

GAHC010172162024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4332/2024

SASANKA CHAKRABORTY
S/O- SANKAR CHAKRABORTY,
R/O- BAISHAKHI APARTMENT,
FLAT NO- A-2, DOLAIGAON,
P.O, P.S, AND DIST- BONGAIGAON, ASSAM,
PIN-783380

VERSUS

THE UNION OF INDIA AND 3 ORS
MINISTRY OF EXTERNAL AFFAIRS,
REP. BY THE PRINCIPAL SECRETARY, TO THE GOVT. OF INDIA, SOUTH
BLOCK, NEW DELHI-01

2:THE PASSPORT AUTHORITY OF INDIA
REP. BY THE CHIEF PASSPORT OFFICER
PASSPORT SEVA PROGRAMME (PSP) DIVISION
PATIALA HOUSE
TILAKMARG
NEW DELHI-01

3:REGIONAL PASSPORT OFFICER
A DEE TOWER (SECOND FLOOR)

LALMATI
OPP. NIDHI BHAWAN
N.H 37
GUWAHATI-29

4:SENIOR SUPERINTENDENT
REGIONAL PASSPORT OFFICE

A DEE TOWER (SECOND FLOOR)

LALMATI
OPP. NIDHI BHAWAN
N.H 37
GUWAHATI-2

For the Petitioner(s) : Mr. A. K. Hussain, Advocate

For the Respondent(s) : Ms. B. Sharma, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 30.08.2024

Heard Mr. A. K. Hussain, the learned counsel appearing on behalf of the Petitioner and Ms. B. Sharma, the learned Government Advocate appearing on behalf of the Respondents.

2. The Petitioner herein is aggrieved by the non-renewal of the passport of the Petitioner by the Respondent Nos. 3 and 4.

3. The learned counsel for the Petitioner has drawn the attention of this Court to the Office Memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India. In terms with GSR 570(E), it has been mentioned that citizens of India against whom criminal proceedings are pending are exempted from the operation of Section 6(2)(f) of the Passports Act, 1967 if they produce orders from the Court wherein criminal proceedings are pending thereby permitting them to deport from India. In the Office Memorandum dated 10.10.2019, certain instructions were issued. Clause 5(i) and (ii) of the said Office Memorandum being relevant are quoted herein below.

“5(i) The provisions of GSR 570(E) may be strictly applied in all cases. GSR 570(E) is a statutory notification and hence forms part of the Rules. It is to be noted that as per Section 5(2) of the Passports Act, 1967, the passport authority shall by order in writing take a decision whether to issue or refuse a passport, after making such inquiry, if any, as it may consider necessary. Moreover, Section 7 of the Passports Act, provides that a passport or travel document may be issued for a shorter period than the prescribed period if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period. Rule 12 of the Passport Rules, 1980 only states that an ordinary passport shall be in force for a period of 10 years which implies that an ordinary passport cannot be issued beyond a period of 10 years.

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that undertaking as per GSR 570(E) should be complete in all respects and should mention all the pending criminal cases against the applicant. The undertaking will have a note clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected.”

4. In the backdrop of the above, if this Court takes note of the applications which were filed before the Court of the learned Chief Judicial Magistrate, Bongaigaon by the Petitioner and the orders so passed on 17.03.2023 as well as on 09.01.2024, it is seen that the prayer so made is for appropriate directions for renewal of the passport, which obviously the said Court would not have the jurisdiction to do so.

5. Be that as it may, as per the mandate of the Office Memorandum dated 10.10.2019, the Court before which a criminal proceedings is pending can very well pass an order for issuance of a short validity passport of one year validity or for the period specified by the Court, when there arises a need to travel abroad

for some urgent business.

6. The learned counsel for the petitioner in view of the above observations submits that he may be permitted to move the Court before whom the criminal proceedings are pending so that appropriate orders are passed so that the passport authority can renew the passport in terms with the Office Memorandum dated 10.10.2019.

7. Ms. B. Sharma, the learned counsel for the Respondent Nos. 1 to 4 submits that the passport authority would have no objection if the instructions contained in the Office Memorandum dated 10.10.2019 is duly complied with.

8. Taking into account the above, this Court disposes of the instant writ petition thereby granting liberty to the Petitioner to approach the Court of the learned Chief Judicial Magistrate, Bongaigaon before whom PRC Case No.268/2019 is pending to apply for the No Objection in terms with the Office Memorandum dated 10.10.2019. Upon such application being filed, the learned Chief Judicial Magistrate, Bongaigaon shall duly apply its mind on the basis of the said Office Memorandum as well as the observations made hereinabove.

9. In addition to that the Court shall also take due note of the judgment of the Supreme Court dated 27.09.2021 passed in the case of ***Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation.***

10. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant