

Neutral Citation No. - 2024:AHC-LKO:67847

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8872 of 2024

Applicant :- Kalektar Tiwari @ Sanjay Tiwari

Opposite Party :- Union Of India Thru. Secy. Deptt. Of External Affairs New Delhi And 2 Others

Counsel for Applicant :- Ranjana Agnihotri, Jeya Rai, Ratnesh Kant Agnihotri

Counsel for Opposite Party :- A.S.G.I., G.A.

Hon'ble Saurabh Lavania, J.

1. The present application has been filed seeking following main relief:-

"I. Wherefore it is most respectfully prayed that this Hon'ble Court may kindly be pleased to set aside the impugned order dated 19.09.2024 passed by the Learned Civil Judge (Junior Division)/F.T.C-II, Pratapgarh, as contained in Annexure No. 1 to this petition.

II. It is further prayed that Learned Civil Judge (Junior Division)/F.T.C. - II, Pratapgarh be directed to pass a fresh order permitting the petitioner to travel abroad for work.

III. It is further prayed that this Hon'ble Court may kindly be pleased to stay the impugned order dated 19.09.2024 passed by the Learned Civil Judge (Junior Division)/F.T.C- II, Pratapgarh till disposal of this petition"

2. It is stated that criminal proceedings against the applicant are pending before the Civil Judge (Junior Division)/F.T.C-II, Pratapgarh (in short 'trial Court') in Criminal Case No. 15570/2022, Crime No.151 of 2022 (State Vs. Kalektor Tewari alias Sanjay Tiwari & Ors.) under Section 323/504/506 IPC, P.S. -Aaspur, District -Pratapgarh.

3. It is stated that in the said case, on account of the fact that the passport issued in favour of the applicant expired on 01.09.2024, an application seeking permission for the purposes of renewal of passport was preferred before the Court concerned, as the permission as per law is required, and thereupon, the trial Court passed the impugned order dated 19.09.2024, whereby partly allowed the application.

4. It is stated in view of the fact that passport of the applicant was valid upto 01.09.2024, the impugned order dated 19.09.2024 is unsustainable in law and is liable to be set aside by this Court.

5. The operative portion of the impugned order dated 19.09.2024 is hereby extracted hereunder:-

" पत्रावली पेश हुयी। प्रार्थी के प्रार्थना पत्र दिनांकित 15.05.2024 को पूर्व नियत तिथि पर सुना जा चुका है। पत्रावली वास्ते आदेश नियत है।

प्रार्थी ने अपने प्रार्थना पत्र 15.05.2024 में कथन किया है कि प्रार्थी कलेक्टर तिवारी सुत सत्यनारायण तिवारी नि० ग्राम महड़ौरा थाना आसपुर देवसरा, प्रतापगढ़ का एक शांति प्रिय व्यक्ति है प्रार्थी मर्चेन्ट नेवी में बतौर कर्मचारी कार्य करता है। श्रीमान जी के न्यायालय में प्रार्थी के विरुद्ध राज्य बनाम कलेक्टर तिवारी मु०अ०सं० 151/2022 धारा-323, 504, 506 भा०दं०वि० में अभियुक्त है। प्रार्थी ने जमानत ले लिया है। प्रार्थी को पासपोर्ट नवीनीकरण की आवश्यकता है। अतः श्रीमान जी से प्रार्थना है कि प्रार्थी का पासपोर्ट नवीनीकरण कराये जाने का आदेश प्रदान करें।

उक्त पासपोर्ट नवीनीकरण प्रार्थना पत्र दिनांकित 15.05.2024 पर वादी मुकदमा द्वारा आपत्ति कर कथन किया गया है कि प्रार्थी अपने घर अपनी लड़की के साथ अकेले रहती उसके पति बाहर रह कर गार्ड की नौकरी करते हैं, जिसका वेजा फायदा उठाकर संजय तिवारी उर्फ कलेक्टर ने प्रार्थिनी को मारापीटा उसका ब्लाउज फाड़ दिया उसका बाल पकड़ कर गिराकर बेपर्दा कर दिया और अब चुपके चुपके जमानत करवा बाहर भाग जाना चाहते अतएव ऐसी स्थिति में मुकदमें के निस्तारण तक उनके विदेश जाना रोका जाना न्यायहित में आवश्यक है। अतः प्रार्थना है कि संजय तिवारी द्वारा दिया गया प्रार्थना पत्र निरस्त करने की कृपा की जाय।

उक्त प्रार्थना पत्र पर थाने से आख्या आहूत की गयी। थाना आख्या दिनांकित 22.05.2024 के अनुसार आवेदक कलेक्टर तिवारी आदि उपरोक्त के विरुद्ध मुकदमा अपराध सं० 151/2022 धारा- 323, 504, 506 भा०दं०सं० का वाद पंजीकृत है।

अभियोजन की ओर से उक्त प्रा० पत्र पर कोई बहस नहीं की गयी।

सुना तथा पत्रावली का सम्यक परिशीलन किया।

पत्रावली के सम्यक परिशीलन से यह स्पष्ट है कि प्रार्थी/आवेदक, मुकदमा कलेक्टर तिवारी उर्फ संजय तिवारी आदि में अभियुक्त है। प्रार्थी के विरुद्ध मु०अ०सं० 151/2022 अंतर्गत धारा-323, 504, 506 भा०दं०सं० का वाद वर्तमान में लम्बित है। प्रार्थी द्वारा प्रार्थना पत्र दिनांकित 15.05.2024 के माध्यम से पासपोर्ट नवीनीकरण करने की अनुमति चाही गयी है। प्रार्थी का कथन है कि वह नौकरी के सिलसिले में उक्त पासपोर्ट का नवीनीकरण कराना चाहता है। पत्रावली में अभियुक्त जमानत पर है परन्तु पत्रावली में अभी साक्ष्य प्रारम्भ नहीं हुआ है। थाना आख्या के अनुसार प्रार्थी के विरुद्ध आरोप पत्र न्यायालय में प्रेषित किया जा चुका है।

चूंकि पत्रावली में अभी तक कोई साक्ष्य प्रारम्भ नहीं हुआ है। अतः ऐसे में प्रार्थी के विदेश चले जाने से वाद की कार्यवाही विलम्बित होने की पूर्ण सम्भावना है अतः ऐसे में नवीनीकरण की अनुमति दिया जाना न्यायोचित नहीं है।

आदेश

प्रार्थना पत्र दिनांकित 15.05.2024 वास्ते पासपोर्ट नवीनीकरण न्यायहित में निरस्त किया जाता है।

पत्रावली वास्ते वादी साक्ष्य हेतु नियत तिथि को पेश हो।"

6. It is also stated that right to travel abroad is covered under Article 21 of the Constitution of India and there are various

pronouncements on the issue. He places reliance on the order dated 26.04.2024 passed in ***Application U/S 482 No. 3846 of 2024, Ashok Kumar Vs. State of UP & 3 others*** and the judgment and order dated 02.02.2024 passed in ***Application U/S 482 No. 839 of 2024, Sahanur & Another Vs. Union of India & 2 others***.

7. Considered the aforesaid and perused the record.

8. On the issue involved in this case, the notification of Ministry of External Affairs, New Delhi dated 25.08.1993 and Office Memorandum dated 10.10.2019 issued by Ministry of External Affairs, Government of India, New Delhi, which includes the statutory provision indicated therein, are relevant to be considered by the Court concerned while passing the order on the application seeking permission for renewal of passport.

9.) The notification dated 25.08.1993 reads as under:-

"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 -

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

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

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of 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."

10. Office Memorandum dated 10.10.2019 is extracted hereunder:-

"Office Memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India, New Delhi:-

No. VI/401/1/5/2019

Government of India

Ministry of External Affairs PSP Division

Patiala House Annexe, Tilak Marg.

New Delhi, the 10th October 2019.

OFFICE MEMORANDUM

Subject: Issue of passports to applicants against whom criminal cases are pending before court of law in India.

Reference is invited to Notification No. GSR 570(E) dated 25.8.1993 regarding issuance of passports to applicants who have criminal proceedings pending against them and whose applications would attract the provisions of clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967.

2. GSR 570(E) dated 25.8.1993 is reproduced below for reference:

"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 -

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

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

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of 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."

3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6(2) of the Passports Act, 1967. Section 6(2)(f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. GSR 570(E) dated 25.8.1993 was introduced to give relief to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity for the period specified by the Court.

4. It has been noticed that there are an increasing number of references being received regarding passport applications attracting Section 6(2)(f). It has also been brought to Ministry's notice that there are a number of complex issues involved while processing such applications. During the proceedings in a recent court case, the Hon'ble High Court of Delhi in W.P. (CRL) No. 2844/2018/CRL.M.?. 48674/2018 has directed that guidelines be issued by the Ministry reiterating the procedure for processing of such applications and emphasizing that such applications need to be processed with due care and diligence.

5. In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

(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 be 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 not clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected.

(iii) Extant instructions clearly lay down that such applications should be processed on pre- Police Verification (PV) mode. "Pre-PV" would be mandatory in all cases of applications submitted with GSR 570(E) to ensure that the undertaking submitted by the applicant is properly matched with the criminal cases mentioned in the Police Verification Report (PVR). Hence, such applications should not be accepted under Tatkaal nor such applications be moved to "post-PV" mode or "No-PV" mode without proper justification and approval to be recorded in writing.

(iv) If an undertaking is incomplete or misleading and the applicant is found to have suppressed details of other criminal cases against the applicant, a Show Cause Notice should be issued to the applicant and action initiated against that applicant as per provisions of Section 12 of the Passports Act, 1967. If information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per provision of Section 10 (3) (b) of the Passports Act, 1967 after following the due procedure.

(v) In case where the first police verification (PV) is 'Adverse', secondary police verification may be generated. While a secondary PV is generated, it should be accompanied by a detailed letter seeking clarification regarding the pending criminal cases against the applicant and the status of these cases. Apart from generating secondary PVR, the passport officers may, if considered necessary, call for discreet enquiry through the police authorities by sending the court order submitted by the applicant or even seek verification from other government agencies/departments, as the case may be.

(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered

pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.

(vii) If the details given in the police report and the undertaking submitted by the applicant are matching, then the 'No Objection Certificate' issued by a Court of law submitted by the applicant would take precedence over any 'Adverse' report submitted by the police. In such cases, the 'Adverse' report may be overruled with the written approval of the Passport Officer.

(viii) If the details given in the PVR and the undertaking submitted by the applicant are at variance, then a notice may be issued to the applicant calling for clarification and advising the applicant to submit details of all pending criminal cases as well as to submit a revised No Objection Certificate (NOC).

(ix) If it is brought to the notice of the authority that an applicant has criminal proceedings arrayed against applicant before several courts of law, then the applicant may be advised to get NOC from all the concerned court (s). Normally, the Court Order would make a mention of the cases pending against the applicant as well as the prayer made by the applicant. This may be examined along with the undertaking submitted by the applicant and complaints or other court orders, if any, that have been received against the applicant.

(x) It may noted that GSR 570(E) only exempts and applicant from the operation of Section 6 (2)(f) and none of the other sub-sections of Section 6(2) of the Passports Act, 1967.

(xi) A revised Undertaking under GSR 570(E) is attached at Annexure 'A'.

(xii) Passport Officers may issue an internal SOP along the above lines so that there is no confusion in handling of applications that would attract provisions of section 6(2)(f) of the Passports Act, 1967,

6. The above instructions may be noted for strict compliance with immediate effect.

Annexure 'A' UNDERTAKING (to be submitted on plain paper as per provisions of GSR-570(E) dated 25.08.1993)

I am applying/have applied for passport with the following details:-

(a) Name :.....

(b) Date of Birth :.....

(c) Father's Name:.....

(d) Mother's Name:.....

(e) Present Address:.....

(f) File No./ARN No.:..... Date:.....

2. The Criminal case(s) with following details is/are pending against me:

(if more than one case is pending, details of all cases may be provided. Additional sheet giving complete information may be attached)

(a) Case No.:.....

(b) Name of Court:.....

(c) Details of Investigating Agency (Please provide details of Police station Investigating Officer, etc.):.....

(d) Last date of hearing :.....

(e) Next date of hearing :.....

3. I hereby undertake that I shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

4. I am aware that it is an offence under the Passports Act, 1967 to furnish any false information or to suppress any material information with a view to obtaining a passport or any other travel document.

5. The above information given by me in this undertaking and enclosures is true and I am solely responsible for its accuracy.

(Signature of the Passport applicant)

Name :.....

Mobile No.....

Date:.....

Place:.....

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11. A perusal of the order dated 19.09.2024 reflects that the trial Court has not recorded findings / reasons after taking note of the notification and Office Memorandum referred and quoted above, as also the fact that the passport was valid upto 01.09.2024.

12. Accordingly, this Court is of the view that the order dated 19.09.2024 is liable to be set aside, accordingly, it is set aside.

13. The application is ***allowed***.

14. The trial Court is directed to pass fresh order after taking note of the law on the issue within a period of 15 days from the date of production of certified copy of this order.

Order Date :- 01.10.2024

Jyoti/-