

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.12225/2015 & CM No.32451/2015 (for direction)

MOHD. SALIM @ REHMATULLAH

..... Petitioner

Through: Mr. Maroof Ahmad for Mr. B.U.
Barqi, Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Amit Mahajan, CGSC with Mr.
Nitya Sharma, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

23.12.2015

1. Proceedings in respect of an offence alleged to have been committed by the petitioner are admittedly pending before a Criminal Court in India. Though the said Criminal Court is stated to have permitted the petitioner to depart from India and to seek renewal of his passport as per Rules and Regulations but without specifying the period for which the petitioner is entitled to have such renewal of his passport.

2. The petitioner is aggrieved from the action of the respondents Ministry of External Affairs and Regional Passport Office, Ghaziabad of renewing his passport for a period of one year at a time and not for a period of ten years as provided in Rule 12 of the Passports Rules, 1980. This petition has been filed

seeking mandamus to the respondents to renew the passport of the petitioner for a period of ten years.

3. The counsel for the respondents appearing on advance notice has referred to the judgment of a Division Bench of Punjab & Haryana High Court in ***Balwinder Singh Vs. Union of India*** (2005) 139 PLR 346 which reproduces Notification dated 25th August, 1993 issued by the Government of India under Section 22 of the Passports Act, 1967. Section 22 of the Passports Act is 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.”*

And the Notification aforesaid is as under:

“No, GSR 570(E) – In exercise of the powers conferred by clause (1) 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.(E), dated the 14th April, 1970, 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 or 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 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 less than one year, but does not specify the period 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)(i) and (a)(ii) 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 Laid 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.”

4. The counsel for the respondents thus states that the respondents, in accordance with the said Notification, are renewing the passport for a period of one year at a time. On enquiry, it is stated that the said Notification is still in force.

5. The counsel for the petitioner per contra refers to an order dated 14th August, 2012 of this Court in W.P.(C) No.4942/2012 titled ***Rajesh Dua Vs. Union of India*** whereby on a similar facts the petition was disposed of by directing the respondents to treat the writ petition as a representation and to pass a reasoned order thereon. Attention is also invited to Section 7 of the Passports Act which is as under:

“7. Duration of passports and travel documents—A passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided that a passport or travel document may be issued for a shorter period than the prescribed period—

- (a) if the person by whom it is required so desires; or*
- (b) 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.”

And it is contended that the respondents, before issuing / renewing the passport for a period of less than ten years ought to have communicated the reasons thereof to the petitioner. The counsel for the petitioner further states that this petition be also disposed of with a similar direction as in order dated 14th August, 2012 *supra*.

6. I am however of the view that no purpose would be served in so disposing of the petition in as much as the respondents, as per Notification aforesaid, in such an eventuality can renew the passport for a period of one year only. It appears that the said Notification was not brought to the notice of this Court while passing the order dated 14th August, 2012 in ***Rajesh Dua*** *supra*.

7. I am of the view that once the Government of India in exercise of powers under Section 22 of the Act has issued a Notification with respect to persons against whom proceedings in respect of an offence alleged to have been committed by them are pending before a Criminal Court of India, providing the period for which the passport would be issued to them, Section 7 of the Act *supra* would have no application to such persons.

8. The petitioner thus has to either challenge the Notification aforesaid or to obtain an order from the Criminal Court where he is being prosecuted, for having his passport renewed/issued for a period of more than one year.

9. The petition is disposed of giving liberty to the petitioner to avail either of the aforesaid two remedies.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 23, 2015

‘pp/bs’..