

the Ministry of External Affairs, Government of India, New Delhi (referred above) while passing the impugned order for grant permission for renewal/re-issue of passport, thus, the impugned order is not sustainable in the eyes of law, therefore, the same is liable to be set aside/reversed.

10. In view of above, in the light of the notification dated 25.08.1993 and the Office Memorandum dated 10.10.2019 as well as the judgment passed by Hon'ble the Supreme Court in the case of **Maneka Gandhi (Supra)** and considering the larger mandate of the Article 19 and 21 of the Constitution of India, the impugned order dated 08.08.2024 passed by learned Additional Civil Judge/Additional Chief Judicial Magistrate, Court No.24, Lucknow is hereby **set aside and reversed**.

11. Accordingly, the instant writ petition is **allowed** with following directions:

(i) The petitioner shall move a fresh application along with certified copy of this order for renewal/re-issue of his passport before the Regional Passport Officer, Lucknow within 20 days from the date of this order.

(ii) In case such application is moved by the petitioner, within the time stipulated by this Court, the concerned Regional Passport Officer/authority shall decide the application and pass an order for renewal/re-issue of the passport of the applicant within 01 month from the date of production of certified copy of this order, after completing the due formalities in accordance with law.

(iii) If the passport is renewed/re-issued to the petitioner, he shall inform and take permission from the trial court concerned before going abroad and he shall

appear before the trial Court on the date fixed as directed by the trial Court and he shall be bound by the terms and conditions imposed by the trial court, if any.

(iv) The trial Court, if grants permission to the petitioner to go abroad, may impose condition in accordance with law, during the pendency of the case pending before it.

(v) The petitioner is also directed to submit the copy of the trial court's order, if any, condition imposed by the trial court regarding permission to go abroad, before the Regional Passport Officer, Lucknow.

(vi) Let a copy of this order be given to Sri Surya Bhan Pandey, learned Sr. Advocate and Deputy Solicitor General of India appearing for Union of India and Sri Ashok Kumar Singh, learned A.G.A.-I for the State for information and communication to the authorities concerned.

(2024) 9 ILRA 1470
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.09.2024

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 14235 of 2023

Jitendra Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 Satyaveer Singh, Sr. Advocate

Counsel for the Respondents:
 C.S.C.

Civil Law – Constitution of India, 1950 - Article 226 - cancellation of selection of the petitioner as Member of the District

Consumer Commission-under challenge- Rule 5(5) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the St. Commission and District Commission) Rules, 2020- cancellation order lacked valid reasoning, as the political affiliation did not constitute a disqualification under the specified rules- reasons provided in a counter affidavit cannot substitute for those absent in the original order- cancellation order quashed-petition allowed. (Paras 4 and 5)

HELD:

In the counter affidavit, the ground for cancellation of the selection of the petitioner is that the petitioner was an office bearer of a political party, and therefore, his working as a Member of the District Consumer Commission would be prejudiced. It is to be noted that in the impugned order, no reason whatsoever was provided and this explanation has been provided only in the counter affidavit. Supplanting of reason by way of a counter affidavit cannot be a substitute for having providing reasons in the main order itself. (see: Mohinder Singh Gill & another vs The Chief Election Commissioner, New Delhi & ors., reported in 1978 (1) SCC 405). (Para 4)

In any event, we find that the reason provided in the counter affidavit is flimsy and does not fall in any of the clauses for disqualification as prescribed in Rule 5 of the Rules. The petitioner has himself informed to this Court that if he was appointed as a Member of the District Consumer Commission, he would have given resignation from the post that he was holding. Under such circumstances, we find that the impugned order is without any merit and deserves to be quashed and set-aside. (Para 5)

Petition allowed. (E-13)

List of Cases cited:

Mohinder Singh Gill & another vs The Chief Election Commissioner, New Delhi & ors., reported in 1978 (1) SCC 405

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Manjive Shukla, J.)

1. Heard counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the order dated March 1, 2023 bearing No.118/84-2-2023 issued by the Government of Uttar Pradesh, Lucknow and the subsequent communication dated March 14, 2023 with regard to cancellation of selection of the petitioner as Member of the District Consumer Commission.

3. It is to be noted that the petitioner was selected as a Member of the District Consumer Commission along with 13 other persons. By the impugned order dated March 1, 2023, his selection has been cancelled under Rule 5(5) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (hereinafter referred to as 'the Rules'). Rule 5 of the Rules is extracted below:-

“5. Disqualification for appointment of President or member of State Commission and District Commission – A person shall be disqualified as the President or a member of a State Commission or District Commission if he-

(1) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(2) has been adjudged to be insolvent; or

(3) is of unsound mind and stands so declared by a competent authority; or

(4) has been removed or dismissed from the service of the State Government or Central Government or a body corporate owned or controlled by such Government; or

(5) has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the President or a member.”

4. In the counter affidavit, the ground for cancellation of the selection of the petitioner is that the petitioner was an office bearer of a political party, and therefore, his working as a Member of the District Consumer Commission would be prejudiced. It is to be noted that in the impugned order, no reason whatsoever was provided and this explanation has been provided only in the counter affidavit. Supplanting of reason by way of a counter affidavit cannot be a substitute for having providing reasons in the main order itself. (see: Mohinder Singh Gill & another vs The Chief Election Commissioner, New Delhi and others, reported in 1978 (1) SCC 405).

5. In any event, we find that the reason provided in the counter affidavit is flimsy and does not fall in any of the clauses for disqualification as prescribed in Rule 5 of the Rules. The petitioner has himself informed to this Court that if he was appointed as a Member of the District Consumer Commission, he would have given resignation from the post that he was holding. Under such circumstances, we find that the impugned order is without any merit and deserves to be quashed and set-aside.

6. Accordingly, the impugned order dated March 1, 2023 and subsequent

communication dated March 14, 2023 are quashed and set-aside. In the event, there is any vacancy of the post of Member of the District Consumer Commission, the petitioner should be appointed within eight weeks from date.

7. The writ petition is allowed.

(2024) 9 ILRA 1472
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.09.2024

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ Tax No. 1396 of 2024

Hcl Infotech Ltd. ...Petitioner
Versus
Commissioner, Commercial Tax & Anr.
...Respondents

Counsel for the Petitioner:
 Atul Gupta

Counsel for the Respondents:
 C.S.C.

Law of taxation – Constitution of India,1950 - Article 226 - The Central Goods and Services Tax Act, 2017- Section 61 -Show cause notice under Section 74 CGST Act,2017 under challenge-previous proceedings under Section 73 CGST Act,2017 already dropped-no allegation of fraud or suppression of facts- notice lacked jurisdiction as it did not specify any fraud, wilful misSt.ment, or suppression of facts, which are necessary to invoke Section 74-show cause notice quashed-possibility of fresh proceedings allowed if necessary conditions are met-petition allowed. (Paras 19, 20, 21, 22, 25,26 and 27)

HELD: