No.2 and the representative appearing on their behalf, according to which the Passport Officer, while accepting the application will personally satisfy himself about the national status/credibility of the Applicant, on which basis the verification of Petitioners' national status was statedly initiated. But, above referred sub-para(i) of para No.23 of the policy *ibid* is of immense importance as according to said sub-para, the Passport Officers are not authorized to refer cases for verification as of routine but in case of any doubt about the national status, the reference must contain the reasons in writing in a register to be maintained for this purpose. When asked, about the reason for referring the Petitioners' case for verification, learned Counsel for the Respondents as well as representative of Respondent No.2 replied that the Petitioners were not able to speak the Pashto language properly.

This Court is of the view that first of all the reference of Petitioners' case for verification is against the

Passport Policy as no reason whatsoever was recorded in writing regarding alleged creation of doubt against the Petitioners. Secondly, the verbal reason of not speaking Pashto language properly cannot be made the ground to cast doubt on the national status of the Petitioners when all their family members have been issued CNIC's and two of them have also been issued passports considering them to be the Pakistani nationals. Petitioner No.2 was also issued passport in 2009 on the basis of CNIC duly issued to him, on the basis of family data maintained with NADRA and therefore, withholding of his passport at the time of renewal is not legally justified. Perusal of the letters issued for verification written by the Assistant Director, Regional Passport office, Islamabad dated 12.09.2018, 17.11.2018, & 24.12.2019 to Additional Inspector General Police, Islamabad/Peshawar/Karachi, respectively, reveals that they are vague as they do not contain any specific reason regarding creation of doubt concerning national status of the Petitioners. It has been observed that the Respondents have unnecessarily delayed the delivery of Passports to the Petitioners on the pretext of ascertaining their national status since, September, 2018 without any lawful reason and justifiable ground.

8. In view of the above, it has been held that the action of the Respondent No.2 for not delivering the Passports to the Petitioners is illegal and in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and it has now been well settled that every citizen has an inalienable right to enjoy the protection of law and to be treated in accordance with law particularly no action detrimental to the life, liberty, body, reputation or property

of any person shall be taken except in accordance with law. Further, Article 14 of the Constitution states that dignity of man shall be inviolable under Article 25 as all citizens are equal before law and are entitled to equal protection of law.

9. For the foregoing reasons, instant petition is allowed and the Respondent No.2 is directed to deliver the Passports to the Petitioners forthwith so that they may be able to proceed for Umrah.

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan