

Reserved on 04.04.2024

Delivered on 24.05.2024

Neutral Citation No. - 2024:AHC-LKO:39431-DB

Court No. - 3

Case :- WRIT - C No. - 3119 of 2024

Petitioner :- Safat Hussain

Respondent :- Union Of India Thru.Secy. Mionistry Of
External Affairs And Another

Counsel for Petitioner :- Satendra Kumar
(Singh),Abhishek Misra

Counsel for Respondent :- A.S.G.I.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

(Delivered by Hon'ble Mrs. Sangeeta Chandra,J.)

1. This petition has been filed praying for a Mandamus to be issued directing the Regional Passport Officer (responent no.2) to renew the Passport of the petitioner earlier issued on 06.09.2013, which has expired on 05.09.2023.

2. It is the case of the petitioner that the petitioner was intending to travel abroad and, therefore, made an application on 21.09.2023 registered as LK3078575222823. In spite of such application being made, his passport was not renewed. He tried to contact the officer concerned and he was informed on 15.02.2024 that the Police verification report was not clear/ favourable as some criminal cases were shown to be pending against the petitioner. As per the police report, the petitioner is an accused in Case Crime No.122 of 2021 under Sections 147, 323 and 325 of the I.P.C., P.S. Kursi, District Barabanki.

3. It has been submitted by the learned counsel for the petitioner that he has been falsely implicated in the matter. He had surrendered before the Trial Court and he was enlarged on bail on 23.08.2022. Another criminal case No.118 of 2022 under Sections 323, 504 and 506 of the I.P.C. has been registered against the petitioner at P.S.

Kursi, District Barabanki and in the said case also the petitioner has surrendered before the Trial Court and has been enlarged on bail on 07.03.2024. A third criminal case/ N.C.R. No.66 of 2016 under Sections 323 and 504 of the I.P.C. has been shown to be registered at Police Station P.S. Kursi, District Barabanki. In the said third criminal case, the petitioner has approached this Court in an Application under Section 482 Cr.P.C. No.7260 of 2018, this Court by its order dated 20.12.2018 has been pleased to quash the charge sheet dated 01.04.2017.

4. It has been submitted by learned counsel for the petitioner, on the basis of Section 5 of the Passport Act, that an application for issuance of passport may be made to the Passport Authority accompanied by all documents as are shown to be necessary in the Rules and the Passport Authority after making such enquiry as it may consider necessary, issue passport or travel documents in respect of one or more foreign countries specified in the application allowing the applicant/ the passport holder to travel to such countries or refuse to issue such passport. In case the Passport Authority refuses to issue passport, brief statement of its reasons for making such order shall be furnished to that person on demand.

5. It has also been argued that under Section 6 of the Passport Act, passport can be refused subject to the various conditions. Section 6 of the Passport Act is quoted hereinbelow:-

“6. Refusal of passports, travel documents. etc.

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

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(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

(a) that the applicant is not a citizen of India.,

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, 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;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

6. On the basis of provisions of Section 6 of the Act, the counsel for the petitioner says that Section 6 applies only for issuance of passport and not for renewal of passport, and, therefore, the refusal of the Passport Officer on the ground that criminal proceedings are pending against the petitioner is illegal and arbitrary.

7. Learned counsel for the petitioner has also relied upon judgment rendered by High Court of Delhi in Criminal Appeal No.686 of 2018: *Ashok Khanna Vs. Central Bureau of Investigation*; decided on 07.11.2019, that under sub-clause (f) of sub-Section (2) of Section 6, the grounds for refusal to issue fresh passport are given and not grounds for refusal of renewal applications.

8. Learned counsel for the petitioner has further argued on the basis of judgement rendered by two Division Benches of this Court in Writ-C No.29605 of 2022: *Basoo Yadav Vs. Union of India and others*; decided on 16.12.2022 and in Writ-C No.29346 of 2023: *Akash Kumar Vs. Union of India and others*; decided on 16.10.2023, that registration of only NCR without any orders of any competent Trial Court/ Magistrate for the Police to register F.I.R. and investigate shall not be treated as criminal proceedings to be pending against the accused.

9. Learned counsel for the petitioner has also placed reliance upon judgement rendered by Hon'ble Supreme Court in the case of *Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation (IA 52346/2021 in Criminal Appeal No(s). 1343/2017)*, where the Supreme Court has held that the Passport Authority cannot refuse renewal of passport only on the ground of pendency of criminal Appeal.

10. Learned counsel for the petitioner has also placed reliance upon a judgement rendered by the Single Judge of the Telangana High Court in *Ravikanti Venkatesham Vs. the Union of India*, decided on 05.12.2023 that merely

because a person is an accused in a case, it cannot be said that he cannot hold or possess a passport.

11. The Hon'ble Single Judge of the Telangana High Court referred to the judgement of the Hon'ble Supreme Court rendered in the case of *Menaka Gandhi Vs. Union of India* and other, reported in AIR 1978 SC 597, and observed that right to travel abroad is a part of personal liberty and the right to possess a passport can only be curtailed in accordance with the law and procedure for refusal to issue passport must be just, fair and reasonable.

12. We do not wish to make any observations on the law as settled by Hon'ble Supreme Court in the case of *Menaka Gandhi* (supra).

13. We, however, find that all other judgments which the counsel for the petitioner has placed reliance upon, are inapplicable on the facts of the petitioner's case. The petitioner has at least two criminal cases pending against him. Also, it has been stated in paragraph-6 of the writ petition that his passport expired on 05.09.2023 and he filed an application for renewal of passport only on 21.09.2023. No renewal of an expired passport can be made. Only a fresh passport can be issued and for issuance of fresh passport, the Passport Authority has to strictly follow the provisions of the Act including Section 6(2)(f).

14. Learned counsel for the respondent has placed reliance upon a Coordinate Bench decision of this Court in Writ Petition No.31723 (M/B) of 2018: *Salim Khan Vs. Union of India and others*, where the Court was considering a similar case of the petitioner who wanted to go for pilgrimage and had applied for a passport, which was refused on the ground that a criminal case being pending against him. The Court considered Section 6(2)(f) of the Act and also a Notification issued by the Central Government dated 25.08.1993 in terms of exercise of its powers under Section 22(a) of the Passport Act. The Division Bench quoted the Notification dated 25.08.1993 in its order. The relevant paragraphs of the order dated 20.11.2018 is quoted hereinbelow:

"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 be issued to every such citizen shall be issued--

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(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)"

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."

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."

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."

15. We are in respectful agreement with the view expressed by Hon'ble Division Bench in its judgement and order dated 20.11.2018 in the case of **Salim Khan** (supra). We **dispose of** this petition with a direction to the petitioner to move an appropriate application before the Trial Court where criminal proceedings are pending against him to seek permission to go abroad. If such permission is granted, then the petitioner may move an appropriate application before the Competent Authority, for issuance of a passport, which shall be considered in the light of the provisions of the Act and the law settled by Hon'ble Supreme Court in the case of **Prashant Bhushan Vs. Union of India and Another** in Writ-C No.1524 of 2015.

[Justice Brij Raj Singh] [Justice Sangeeta Chandra]

Order Date :-24/05/2024

Rahul