

**HIGH COURT OF CALCUTTA****Bench: The Hon'ble Justice Sabyasachi Bhattacharyya****Date of Decision: 30th April 2024**

Constitutional Writ Jurisdiction - Appellate Side

WPA No. 7360 of 2024

WPA No. 8033 of 2024

**Dr. Agnidipa Das - Petitioner****Versus****Ranajoy Dutta - Respondents****Legislation and Rules:**

Sections 10, 12, 15 of the Passports Act, 1967

Section 8(1)(j) of the Right to Information Act, 2005

**Subject:** Dispute over the impounding of a minor's passport amid parental custody battles and allegations of suppression of material information for passport issuance.

**Headnotes:**

Child Custody and Passport Issue – Mother, Dr. Agnidipa Das, appeals against impounding of her daughter's passport - Father, Ranajoy Dutta, alleges suppression of material facts by mother in obtaining passport - Both parents involved in legal disputes over custody and passport issues for their daughter - Contention revolves around materiality and suppression of information in the context of passport issuance under Section 10(3)(b) of the Passports Act, 1967 - Justice Sabyasachi Bhattacharyya finds that the consent of the non-custodial parent was not material for the grant of passport - Impounding of passport held as not justified, as the information alleged to have been suppressed was not material - Court sets aside order impounding the passport and dismisses father's petition seeking further legal measures against the mother [Paras 36-43, 47-52].

**Referred Cases:**

- L. Deepika Vs. Union of India and others, 2022 SCC OnLine TS 2481
- Juvairiya v. Regional Passport Officer, 2014 SCC OnLine Ker 4040
- Rabeeha v. Ministry of External Affairs, 2015 SCC OnLine Ker 16785
- S. Nancy Nithya v. Govt. of India & Anr., 2022 SCC OnLine Kar 1614
- Kamal Kumar Narottam Dash Parekh v. Govt. of India (Ministry of External Affairs), (2010) 1 CHN 834
- Mariam Fasihuddin and another v. State by Aduqodi Police Station and Another, 2024 SCC OnLine SC 58
- Citizens Legal Right Association and another v. Union of India and others, AIR 2020 Ker 191
- Thalappalam Service Cooperative Bank Limited and others Vs. State of Kerala and others, (2013) 16 SCC 82

Representing Advocates:

For the petitioner in WPA 7360/2024 & respondent in WPA 8033/2024: Mr. Srijib Chakraborty, Mr. Dhuv Chada, Mr. Aditya Mondal

For the petitioner in WPA 8033/2024 & respondent in WPA 7360/2024: Mr. Anindya Lahiri, Mr. Prajnadepta Roy, Ms. Sohini Kundu, Mr. Anish Chakraborty, Mr. Debojyoti Goswami

Additional representation in WPA 8033/2024: Mr. Kumar Jyoti Tewari, Ms. Amrita Pandey

### **Sabyasachi Bhattacharyya, J:-**

1. The two writ petitions are inter-connected. The protagonists are Dr. Agnidipa Das and Dr. Ranajoy Dutta, who are a married couple having a minor daughter aged about seven years. On September 6, 2022, Ranajoy came to the house of Agnidipa and took their minor daughter Arya to drop her at school. Agnidipa filed a *habeas corpus* petition bearing WPA (H) No.55 of 2022 on the allegation that Ranajoy never returned the child. On September 13, 2022, a Division Bench of this Court directed Ranajoy to return the child to Agnidipa and fixed the manner and modalities of visitation of the child by her father.

2. Agnidipa, the mother, in the meantime applied for passport of her daughter and was called for interview on December 23, 2022 when allegedly the sister of Ranajoy accompanied them to the passport office.
3. The passport was duly granted. Ranajoy, however, lodged a complaint with the Passport Authority on May 9, 2023 against grant of passport of their minor daughter.
4. In the meantime, Ranajoy had filed an application on May 2, 2023 in the Alipore Court seeking custody of the minor daughter, where he prayed for 14 days" custody.
5. The Trial Court allowed such prayer of Ranajoy. The said order, however, was stayed in a revisional application bearing CO No. 1632 of 2023 passed by a co-ordinate Bench on the challenge by Agnidipa.
6. On May 20, 2023 the father Ranajoy sought the child"s passport for a foreign tour.
7. On June 15, 2023 a show-cause notice was served on the mother by the Passport Authority, to which a reply was filed by her on June 26, 2023, whereupon the mother was called for personal hearing on December 27, 2023. She appeared before the Deputy Passport Officer on January 10, 2024.
8. Being aggrieved with the delay in taking a decision by the Passport Authority, the father preferred WPA No. 28521 of 2023, which was disposed of on January 31, 2024 by this Court directing the Passport Authority to hear both the parties if necessary and pass a reasoned order.
9. On February 12, 2024, Ranajoy was given a hearing, although no further hearing was given to Agnidipa.
10. On February 29, 2024, Agnidipa alleges, she was served with an e-mail asking to show cause but only two minutes thereafter, another e-mail was sent by the Passport Authority intimating Agnidipa that her daughter"s passport had been impounded.
11. The said order dated February 28, 2024 impounding the passport was received by the petitioner/mother allegedly on March 2, 2024, challenging which the petitioner/mother has preferred WPA No. 7360 of 2024.
12. On the other hand, the father Ranajoy has moved WPA No. 8033 of 2024 *inter alia* seeking documents from the Passport Authority regarding Annexure "C" to the passport application for the couple"s daughter and for a direction on the Passport Authorities to initiate proceedings under Section 10 of the Passports Act, 1967 (for short, "the 1967 Act") against Agnidipa. In the said writ petition, penal measures have also been sought under Section 12 of

the said Act against Agnidipa. The father Ranajoy further seeks a cancellation of the passport of his wife on the allegation that she had suppressed material facts in obtaining the passport of their daughter.

- 13.** Learned counsel for the mother, Dr. Agnidipa Das argues that the Order dated February 31, 2024 passed in WPA No. 28521 of 2023 directing the Passport Authority to give hearing to both parties was flouted, since only Ranajoy and not Agnidipa was given a hearing thereafter.
- 14.** Secondly, although an e-mail asking Agnidipa to show cause was sent on February 29, 2024, within two minutes, the Passport Authority sent a further e-mail intimating the mother that the passport of her daughter had been impounded on the previous day, that is, on February 28, 2024.
- 15.** A copy of the said Order was served only on March 2, 2024. Thus, the principles of natural justice were violated.
- 16.** It is next argued that the provisions of Section 10(3)(b) of 1967 Act are not attracted; as such, the child's passport ought not to have been impounded. The said provision grants a discretion on the Passport Authority by use of the word "may". Moreover, it is to be seen whether the alleged suppression/information was material in the context.
- 17.** The impugned order, it is argued, has failed to consider that the consent of the parent not having custody is not a material consideration for grant of passport and, as such, the fact regarding obtaining or not getting consent of the other parent is not germane or material at all, which is necessary for coming within the purview of Section 10(3)(b). In support of the submission, learned counsel for the mother cites the following judgments:
- i) *L. Deepika Vs. Union of India and others, reported at 2022 SCC*  
*OnLine TS 2481; ii) Juvairiya v. Regional Passport Officer, reported at 2014 SCC*  
*OnLine Ker 4040; iii) Rabeeha v. Ministry of External Affairs, reported at 2015 SCC*  
*OnLine Ker 16785; iv) S. Nancy Nithya v. Govt. of India & Anr., reported at 2022 SCC*  
*OnLine Kar 1614.*
- 18.** It is next argued that Section 10(3), being a discretionary power, requires application of mind whether incorrect information would be material, which is entirely lacking in the cryptic decision of the Passport Authority. Learned counsel cites *Kamal Kumar Narottam Dash Parekh v. Govt. of India*

(*Ministry of External Affairs*), reported at (2010) 1 CHN 834 in support of such contention.

- 19.** It is to be noted that the petitioner/mother ticked option “a” in good faith on the basis of the representation of the father that he was travelling to Delhi. Thus, there was no suppression of any fact on the part of the mother. Further, the father himself had relied on the passport by asking for the same on May 20, 2023 for the purpose of a trip abroad and had also sought an order allowing him to take the minor daughter from the custody of the mother for 14 days.
- 20.** Moreover, the statements made in WPA No. 8033 of 2024 clearly show that the father admitted knowledge of the passport and intended to take advantage of the same and cannot now resile from such position by seeking impoundment.
- 21.** In the present case, the mother had nothing to gain by making a false statement and, as such, the alleged suppression cannot be material. In support of such contention, learned counsel for the mother cites *Mariam Fasihuddin and another v. State by Adujadi Police Station and Another*, reported at 2024 SCC OnLine SC 58.
- 22.** There is no material misrepresentation or suppression or wrong information provided by the mother in Annexure “C”, it is contended, as neither pendency of custody case or grant of visitation right to the father nor non-availability of the consent of the father would have materially altered the fate of the passport application as Annexure “C” is nothing but a document in the nature of an indemnity bond issued by the mother in favour of the Passport Authority.
- 23.** It is argued on behalf of the mother that the Passport Authority, in its submissions, has admitted that it would be bound to issue a passport to the minor daughter even if option “e” of Annexure “C” had been ticked as post-submission of Annexure “C”, the Passport Authorities do not have any power to either withhold or reject the passport application.
- 24.** It is next argued on behalf of Agnidipa that the impugned order is without reasoning and has been passed in contravention of principles of natural justice, in particular *Audi Alteram Partem*.
- 25.** With regard to the father’s application, it is argued on behalf of the mother that the prayer of cancellation of the mother’s passport is beyond the ambit of Section 10 of the Passports Act. Moreover, to initiate such a proceeding, a prior sanction from the Central Government is required by the Passport Authority under Section 15 of the 1967 Act, which has not been taken in the present case.

**26.** It is argued that it is beyond the authority of the Passport Authority to initiate proceedings under Section 12. For such proposition, the mother relies on *Citizens Legal Right Association and another v. Union of India and others*, reported at AIR 2020 Ker 191.

**27.** The father Ranajoy argues that the impugned order dated February 28, 2024 does not suffer from violation of principles of natural justice. The mother was granted personal hearing previously and, as such, not giving further hearing after the order dated January 31, 2022 in WPA No. 28521 of 2023 does not vitiate the impugned order.

**28.** The impugned rejection of passport of the child, it is argued, was clearly in terms of Section 10(3)(b) of the 1967 Act, in view of the mother having suppressed material information and having furnished wrong information, deliberately not disclosing the pendency of the custody matter and making false statement that the father was out of station in Delhi. Learned counsel for the father submits that documents have been produced to show that he was very much in Kolkata at the relevant juncture.

**29.** Learned counsel for the father argues that the mother, while submitting Annexure "C", had consciously supplied wrong information, from which she cannot withdraw/retract/improve.

**30.** If the order cancelling the passport is interfered with, it would be giving premium to the mother to leave the country with the child, defeating the visitation rights of the father. She has already used the passport for travelling to Thailand which has not been disclosed to the court which is in seisin of the custody matter, from which the intention of the mother is very clear.

**31.** If the other entries in Annexure "C" would have been ticked by the mother, the outcome of the application for passport would have been different.

**32.** It is further argued by learned counsel for Ranajoy that Section 12(1)(b) of the 1967 Act provides that if anybody knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under the Act or without lawful authority alters or attempts to alter the entries made in a passport, he or she shall be punishable with imprisonment for a term which may extend to two years or with a fine which may extend to five thousand rupees or with both. The passport authority, accordingly, should have taken steps against the mother by cancellation of her passport and imposing penal action.



- 33.** The Passport Authority takes a neutral stand and argues that since the mother deliberately suppressed information and duly admitted in her reply to the show-cause notice that she had options(d) and (e) in Annexure “C” but did not fill up the same, the cancellation of the passport for suppression of material information was justified.
- 34.** Ranajoy produced the attendance record of IPGMER and SSKM Hospital for the month of December, 2022 which showed that the mother had obtained the passport on the basis of wrong information that the father was travelling out of station at the relevant juncture. The father, during hearing, was asked by the Passport Authority as to whether he had consent for grant of passport but he denied to give such consent. Accordingly, the Passport Authority rightly cancelled the passport of the child. Insofar as the father’s prayer for initiation of criminal proceedings is concerned, the same is argued by learned counsel for the Passport Authority to be frivolous. The relief sought by Ranajoy against Agnidipa, it is submitted, amounts to arbitrary and unlawful interference with her right to privacy. A public authority is not legally obliged to give or provide information if it falls under Clause (j) of Section 8(1) of the Right to Information Act, 2005. The prayer of the father for getting the documents pertaining to the mother’s application for passport is, thus, barred by law. Learned counsel for the Passport Authority refers in this context to the decision of the *Thalappalam Service Cooperative Bank Limited and others Vs. State of Kerala and others*, reported at (2013) 16 SCC 82.
- 35.** The provisions of Section 12(1)(b), it is argued, is not applicable in the facts and circumstances of the present case.
- 36.** Upon hearing learned counsel for the parties, it is seen that the plinth of the decision to cancel the passport of the child was suppression of material information and/or furnishing of wrong information by the mother.
- 37.** In order to check the applicability of such ground, it is to be considered whether the information suppressed by the mother was „material” in the context. It has been held by different High Courts consistently that the consent of a parent not having the custody of a child is not material for grant of passport of the child. The judgments in the matters of *L. Deepika (supra)*, *Juvairiya (supra)*, *Rabeeha (supra)*, *S. Nancy Nithya (supra)* are germane.
- 38.** Hence, the alleged suppression of information could not have brought any material benefit to the mother and as such, cannot be a basis of cancellation of the passport on the ground of deliberate suppression, as held in *Kamal Kumar Narottam Dash Parekh (supra)*. Within the purview of Section 10(3)(b), the *mens rea* or the motive of nonfurnishing of information or

suppression is to be looked into. To constitute “suppression”, there has to be a deliberate act of hiding material information, which is absent in the present case. It cannot be verified whether the father had actually given an impression to the mother that he was travelling out of Kolkata at the material point of time. Thus, it cannot be found conclusively that the suppression was material or deliberate.

**39.** Certain other important factors also have to be taken into consideration. The father Ranajoy had knowledge of issuance of the passport since May 20, 2023 when he had asked for their daughter’s passport for the purpose of a foreign trip with the child. Moreover, in WPA No. 8033 of 2024, the father admitted knowledge of the passport. Hence, the challenge to the grant of passport post facto reeks of *mala fides* on the part of the father.

**40.** Another important facet of the case is that the sister of Ranajoy, the father, had accompanied the mother to the passport office for the purpose of interview for grant of passport to the child. Thus, the circumstances indicate that at the juncture of issuance of the passport, the father did not have any objection to the same being granted. The facts of the present case indicate the implicit consent of the father in grant of the passport, as he also relied on the same, asking for the same for his own purpose of travelling with the child. Being thwarted in such endeavour due to the stay of the trial court’s order to have 14 days’ custody, his wrath apparently turned on the mother, seeking to have the child’s passport impounded.

**41.** In considering the true connotation of the expression “wrong information” in Section 10(3)(b) of the 1967 Act, the principle of *Noscitur a Sociis* is to be applied. The immediately preceding like phrase “suppression of material information” and “wrong information” have to be read in similar context. Thus, the wrong information, like the information suppressed, also has to be „material” in the context.

**42.** As discussed above, the lack of consent of the other parent has no bearing in grant of passport. Thus, the said fact could not also have been material for impounding passport within the contemplation of Section 10(3)(b). The Passport Authority has argued that it could not have withheld consent for grant of passport even if the father had not granted consent. As such, there could not have been any justified reason for the mother to deliberately suppress such information from the Passport Authority.

**43.** Hence, the very premise of applicability of Section 10(3)(b) is baseless and could not be a valid ground for impounding the passport of the child.



- 44.** Insofar as the father's writ petition is concerned, the proviso to subclause (b) of Section 10(3) stipulates 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. Even if the passport authority was held to be justified in impounding the passport of the minor child, the same would not furnish a ground for applying the proviso, as the passport referred to in the proviso has to pertain to the same person who obtains the other passport.
- 45.** If the passport of the child, an individual in her own right, was to be impounded under Section 10(3)(b), the said passport would be for a different person (the child) than the mother, whose passport could not have thus been impounded on the ground that her child's passport has been impounded.
- 46.** To apply the proviso, both the passports, the one which is impounded in the first place under Section 10(3)(b) and the other passport which is to be cancelled, have to belong to the same person, which is not the case here. Thus, the prayer for cancellation of the mother's passport is not tenable in the eye of law.
- 47.** Section 12 of the 1967 Act provides that whoever knowingly furnishes any false information or suppresses any material information with a view to obtain a passport or travel document shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or both. In the present case, the mother having been held above not to be guilty of such offence, there does not arise any question of imposing such penalty on her.
- 48.** In any event, the Passport Authority is not the appropriate authority who can impose such punishment. Thus, the prayer in that regard made by the father is not maintainable in law.
- 49.** The mother's argument that no previous sanction of the Central Government has been taken for instituting a prosecution for an offence under the Act, also holds good in the facts of the present case. Thus, also on the ground of contravention of Section 15 of the 1967 Act, the prayer of the father for invocation of Section 12 is not maintainable in law.
- 50.** In view of the above observations, the impugned order dated February 28, 2024 impounding the passport of the minor child Arya was bad in law and has to be set aside.
- 51.** Accordingly, WPA No. 7360 of 2024 is allowed on contest, thereby setting aside the impugned order dated February 28, 2024 impounding the passport of the minor Arya Dutta and restoring the said passport.

- 52.** In view of the above observations, WPA No. 8033 of 2024 is dismissed on contest.
- 53.** However, it is made clear that nothing in this order shall affect the rights and contentions of the parties in the pending custody matter and it will be open to the father Ranajoy to approach the court which is in seisin of the custody matter for appropriate orders restraining the mother from taking the child out of the country, if the father is otherwise entitled in law to do so. If such an application is filed, the same will be decided in accordance with law upon giving adequate opportunity of hearing to both the parties, without being prejudiced in any manner by any of the observations made herein.
- 54.** There will be no order as to costs.
- 55.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

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