

Impounding of Passports: Supreme Court Cautions Executive

FROM OUR LEGAL CORRESPONDENT

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In what is described in legal circles as a landmark case in the interpretation of inter-relationship of fundamental rights relating to essential aspects of personal freedoms and liberty, a Seven-Judge Constitution Bench of the Supreme Court has, by a majority of six to one, ruled that fundamental personal freedoms concerning freedom of speech and freedom to carry on trade or business or profession are exercisable by the citizens concerned in appropriate circumstances not only inside India but also outside.

This Bench—the main judgement of which was delivered by Mr. Justice P. N. Bhagwati speaking for himself, for Mr. Justice N. L. Untawala and Mr. Justice S. Murtuza Fazl Ali—also ruled that if a State action prevented a citizen from exercising his freedom of speech and freedom to carry on trade or business even outside our country, the affected citizen could complain against such State action for seeking suitable redress.

The Bench, by its five separate judgments delivered to-day, held that, in view of a statement made by the Attorney-General in the course of arguments, that an opportunity would be given by the authorities concerned under the Passport Act to Mrs. Maneka Gandhi (petitioner) to show cause against the orders dated July 4 last impounding her passport, did "not think it necessary to formally interfere" with the impugned orders (impounding the passport). Therefore, the majority further said that they were disposing of the writ petition of the petitioner without formal orders.

It may be mentioned that the statement of the Attorney-General, on the basis of which the Court did not consider it necessary to formally interfere with the impugned order, also said the period of the operation of the orders impounding the passport of the petitioner would be limited to a period of six months from the date of the decision to be given by the authorities concerned (after affording opportunity to the petitioner to make her submissions), if such decision of the authorities went against her.

The Chief Justice Mr. Justice Beg, who agreed with the main judgement of Mr. Justice Bhagwati, however, said the statement of the Attorney-General "shows that the passport authorities realise fully that the petitioner's case has not been justly or reasonably dealt with" and added that "in view, however, of what is practically an admission that the order actually passed on July 7 last—refusing to disclose the reason for impounding in the interest of general public—is neither fair nor procedurally proper".

Therefore, the Chief Justice, speaking for himself, quashed the impugned orders and directed the authorities to return the impounded passport to the petitioner.

But, however, all the other Judges of the Bench in view of the statement of the Attorney-General, to-day directed that the passport of the petitioner would continue to remain in the custody of the Registrar of the Supreme Court, until further orders.

It may be mentioned that the impounded passport of the petitioner was directed by the Supreme Court to be placed in the custody of the Registrar of the Supreme Court by the authorities concerned, pending the hearing and disposal of the writ petition.

The other Judges who delivered the separate and almost concurrent

judgments were Mr. Justice Y. V. Chandrachud, Mr. Justice V. R. Krishna Iyer and Mr. Justice P. S. Kailasam.

In the main judgement, Mr. Justice Bhagwati made a significant observation that "we (Court), however, wish to utter a word of caution to the passport authority while exercising the power of refusing or impounding or cancelling a passport. The passport authority would do well to remember that it is a basic human right recognised in Article 13 of the Universal Declaration of Human Rights with which the passport authority is interfering when it refuses or impounds or cancels a passport. It is a highly valuable right which is a part of personal liberty, an aspect of the spiritual dimension of man, and it should not be lightly interfered with. Cases are not unknown where people have not been allowed to go abroad because of the views held, opinions expressed or political beliefs or economic ideologies entertained by them".

His Lordship, in this context, also added that "it is hoped that such cases will not recur under a Government constitutionally committed to uphold freedom and liberty but it is well to remember, at all times, that eternal vigilance is the price of liberty, for history shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely corrode the foundations of liberty".

The Chief Justice, in his judgement agreeing with the main judgement, observed that it appeared to His Lordship, that "even executive authorities when taking administrative action which involves any deprivations of or restrictions on in-

herent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done". His Lordship also added that "they (executive) have a duty to proceed in a way which is free from even the appearance of arbitrariness or unreasonableness or unfairness and they have to act in a manner which is patently impartial and meets the requirements of natural justice".

All the judgments upheld the constitutional validity of Section 10(3) (C) of the Passport Act empowering the authorities to impound a passport and ruled that this provision was not violative of fundamental rights relating to freedom of speech and expression and also to carry on trade and business under Sub-Articles 1 (A) and (G) of Article 19 of the Constitution.

But, the Court also held that if "the direct and inevitable" consequence of an order impounding a passport under Section 10(3) (C) was to interfere with the freedom of speech and expression or freedom to carry on trade or business (like, for instance in cases of a musician or other performing artist or a journalist or a professor who intend to go abroad to exhibit their skills and exercise their right to practice the professions concerned), such impounding would be violative of relevant provisions of Article 19 unless saved by Sub-Articles 2 or 6 of Article 19 (which specifies the circumstances in which rights of freedom of speech and carrying on trade could be interfered with by a valid law made by the State).

The Bench also held that a person could be deprived of his personal liberty under Article 21 according to the procedure established by law but the procedure must be fair,

reasonably just and right and the law concerned must pass the "tests" of constitutionality under Article 14 (equality before law) as well as the other applicable clauses concerned of Article 19 (dealing with seven personal freedoms like freedom of speech, movement, and to carry on trade etc, in respect of which there could be interference by a State action in circumstances specified in the relevant clauses under a valid law made for the purpose).

The Bench also reiterated an earlier ruling pronounced by the Supreme Court about a decade ago that right to travel abroad was a part of personal liberty under Article 21 of the Constitution.

But the Court held that the right to go abroad was not covered by Sub-Articles 1 (A) and 1 (G) of Article 19 dealing with freedom of speech and freedom to carry on profession, trade or business etc.

The Court also said the right to be heard even in respect of administrative decisions, which involved civil consequences, had been recognised in favour of those prejudicially affected by those decisions.

Therefore, the Court held that the well-known legal principle—that no one should be condemned unless heard—was, therefore, not excluded in the case of an order impounding a passport under the Passports Act.

The Court also said if it was found in a given case that giving notice to the holder of a passport before impounding it might result in frustrating the object of impounding the passport (like the person concerned actually leaving the country on receipt of the notice itself), prior notice might not be given but an opportunity should be given immediately after the making of the order to the person concerned to make his or her submissions.

The post-decisional hearing would in such a case satisfy the concerned rules of natural justice, according to the judgment of the Bench.