Court No. - 3

Case :- WRIT - C No. - 8659 of 2023

Petitioner :- Shishir Agrawal
Respondent :- Union Of India State Of U.P. Thru. Prin. Secy. Ministry Of External Affairs Sansad And 3 Others
Counsel for Petitioner :- Hom Narayan Awasthi
Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Vivek Chaudhary,J.
Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner, Sri S.B. Pandey, learned Senior Advocate and Deputy Solicitor General of India assisted by Sri Varun Pandey for the opposite parties no.1 and 2 and learned Standing Counsel for the State.

2. Petitioner has approached this Court for getting a direction issued to the respondents to issue passport to the petitioner. Admittedly, there are two criminal cases pending against the petitioner.

3. We find that as per Section 6(2)(f) of the Passport Act, 1967 one of the grounds for non issuance of a Passport is that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the Criminal Court in India. Of course this provision is subject to the other provisions in this Act. Now, we find that in exercise of powers under Section 22(a) of the Passport Act, 1967 the Central Government has issued a notification dated 25th August, 1993 which reads as under:-

"GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION

New Delhi, the 25th August, 1993

***G.S.R. 570(E)**. - In exercise of the powers conferred by clause (a) of section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs no. G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an*

offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) the passport to the issued to every such citizen shall be issued--

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order;

(b) any passport issued in terms of a(ii) and a(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of a(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

[No.VI/401/37/79]
L.K. PONAPPA, Jt. Secy. (CPV)"

4. The provisions of Section 22 of the Act, 1967 read as under:-

*"**22. Power to exempt**.--Where the Central Government is of the opinion that it is necessary or expedient in the public interest so*

to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification--

(a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions."

5. In this view of the matter, the Bar contained in Section 6(2)(f) of the Act, 1967 is not absolute as has also been considered by a Division Bench of the Delhi High Court in ***Writ Petition (C) 1524/2015; Prashant Bhushan Vs. Union of India and Anr***. wherein it has been held as under:-

"13. We may at the outset point out that Section 6(2)(f) of the Act cannot be interpreted as creating an absolute curtailment of the rights of an applicant for passport. As we could see Section 6(2)(f) has to be read with Section 22 which has empowered the executive to grant exemption to any person or class of persons. In exercise of the said power, the Central Government has carved out certain exceptions by issuing the Notification dated 25.08.1993 under which the powers are conferred upon a judicial officer to exempt any person from the rigour of Section 6(2)(f) of the Act. It is also not out of place to mention that the discretion exercised by the Metropolitan Magistrate is not final but it is always amenable to other remedies available under law. Thus, it is clear that the power conferred under Section 6(2)(f) of the Act is neither unguided nor unfettered and, therefore, the same cannot be regarded as arbitrary. The contention of the learned senior counsel for the petitioner that Section 6(2)(f) has treated un-equals as equals and thus is violative of Article 14 of Constitution of India is equally without any substance. Though there can be no dispute about the well settled proposition that un-equals cannot be clubbed and equal treatment to un-equals is nothing but inequality, in our considered opinion, the same has no relevance to the case on hand. The contention of the petitioner that all persons against whom proceedings are pending before a criminal court in respect of an offence alleged to have been committed cannot be treated under the same category has no legal basis under the criminal justice system. No precedent has been cited before us to substantiate the said contention. The object behind incorporating clause (f) as one of the grounds for refusal of the issuance of passport appears to be that permitting a person facing criminal charges to go abroad is against the interest of the State and society at large. As mentioned above, the

restriction under Section 6(2)(f) is not absolute but the same can be relaxed in appropriate cases with the permission of the court in which the criminal proceedings are pending. Merely because such an order of the court is silent about the time limit, the applicant cannot claim a right for issuance of the passport for full validity period. Though it is open to the applicant to seek further extension, there is no logic in contending that in the absence of fixation of any time limit by the court it has to be presumed that the court has allowed issuance of the passport for full validity period.

14. It is a well settled principle of law that a law made by Parliament can be struck down by courts only on two grounds, namely, lack of legislative competence and violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. It is no doubt true that Section 6(2)(f) of the Act is challenged in the present case on the ground that it is violative of Article 14, however, for the reasons stated supra, we are of the view that Section 6(2)(f) is neither violative of the equality clause nor equal protection clause enshrined in Article 14. It has been held by the courts consistently that presumption of constitutionality is always in favour of a legislation unless the contrary is shown. Parliament and the Legislatures comprising the representatives of the people are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom, particularly where they have stood the test of time, unless it is established that the impugned provision suffers from the vice of legislative competence or impinged the fundamental rights guaranteed in the Constitution. The mere fact that there is some inconvenience arising from the language of a statutory provision and its due implementation cannot be a ground for declaring the same violative of fundamental rights [vide State of AP v. McDowell & Co., (1996) 3 SCC 709, State of Haryana v. State of Punjab, (2004) 12 SCC 673 and K.B. Nagur v. Union of India, (2012) 4 SCC 483].

15. For the reasons stated above, the writ petition is devoid of any merit and the same is accordingly dismissed. However, this shall not preclude the petitioner to take appropriate steps available under law for further extension of validity period or renewal of his passport."

6. The argument that Section 6(2)(f) was arbitrary and unreasonable was repelled, however, considering the Notification dated 25.08.1993 quoted hereinabove, it was held that the restriction under Section 6(2)(f) was not absolute but the same can be relaxed in appropriate cases with the

permission of the Court in which the criminal proceedings are pending. The Court in fact held that the object behind the aforesaid provisions appeared to be that permitting a person facing criminal charges to go abroad was against the interest of the State and Society at large, however, as already mentioned hereinabove in view of the Notification dated 25.08.1993 it was held that the restriction was not absolute.

7. In this view of the matter, we are of the view that the petitioner should move an appropriate application before the Court of criminal jurisdiction where the trial is pending against him seeking permission to go abroad. In case such an application is moved before the Court concerned, the same shall be decided in accordance with law as expeditiously as possible. If such permission is granted, then the petitioner may move appropriate application before the competent Authority of the Passport department of the Government of India citing the judgment referred hereinabove as also the Notification dated 25.08.1993 for issuance of a Passport which shall be considered accordingly in the light of the law on the subject.

8. With these observations, we ***dispose of*** this writ petition.

[Manish Kumar,J.] [Vivek Chaudhary,J.]

Order Date :- 10.10.2023
Sachin

Digitally signed by :-
SACHIN MEHROTRA
High Court of Judicature at Allahabad,
Lucknow Bench