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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 2844/2018, CRL. M.A. 48674/2018
ASSOCIATION OF THE VICTIMS OF UPHAAR TRAGEDY
(A.V.U.T.) THR. ITS GENERAL SECRETARY MR. R.
KRISHNAMOORTHY Petitioner
Through: Mr. Vikas Pahwa, Sr. Adv. with Mr.
Tushar Agarwal and Ms. Aashita Khanna, Adv.
Versus
UNION OF INDIA & ORS Respondents
Through: Ms. Maninder Acharya, Sr. Adv. with
Mr. Vikas Mahajan, CGSC, Mr. Aakash Varma,
Mr. Deepak Goyal and Ms. Yantakshikaa Sharma,
Adv. for Resp./ UOI.
Mr Trideep Pais and Ms. Sanya Sud, Adv. for R-2
with Mr. Inderjeet Singh, ACP and SI Sandeep
Kumar, Special Branch, Delhi Police.
Ms. Rebecca M. John, Sr. Adv. with Mr. Vishal
Gosain, Mr. Kushdeep Gaur, Ms. Rudrani Tyagi
and Ms. Megha Bahl, Adv. for R-4.
Mr. Sanjeev Bhandari, SPP for CBI with Mr.
Prateek Kumar, Adv. for R-5/ CBI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 17.12.2018

1. Referring to the list of documents filed by Delhi Police on 05.12.2018, Mr. Pahwa, the learned Senior Advocate for the petitioners submits, that at page 5 of the said document, oddly cases against Ansal Properties have been listed. The examination in the present case is apropos one Sushil Ansal and the issuance of a passport to him by the Regional Passport Office (RPO), Delhi. Mr. Trideep Pais, the learned counsel for R-2/Delhi Police seeks time to file an affidavit through the ACP concerned apropos the documents filed and to bring better particulars on record,

especially in view of the submission made by Mr. Pahwa that cases against Sushil Ansal have been pending since 1997, and even subsequent thereto many other criminal proceedings were initiated against Sushil Ansal. These cases too should have been mentioned in the list of cases against the said person as being prior to 2012.

2. Mr. Pais, further submits that proceedings have been initiated against three police officers who had given the Police Verification Report dated 22.10.2013 in favour of respondent no.4. The officers whose signatures are on the Police Verification Report have been called for questioning by Delhi Police. Two of the said officers have since retired. Nevertheless, the Police are stated to be looking into the matter in right earnest. They seek two days' time to file a Status Report with all requisite particulars.

3. Mr. Pahwa draws the Court's attention to the application filed by Sushil Ansal, especially regarding information on Report of Delhi Police, to the effect that no criminal proceedings were pending against him in any criminal court or that he has not travelled abroad. The police report also certified that the applicant has not travelled outside the country, but in fact, he had travelled outside the country. Information furnished by R-4 against queries 5 to 9 are in the negative. These queries are as under:

“...5. Has the applicant, during the past five years been convicted and sentenced to imprisonment of two year or more?” Yes No

6. Is there any “Court Order” from any Court against the applicant's departure overseas?” Yes No

7. Are any Proceedings against the applicant pending in any Criminal Court?” Yes No

8. Are there any pending “Warrant of Arrest” or Yes No

“Warrants/ Summons for Appearance” against the applicant?

9. *Has the applicant travelled abroad?*

Yes No”

4. Ms. Rebecca John, the learned Senior Advocate for respondent no.4 submits that as of that date no criminal cases were pending against the applicant.

5. The issue that needs to be examined is how could Delhi Police certify that Sushil Ansal had never travelled abroad. Let these aspects be looked into and a detailed affidavit be filed by the ACP concerned.

6. Sushil Ansal was issued a passport in the year 2013 on a *tatkaal* application. The *tatkaal* scheme was framed by the Government of India for issuance of passport on an urgent basis. The said Scheme is not under challenge. The requisite information under Section 6 of the Passport Act, 1967 (Act) can be modified by the Government of India in exercise of its powers under section 22 of the Act. On 25.08.1993 a Gazette Notification was issued by the Government, modifying the requirements under section 6(2)(f) of the Act. Since the *tatkaal* scheme is for issuance of a passport on an urgent basis, it relies to a large extent, on the police report to be furnished by the police station having jurisdiction over the residence of the applicant. A standard format affidavit is required to be filed by the applicant. Accordingly GSR 570 (E) was published in the Extraordinary Gazette. The Government was of the opinion that it was necessary in public interest to exempt citizens of India, against whom proceedings in respect of an offence alleged to have been committed by them were pending before a criminal court in India, and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of clause (f)

of sub-section (2) of section 6 of the Act. The affidavit under the *tatkaal* scheme required specific deposition by the applicant to the effect that there were no criminal proceedings pending against the applicant in any court of law or that she/he has not been convicted by any court of law for any criminal offence in the past. This affidavit was filed by respondent no.4 along with his application, which resulted in the issuance of a passport in 2013. Respondent no.4 benefited from the said passport and travelled on it outside the country few times. He did not take the requisite permission from the appropriate court in terms of GSR 570(E) mentioned hereinabove. In effect, he has on oath misled the Government of India and the Court that he has not been convicted in any criminal proceedings by any Court.

7. Before expiry of the tenure of the said passport issued in 2013 to respondent no.4, he surrendered it before the RPO. Mr. Pahwa submits that application for cancellation/deposit of respondent no. 4's passport was filed before the Trial Court on 09.08.2017. However, respondent no. 4 surrendered on 14.08.2017, because he knew that adverse orders against him may well be passed. The passport issued by the MEA to respondent no.4 in the year 2018 was through the normal procedure and not through *tatkaal* scheme. Two adverse reports were given against the applicant by the Delhi Police. However, no NOC from the Court was submitted to the RPO.

8. Apropos issuance of the passport in 2018, Ms. Maninder Acharya, the learned ASG, submits that at the time of issuance, three cases against respondent no. 4 – Sushil Ansal were to be looked into: (i) the unfortunate Uphaar Fire tragedy in which R-4 already stood convicted, so there were no pending proceedings; (ii) tampering of evidence case in which NOC was issued by the court concerned and (iii) the case filed by Ms. Neelam

Krishnamoorthy, in which proceedings had been stayed in the year 2016 and respondent no.4 had been discharged from proceedings on 14.07.2015. However, two adverse police reports have been filed by Delhi Police on 10.05.2018 and 11.06.2018, in which they gave reference to various cases. Despite the adverse reports being in the knowledge of the RPO, a fresh passport was issued to Sushil Ansal. After issuance of the passport, the RPO, Delhi had sought clarifications from Delhi Police. The clarification was issued by Delhi Police on 04.10.2018, listing all criminal cases pending or otherwise initiated against respondent no.4. Thereafter, the said passport, issued to respondent no.4, was recalled. In this regard the comprehensive report by Dr. T.V. Nagendra Prasad, Joint Secretary (Gulf), Ministry of External Affairs has made following observations:

“...4. Direction of the Court relating to passport of Shri Sushil Ansal (2007-2008):

4.1 It would be pertinent to mention that the court directed Shri Ansal to deposit his passport with the Court on 27.11.2007. Following his appeal before trial court seeking recall of the order of 27.11.2007, the passport was returned by the Court to the passport holder in 2009 with specific directions relating to his foreign travel. The Court had not raised any questions regarding his eligibility to hold a passport or directed that his passport should be cancelled and revoked by the passport authority. The Court also did not raise any objections on issue of passports to him in the future. Even then, neither the Ministry of External Affairs nor the Regional Passport Office, Delhi was directed to file any affidavits or present evidence.

5. Voluntary declaration and surrender of passport by Shri Sushil Ansal.

5.1 For the first time on 14 August 2017, Shri Sushil Ansal suo moto submitted to the Passport Officer, Delhi that while applying for renewal of his earlier passport under Tatkaal

Scheme, he had 'unintentionally and by oversight' declared that no criminal proceedings were pending against him and that he had been convicted by a Court of Law.

5.2 Both the then RPO Shri Hitesh Rajpal and the Senior Superintendent (Policy) Shri Suresh Yadav were asked about the circumstances leading to the surrender of the passport by Shri Sushil Ansal. Written statements submitted by them are attached to this report.

5.3 In his statement Shri Suresh Yadav, Senior Superintendent has stated that he had noted on the letter submitted by Shri Sushil Ansal as "Self explained by applicant and surrendered the passport; Clear Police Verification Report; Applicant has stated that he is facing criminal proceedings s disclosed and mentioned in his application; in view of above, we may keep his said passport in safe custody, penalty if any, will be decided while applicant comes with Court NOC or applying again." Thereafter the RPO instructed that the passport be kept in safe custody and levied a penalty of Rs. 5000 which was duly paid by Shri Sushil Ansal.

5.4 Then RPO Shri Hitesh Rajpal also stated that Shri Sushil Ansal had come of his own accord and explained that he had suppressed material information relating to criminal proceedings and court cases against him and surrendered the passport issued to him in 2013.

5.5 It was intriguing as to why Shri Sushil Ansal should come by himself to the Passport Office, admit that he had suppressed information relating to criminal proceedings against him and surrendered his passport. The then RPO stated that he was not issued any Show Cause Notice or any letter from the RPO, that he came by himself and would not be able to know the motive of Shri Sushil Ansal. To the question that if the passport was simply taken into safe custody, was the applicant given to understand that he could get that passport back, the RPO has stated that there was no conversation about the return of the passport at all.

5.6 Both the then RPO Shri Hitesh Rajpal and Shri Suresh Yadav, Senior Superintendent have stated that Shri Sushil Ansal

nor anyone on his behalf tried to contact them before 17 August 2017 nor thereafter once he had surrendered the passport. The inquiry committee felt that even in case of suo moto declaration of suppression of facts by the passport holder, the details of cases etc. should have been examined instead of taking passport into safe custody and penalization. But RPO officers stated that it was not normal procedure followed in case of such voluntary declarations.

5.7 Passport No. L5241099 was voluntarily surrendered by Shri Sushil Ansal to the RPO, Delhi in November, 2017. The Passport was taken into safe custody and a penalty of Rs. 5000 was levied for obtaining passport by false declaration/suppression of material information as per the provisions under section 12(b). He was informed that he should furnish a court No Objection Certificate for release of his passport or when applying for a new passport.

6. New Passport application in 2018:

6.1 Shru Sushil Ansal again filed an application for re-issue of a new passport on 7.5.2018 with a No Objection Certificate from the court issued on 2/5/2018. The application form was submitted at the PSK R.K. Puram. When processing the application form, it was found that the earlier passport of Shru Sushil Ansal was in safe custody at the Passpor Office and hence the file was escalated to the Back Office/ Police Section for further examination. The old passnort No. L5241099 in custody was cancelled and returned to the passport holder. On 08/05/2018, the PV was initiated on the file; on 10/5/2018, an adverse report is received and duly updated on the system. On 21/05/2018, the adverse report of the police is accepted and a stop is imposed on the file; objection letter sent to the applicant Shri Sushil Ansal. On 22/5/2018, a fresh PVR is initiated and on 11/6/2018, again the police return with an adverse report. Again this is accepted by the PV review officer and duly updated on the system. However, on 28/6/2018, the PV mode is changed from pre-PV to post-PV and the stop imposed is cleared and one year short validity passport is granted. The passport is printed on 2nd July 2018.

6.2 The applicant had submitted a No Objection Certificate from Court stating that he faced only court proceedings related only one FIR. The Chief Metropolitan Magistrate, Patiala House Court of Delhi in order on CC No. 39858/2016 of 2/5/2018, while refusing to issuing any summons to the accused Shri Sushil Ansal, held that directions cannot be issued to the Passport authority because the document sought (the passport) is not part of evidence or has direct connection with the subject matter of the proceedings. The Court allowed the application for NOC and stated that the Court has no objection to the issuance of passport to the accused Shri Sushil Ansal.

6.3 In view of the Court NOC, his case was reviewed by the passport authority. Passport No. S1491836 was issued on 2/7/2018 against a No Objection Certificate submitted by the applicant. Only a one year validity passport was issued to the applicant valid upto 1/7/2019 as per procedure laiddown vide GSR 570(E).

6.4 GSR 570(E) issued on 25th August 1993 exempted citizens of Indian against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provision of clause (f) of sub-section (2) of section 6 of the Passports Act, 1967. It laid down that passport may be issued to such citizen who was facing criminal proceedings subject to the condition that (a) passport shall be issued for period specified by the Court or (b) if no period is specified for issue or for travel, passport shall be issued for a period of one year. The notification also stipulated that any passport so issued for a period of one year could be further renewed only on the basis of fresh court order and that the said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

6.5 Smt. Bhavna Tanwar Bhadoria, Assistant Passport Officer, Shri Naved Mujtaba Sheikh, Senior Superintendent,

Shri Vineet Kumar, PVR Reviewer were interrogated in this regard. Written statements have been obtained from Smt. Bhavna Tanwar and Shri Naved Mujtaba Sheikh.

6.6 Smt. Bhavna Tanwar had only handled the application form at the initial stage and escalated it to the Back Office/ Policy Section for further examination without granting the application. Shri Vineet Kumar had reviewed the police verification report and duly updated the remarks accepting the police report as adverse.

6.7 A written statement has been obtained from the then RPO, Delhi Shri Sanjiv Agarwal, who is presently posted in the Embassy of India, Prague. He has stated that 'F' token is issued by the Passport Officer to fast track an application only; however, he does not recall how this case was marked 'F' token and that background of the applicant is not checked while issuing 'F' token. He has also stated that he had not issued any instructions for moving the case from pre-PV to post-PV basis.

6.8 Shri Naved Mujtaba Sheikh, Superintendent was also questioned and a written statement has been obtained from him. He has stated that applicant Shru Sushil Ansal visited RPO on 7/5/2018. He has also stated that RPO approved issue of 'F' token on the file and also release of his old passport. Although the application was processed, due to adverse PVRs, stop was imposed on the case twice. Based on Court NOC and earlier direction by RPO, passport was granted on 28/6/18. On the direction of the present RPO, objection letter was generated on 3/8/2018 advising applicant to surrender the passport, which was done on 6/8/2018.

6.9 Shri Sushil Ansal has again filed an application for re-issue of a passport on 13/8/2018. However, the file is kept on hold. RPO got a discreet inquiry made from the police authorities and a detailed report was received from the police on 4/10/2018.

7. Court cases and wilful suppression of information by Shri Sushil Ansal

7.1 The Uphaar tragedy happened in July 1997. In

November 1997, CBI filed a charge sheet against the Ansals. No advice or request was sent to the passport authorities regarding any action to be taken on their passports either by the CBI or the Court or any complaint made by the petitioners to RPO, Delhi. The trial court convicted the Ansal brothers in November 2007 for a period of two years; Delhi High Court grants bail in January 2008, which is cancelled by the Supreme Court in September 2008. In November 2008, High Court reserved the trial Court Order; the sentence reduced from two years to one year in December 2008. In 2009, Supreme Court issued notice on petition filed by AVUT for enhancement of sentence and alteration of charges. On April 17, 2013, Supreme Court reserved the order on appeals. The case was heard in March 2014 and then in August 2015 when the Supreme Court allowed the Ansals to walk free after paying a fine of Rs. 30 crore each.

7.2 In between the Court had returned the passport of Shri Sushil Ansal in November 2008 with the direction that he would inform the Court Registrar if he travels abroad for a period of one month or less and would take Court's permission if the period of travel exceeded one month.

7.3 Through this long period, nowhere was any reference or direction made to the RPO or the Government of India regarding action to be taken on the passports. When the passport was taken into custody in 2007 and released by the Court in 2008, it is to be presumed that even the Court had no objection to his continued possession of a passport and travel abroad.

7.4 It is also interesting to note that after 2004, the applicant never approached the RPO for issue of any passport or booklet until October 2013 when the case was on appeal at the Supreme Court.

7.5 Never before August 2017 did the passport holder declare that he was facing any criminal proceedings or that he had been convicted.

7.6 From the changing sentences and reduction from a period of two years imprisonment to one year, the two year

imprisonment period laid down in the Passports Act that would disqualify him from holding a passport stood nullified. Also, the applicant only approached the RPO in October 2013, well after 5 years of the date of the first conviction in November 2007. In any case, in 2013, as stated above, RPO could not have any reason to reject the application based on the applicant's criminality or conviction as the police verification report was CLEAR.

7.7 Shri Sushil Ansal, therefore, was fully aware of the provisions of the Passports Act 1967. He had deliberately left the relevant boxes in the application form pertaining to criminality or court proceedings unticked. Whereas in 2000 and 2004, there was no procedural requirement as per the extant rules for carrying out police verification for issue of additional booklets, the police verification done in 2013 did not carry any mention of any pending court cases against the applicant.

7.8 With the introduction of online application process, an applicant has to fill in all relevant mandatory fields and also check the boxes relating to self-declaration including the clause regarding criminality and/or pending court cases and previous conviction. The application should not proceed forward unless the fields are entered and the relevant boxes checked. In addition, in the new application under Passport Seva Project, the undertaking includes pending cases etc., so that the applicant cannot dodge the requisite information.

7.9 Whereas the applicant was able to deliberately hid the facts about his court cases in 2000 and 2004 due to the manual forms filled in by him and as only passport booklets were issued where police verification was not required, he had to necessarily sign the form with the self-declaration that no court cases or conviction is pending against him in any Court of law. A court case was filed in 2016 alleging that he had obtained passports by suppressing material information and in August 2017, the passport holder voluntarily visits the RPO, Delhi and surrenders the passport issued to him 2013. The passport is kept in safe custody and later impounded. Penalty is also levied

on the passport holder Shri Sushil Ansal, as per the relevant provisions of the Passports Act, 1967....”

9. The learned Senior Counsel for respondent no.4 contends that seeking of information beyond the statutorily permissible parameters under Section 6 of the Act would be impermissible. She submits that insofar as the *tatkaal* scheme seeks information, which is beyond Section 6 of the Act, a citizen is not compelled to give that information. The Court is not persuaded by the said argument because the *tatkaal* scheme is a special arrangement for the benefit of citizens, who may desire issuance of a passport on an urgent basis. However such expeditious issuance of passports would be subject to receipt of requisite information to the Government, either by way of documents or affidavits which the Government would, for the interim, take to be truthful statements. Sushil Ansal had availed the benefit of the *tatkaal* scheme and had specifically deposed, by way of an affidavit, that he had never been punished by any criminal court for an offence. This is in the face of his conviction in the year 2007, the sentence of punishment was reduced to one year in 2008, which was further reduced by the Supreme Court in 2014. When respondent no.4 filed the affidavit, he ought to have made it clear to the Government that he had indeed been convicted for at least one year by this Court.

10. His counsel further submits that respondent no.4 had duly sought this Court's permission and was required to travel abroad frequently because of the nature of his commercial interests. By order dated 19.05.2008 permission to travel abroad was granted, subject to some conditions. The order reads *inter-alia*:-

“...7. Even otherwise, their passports remained with

them throughout the trial and as and when they went abroad, they came back and reported to the court. Looking to the investments which they have made in India which everyday, everyone comes across, their various advertisements in the newspapers and hoardings, it is too remote to say that they will flee from India if they are given their passports. Thus, their bona fide speaks for itself. Therefore, this court is inclined to return their passports. Their passports are accordingly ordered to be returned to them, subject to the condition that they will inform the Registrar General of this Court about their visit to abroad and also furnish their complete address where they would stay when they go abroad. This fact will have to be supported by an affidavit and other supporting documents, if any, in their possession. If their visit to abroad is for a period of one month or less, mere information to the Registrar General shall be given in the manner aforesaid and if their visit exceeds the period of one month then they shall move the court and seek permission from the court....”

11. Ms. John further contends that insofar as the said permission was given to respondent no.4 on his passport, then valid upto the year 2016, the said order would be applicable to him till the year 2016 and would be treated as carte blanche for him to travel abroad; that he would not be required to furnish any other information. The Court is not persuaded by the said argument because the permission was to travel outside the country, only on such travel document or passport as may be issued by the Government of India, which although valid till 2016, could not have been used further after the pages of that passport had got exhausted. In the interim, the rule had changed. No new booklets were issuable. On a fresh application being made, all requisite information would have to be provided in the application. When respondent no.4 applied through the *tatkaal* scheme, he should have

given information as required. Sushil Ansal has not only misled the Government of India, but has misrepresented on oath. Appropriate proceedings against him would be warranted.

12. At this stage the Court would refer to the aforesaid Report of Dr. T.V. Nagendra Prasad which observed inter alia as under:

“.... 11.6 When Shri Sushil Ansal applied for a new passport on 2/5/2018, he submitted an undertaking as per GSR 570(E) declaring that one case was pending against him. Here again, he had suppressed material information about the other court proceedings against him but RPO could have taken the police report into account before issuing the short validity passport.

11.7 If Shri Sushil Ansal was ignorant of the rules and procedure of applying for a passport and had unintentionally and by mistake failed to declare that he had faced criminal proceedings and had been convicted when applying for passports in 2013 (as voluntarily stated by him in August 2017), he would have submitted applications for the release of his valid passport held in safe custody or would have sought an order from the court to that effect. However, he got a specific NOC for a specific case with a specific direction for issue of a passport. This clearly proves that Shri Sushil Ansal was very much aware of the rules and procedures governing the application for an Indian passport.

11.8 The first complaint regarding passports of Shri Sushil Ansal was received by the Ministry in June 2018 and the same was forwarded to RPO, Delhi for further action. Prompt action was taken by RPO Delhi on 03.08.2018. The passport issued to Shri Sushil Ansal was surrendered to RPO on 06.08.2018.

11.9 As per the records examined and the history of the issue of passports to Shri Sushil Ansal, it was found that at no time were multiple passports issued to Shri Sushil Ansal. There was no lapse in the procedure and rules in the issue of additional booklets in 2000 and 2004 and re-issue of passport in 2013 as detailed above.

11.10 Due to the confusion arising out of the mention of a wrong passport number, it was alleged that Shri Sushil Ansal had in his

possession double or multiple passports. A check on our system and the history of passports issued to him revealed that at no time Shri Sushil Ansal was issued more than one valid passport. He has only obtained all his passport services from the Regional Passport Office, Delhi and never tried to file any application for passport from any other passport office or any Indian Mission abroad.

11.11 It was not clear as to why the case was suddenly moved from pre-PV to post-PV without any written explanations or reasons recorded in June 2018. It is also not clear why the Passport Office failed to record the reasons for over-ruling the adverse reports in May-June 2018 and also did not send a speaking order/ show cause notice to the applicant asking him why passport service should not be denied to him....”

13. Clearly there is no explanation as to why there was relaxation apropos the requirement for pre-police verification to post-police verification for Sushil Ansal. The matter is being looked into by the Ministry of External Affairs and the Court is assured of a Report in the next four weeks. Let the matter be looked into by an officer not below the rank of Joint Secretary, MEA. The Report be filed in Court, in a sealed cover. The Inquiry Report would suggest measures for plugging in such lacunae as have been observed by Dr. T.V. Nagendra Prasad, and furnishing of such other specific information as may be deemed necessary from an applicant for issuance of a passport.

14. Apropos the cases against the police officials, let an FIR be registered by the Crime Branch, Delhi Police under the appropriate sections of law and a Report be filed in four weeks.

15. List on 06.02.2019 as part heard.

CM No. 48674/2018

16. In view of the order passed above in the main petition today, the

application has become infructuous. In any case since the passport of respondent no.4 has been recalled by the Government of India, he has no travel document and the same is not likely to be issued in the near future, at least not without the permission of the Court.

17. The application is not pressed. It is, accordingly, disposed off.

DECEMBER 17, 2018/kk

NAJMI WAZIRI, J.