

A Case Analysis: Of the Maneka Gandhi Case

By Saakshi Sharma July 26, 2016

BRIEF FACTS OF THE CASE –

On the 4th of July, 1977, Smt. Maneka Gandhi received a letter from the Regional Passport Office, Delhi, asking her to submit her passport (No. K-869668) within seven days from the day on which she had received such letter, i.e. before 11th July 1977. The letter stated that it had been the decision of the Government of India to impound her passport under Section 10(3)(c) of the Passport Act 1967. The grounds for such an impounding, as told to her, was “public interest.”

Smt. Maneka Gandhi immediately sent a letter to the Regional Passport Officer, inquiring about the grounds on which her passport had been impounded. She also requested him to provide a copy of the ‘Statement of Reasons’ for making of such an order. The reply sent by the Ministry of External Affairs was that it was the decision of the Government of India to impound the passport in the interest of the general public. Also, there were orders to not issue her a copy of the Statement of Reasons. Smt. Maneka Gandhi thus filed a petition with regards to the matter.

JUDGEMENT OF THE CASE –

It was held that Section 10(3)(c) of the Passport Act confers vague and undefined power on the passport authorities, it is violative of Article 14 of the Constitution since it doesn’t provide for an opportunity for the

aggrieved party to be heard. It was also held violative of Article 21 since it does not affirm to the word “procedure” as mentioned in the clause, and the present procedure performed was the worst possible one. The Court, however, refrained from passing any formal answer on the matter, and ruled that the passport would remain with the authorities till they deem fit.

RATIO DECIDENDI OF THE CASE –

Ratio Decidendi is commonly defined as the reasons for the judgement. It basically refers to the material part of the judgement without which the judge would have been unable to reach to the present conclusion of the case.

Before stating the ratio of the case and the reasons for the same, let’s first look at Section 10(3)(c) of the Passports Act 1967 – “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;”

Following is the ratio of the case, with an analysis of the same –

1. Section 10(3)(c) of the Passport Act is violative of Article 14 of the Indian Constitution –

Article 14 of the Constitution talks about equality before law. This provision is absolutely against arbitrariness or vagueness of any sort as far as the actions of the executive are concerned. Section 10(3)(c) of the Passports Act confers unlimited powers on the passport authorities. Since it is vague in its wordings, the application of such a provision has not been very clearly defined in the Act. Thus, this leaves a lot of scope for the executive to interpret it in whichever way they want, and hence get away with a lot of actions under the guise of varied interpretation.

The provision also leads to arbitrariness in the actions of the executive. The arbitrariness comes from the fact that it is completely in the hands of the passport authorities to decide whether or not, and how to proceed in a particular case. The words ‘deems it necessary’ give the passport authorities complete freedom to act in whichever manner they want, and in whichever cases they want. Thus there is no uniformity or reasonableness in the actions of the passport authorities, and their actions could differ from case to case.

E.P Royappa v. State of Tamil Nadu & Another,[1974] 2 SCR 348, was the judgement applied by the Supreme Court to further justify their views. It was held in this case that Article 14 is one of the pillars of the Indian Constitution and hence cannot be bound by a narrow and inflexible interpretation. Article 14 should thus be given the widest interpretation possible, which also includes reasonableness and arbitrariness of certain provisions of the legislations.

Based on these observations the Court held Section 10(3)(c) of The Passport Act violative of Article 14 of the Constitution.

2. Violation of the Principle of Natural Justice: The Audi AlteramPartem Rule –

The audialterampartem rule is one of the three principles of natural justice, and forms an important part in defining the constitutionality and fairness of any procedure. The literal translation of audialterampartem is “hear the other side”. In a layman’s language it basically means that both the sides should be given the opportunity to present their case before a decision is formulated for the case. In the present case, Maneka Gandhi was denied reasons for the impounding of her passport, which is unfair since every person has the right to know the grounds on which any executive action is being taken against him/her. Also, she was never given a chance to present her own case before the authorities.

The principle of audialterampartem requires that before the final order for the impounding of her passport was passed, Smt. Maneka Gandhi should have been given a chance to approach the authorities and to bring to light her part of the story so that the order for impounding of the passport would have been just. There is always the possibility of arriving at a one sided conclusion when only one party has been heard and the other is denied that opportunity. Thus to keep the orders completely objective and free from bias, it is absolutely imperative that both parties to a situation must be given a chance to put forward their side of the story.

In the present case, during the Court proceedings itself, the passport authorities ultimately ceded to the fact that they had been wrong in not providing Smt. Maneka Gandhi a chance to present her case. Thus, they ultimately agreed to withhold the order and give her a chance to present her case before the concerned authorities. But what is important to note

is that the authorities had been held wrong in the first place, and only to mitigate the blame had they accepted to let her present her case. The final change of events prevented them from being held liable. Otherwise, they were definitely in the wrong and even the Court had held that their action had been arbitrary and contrary to the principles of natural justice.

3. Section 10(3)(c) not Violative of Article 19(1)(A) and Article 19(1)(g) of the Constitution –

Article 19(1)(a) of the Constitution talks about the freedom of speech and expression guaranteed to all citizens of the country. Article 19(1)(g), on the other hand, talks about freedom to carry out any trade and profession. Smt. Maneka Gandhi had alleged that the order to impound her passport also violates these two rights of hers. She alleged that the freedom of speech and expression also includes in its ambit the right to travel abroad to express oneself among the people of other nations. Thus according to her, the freedom of speech and expression also included the right to go abroad to mingle with people, to carry out an exchange of ideas, to be able to converse with the people of other nations, and thus to be able to freely speak and express oneself outside India as well. Now since she had been denied the right to travel out of India due to the impounding of her passport, she alleged that her right to freedom of speech and expression had been violated. The same way, she said that since she was a journalist, it was part of her profession to travel to different parts of the world, to cover news issues. Thus by denying her the opportunity to travel abroad, the passport authorities had violated her right of trade and profession.

It was held by the Court that even though the above mentioned contentions were correct and that such an order would in fact amount to violations of Article 19(1)(a) and 19(1)(g), there was nothing to prove that Ms. Gandhi was scheduled to travel on an official tour at the time the impugned order was passed and her passport was impounded. Neither was there anything to prove that she had some earnest need to travel abroad towards realization of her right of expression under article 19(1), for eg. Public speaking, dancing, literature, art, etc. Thus this argument was rejected and the order was not held to be violative of Articles 19(1)(a) and 19(1)(g).

However, the Court did go on to clarify that if at any point of time in the future she was denied her passport from the government when she needed or wanted to travel abroad to exercise either of the two rights

under 19(1)(a) and 19(1)(g) and the government denied such rights it would be considered to be an infringement of these two fundamental rights.

4. The order is violative of Article 21 of the Indian Constitution.

In the case of *Satwant Singh Sawhney v D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi & Ors*, the Supreme Court held by a majority judgement that the expression 'personal liberty' in Article 21 takes in the right of locomotion and travel abroad, and under Article 21 no person can be deprived of his right to go abroad except according to the procedure established by law. This decision was accepted by the Parliament and the infirmity pointed out by it was set right by the enactment of the Passports Act, 1967.

Keeping in mind this right, Smt. Maneka Gandhi alleged that her right to travel abroad had been violated by the passport authorities. Also, the clause talking about 'procedure established by law' was contended in that the procedure adopted in this case was arbitrary and unfair. Maneka Gandhi contested that the procedure in this particular case was violative of the *audi alteram partem* rule; it was arbitrary in that she was denied the statement of reasons for the impounding of her passport; and it was also violative of her fundamental rights because she was being denied the right to travel abroad under Article 21, without being given valid reasons for the same.

As far as the procedural discrepancy was concerned, the attorney for the government accepted the fact that the actions had been arbitrary and hence she was given the chance to put forward her contentions. Thus that anomaly was taken care of. As far as the question of her fundamental rights was concerned, it was held that true her fundamental right had been violated, but it was in the interest of the general public. The Court has adopted a liberal interpretation of Article 21 in the case, and expanded its ambit by leaps and bounds. However, the Court has refrained from outrightly commenting on this issue in this particular case.

OBITER DICTA OF THE CASE –

- 1. Freedom of Speech and Expression {Article 19(1)(a)} is not bound only to the national territories of India –**

This was a landmark opinion of the Court and one that was highly celebrated by the entire country. The Court in the course of this case opined that the right to freedom of speech and expression, as guaranteed to all the citizens of the country, was limitless in that it had given to the citizens a vast number of rights irrespective of whether they were in India or abroad. The Court held that if the Constitution makers had intended this right to be bound by the territories of the country, then they would have expressly mentioned so as they have done for various other rights, such as the right to settle down freely, or the right to assemble freely. However, since no such words had been added at the end of this provision, the Court felt that it was its duty to give it the widest interpretation possible.

Also, supporting this view was the fact that the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948 and most of the fundamental rights which we find included in Part III were recognised and adopted by the United Nations as the inalienable rights of man in the Universal Declaration of Human Rights. This further supported the view of the Court in that even though Indian Courts may not have jurisdiction outside the territory of India, but these rights as guaranteed by the Indian Constitution would still be maintained since they were now fortified by the Universal Declaration of Human Rights which was adopted by almost all the countries around the globe.

Giving this kind of an opinion was a landmark judgement and even though it may not have the value of a precedent (since it is an obiter), Courts all over the country have adopted this view of the Supreme Court, and used it in their judgements.

2. Article 21 is not to be read in isolation; all violations and procedural requirement under Article 21 are to be tested for Article 14 and Article 19 also.

The Supreme Court in the present case had adopted the widest possible interpretation of the right to life and personal liberty, guaranteed under Article 21 of the Constitution. Bhagwati, J. observed:

“The expression ‘personal liberty’ in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19.”

Also, with respect to the relationship between Article 19 and Article 21, the Court held that Article 21 is controlled by Article 19, i.e., it must satisfy the requirement of Article 19. The Court observed: "*The law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that Article.*" Thus a law "depriving a person of 'personal liberty' has not only to stand the test" of Article 21, but it must stand the test of Article 19 and Article 14 of the Constitution as well.

CONCLUSION

The case is considered a landmark case in that it gave a new and highly varied interpretation to the meaning of 'life and personal liberty' under Article 21 of the Constitution. Also, it expanded the horizons of freedom of speech and expression to the effect that the right is no longer restricted by the territorial boundaries of the country. In fact, it extends to almost the entire world. Thus the case saw a high degree of judicial activism, and ushered in a new era of expanding horizons of fundamental rights in general, and Article 21 in particular.

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TAGS: Constitution of India Articles 14 , 19 (1) (a) and 21; Passports Act , 1967 , Sections 3 , 5 , 6 , 10(3)(c) , 10(5) , 1978 AIR 597 1978 SCR (2) 621; 1978 SCC (1) 248 ,Maneka Gandhi v. Union of India