

Uoi and Others Vs. Balwinder Singh and Another

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Court : Delhi

Decided On : May-18-2012

Judge : The Honourable Acting Chief Justice Mr. a.K. Sikri & Rajiv Sahai
Endlaw

Appeal No. : LPA NO. 551 OF 2011

Appellant : Uoi and Others

Respondent : Balwinder Singh and Another

Judgement :

A.K. SIKRI, ACTING CHIEF JUSTICE.

1. This intra court appeal is filed by the Union of India impugning the judgment dated 29th April, 2011 given by a learned Single Judge of this Court in writ petition filed by the respondent No.1 herein whereby compensation of Rs.50,000/- along with litigation expenses of Rs.5,000/- are awarded in favour of the respondent No.1 with direction to the appellants to pay the same. There is also a direction that documents of the respondent No.1 which were seized by the appellants be also returned, if not already done. The prayers made in the petition give some reflection of the grievance of the respondent No.1 made in the writ petition filed by him and we reproduce these prayers:

“(a) Issue writ, order or direction(s) in the nature of Mandamus or any other writ/order/direction thereby directing the respondent no.2 and 3 to release all documents of the petitioner seized on 22.2.2010.

(b) To direct respondent no.2 and 4 to make all necessary arrangements for departure of the petitioner to Spain as he has been deported and document seized for no fault of his.

(c) To issue an order/direction to the respondent no.2, 3 and 4 to pay compensation of Rs.25,00,000/0 to the petitioner for the mental agony and torture he has suffered due to the illegal acts of the respondents no.2, 3 and 4.”

2. The documents have since been returned. The only dispute is as to whether the learned Single Judge was right in awarding the compensation of Rs.50,000/- along with litigation expenses of Rs.5,000/-.

3. The respondent No.1 is an Indian citizen who holds an Indian passport issued by the Regional Passport Officer, Jalandhar. This passport was issued on 17th February, 2006 and is valid up to 16th January, 2016. He got a job at Jarona in Spain in the year 2007. On getting this job, he applied for work visa with the Embassy of Spain at New Delhi. His documents were verified by the Embassy and certificate dated 6th July, 2007 was issued on 6th July, 2007 reading as under:

“There is no adverse information against Shri/Smt./Kum. BALWINDER SINGH S/o, D/o, W/o Jit Singh SPOUSE NAME....HOLDER OF Indian Passport No. F6537221 issued at Jalandhar on 17th Feb 06 which would render him/her ineligible for the grant of travel facilities including visa for SPAIN.”

4. Thereafter, at the instance of the Embassy of Spain, the respondent underwent medical test and after completion of all formalities, work visa was issued to him on 16th April, 2008 for three months which was further extended up to 2011. On the strength of these documents, respondent went

to Spain and worked as a peon in a shop at Jarona in Spain. During this period, he was also registered under the Social Security Scheme in Spain and was given tax identity number as well. After working for some time, he wanted to visit India to meet his family. He thus returned to India on 25th November, 2009.

5. After staying for about three months, with a view to re-join his duties in Spain, the respondent No.1 boarded a flight from Indira Gandhi International Airport at New Delhi on 21st February, 2010. This flight was up to Brussels (Belgium). On reaching Brussels, when the respondent No.1 was taking connected flight, the officials of Jet Airways began questioning him in English and Belgium language. As per him, being an illiterate, he could not answer the queries appropriately though he was able to communicate with them that he had a valid work permit. Still he was kept in illegal confinement at the cells and was not allowed to fly to Spain. Instead, on the next date, i.e. 22nd February, 2010, he was deported back to India.

6. In the writ petition filed by the respondent No.1, he averred that on return to India, his trauma got compounded. The Indian authorities did not verify the genuineness of his work permit. Rather he was kept in illegal confinement till the evening of 22nd February, 2010. To top it all, they even took away his personal documents including passport, residential permit, medical cards, driving licence and bank cards etc. He kept approaching the authorities for return of these documents, but in vain. Under these circumstances, he filed the aforesaid petition on 17th August, 2010 with the prayer of returning the documents and award of compensation of Rs.25 lacs.

7. The appellant contested the petition. The defence put forth was that when the respondent No.1 was deported back to India by the Belgium Immigration Department, in the deportation papers dated 21st February, 2010, it was stated that respondent No.1 had been refused entry into Belgium for the reason that he was an “imposter” who held a “fraudulent” visa and resident permit. For this reason, on his arrival at Delhi airport, his documents were seized with the arrival card and were sent to Police Station, IGI Airport, New

Delhi for verification. Thereafter, FIR No.119 dated 7th March, 2010 was registered under Section 419/420 and 468/471 IPC against respondent No.1 at Police Station, IGI Airport.

8. Certain interim orders were passed and directions were given to the appellant from time to time in the said writ petition. These included order dated 10th January, 2011 directing the appellant to seek instructions on whether any verification was sought from the authority in Spain on the genuineness of the travel documents. This verification was sought and the report submitted by the appellant disclosed that as per the said verification, the documents were genuine. Report to this effect was submitted by the Foreigner Regional Registration Office (FRRO) vide affidavit dated 5th April, 2011. In the meanwhile, the Additional Sessions Judge passed the orders dated 8th March, 2010 in the FIR which was lodged against the respondent herein dismissing the case recording the statement of the I.O. that visa and resident permit were found to be genuine and no case was made out against the respondent No.1. Taking into account these facts, the learned Single Judge has come to the conclusion that the entire approach of the appellant in dealing with respondent No.1's case, nay his life and liberty, was totally callous and for this reason, costs of Rs.50,000/- is imposed. We would like to reproduce the detailed analysis of the situation recorded by the learned Single Judge in this behalf in the impugned order:

“15. The conduct of the Respondents in the present case displays utter callousness in dealing with the life and liberty of the citizen. The Petitioner had valid travel papers and work permit for employment in Spain. He had already commenced his employment in Spain. He was returning to Spain to resume his employment after briefly visiting India during vacations. During the stop-over of his flight from New Delhi to Spain at Brussels, he was stopped and subsequently deported to New Delhi on 22nd February 2010. He was not permitted to travel by the BID, on the ground that he was an “imposter” and that he held a “fraudulent” visa and fraudulent residence permit. It is now clear that this determination by the BID, which formed the basis of the Petitioner's deportation, was wholly erroneous.

16. What is unfortunate is that when the Petitioner arrived in New Delhi, pursuant to such deportation no effort was made by the airport immigration authorities in New Delhi to make any proper inquiry. A copy of the seizure report of the Indian Immigration Control at the IGI Airport, (which is at Annexure P-5 to the petition), gives the reasons for seizure of the Petitioner's passport and travel documents as under:

"The residential permit of Spain seems to be doubtful."

17. The affidavits and documents placed on record in this petition by the FRRO shows that there was no basis for the above "doubt" as to genuineness of the Petitioner's residence permit. No attempt was made to verify this from the Embassy of Spain. Instead, the FRRO straightway sent the papers to the police and an FIR was registered against the Petitioner under Sections 419/420/468/471 IPC. The present petition was filed on 17th August 2010. Notice was issued on 20th August 2010 and accepted by counsel for the Respondents on that date. Yet till 10th January 2011 no attempt was made by the FRRO to write to the Embassy of Spain to verify the genuineness of the Petitioner's residence permit. The Police on its part also made no effort to make inquiries with the Embassy of Spain till 22nd February 2011. Within ten days of such inquiry, Embassy of Spain confirmed the genuineness of the Petitioner's documents. This then led to the immediate closure of the criminal case. Had this inquiry been made soon after the deportation of the Petitioner, the criminal case would have been unnecessary. He may have been able to immediately return to Spain to resume his employment. On account of the utter negligence and callousness on the part of the Respondents, the Petitioner had to needlessly undergo the trauma of a false criminal case against him for over one year and suffer the deprivation of his passport and travel documents. He was unable to return to Spain to resume his employment. The direct consequence of the arbitrary action of the Respondents has been irreversible loss of employment and earning of the Petitioner, apart from the mental trauma undergone as a result of the false criminal case.

18. This Court expresses its displeasure with the manner in which the Respondents have violated the life and liberty of the Petitioner. There has been an undoubted violation of the Petitioner's fundamental rights under Article 14 and Article 21 of the Constitution. The Petitioner has needlessly suffered hardship and trauma due to the arbitrary acts of the Respondents. In the circumstances, this Court considers it appropriate to direct that Respondents shall compensate the Petitioner in the sum of Rs.50,000/- which will be paid by the Union of India in the Ministry of External Affairs to him within a period of four weeks from today. The Respondent Union of India will also pay to the Petitioner litigation expenses of Rs. 5,000/- within a period of four weeks from today. The Respondents will immediately return to the Petitioner, if not already done, all the documents seized from him."

9. Questioning the rationale of the aforesaid reasoning, it is argued by the learned Additional Solicitor General that no fault can be found or discerned in the approach of the Indian authorities. He highlighted that the reason given in the seizure memo was that the work permit of the respondent No.1 seemed to be doubtful which necessitated the seizure thereof and appropriate enquiry. He also referred to the deportation documents of the Belgium immigration department which mentioned, "no valid document for airport transit" and "no valid document for entry". The reason for deportation given in the document was that the respondent No.1 was "imposter". He also referred to the contents of the FIR which was registered on the ground that respondent No.1 had impersonated and was impersonate of forged resident permit of Spain. It was further submitted that having received these documents, it rather was the duty of the appellants to do necessary verification for which respondent No.1 was kept till the evening. He also submitted that FIR was not the basis of the impugned judgment and in such circumstances, the entire action of the appellants was bona fide and no damages could be imposed upon the appellants.

10. We are afraid, we cannot accept the aforesaid submission of the appellants. The appellants are only trying to trivialize the entire issue giving it a very simplistic tone which defies the ground realities of the case at hand.

No doubt, after receiving the deportation documents of the aforesaid description where the identity of the respondent No.1 was stated as doubtful, it became the duty of the appellants to do necessary verification and for this purpose when the respondent No.1 was detained for some time and his documents were seized for verification, such an initial move of the appellants cannot be treated as unjustified or illegal. However, had the verification been done in an appropriate manner and documents released to the respondent No.1 immediately thereafter, the appellants would have emerged faultless. Here, the appellants have been found wanting in their action and the learned Single Judge has rightly commented that the conduct of the appellants in the present case displays utter callousness in dealing with life and liberty of the citizens.

11. The documents were seized on 22nd February, 2010. No steps were taken for getting the same verified from the Spanish Embassy at New Delhi immediately thereafter. If these steps were taken, which any person with little prudence could conceive of as necessary, the respondent No.1 could have been spared a further trauma and agony. Not only the authorities failed to do so, on mere suspicion nurtured by the Belgium authorities in Brussels, the appellants went ahead and even lodged an FIR on 7th March, 2010. All this happens without any verification. Thus, to add insult to the injury suffered by the respondent No.1, FIR is not preceded by necessary verification and/or investigation. On the contrary, after lodging the FIR, the investigation starts, that too on the directions of the Court in the writ petition vide order dated 10th January, 2011. In the meantime, the respondent No.1 is faced to suffer the agony of false prosecution. The investigation revealed that documents in possession of the respondent No.1 were all genuine. However, the FIR is ultimately quashed by the additional C.M.M., Dwarka only on 26th March, 2011, that is, one year after the filing thereof. One cannot be insensitive to the suffering of the respondent No.1 which faced as a result of false FIR lodged against him. To top it all, in the meantime, documents remain seized which resulted in depriving the respondent No.1 from going back to Spain and re-join his duties. Inhuman, indifferent, insensitive, callous, arbitrary and highly negligent attitude of the appellants

in dealing with the respondent No.1's case is writ large resulting in severe hardship, difficulties and trauma faced by the respondent No.1. For this, compensation of Rs.50,000/- is meager and negligible. Unfortunately, the obstinate attitude of the appellants persists when instead of honouring the orders of the learned Single Judge and making this payment to the respondent No.1, they have preferred the present appeal. Even the financial loss which the respondent has suffered in the entire process would be many times more. To add to this financial misery, the respondent is made to spend further to contest the present appeal.

12. We, thus, find the appeal totally devoid of any merit and dismiss the same with costs quantified at Rs.20,000/-. The compensation of Rs.50,000/- along with litigation costs of Rs.5,000/- awarded by the learned Single Judge as well as the costs of present appeal of Rs.20,000/- shall be paid to the respondent within four weeks from today.

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