

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2567 of 2019**

- Neelam Chandrakar S/o Babulal Chandrakar Aged About 42 Years R/o H.No. 154, Purana Bazar Chowk, Ward No. 8, Near Ram Mandir, Kurud, Dhamtari, District Dhamtari Chhattisgarh

---- Petitioner**Versus**

1. Union of India Through Its Secretary, Ministry Of External Affairs, Government Of India, South Block, New Delhi
2. Regional Passport Officer Regional Passport Office, 1st Floor, Commercial Complex, Sector - 4, Pandit Deen Dayal Upadhyay Nagar, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Vivek Shrivastava, Advocate
For Respondent/UOI	:	Shri P. Chetan Kumar, Advocate on behalf of Shri B. Gopa Kumar, ASG for the Union of India

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13/08/2019**

1. Heard.
2. The present petition is filed for the following reliefs:-

“i.That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to consider the case of the petitioner and renew/reissue of his passport bearing No.H5763877 issued on 13/8/2009 and the same is going to be expired on 12/8/2019.

ii.Cost of the petition may also be granted to the petitioner.

iii. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice.”

3. It is contended by the petitioner that the passport of the petitioner has not been renewed on the ground that the criminal case is pending against him before the Court of JMFC, therefore, as such since the Court has refused to adjudicate when the permission was sought that the passport authority should have allowed the renewal of the passport. Learned counsel for the petitioner referred to Section 6 (2) (f) of the Passports Act, 1967 (hereinafter referred to as “the Act, 1967”) and further to the notification issued by the Ministry of External Affairs on 25th August, 1993 and would submit that under the circumstances, the passport authority should have renewed the passport. The petitioner places his reliance in case law of *Rajeev Chaturvedi Versus Union of India & Ors.* (WPC No.12136 of 2018) decided on 13.05.2019 by the Delhi High Court.

4. It is not in dispute that initially the passport was issued to the petitioner on 13.08.2009 which was to expire on 12.08.2019. Section 6 (2) (f) of the Act, 1967, which taken into ambit a refusal of passport, the relevant part is as under:-

“6. Refusal of Passports, travel documents, etc.-

(1) xxxx

(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:

xxxx

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

xxxx;”

5. By virtue of Section 22 of the Act, 1967 the Central Government is empowered to exempt any person or class of persons from operation of the provisions of the Act, 1967. Section 22 of the Act, 1967 is reproduced hereinbelow:-

“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.”

6. In exercise of the powers conferred under Section 22(a) of the Act, 1967 the Central Government has issued a notification being GSR 570 (E) dated 25.08.1993 exempting the rigours of Clause (f) of sub-section (2) of Section 6 of the Act, 1967, subject to certain conditions. The said notification is reproduced below:-

**“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.”

7. The petitioner contends that an application was filed by him to get the permission which was virtually undecided by an order dated 08.04.2019. The said order of 08.04.2019 is on record, wherein the Judicial Magistrate has refused to consider the application of the petitioner on the ground that since the bail order do not contain such condition, as such the trial Court is not required to adjudicate. The letter dated 24.07.2019 Annexure D/2 is also been placed on record, addressed by respondent wherein the petitioner was informed to furnish NOC from the Court, wherein the case is pending pursuant to the gazette notification. The reliance placed by counsel would be misplaced in the facts of this case. In the case decided by Delhi High Court, the petitioner therein had obtained necessary permission from the Court for issuance of NOC for passport, whereas in present case the trial Court has not adjudicated the prayer of the petitioner.
8. This Court in exercise of power under Article 226 of the Constitution of India cannot assume those facts the trial Court has not adjudicated and encroach upon the turt of object of notification. The object of the notification dated 25th of August, 1993 would show that it is primarily based on the fact that the Court wherein the criminal case is pending would be the proper adjudicatory authority

so as to evaluate whether permission of such kind can be accorded or not i.e. by way of issuance of NOC for a passport. The issuance of NOC would depend from case to case and degree of allegation and the nature of evidence available against a particular person. The object is to give the lence to the trial Court to ascertain facts which may be as a reasonable bounds for general good. Therefore, this Court sans the fact of criminal case cannot adjudicate those issues and it is for the trial Court wherein criminal case is pending to evaluate the facts whether NOC to be granted or not. Under the facts, the JMFC, Kurud, District Dhamtari, is directed to adjudicate the application of the petitioner afresh for issuance of NOC, for passport whether to be issued or not as required under Section 6 (2) (f) of the Act, 1967 and the notification dated 25th of August, 1993. The petitioner shall be at liberty to file afresh application seeking NOC in terms of the notification and the Judicial Magistrate shall adjudicate the same on its own merits.

9. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu