

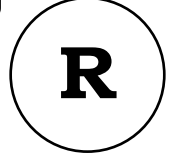


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA
WRIT PETITION NO. 26333 OF 2023 (GM-DRT)



BETWEEN:

NITIN SHAMBHUKUMAR KASLIWAL

...PETITIONER

(BY SRI.K.N.PHANINDRA, SR. ADVOCATE FOR
SRI BHAIKAV KUTTAIAH, ADVOCATE)

AND:

1. DEBT RECOVERY TRIBUNAL-1
BSNL HOUSE
RAJ BHAVAN ROAD
BENGALURU, KARNATAKA – 560 001
REPRESENTED BY ITS REGISTRAR.
2. UNION OF INDIA THROUGH
MINISTRY OF EXTERNAL AFFAIRS
SOUTH BLOCK, SECRETARIAT BUILDING
RAISINA HILL, NEW DELHI – 110 011
AMEMDED VIDE ORDER DATED 28.11.2023.

...RESPONDENTS

(BY SRI.SHANTHI BHUSHAN H., DSGI FOR R2)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTING THE RESPONDENT TO RELEASE THE PASSPORTS BEARING NUMBERS Z-2196178 AND Z-1742943, BELONGS TO PETITIONER I.E., NITHIN.SHAMBUKUMAR KASILWAL.ANN-L.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of *mandamus* directing the 1st respondent/Debts Recovery Tribunal-1, Bangalore (hereinafter referred to as 'the Tribunal' for short) to release the passport standing in the name of the petitioner to the petitioner.

2. Facts, in brief, germane are as follows:-

The facts of the case dates back to 18-11-1999, wherein the petitioner is said to have executed certain agreement of guarantee in favour of various lenders towards loans secured from those lenders. On 20-03-2015, the companies – lenders proceed to initiate O.A.No.711 of 2015 before the Tribunal *inter alia* seeking repayment of sums allegedly in default, attachment and sale of properties of several companies and



that of the petitioner. The issue does not concern merit of the claim of the companies or the petitioner before the Tribunal.

3. An application comes to be filed by those Banks who had initiated proceedings in O.A.No.711 of 2015, in I.A.No.1598 of 2015 invoking Section 22(2)(h) r/w Section 19(25) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('the Act' for short) to surrender passport of the petitioner and not leave the country without the permission of the Tribunal. The very next day on 16-04-2015, the Tribunal passes an order allowing the application so filed seeking retention of the passport before the Tribunal. The petitioner then files an application seeking vacation of the interim order and the Banks filed their objections in I.A.No.5872/2015. The application seeking vacation of the interim order comes to be rejected. Then, the petitioner on 05-04-2016, surrenders his passport before the Tribunal. The Tribunal then passes an order on 25-07-2016 holding that the petitioner shall be entitled to his passport as and when he requires to travel, subject to production of appropriate travel itinerary. Since then, the petitioner has been filing applications



before the Tribunal seeking permission to travel to several countries and on coming back surrendering the passport to the Tribunal. On 02-12-2016, the petitioner files an application seeking release of passport in his favour. The application comes to be rejected. The petitioner claims that he has represented before the Tribunal seeking return of passport on the score that there is urgent necessity of the old passport as its validity had expired and a fresh passport had to be secured from the hands of the Passport Authority. That having not been considered, the petitioner is before this Court seeking a direction as observed hereinabove.

4. Heard Sri K.N. Phanindra, learned senior counsel along with Sri Bhairav Kuttaiah, learned counsel appearing for the petitioner and Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.2.

5. The learned senior counsel Sri K.N.Phanindra would vehemently contend that the passport cannot be impounded by the Tribunal as its retention would amount to confiscation or impounding of a passport, this is the power of the Passport



Authorities and none else. He would seek a direction to the Tribunal to release the passport surrendered before it on 05-04-2016.

6. This Court directed impleadment of Union of India as party respondent to these proceedings as the Passport Act was to fall for interpretation. Therefore, Union of India is impleaded as the 2nd respondent and Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India is also heard in the matter. He would submit that the power to impound a passport is only under Sub-section (3) of Section 10 of the Passports Act, 1967 and no Court except constitutional Courts can pass any order of retention of a passport.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The issue in the *lis* does not concern recovery of debt by the Banks before the Tribunal. The issue relates to and is traceable to an



application filed by Banks in I.A.No.1598 of 2015 praying to direct the petitioner to surrender his passport before the Tribunal. The Tribunal allows it and every time, every attempt of the petitioner to get his passport released before the Tribunal failed. The only breather that the Tribunal would grant in favour of the petitioner is that, he would be entitled to the passport as and when he requires to travel subject to production of appropriate travel itinerary. This in effect would mean that the passport of the petitioner is impounded. Such impounding or retention of the passport of the citizen of the nation would amount to disabling the holder of the passport from travel. The application filed by the Banks is under Section 22(2)(h) of the Act. Section 22 reads as follows:

"22. Procedure and Powers of the Tribunal and the Appellate Tribunal.—

(1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code



of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) issuing commissions for the examination of witnesses or documents;*
- (e) reviewing its decisions;*
- (f) dismissing an application for default or deciding it ex parte;*
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
- (h) any other matter which may be prescribed.**

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

(Emphasis supplied)

Section 22 deals with procedure and powers of the Tribunal and the Appellate Tribunal. Section 22(2)(h) depicts that the Tribunal or the Appellate Tribunal for the purpose of discharging their functions under the Act shall have the same



powers that are vested in a civil Court and have powers to pass orders in those, enumerated under Sub-section (2)(a) to 2(g). Clause (h) of sub-section (2) of Section 22 is '*any other matter which may be prescribed*'. The other provision that is invoked is Section 19(25) of the Act. Section 19(25) of the Act reads as follows:

"19. Application to the Tribunal.—

(1)

(25) The Tribunal may made such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

(Emphasis supplied)

Sub-section (25) of Section 19 permits the Tribunal to make such orders and give such directions as may be necessary or expedient to give effect to the orders to prevent abuse or to secure ends of the justice. It is these provisions that the Banks seek to invoke and answering these provisions, the direction is issued by the Tribunal to the petitioner to surrender the passport. The direction reads as follows:



"ORDER

I.A.No.1598 of 2015 stands disposed of in the following manner:

Defendant No.2 – Shri Nitin Shambhukumar Kasliwal, Director of defendant No.1 Company is hereby directed to surrender his passports bearing Nos. Z-2196178 (Old passport No.Z-1742943) and F-5612604 (Old Passport No.Z-1109162) to the present Tribunal i.e., Debts Recovery Tribunal, Bangalore forthwith after receipt of this order from the applicant Bank."

(Emphasis added)

The direction of the Tribunal is, surrendering of the passport of the petitioner – both new and old. As observed hereinabove, it is still in the stage of surrender of the passport before the Tribunal. The petitioner on 26-10-2023 represents to the 1st respondent for release of the passport which is under surrender before the Tribunal on account of its expiry and necessity for re-issuance. The representation reads as follows:

"Subject: Return of my passports bearing numbers Z-2196178 and Z-1742943 ('Passports') placed in the safe custody of the Debts Recovery Tribunal – Bangalore during the course of proceedings in O.A.No.711 of 2015.

--

I was arrayed as defendant No.2 in the proceedings initiated by IDBI Bank and others against S.Kumar Nationwide Limited and others in O.A.No.711 of 2015. During the course of the said proceedings, the applicant Banks sought for surrender of



my passports vide I.A.No.1598 of 2015, which was allowed on 16.04.2015. Subsequently, the said order was modified on 25-07-2016 vide an application preferred to me in I.A.No.5872 of 2015, where under I was permitted to collect my passports as and when I was required to travel and subject to compliance with certain conditions laid down by the Tribunal. Copies of the orders dated 16-04-2015 and 25-07-2016 are attached herewith as Document Nos. 1 and 2 respectively.

Further, my application in I.a.No.5149 of 2016 seeking release of the passports unconditionally was rejected on 21.12.2016. The above proceedings in O.a.No.711/2015 concluded on 30-01-2017 merging all interim orders with the final order. Thus, the passports continued to remain on the file of the Tribunal in its safe custody.

I am in the process of renewing my passports for business purposes and it is a requirement under the provisions of the Passports Act, 1967 to submit any and all old passports. Therefore, I request you to kindly return my passports forthwith, in light of the disposal of the above proceedings, given that retaining them will not serve any useful purpose and as I require them to travel. Please note that any delay in returning them will result in loss of opportunities and affect my fundamental rights to trade and livelihood. In view of the aforesaid, I would be deeply obliged if you could kindly return my passports at the earliest, given the urgency.

If you require any further clarifications, I am happy to cooperate and offer the same."

(Emphasis added)

This is not considered by the Tribunal. The issue is, whether the Tribunal can direct withholding of passport of any person in terms of the power ascribed under the provisions quoted



hereinabove. The answer would be an unequivocal and emphatic "**NO**".

9. Issuance of passport and its impounding is dealt with under a special enactment – the Passports Act, 1967. Section 10 of the Passports Act becomes germane to be noticed. It reads as follows:

"10. Variation, impounding and revocation of passports and travel documents.—(1) *The passport authority may, having regard to the provisions of sub-section (1) of Section 6 or any notification under Section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.*

(2) *The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.*

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;



(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has



been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.



(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

(Emphasis supplied)

Sub-section (3) of Section 10 empowers the Passport Authority to impound or cause to be impounded or revoke a passport or travel document, subject to the conditions that are stipulated in sub-section (3) of Section 10 of the Act.

10. One such condition of impounding of passport is that, if the proceedings in respect of an offence alleged to have been committed by the holder of the passport are pending before a criminal court in India. Therefore, the power of the Impounding Authority i.e., the Competent Authority under the Act is traceable to clause (e) of sub-section 3 of Section 10 of the Act which is the only provision applicable to the case at hand.

11. The Passport Act is a special enactment and is trite that it being a special enactment which would prevail over any



power of even the civil court or criminal Court to retain or impound a passport. The issue in the case at hand is, such an act being done by the Tribunal which undoubtedly has only the power of following the procedure of a civil Court in securing ends of justice. The civil Court or the criminal Court itself do not have the power to impound the passport. Section 102 or 104 of the Cr.P.C. empowers the Police to seize and the Court to impound any document. Impounding of any document produced before the Court cannot stretch to an extent that those Courts can impound the passport also. The Court – either the criminal Court or the civil Court, issuing directions to deposit of a passport before it, till conclusion of trial are those orders which are without authority of law. The Tribunal – Debts Recovery Tribunal can hardly have such power. The very act of the Tribunal in directing surrender of the passport of a citizen or its detention before it, would amount to impounding of passport. Such power is unavailable to the Tribunal. Who can impound a passport fell for consideration before the Apex Court in the case of **SURESH NANDA v. CBI**¹ wherein the Apex Court has held as follows:

¹ (2008) 3 SCC 674



"8. Sub-section (5) of Section 165 CrPC provides that the copies of record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence whereas Section 104 CrPC authorises the court to impound any document or thing produced before it under the Code. Section 165 CrPC does not speak about the passport which has been searched and seized as in the present case. It does not speak about the documents found in search, but copies of the records prepared under sub-section (1) and sub-section (3).

9. "Impound" means to keep in custody of the law. There must be some distinct action which will show that documents or things have been impounded. According to Oxford Dictionary "impound" means to take legal or formal possession. In the present case, the passport of the appellant is in possession of CBI right from the date it has been seized by CBI. When we read Section 104 CrPC and Section 10 of the Act together, under CrPC, the court is empowered to impound any document or thing produced before it whereas the Act speaks specifically of impounding of the passport.

10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorises the court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that "general provision should yield to the specific provision" is to be applied. See *DamjiValji Shah v. LIC of India* [AIR 1966 SC 135], *Gobind Sugar Mills Ltd. v. State of Bihar* [(1999) 7 SCC 76] and *Belsund Sugar Co. Ltd. v. State of Bihar* [(1999) 9 SCC 620: AIR 1999 SC 3125].



11. The Act being a specific Act whereas Section 104 CrPC is a general provision for impounding any document or thing, it shall prevail over that section in CrPC as regards the passport. Thus, by necessary implication, the power of court to impound any document or thing produced before it would exclude passport.

12. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10-A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. **The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the Passport Authorities under Section 10(3)(e) or by the Central Government or any designated officer under Section 10-A of the Act to impound the passport by the respondent exercising the powers vested under the Act.**

13. The learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) CrPC which states:

"102. Power of police officer to seize certain property.—(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under



circumstances which create suspicion of the commission of any offence.”

14. In our opinion, while the police may have the power to seize a passport under Section 102(1) CrPC, it does not have the power to impound the same. Impounding of a passport can only be done by the Passport Authority under Section 10(3) of the Passports Act, 1967.

15. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. In Law Lexicon by P. Ramanatha Aiyar (2nd Edn.), the word “impound” has been defined to mean,

“to take possession of a document or the like for being held in custody in accordance with law”.

Thus, the word “impounding” really means retention of possession of goods or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 CrPC if it is permissible within the authority given under Section 102 CrPC, it does not have power to retain or impound the same, because that can only be done by the Passport Authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 CrPC), thereafter the police must send it along with a letter to the Passport



Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter for the Passport Authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the Passport Authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide State of Orissa v. Binapani Dei [AIR 1967 SC 1269]).

17. In the present case, neither the Passport Authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the Passport Authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October 2006. In our opinion, this was clearly illegal. Under Section 10-A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport Authority under Section 10(3).

18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 CrPC states that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while CrPC is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edn., p. 133). This principle is expressed in the maxim generaliaspecialibus non derogant. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing.



19. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10-A of the Act for impounding the passport of the appellant in accordance with law.”

(Emphasis supplied)

The Apex Court dealt with the very issue as to who would be the Authority to impound the passport. The Apex Court holds that neither the Police nor the criminal Court invoking powers under Section 102 or Section 104 of the Cr.P.C. can seize or impound a passport. Impounding of a passport is by the Authority vested under the Act as depicted therein. Retaining of the passport by the Tribunal can hardly be justified under the Act under which it functions much less under the provisions of the Act that are invoked by the Banks. Therefore, the petitioner becomes entitled for issuance of a writ of *mandamus* for release of the passport by reserving liberty to the 2nd respondent to act in accordance with the mandate of Section 10 of the Passports Act in the event need arises.



12. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) A *mandamus* issues to the 1st respondent/Tribunal to release passports bearing Nos. Z-2196178 and Z-1742943 that is held in the custody of the Tribunal to the hands of the petitioner forthwith.
- (iii) This order, however, shall not come in the way of the authorities functioning under the Passports Act, 1967 from exercising their power, if need arises bearing in mind the observations made in the course of the order.

**Sd/-
JUDGE**