

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.18858 OF 2018

O R D E R

This writ petition is filed for a writ of mandamus declaring the action of the 2nd respondent – Regional Passport Officer, Regional Passport Office, Hyderabad, dated 01-05-2018 vide letter No. 30.196.pol.2008, as illegal, null and void and consequently direct the 2nd respondent to release the passport bearing No.Z4033992, which is kept in the safe custody of the 2nd respondent to the petitioner.

The case of the petitioner as per the averments made in the affidavit filed in support of the writ petition is that he is having passport bearing No. F 3314688. He was implicated in C.C.No.7 of 2008 on the file of I Additional Special Judge for SPE & ACB Cases – cum – V Additional Chief Judge, City Civil Court, Hyderabad, FAC Special Judge under the Prevention of Corruption Act, Nampally, Hyderabad and his passport was seized. He filed petition under Sections 451 and 457 of Cr.P.C. for release of passport before the said court. By order dated 12.05.2014, the trial court dismissed the petition. Aggrieved by the same, he filed CrI.P.No.10415 of 2014, under Section 482 of Cr.P.C. and this court by order dated 28.03.2016, set aside the order dated 12.05.2014 and directed the trial court to release the passport of the petitioner for the purpose of renewal and also for travel to USA. Petitioner sought for new passport by renewal vide application dated 18.4.2017. The case of the petitioner is that by mistake, he could not mention the C.C.No.7 of 2008, pending against him. The Regional Passport Office issued notice dated 24.11.2017, for suppression of information and for payment of penalty of Rs.5,000/-. Petitioner submitted his explanation and paid the penalty. The case of

the petitioner is that his children are studying at USA and he is contemplating to perform the marriage of his daughter, who is completing her studies at USA and in that connection he wanted to visit USA. As the 2nd respondent is not releasing his passport in spite of payment of penalty, he filed W.P.No.6757 of 2018. This court by order dated 12.04.2018 disposed of the writ petition, reserving liberty to the petitioner to submit a representation to the 2nd respondent and the same was directed to be considered and disposed of. In pursuance of the orders of this court, 2nd respondent issued the impugned letter dated 1.5.2018, informing the petitioner that the competent authority refused passport services to the petitioner as he is involved in the criminal case, referred to above. The impugned letter further informs that the request of the petitioner for passport services can be considered, if he obtains permission to travel abroad from the same court as per the Ministry of External Affairs Gazette Notification vide GSR 570(E) dated 25.08.1993. Aggrieved by the impugned letter dated 1.5.2018 in refusing to release the passport of the petitioner, the present writ petition came to be filed.

Learned counsel for the petitioner, while reiterating the above facts, further submit that this court vide order dated 28.03.2016 in CrI.P.No.10415 of 2014 directed the trial court for release of passport enabling the petitioner for renewal to travel to USA. In the application for issue of passport, by mistake, petitioner could not mention the pendency of C.C.No.7 of 2008, for which, he submitted explanation and paid penalty of Rs.5,000/-. He stated that in the show-cause notice dated 24.11.2017, it is specifically mentioned that if the amount is paid, the show cause notice was sought to be ignored or has to be treated as cancelled. Therefore, by payment of penalty, the mistake committed by the petitioner is

compounded. This court by order dated 12.4.2018 in W.P.No.6757 of 2018 directed to consider and dispose of the representation of the petitioner for releasing of the passport. Considering these circumstances, the 2nd respondent ought to have released the passport, but erroneously refused to issue the passport and sought the petitioner to obtain permission from the criminal court. He stated that this court allowed the criminal petition and directed the trial court to release the passport of the petitioner, enabling the petitioner to renew the same for traveling to USA and this order has attained finality. In these circumstances again obtaining permission from criminal court to travel to USA, may not be required. With these submissions, he sought to set aside the impugned letter dated 1.5.2018 and to release the passport of the petitioner bearing No.Z4033992.

On the other hand, Ms. Anjali Agarwal, learned Standing Counsel appearing for the respondents submits that in the quash petition, there was only direction to the trial court to release the passport of the petitioner, enabling him to renew and thereafter petitioner obtained passport for one year by furnishing declaration under 570(E) of the gazettee notification dated 25.08.1993. But subsequently the petitioner obtained passport for ten years, suppressing the pendency of criminal case and paid penalty for suppression of information. If the petitioner intends to travel to USA by obtaining passport, as per Ministry of External Affairs Gazettee notification vide GSR 570(E), dated 25.08.1993, he has to obtain the permission from the criminal court, where the case is pending against him. With these submissions, she sought to dismiss the writ petition.

The impugned letter dated 01.05.2018 reads as under:

“Please refer to the judgment delivered in W.P.No.6757 of 2018 dated 12.04.2018 by the Hon’ble High Court of Judicature at Hyderabad and your representation dated 18.04.2018 received by this office on 23.04.2018.

2. You have obtained passport bearing No. Z3717868 dated 07.06.2016 and valid upto 06.06.2017 (1 year only) by furnishing declaration under 570(E) and High Court orders vide Criminal Petition No.10415 of 2014 dated 28.03.2016 and subsequently you have obtained passport bearing No.Z 4033992 dated 18.04.2017 and valid upto 17.04.2027 (valid for 10 years) by suppressing the criminal case pending against him. In this regard, you have also paid the penalty of Rs.5,000/- in compliance with this office show cause notice dated 31.10.2017 and surrendered the passport bearing No.Z 4033992 dated 18.04.2017 to this office on 24.11.2017.

3. In compliance with the Hon’ble High Court of judicature at Hyderabad orders in W.P.No.6757 of 2018 dated 12.04.2018 and your representation dated 18.04.2018, after careful examination by this office, it has been decided by the competent authority to refuse passport services to you under Section 5(2)(c) of the Passport Act, 1967, to be read with Section 6(2)(f) as you are involved in Criminal Case vide Cr.No.1/ACB/NPK/2001 U/s 13(2) R/W 13(1)(d) of PC 1998 and the case is pending before the Hon’ble Spl. Judge under Prevention of Corruption Act, 1988.

4. However, this office can consider your request, if you obtain permission to travel abroad from the same court where the case is still pending. In this regard the Ministry of External Affairs Gazette Notification vide GSR 570(E) dated 25.08.1993 is enclosed herewith for information.”

Since the 2nd respondent required the petitioner to obtain permission from the criminal court, where the case is pending against him by virtue of Ministry of External Affairs Gazette Notification vide GSR 570(E) dated 25.08.1993, the said notification, is extracted as under for better appreciation:

G.S.R. 570(E):-- In exercise of the powers conferred by clause (a) Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of 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 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 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."

A reading of the above notification clearly states that the citizen of India against whom proceedings in respect of an offence alleged to have been committed, are pending before a criminal court in India and who produces orders from the court concerned, permitting him to depart from India, are exempted from operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967, which deals with refusal of passport; subject to certain conditions specified in the said notification.

In the present case, vide order dated 28.03.2016 in CrI.P.No.10415 of 2014 this court directed the trial court to release the passport of the petitioner for the purpose of renewal and for travel to USA. In this order, no period was specified. Therefore, as per (a) (ii) of the G.S.R.No.570(E), the passport can be renewed for a period of one year. As per the

impugned communication, which is extracted above, the passport of the petitioner was renewed for a period of one year from 7.6.2016 to 6.6.2017 as the petitioner filed declaration as required under the above notification.

Under Clause (b) of the above notification, the petitioner can seek for further renewal for one year, provided he has not traveled abroad for the period sanctioned by the court and provided further in the meantime, the order of the court is not cancelled or modified.

From the impugned communication it could be seen that the petitioner vide his application dated 18.04.2017, has obtained passport for a period of ten years from 18.4.2017 to 17.04.2027. This time, while obtaining passport, petitioner has not furnished the information pertaining to pendency of criminal case against him. Therefore, he was issued with show cause notice dated 31.10.2017 and he filed his explanation and also paid the penalty of Rs.5,000/-. However, payment of penalty cannot enure to the petitioner for issuance of passport for a period of ten years. This court in the criminal petition filed under Section 482 of Cr.P.C. directed for release of passport, enabling the petitioner to renew, which was renewed for one year and the said period expired. Since criminal case is pending against him, subsequent renewal shall be as per clause (b) of G.S.R. 570(E) of the notification dated 25.08.1993. Therefore, in consonance with the notification dated 25.08.1993, the 2nd respondent, under the impugned communication, sought the petitioner to obtain permission of the criminal court where the case is pending against him.

In view of the above facts and circumstances, I do not find any illegality or perversity in the impugned communication dated 1.05.2018 and the writ petition is accordingly dismissed.

However, this order will not preclude the petitioner from approaching the criminal court, where C.C.No.7 of 2008 is pending, for obtaining permission to travel to USA, by bringing to the notice of the court all the facts and circumstances, and it is for the said court to consider the same and pass appropriate orders in accordance with law.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A. RAJASHEKER REDDY, J

DATE: 08—06—2018

AVS

