

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.8198 OF 2015

ORDER:

Heard learned counsel for the petitioner and Sri B.Narayana Reddy, learned Assistant Solicitor General.

The petitioner prays for Mandamus declaring the action of 2nd respondent in issuing proceedings No.Hy6078292355915 dated 18.03.2015 refusing to issue computerized passport to petitioner under Section 6(2) of the Passports Act, 1967, as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

Sri B.Narayana Reddy, learned Assistant Solicitor General, made his submissions basing upon the written instructions received by him from the 2nd respondent through communication dated 06.04.2015. The said communication is taken on record.

The case of petitioner is that on 19.06.2007, the respondents issued to him hand written passport bearing No.G-0697614 on 19.06.2007, which is valid up to 18.06.2017. It is not in dispute that the Ministry of External Affairs through public notice o.VIII/410/1/2013 dated 09.12.2013 has cautioned the users of handwritten passport to apply and obtain machine readable passports. The petitioner, on 13.02.2015, applied to the 2nd respondent for re-issue of machine readable passport to him.

It is emphasized that the application made by the petitioner on 13.02.2015 is not for issue of a fresh passport but re-issue of a passport in the machine readable format. Therefore, the case on hand deals with re-issue of passport conforming to the requirement of the International Civil Aviation Organization. The 2nd respondent through the impugned communication declined to extend passport services to petitioner and issue a machine readable passport to him. The impugned communication reads as follows:

“Please refer to your application for passport facilities vide file No.Hy6078292355915 dated 13.02.2015.

It has been decided to refuse passport services to you under

Section 6(2)(f) of Passport Act, 1967 as the criminal appeal proceedings pending before the Hon'ble

II Addl.District and Sessions Judge Court, Guntur vide Crl.Appeal No.381 of 2013. However, this Office would have no objection to extend passport services, if you produce a certified copy of court order permitting you to depart from India. In this regard a Gazette notification issued by the Government of India and proforma of undertaking are enclosed herewith for your information."

Hence, the writ.

The learned counsel for petitioner contends that against the conviction in C.C.No.381 of 2013 in the Court of the Special Judicial Magistrate of the First Class for Prohibition and Excise Offences, Guntur, the petitioner filed Crl.A.No.381 of 2013 in the Court of

II-Additional District and Sessions Judge, Guntur. In Crl.M.P.No.9 of 2015 in Crl.A.No.381 of 2013, the petitioner has obtained suspension of the sentence and same is in force as on date. It is further contended that the *de facto* complainant either before the Court of first instance or before the Appellate Court never demanded

for imposing restrictions on the use of passport by the petitioner.

The petitioner cannot be denied passport services by reference to pendency of Crl.A.No.381 of 2013, more particularly when the application for re-issue is as per the notice issued by the respondents.

The learned Assistant Solicitor General places reliance upon Gazette notification GSR 570(E) dated 25.08.1993 to contend that the denial of passport services is justified under the Gazette dated 25.08.1993. The relevant portion of the Gazette reads as follows:

"G.S.R. 570(E)--In exercise of the powers conferred by clause (a) of section 22 of the Passport Act 1967 (15 of 1967) and in suppression 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)*****

(ii) *****

(iii)*****

(iv)*****

(b) *****

(c)*****

(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 any time during the continuance in force of the passport so issued.”

A bare reading of the notification is sufficient to observe that the Gazette dated 25.08.1993 has no application to the facts and circumstances of the case on hand. In other words, had it been

a case where the issue of passport is considered, then the department is justified in imposing conditions as envisaged in the Gazette dated 25.08.1993 or refuse extending services to petitioner. The petitioner is not restrained by a Court of law from moving out of the country as on date. Further, the petitioner is constrained to apply for machine readable passport in view of change in the format of passport. But for this change in circumstance the petitioner is under no obligation to apply for re-issue of a machine readable passport. When the application is made on 13.02.2015, without considering the totality of circumstances, denial of passport services to petitioner through impugned proceeding is illegal and unsustainable.

It is to be further noted that the Gazette dated 25.08.1993 through clause (d) provides for sufficient safeguards to ensure the presence of the applicant before the Court by taking appropriate undertaking from him.

Having regard to the urgency in the matter and also that no prohibitory order is operating against the petitioner from leaving the country, the writ petition is ordered directing the 2nd respondent to extend passport services for issue of machine readable passport for passport No.G-0697614 subject to the petitioner complying with other conditions and requirements in this behalf and also filing an undertaking as envisaged by clause (d) of Gazette dated 25.08.1993. The 2nd respondent issues

a passport within one week from the date of Gazette of a copy of a copy of this order.
There shall be no order as to costs.

S.V.BHATT, J

16th April, 2015

Note:

Issue cc forthwith B/o Lrkm