

Deputy Director Of Income Tax ... vs Bhavya Bishnoi & Ors on 9 August, 2021

Author: Jyoti Singh

Bench: Chief Justice, Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 236/2021

DEPUTY DIRECTOR OF INCOME TAX

(INVESTIGATION) UNIT 4(3)

..... Appell

Through: Ms. Vibhooti Malhotra, Senior
Standing Counsel (Income Tax Department)

versus

BHAVYA BISHNOI & ORS.

..... Responden

Through: Mr. N. P. Sahni, Mr. Anurag Singh

Mr. Naveen Kumar, Advocates for R-1

Mr. Gaurang Kanth, CGSC for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 09.08.2021 Proceedings have been conducted through video conferencing. CM APPL.25069/2021 (exemptions) Allowed, subject to all just exceptions.

The application is disposed of.

LPA 236/2021 & CM APPL.25068/2021 (stay)

1. Issue notice.

2. Mr. N.P. Sahni, learned counsel accepts notice on behalf of Respondent No. 1.

3. Mr. Gaurang Kanth, learned Central Government Standing Counsel accepts notice on behalf of Respondent No.2.

4. Issue notice to other Respondents, through ordinary process, returnable on 30.09.2021.

5. The Appellant assails the interim order dated 04.08.2021 passed by the learned Single Judge in C.M. No. 21426/2021 in W.P.(C) 142/2020 (Annexure A-1 to the memo of this Letters Patent Appeal). The Learned Single Judge has, vide the impugned order, permitted Respondent No.1 to

travel to U.S. for a two years course in Masters in Public Administration at the Harvard Kennedy School, John F. Kennedy School, subject to the conditions stipulated therein. The relevant part of the impugned order is as follows :-

"5. I have considered the submissions of the parties and perused the record. The fact that the petitioner had, on earlier occasions, been granted permission to go abroad, albeit for shorter periods when he duly returned back to India, is undisputed. It is also undisputed that the petitioner, who has already obtained degrees in B.Sc and M.Sc from prestigious universities abroad, has now secured admission at the Harvard Kennedy School, John F. Kennedy School of Government for undergoing a two-year MPA course. In light of the fact that the petitioner's father is willing to furnish an undertaking not to leave the country while the petitioner is abroad, I do not find the petitioner evidencing any intent of absconding from India. The question of whether the LOC issued in 2019 can now stand in the way of the petitioner travelling abroad is yet to be determined. No doubt, the respondent claims to have already filed a complaint against the petitioner for an offence under the Black Money Act; however, as on date, no cognizance has been taken of the said complaint and therefore, I am inclined to grant permission to the petitioner to travel to US for a period of two-years to attend the MPA Course, subject to the following conditions:

(i) The petitioner will keep the respondents informed about his travel itinerary from time to time;

(ii) He will not tamper with the evidence or contact any person who is a part of the investigation;

(iii) The petitioner's father will file an undertaking before the Registrar General of this Court that he will not leave the country as long as the petitioner is abroad;

(iv) The petitioner, besides the security already furnished by him in respect of AG-059 (Old No.FLG 04), Phase-I, Ansal Plaza, Greater Noida, UP and the security of Rs.5 Lakhs - which is already lying with the Registrar General of this Court in terms of order dated 22.02.2021, will furnish a security to the satisfaction of the Registrar General of this Court for a further sum of Rs.1 Crore in the form of an FDR or a deposit.

(v) The petitioner will appear before any office of the Indian Embassy in the US, once in every eight weeks.

6. It is, however, made clear that this order will not come in the way of the concerned Additional Chief Metropolitan Magistrate from passing any orders requiring the petitioner's presence in the country; in which case, it will be for the petitioner to move an appropriate application before the concerned Court, which will be considered in accordance with law."

6. It is evident from reading of the above passages that stringent conditions have been imposed by the learned Single Judge while permitting Respondent No.1 to travel to U.S. Additionally, learned counsel appearing for Respondent No.1 voluntarily undertakes that the father of the original Petitioner, Respondent No.1 herein, namely, Shri Kuldeep Bishnoi S/o Late Shri Bhajan Lal shall deposit his Passport bearing No. H 1453999 (Expired on 16.11.2018) and Passport bearing No. Z 31459999 (valid till 26.03.2025) with the Registrar General of this Court, within two days from today.

7. It is accordingly directed that on receipt of the passports as aforesaid, the Registrar General shall keep the passports of Shri Kuldeep Bishnoi S/o Late Shri Bhajan Lal in safe custody in a sealed cover. As and when the father of Respondent No.1 would require the said passports for certain genuine and valid reasons, the father of Respondent No.1 may apply to this Court for necessary permission. In the absence of any further order by this Court, the Registrar General shall not release the passports to Sh. Kuldeep Bishnoi.

8. Learned counsel appearing for Respondent No.1 further undertakes voluntarily that within one week of Respondent No.1 reaching the Harvard College, Respondent No.1 shall surrender his passport with the concerned Authorities at the Office of the Indian Embassy in United States of America ('USA'), which is located closest to the College/University where respondent no. 1 is going to study.

9. The undertaking given on behalf of Respondent No.1 is accepted by this Court. It is directed that as soon as the Passport is surrendered by Respondent No.1, the concerned Authority / Officer at the Indian Embassy shall place the same in a sealed cover and retain in safe custody, until further orders passed by this Court or any other Court of competent jurisdiction, in India. Needless to state that in case Respondent No.1 requires the Passport for a genuine cause, he shall be at liberty to prefer an appropriate application before this Court.

10. In view of the conditions imposed in paras 5 and 6 of the impugned order dated 04.08.2021 passed by the learned Single Judge in C.M. No. 21426/2021 in W.P.(C) 142/2020 coupled with the voluntary statements / undertaking given by learned counsel for Respondent No. 1, on instructions, we see no reason to stay the operation of the impugned interim order dated 04.08.2021. We, however, make it clear that Respondent No.1 is being permitted to travel subject to compliance of the conditions imposed by the learned Single Judge and abiding by the undertaking given to this Court today.

11. Learned counsel appearing for the Appellant strenuously contends that the competent Court has taken cognizance of the complaints against Respondent No.1 and the matter is now fixed for serving of summons on 09.11.2021 and submits that it is apprehended that Respondent No.1 may avoid service of summons and / or there could be a practical difficulty in service, if Respondent No.1 is permitted to go abroad and that too for a period of two years for further studies. Responding to the apprehension raised, learned counsel for Respondent No.1 undertakes that Respondent No.1 shall furnish his e-mail ID as well as that of his father to the Appellant as well as to the Registrar General of this Court during the course of the day through electronic mode.

12. In view of the said statement, Respondent No.1 is directed to ensure that his legal and valid e-mail ID alongwith that of his father is furnished to the Appellant and the Registrar General of this Court during the course of the day.

13. We also make it explicitly clear to Respondent No. 1 that he shall cooperate in further investigations undertaken by the Appellant or the Income Tax Authority or any other competent Authority under other Statutes in connection with the complaints against him including proceedings initiated under the Indian Penal Code or Criminal Procedure Code and / or The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

14. Surrendering of the passport by Respondent No. 1 and by his father, as stated hereinabove, and giving the e-mail addresses, participating in the investigation and the court proceedings would be without prejudice to the rights, remedies and contentions of both the parties to this Letters Patent Appeal.

15. At this stage, learned counsel for Respondent No.1 also draws the attention of this Court to Annexure 'O', Panchnama (part of the record of the writ petition), which is at pages No. 102 and 103 of the paper book herein and submits that the competent Authority has during the search and seizure proceedings already seized the assets of Respondent No.1 and his family members valued at 30,38,80,000/-. This is over and above the condition imposed by the learned Single Judge directing Respondent No.1 to deposit a sum of Rs.1 Crore with the Registrar General of this Court. Therefore, after considering the facts and circumstances holistically, i.e. the undertakings of Respondent No.1 and his father, the condition imposed by the learned Single Judge that the father of Respondent No.1 shall not leave the country till such time the Petitioner is abroad, the seizure of assets of the family and the deposit of Rs.1 Crore together with deposit of the passports of the father of Respondent No.1 before this Court and of Respondent No.1 in the office of Indian Embassy in U.S., we permit Respondent No.1 to travel to U.S. to join the two years course at Harvard School. It bears repetition to state that the travel will be subject to compliance of all the aforesaid conditions and undertakings. It is made clear that this Court has not varied any condition imposed by the learned Single Judge which shall remain as they are and shall be scrupulously complied with by Respondent No.1. This Court has in addition to the said conditions recorded the voluntary statements / undertakings given on behalf of Respondent No.1, which shall form part of the conditions necessarily to be fulfilled by Respondent No.1 and his father respectively.

16. A detailed compliance report shall be filed on behalf of Respondent No.1 within a period of two weeks from today, with advance copy to learned counsel for the Appellant. Liberty is granted to the Appellant to seek variations / vacation of the order passed by this Court in case there is non-compliance of the conditions imposed by the Court and / or the undertaking given on behalf of Respondent No.1.

17. List on 30.09.2021.

CHIEF JUSTICE JYOTI SINGH, 9 AUGUST 2021 ns