

Impounding of A Passport - Ambiguity of Applicable Laws Vis. a Vis. Defaulter's Delight

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“Personal liberty is the liberty of an individual to behave as one pleases except for those restraints imposed by laws and codes of conduct of the society in which one lives to safeguard the physical, moral, political, and economic welfare of others. For instance, liberty of an individual which consists in the power of locomotion, of changing situation, or removing his person to whatsoever place his own inclination may direct, without imprisonment or restraint, unless by due course of law.”¹

The right to travel abroad has been recognised as an integral right of every Indian citizen. It would not be out of place to mention that it has in fact been recognised as a fundamental right under Article 21 of the Constitution of India. The Hon'ble Supreme Court has held in the matter of **Satwant Singh Sawhney v. D. Ramarathnam**² that under Article 21 of the Constitution no person can be deprived of his right to travel except in accordance with the procedure established by law. A similar view was reiterated by a larger bench of the Hon'ble Supreme Court in the matter of **Maneka Gandhi v. Union of India**³ that 'personal liberty' carries within its ambit the right to go abroad and that no person can be deprived of the said right except according to the provisions laid down by law.

With the aforesaid in mind, it becomes imperative to deal with the issue regarding impounding of passport by various courts and tribunals. Before assessing opinion of the Hon'ble Supreme Court as well as various High Courts on the issue of impounding of passport, it may be relevant to deal with the procedure laid down under law in so far as the impounding of passports is concerned.

Section 10(3) of The Passport Act, 1967 mentions the conditions that may lead to impounding of passports. The said provision of law is being reproduced herein below for easy reference:

“(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.

¹ US Legal Dictionary

² AIR 1967 SC 1836

³ (1978)1SCC248

(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.”

In view of the provisions of the Passport Act, 1967 it is clear that certain circumstances have been specifically defined under which the Passport can be impounded. It is only the Passport Authority that has been empowered and authorized to impound a Passport under the Passport Act. However, this raises a parallel that, whether a court or a tribunal has any judicial empowerment to impound a Passport.

The Code of Criminal Procedure, 1973 empowers a Police Officer to seize a property which creates suspicion of the commission of any offence⁴. In fact the Code of Criminal Procedure, 1973 also authorises a Court to impound a document⁵. However, the said Code does not specifically provide for impounding of the Passport. Below is a relevant citation for a clarification on the same.

The Hon’ble Supreme Court in the matter titled **Suresh Nanda v. Central Bureau of Investigation**⁶ has clarified that under the powers enumerated in the Code of Criminal Procedure, 1973, the Police Officials may have the power to seize a Passport; however, no power to impound the Passport has been provided. It has also been categorically laid down that the seizure of Passport is done at a particular moment of time.

On the other hand, impounding of a Passport would be retention of the same for some time period. The Hon’ble Supreme Court therefore, has laid down that the power to impound a Passport lies only with the Passport Authority under the provisions of the Passport Act, 1967.

It is imperative to point out that the Hon’ble Supreme Court in the matter of **Suresh Nanda**⁷ while dealing with the issue of impounding of Passport has placed reliance on the judgment passed in the matter of **Maneka Gandhi**⁸ stating that impounding of passport by a criminal court would lead to violation of fundamental right as enshrined under Article 21 of the Constitution of India.

It has also been reiterated that a person can be deprived of his right to ‘personal liberty’ only as per procedure prescribed under law and the same has been provided under the Passport Act, 1967.

The same question has also arisen for consideration before the various Debts Recovery Tribunals across the country. What has necessitated the adjudication of the said issue is the fact that there are borrowers who have defaulted in repayment of huge amounts of public monies and there is an apprehension that the said defaulting borrowers may leave the country and not come back. In a series of cases arising out of orders passed by various Debts Recovery Tribunals, various High Courts of India have taken distinct views.

⁴ Section 102 of the Code of Criminal Procedure, 1973

⁵ Section 104 of the Code of Criminal Procedure, 1973

⁶ (2008)3SCC674

⁷ Supra

⁸ Supra Note 3

On behalf of the Banks and Financial Institutions, it has been contended that the defaulting borrowers who owe large sums of money may go out of the country to escape their liability and to avoid the same the borrowers against whom recovery proceedings in the form of Original Applications have been initiated before the Debts Recovery Tribunals, ought to be restrained from travelling abroad without prior permission of the Debts Recovery Tribunal(s). While contending the said case, Banks and Financial Institutions have placed reliance on Section 19(12)⁹ of the Recovery of Debts Due to Financial Institutions Act, 1993 (hereinafter referred to as "RDDDB&FI Act"). The said provision of the RDDDB&FI Act provides that "*The Tribunal may make an interim order (whether by way of injunction or stay) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.*" Reliance has also been placed on Section 19(25) of the RDDDB&FI Act. To buttress the contention and to support the provisions under Section 19(12) and 19(25) of the RDDDB&FI Act, Banks and Financial Institutions have relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **Industrial Credit and Investment Corporation of India Ltd v. Grapco Industries Ltd & Ors**¹⁰. It is the case of Banks and Financial Institutions that similar to provisions of Code of Civil Procedure¹¹, Section 19(25) read with Section 19(12) of the RDDDB&FI Act empower the Debts Recovery Tribunals to pass orders to secure interest of justice and that the same shall include within its ambit the power of the Debts Recovery Tribunals to restrain any of the defaulting borrowers from travelling abroad.¹²

On the other hand, the averment and stand of the borrowers is that the power to restrain a borrower from travelling abroad or to impound the Passport of a borrower is not enshrined under the provisions of the RDDDB&FI Act. It has been time and again contended by various borrowers that the modes of recovery of debts¹³ have been categorically provided for in the RDDDB&FI Act.

Furthermore, the Debts Recovery Tribunals have been empowered to detain in a civil prison or arrest a borrower¹⁴. The Debts Recovery Tribunals have also been empowered to pass interim orders in the form of injunctions or stay or attachment of properties¹⁵ or to even ask for security¹⁶ in case the Debts Recovery Tribunal is satisfied that the borrower with an intent to obstruct or delay the execution of any order may dispose of the whole or any part of the property. Therefore, what the Debts Recovery Tribunal is empowered to do is already specifically provided for in the RDDDB&FI Act. In view of the same, it has been time and again contended that the Debts Recovery Tribunals are not empowered to either impound the Passport or to restrain the borrowers from travelling abroad.

Various High Courts have dealt with the question on numerous occasions and there are conflicting views. It is imperative to highlight that the Hon'ble High Court of Kerala while dealing with the question of restrain in **Annai Jayabharathi v. DRT, Ernakulam & Anr**¹⁷ has upheld that the powers under Section 22(1) of the RDDDB&FI Act are wide and must be read and understood to give free hand to the Debts Recovery Tribunal to pass any order for speedy trial and effective enforcement of decree. Therefore, the Hon'ble Kerala High Court has been of the consistent opinion that the Debts Recovery Tribunals are empowered to put a travel restraint on a person in the interest of justice.

The Hon'ble High Court of Chennai has also expressed a similar view on the issue of travel restrain. In the matter titled **ICICI Bank Ltd. v. DRAT Chennai**¹⁸, the Hon'ble High Court of Chennai has held that the power to impound Passport is inherent under Section 19(25) of the RDDDB&FI Act and that the

⁹ Section 19(12) has been omitted by Act 44 of 2016.

¹⁰ (1999)4SCC710

¹¹ Section 151 of the Code of Civil Procedure, 1908

¹² **Annai Jayabharathi v. Debts Recovery Tribunal (Kerala and Lakhshadweep) Ernakulam**, AIR2005Ker137

¹³ Section 25 of the RDDDB&FI Act.

¹⁴ Section 19(17) and Section 25 of the RDDDB&FI Act

¹⁵ Section 19(12) of the RDDDB&FI Act

¹⁶ Section 19(13)(A) of the RDDDB&FI Act

¹⁷ (DB) AIR 2005 Kerala 137

¹⁸ (DB, Madras HC), 2011 (6) CTC 70

Debts Recovery Tribunals only require to satisfy itself as to whether such directions are absolutely necessary.

In the matter of **ICICI Limited v. The Passport Officer**¹⁹ the Hon'ble Karnataka High Court has held that "10. ...the provision of Section 10(3)(h) is not an enabling provision in favour of any person, giving a right in favour of any person to invoke the same for compelling the Passport Officer to act at the instance of such aggrieved person. The provision is one devised in the larger public interest and for protecting public interest. It cannot be called in aid for settling civil disputes by aggrieved persons. At any rate, this provision does not give any right in favour of persons who have civil claims against such other person whose passport is sought to be impounded invoking the provision under Section 10(3)(h) of the Act." The Hon'ble Karnataka High Court has also placed reliance on the judgment of **Maneka Gandhi**²⁰ to state that the right to travel abroad is a fundamental right enshrined under Article 21 of the Constitution of India.

The High Court of Gujarat in the matter titled **State Bank of India v. Prafullchandra Patel & Ors**²¹ has also expressed similar view and has held that the Debts Recovery Tribunals are not empowered to put any restrictions on traveling as the same amounts to depriving a person of his personal liberty guaranteed under Article 21.

The High Court of Delhi has also addressed the issue of impounding Passport/ restrain from travelling abroad by the Debts Recovery Tribunals. The Hon'ble High Court of Delhi has consistently held in various judgments viz., **A.S. Mittal v. P.O. Debts Recovery Tribunal & Ors**²², **Sanjeev R. Apte v. IFCI & Ors**²³, **Sam Verma v. Tourism Finance Corporation of India**²⁴, **Gurbachan Singh Saluja v. Debts Recovery Tribunal & Ors**²⁵ that the Debts Recovery Tribunals are not empowered to restrain a borrower from travelling abroad. In a judgment titled **ICICI Bank Ltd v. Kapil Puri & Ors**²⁶, it has once again been clarified by the Hon'ble High Court that Debts Recovery Tribunals/ Debts Recovery Appellate Tribunals do not have the power to impound the Passport or impose restrictions on a borrower from travelling abroad. The Hon'ble Delhi High Court has conceded to the observations passed by the Debts Recovery Appellate Tribunal below to hold that "*The Debts Recovery Tribunal being a creature of statute would have power as conferred on these Tribunals by the statute. If the intention was to confer such power allowing the Tribunal to restrain a person from travelling abroad, it ought to have been so conferred on the Tribunal...*"

It is clear that different High Courts have expressed different views on the issue of impounding of Passport/restrain on travel of defaulting borrowers.

In the recent times, it has been seen that the Hon'ble Supreme Court has imposed restrictions on persons from travelling abroad. The Hon'ble Supreme Court in 2016 rejected the plea of Mr. Ravi Ruia²⁷ seeking permission to travel abroad²⁸. In another and rather a more highlighted event of recent past, the Diplomatic Passport²⁹ of Dr. Vijay Mallya was revoked with immediate effect by the Enforcement Directorate. The Hon'ble Supreme Court observed in the matter titled **State Bank of India & Ors v. Kingfishers Airlines & Ors**³⁰ that the application filed on behalf of the Banks to freeze the Passport had become infructuous in view of the fact that Dr. Vijay Mallya had left the country. The

¹⁹ AIR 2002Kant118

²⁰ Supra Note 3

²¹ AIR 2011 Guj 81

²² (2004)121 ComCas 309 (Del)

²³ (2009)3PLR44

²⁴ Appeal No.174 of 2007 (Del High Court)

²⁵ W.P.(C) 12030/2009 (Delhi High Court)

²⁶ W.P.(C) 10765/2015, Delhi High Court

²⁷ Mr. Ravi Ruia is a Promoter of the Essar Group who was facing trial in the 2G Scam.

²⁸ <http://indianexpress.com/article/business/companies/sc-rejects-plea-of-essar-promoter-ravi-ruia-to-go-abroad-3016838/>

²⁹ Dr. Vijay Mallya was the sitting Rajya Sabha MP and in his capacity as a Member of Parliament held a Diplomatic Passport.

³⁰ (2017)6 SCC654

uproar in the legal arena after this incident was visible. It is also pertinent to point out that the Hon'ble Supreme Court has also imposed restrictions on the Managing Director and other Directors of Jaypee Infratech Ltd as well as Jai Prakash Associates Ltd. from travelling abroad without permission of the Court³¹. This order has been passed owing to the defaults committed by Jaypee Infratech Ltd in repayment of its dues and thereafter, in view of the initiation of Corporate Insolvency Resolution Proceedings before the National Company Law Tribunal, Delhi. However, without prejudice to the same, it is crucial for the Courts to pass orders restraining foreign travel/ impounding of Passports only upon being fully satisfied that they are empowered to do so as per the law.

Wrapping Up

Needless to say that, every court/tribunal is mandated under law to pass an order of restrain only under the procedure prescribed by law and not otherwise. As a closing statement, it is relevant to state that the power to impound/revoke Passport is only with the Passport Authority as defined under the Passport Act, 1967. The Passport Authority may impound or revoke the passport if it is brought to the knowledge of the Passport Authority that a warrant or summon for appearance, or a warrant for the arrest has been issued by a court under any law.³² Thus, for any party seeking for revocation/impounding of Passport of a person, appropriate application is required to be made before the Passport Authority, which may exercise powers to impound the same.

³¹ *Chitra Sharma & Ors. V. Union of India & Ors*, W.P.(C) 744 of 2017, Order dated 11.09.2017

³² Section 10(3)(h) of the Passport Act, 1967