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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 5533 of 2015
Date of Decision: -22.9.2015

Ajay Kumar

....Petitioner

vs.

Union of India and ors

....Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: - Mr. Navkiran Singh, Advocate for the petitioner.

Mr. Indresh Goel, Advocate for respondent No. 1

Mr. Yatinder Sharma, Addl. AG, Punjab

.....

Rakesh Kumar Jain, J (Oral)

The petitioner has prayed for a writ in the nature of mandamus seeking directions to respondent No. 3-Commissioner of Police to issue "No Objection Certificate" to the passport authorities regarding the FIRs registered against the petitioner as due to wrong information given by the police to the Regional Passport Office, Jalandhar-respondent No. 2, that the petitioner has been convicted for two years imprisonment in a case, the Regional Passport Officer, Jalandhar is not issuing the passport to the petitioner.

In brief, the petitioner has alleged that he was holding a valid passport No. E4395727 issued on 17.4.2003 which was expired on 16.4.2013. He thereafter, applied for renewal of the passport vide passport

file No. JA2070705085412. It is alleged that the Jalandhar police has given a wrong information to the Regional Passport Office, Jalandhar that since the petitioner has been convicted for two years, therefore, he cannot be issued a fresh passport and as such respondent No.2 has served a notice to the petitioner on 16.1.2014 asking him to give explanation as to why the request for renewal of passport be not declined because the petitioner has been allegedly convicted during the last five years and sentenced to imprisonment for a period of two years or more.

The petitioner gave his explanation/reply dated 22.10.2014 (Annexure P-3) through an advocate but still no action was taken by the respondents and therefore, the petitioner has filed the present petition. It is argued by learned counsel for the petitioner that respondent No. 2 can refuse to issue passport only in terms of Section 6(2) (e) of the Passport Act 1967 (for short 'the Act'). It is also submitted that respondent No. 3 has only provided the information to respondent No.2 that there are about nine FIRs registered against the petitioner but it is admitted that they have no information about the sentence of the petitioner for two years or more.

Learned counsel for respondent No. 2 has submitted that in view of number of FIRs registered against the petitioner and the information supplied by respondent No. 3 that the petitioner has been convicted for a period of two years or more, passport has not been issued to the petitioner. However, it is an admitted fact that no order has been passed by respondent No. 2 in terms of Section 6(2) (c) of the Act. I have heard learned counsel for the parties and perused the record. Section 5, 6 and 11 of the Act are necessary for the purpose of present petition, which are reproduced below.

5. Applications for passports, travel documents, etc., and orders thereon

[(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by [Such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents].

Explanation.- In this section, "named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

(i) a passport under this Act for visiting a named foreign country; or

(ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(1B) Every application under this section shall be in such form and contain such particulars as may be prescribed.]

(2) On receipt of an application [under this section], the passport authority, after making such inquiry, if any. as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

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;

(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.

11. Appeals

(1) Any person aggrieved by an order of the passport authority under clause (b) or clause (c) of sub-section (2) of section 5 or clause (b) of the proviso to section 7 or sub-section (1), or sub-section (3) of section 10 or by an order under sub-section (6) of section 10 of the authority to whom the passport authority is subordinate, may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by the Central Government.

(2) No appeal shall be admitted if it is preferred after the

expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Limitation Act, 1963, (36 of 1963) with respect to the computation of the periods of limitation thereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a copy of the statement of the reasons for the order appealed against where such copy has been furnished to the appellant and [by such fee as may be prescribed for meeting the expenses that may be incurred in calling for relevant records and for connected services]

(5) In disposing of an appeal, the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of representing his case.

(6) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

Section 5 of the Act enables a citizen to apply for a passport on such fee as may be prescribed. On the receipt of the application, as per Section 5(2)(a) (b) of the Act, the Passport Officer would issue the passport and if he is not satisfied than he can refuse to issue passport in terms of Section 5(2) (c) of the Act or as the case may be. Section 6(2) (e) and (f) of the Act provides that the passport can be refused by the Passport Officer if

the applicant has been convicted for more than two years or more or if any proceeding in respect of any offence alleged to have been committed by the applicant is pending before the criminal court. Section 6 of the Act also provides that the refusal can be on any one or more ground provided therein. In case, the passport is not issued or refused by the Passport Officer, appeal under Section 11 of the Act also lies.

Ironically, in the present case, no decision has been taken by the Passport Officer either for the purpose of issuance of passport or refusing the same. Thus, at this stage, no other relief can be granted to the petitioner except directing respondent No.2 to take a decision on the application of the petitioner either refusing or issuing the passport in terms of Section 5(2) (a) and (b) or 5(2) (c) of the Act on the grounds which are mentioned in Section 6 of the Act. The decision would be taken by respondent No. 2 within a period of one month from the date of receipt of certified copy of this order. The decision so taken by respondent No.2 shall also be communicated to the petitioner. The petitioner is at liberty to avail the remedy of appeal, if his application is rejected by respondent No. 2.

Disposed of in the above terms.

(RAKESH KUMAR JAIN)
JUDGE

22.9.2015
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