Court No. - 40

Case :- WRIT - C No. - 35503 of 2023

Petitioner :- Sudheer Kumar Yadav
Respondent :- Union Of India And 2 Others
Counsel for Petitioner :- Neeraj Singh Yadav,Aman Patel
Counsel for Respondent :- A.S.G.I.

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Ms. Swarn Lata Sumar, learned Standing Counsel for the respondent-Union of India.

2. The present writ petition has been preferred for a mandamus commanding the second respondent to issue passport in favour of the petitioner within stipulated time.

3. Learned counsel for the petitioner submits that the petitioner has applied online for passport on 21.07.2023. He further submits that the petitioner was implicated in Case No.8919/2022 (State vs. Madhur Shyam) under Section 143, 188 and 341 IPC, wherein, the petitioner appeared before the trial court and obtained bail. In this backdrop, learned counsel for the petitioner vehemently contended that neither the petitioner is convicted in any case till date nor he is having any criminal history except the aforesaid case. It is also contended that the issue of renewal of passport (while the criminal case is pending against the applicant) has been considered by this Court in ***Writ C No. 8621 of 2022 (Shiv Shankar vs. Union of India) decided on 3.12.2022***, in which, it has been held that for grant/renewal of passport the permission of criminal court, where the criminal case is pending against the applicant, is not necessary and the passport office has been directed to consider the grant/renewal of passport of the petitioner therein without insisting for permission of criminal court concerned. For ready reference, the operation of the order dated 3.12.2022 is reproduced herein below.

"8. We have considered the aforesaid submissions of learned counsel for the petitioner. We have also heard Sri Varun Pandey, learned counsel representing the respondents, who has vehemently opposed the prayer of the petitioner and has submitted that in terms of the provisions contained in Section 6(2)(f) of the Passport Act 1967, the passport authority is bound to refuse to issue the passport under Section 5(2)(c) of the Passport Act, 1967 in this

case for the reason that pendency of criminal proceedings is one of the grounds enumerated in Section 6(2)(f) of the Act of 1967 to deny issuance of passport.

9. Section 6 (2)(f) of the 1967 Act provides that the passport authority shall refuse to issue the passport in various conditions including a situation where proceedings in respect of an offence, alleged to have been committed by the person seeking passport, are pending before criminal court in India. It is undeniable in this case that after lodging of the First Information Report bearing No.0576 of 2020, the charge sheet has also been submitted before the Court concerned by the Investigating Officer, as has been communicated to the petitioner by the letter dated 29.09.2022, which was communicated to the petitioner by the Indian Embassy at Kuwait.

10. Having regard to the provisions contained in Section 6 (2)(f) of the 1967 Act, unless the criminal proceedings are concluded, the passport authority is bound to refuse issuance of the passport, however to meet such exigencies where some frivolous or unsustainable criminal cases are pending, Government of India has issued a Circular dated 10.10.2019. The said circular has been issued in furtherance of an earlier Circular published vide Notification No.GSR 570 (E), dated 25.08.1993. The said circulars dated 10.10.2019 and 25.08.1993 have been issued by the Ministry of Foreign Affairs, Government of India, in exercise of its powers conferred under Section 22 of the Passport Act, 1967 and hence they are statutory in nature and accordingly are binding on all concerned.

11. We may also notice that Office Memorandum dated 10.10.2019 has been issued in reference to the provisions contained in Section 6 (2)(f) of the Passport Act, 1967. As per the Office Memorandum dated 10.10.2019, GSR 570 (E), dated 25.08.1993 exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before the criminal court in India if they produce orders from the court concerned permitting them to depart from India, from operation of the provisions of Section 6 (2)(f) of the 1967 Act. Clause 5 (i) of the Office Memorandum dated 10.10.2019 clearly provides that the provisions of GSR 570 (E) may be strictly applied in all cases, which also clarifies that GSR 570 (E) is a statutory notification and hence it forms part of the Rules.

12. In view of the aforesaid, what we notice is that the Government of India has been conscious of a situation where certain frivolous criminal complaints or cases are lodged against the persons seeking passport and accordingly, has evolved a complete mechanism by issuing Office Memorandum dated 10.10.2019 and Office Memorandum dated 25.08.1993 (GSR 570 (E)). When we examine the facts of the present case, what we find is that the First Information Report has been lodged by the real sister of the applicant and the contents thereof also reflect that the same was lodged in relation to some not so serious family dispute.

13. In view of the aforesaid, denying the petitioner passport only on account of pendency of the aforesaid criminal case does not appear to be equitable. However in terms of the provisions contained in the Office Memorandum issued by the Government of India in the Ministry of External Affairs, dated 10.10.2019 and 25.08.1993, the petitioner will have to seek an order from the court where the charge sheet in relation to the F.I.R. No. 0576 of 2020, P.S. Kotwali, Unnao is pending.

14. Accordingly, the appropriate course which legally is available to the petitioner is to approach the court concerned and seek an order permitting the petitioner to depart from India.

15. However, learned counsel for the petitioner has submitted that the petitioner is presently in Kuwait in connection with his employment and it will be very difficult for him to travel all along from Kuwait to Unnao to seek requisite orders.

16. In view of the aforesaid facts, we permit that application for seeking the requisite order from the Court where the charge sheet in relation to the F.I.R. No.0576 of 2020, P.S. Kotwali, Unnao under Section 452, 323, 504 and 506 is pending, shall be moved through a counsel, who may represent the petitioner. Affidavits and other requisite pleading may be filed by his wife or any other close relative. In case any such application is preferred by the petitioner, the Court concerned shall consider the same and take appropriate decision in accordance

with law considering the provisions contained in Office Memorandums dated 10.10.2019 and 25.08.1993 issued by the Government of India in the Ministry of External Affairs.

17. The decision by the court concerned shall be taken within 10 days from the date any such application is made by the petitioner through his counsel before the Court concerned.

18. Once any such order is passed by the Court concerned, the case of the petitioner for renewal/ re-issue of passport shall be considered and appropriate decision shall be taken by the competent authority within next ten days.

19. With the aforesaid observations and directions, the writ petition is finally disposed of."

4. Per contra, learned counsel appearing for the Union of India has raised an objection and submits that issuance of the passport could be refused under Section 6 (2) (e) of the Passports Act, if in the five years immediately preceding the date of the application, the applicant has 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. He has further raised an objection and placed reliance upon Section 6 (2) (f) of the Passports Act, which states that if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India then also the passport application could be rejected. In absence of permission from the Competent Court, the application of the petitioner cannot be processed.

5. Confronted with this situation, learned counsel for the petitioner submits that leave may be accorded to the petitioner to approach the Competent Criminal Court seeking permission so that application of the petitioner may be considered.

6. Considering the facts and circumstances, we deem it appropriate to permit the petitioner to approach the competent Criminal Court to seek permission. In case any such application is moved within two weeks from today, the same would be considered and decided by the Court concerned, thereafter, the petitioner would be at liberty to press the application for issuing passport before the Passport Authority, which would also be addressed expeditiously in accordance with law.

7. With these observations, the writ petition is ***disposed of***.

Order Date :- 13.10.2023
A. Pandey

Digitally signed by :-
ANAND PANDEY
High Court of Judicature at Allahabad