

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

Date of Decision: 7th January, 2016

+ W.P.(C) 1524/2015

PRASHANT BHUSHAN

..... Petitioner

Through: Sh. Jayant Bhushan, Sr. Adv. with
Sh.Pranav Sachdeva and Ms.Neha
Rathi, Advocates

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Sh. Sanjay Jain, ASG with Sh.Anurag
Ahluwalia, CGSC, Sh.Akash Nagar &
Ms.Pallavi Shali, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

: **G.ROHINI, CHIEF JUSTICE:**

1. The petitioner was issued a passport on 03.05.2006 under the Passports Act, 1967 (hereinafter referred to as 'the Act') valid for a period of ten years.
2. The petitioner made an application on 26.06.2014 for re-issuance of the passport since leaves in his passport booklet had exhausted. In the said application the petitioner had mentioned the details of the cases that were registered against him for the alleged violation of Section 144 of Cr.PC and Section 3 of Prevention of Damage to Public Property Act, 1984 which are pending in Patiala House Court namely FIR No. 71/2012 and 72/2012 on the file of PS Tughlak Road and FIR No.130/2012 on the file of PS Parliament Street. The petitioner was informed that in view of the pendency of the criminal

cases, it is necessary for him to obtain No Objection Certificate (NOC) from the Court where the criminal cases are pending. Accordingly the petitioner moved the Court of Metropolitan Magistrate at Patiala House Courts, seeking NOC for reissuance of his passport. By order dated 02.09.2014, the Metropolitan Magistrate, Patiala House Courts, New Delhi issued NOC for renewal as per Rules. However, the Respondent No.2/Passport Officer, by order dated 15.09.2014, issued the passport with validity for a period of one year only stating that the petitioner is eligible for a short validity passport in terms of the Notification dated 25.08.1993 and that the request of the petitioner for re-issue of the passport for full validity cannot be acceded to unless the court issues a fresh order in that regard.

3. Aggrieved by the same, this petition has been filed seeking a declaration that the Notification dated 25.08.1993 is unconstitutional and void and that the petitioner is entitled to re-issuance of passport for full validity of ten years. Subsequently, the writ petition has been amended seeking an additional prayer to quash Section 6(2)(f) of the Act on the ground that it is violative of Article 21 read with Article 14 of the Constitution of India.

4. We have heard the learned counsel appearing for both the parties.

5. Section 6(2) of the Act provides that the Passport Authority shall refuse to issue a passport or travel document for visiting any foreign country under Section 5(2)(c) on any one or more of the grounds specified therein. One of the grounds specified under Section 6(2) is pendency of proceedings before a criminal court in India in respect of an offence alleged to have been committed by the applicant. Section 6(2) of the Act, to the extent it is relevant for the present case, reads as under:

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

(1) xxx xxx xxx

(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:-

xxx xxx xxx
xxx xxx xxx

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

6. As could be seen, the statute mandates that a passport shall be refused in case of pendency of proceedings in respect of an offence alleged to have been committed by the applicant before a criminal court. However, Section 22 of the Act enables the Central Government to exempt by notification in the official gazette any person or class of persons from the operation of the provisions of the Act or the Rules made thereunder. In exercise of the power so conferred, the Government of India, Ministry of External Affairs issued the Notification dated 25.08.1993 exempting citizens of India, against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Section 6(2)(f) of the Act subject to conditions specified therein. The said notification dated 25.8.1993 is reproduced hereunder for ready reference:

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—
- (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)”

7. A plain reading of the above Notification shows that if the Court specifies the period for which the passport has to be issued, the passport has to be issued for the said period and if no period is specified by the Court, the passport shall be issued for a period of one year. Admittedly, in the order dated 02.9.2014 passed by the Court of MM, Patiala House Courts, no period for which the passport may be issued to the petitioner has been specified. Under those circumstances, the Respondent No.2, while reissuing the petitioner’s passport, limited its validity for one year.

8. The said action of the Respondent No. 2 is assailed in this petition contending *inter alia* that issuance of passport to the petitioner with a short validity of one year i.e., up to 11.9.2015 whereas the petitioner’s passport is valid upto 3.5.2016 is arbitrary and illegal resulting in violation of his fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution

of India. It is also contended that the notification dated 25.8.1993 which requires that a person against whom a criminal case is pending in any Court in India has to produce an order from the Court concerned permitting them to depart from India amounts to an arbitrary and unreasonable restriction. The further contention is that no distinction is made under the said notification between the persons facing charges of committing heinous offences and those charged a simple offence of participating in unlawful assembly and therefore, on that ground also the same is liable to be declared as arbitrary. It is contended that once the Court has given its no objection to an accused to travel abroad, there can be no justification for restricting the passport validity for one year.

9. While amending the writ petition by seeking an additional prayer to declare Section 6(2)(f) of the Act as violative of Article 21 read with Article 14 of the Constitution of India and to strike down the same, the petitioner raised the following grounds:

- i) Section 6(2)(f) of the Act violates Article 14 of the Constitution of India as it fails to make a distinction between a person who is accused of having committed a heinous crime and a person who is accused of a minor offence. By imposing the same restriction for all those against whom a criminal case may be pending before any court, Section 6(2)(f) treats un-equals as equals and thereby violates the equality clause of Article 14 of the Constitution of India.
- ii) Section 6(2)(f) of the Act is arbitrary and unreasonable as it fails to make a distinction between a person accused of bailable and non-bailable offence. While the court is empowered to permit foreign

travel of a person against whom a criminal case is pending even in a non-bailable case, Section 6(2)(f) of the Act has imposed a complete bar on issuance of passport.

- iii) Section 6(2)(f) of the Act, even if read with the exemption granted under Section 22 of the Act vide Notification dated 25.08.1993, is arbitrary and unreasonable since the Notification confers a power on the Executive to restrict the validity period of passport though no such restriction is imposed by the court.

10. Reiterating the grounds urged in the writ petition, Shri Jayant Bhushan, learned senior counsel appearing for the petitioner vehemently contended that Section 6(2)(f) of the Act is totally arbitrary and unreasonable. It is further contended by the learned senior counsel that since a person accused of a crime is presumed to be innocent till the charges are established, restricting his personal liberty invoking Section 6(2)(f) would amount to arbitrary exercise of power. To substantiate his contentions, the learned senior counsel has relied upon *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, *Onkar Lal Bajaj & Ors. v. Union of India & Anr.*, (2003) 2 SCC 673 and *TMA Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

11. Shri Sanjay Jain, the learned ASG at the outset has drawn the attention of this Court to the definition of offence under Section 40 of IPC and Section 3(38) of General Clauses Act in support of his submission that no hard and fast rule can be made for the purpose of the grant of passport on the basis of the categorisation of offences under the criminal justice administration system. While submitting that the principles of revocation of passport are different from the principles governing the issuance of a passport, the learned ASG has sought

to distinguish the decision in *Maneka Gandhi* (supra). It is also pointed out by the learned ASG that the power conferred under Section 6(2) to refuse issuance of passport which is subject to the other provisions of the Act is distinct from the power conferred under Section 10 for impounding and revocation of passports.

12. We have given our thoughtful consideration to the rival submissions made on behalf of the parties.

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.

No costs.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 07, 2016
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