

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.01.2019

+ **W.P.(C) 9957/2018**

ASHOK KUMAR SHARMA

.....Petitioner

versus

**THE REGIONAL PASSPORT OFFICER
AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr B.P. Singh, Mr Anubhav Gupta and Mr
Vikas Poonia, Advocates.

For the Respondents :Mr Ravi Prakash, CGSC with Mr Farman
Ali, Mr Brajesh Kumar, Advocates for R-1
& 2 with Mr Prince Roshan, JPA, RPO,
Delhi.
Mr Brajesh Kumar, Advocate for UOI. Mr
Sanjeev Bhandari, SPP, CBI alongwith Mr
Prateek Kumar, Advocate for R-3/CBI.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the preset petition, *inter alia*, impugning an order dated 17.07.2018 (hereafter 'the impugned order') passed by respondent no.1 (Regional Passport Officer) denying the petitioner's request for re-issuance of the passport. In the impugned order, respondent no.1 has referred to a notification dated 25.08.1993 issued by the Central Government – being GSR No. 570 (E) – and indicated

that the petitioner's application would be processed only on receipt of an NOC from the concerned Court in terms of the said notification.

2. The petitioner contends that no such NOC is required as the petitioner's application for the same was withdrawn in view of the stand of respondent no.3 (Central Bureau of Investigation – CBI) that no such NOC is required.

3. It is apparent from the above that the petitioner's predicament arises from respondent no.1's decision not to process the petitioner's application for issuance of passport without NOC from the concerned court where criminal proceedings are pending and respondent no.3's stand that no such NOC is required.

Factual Background

4. On 08.11.2004, an FIR was, *inter alia*, registered against the petitioner under Section 120B of the Indian Penal Code, 1860 (IPC) read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420, 467, 468 and 471 IPC. The allegation against the petitioner was that while posted as the Group General Manager of a public-sector undertaking (TCIL), he had entered into a criminal conspiracy with the co-accused and abused his official position, in the matter of appointment of a fictitious firm as an agent for a project awarded to TCIL by M/s Bhutan Telecom and thereby causing wrongful pecuniary loss to the exchequer.

5. On 07.01.2008, respondent no.3 (CBI) filed a charge-sheet against the petitioner under the afore-mentioned provisions. On

22.02.2008, the Trial Court took the cognizance of the said charges and commenced trial.

6. During the course of the trial, the term of the petitioner's passport expired. Accordingly, in May/June, 2014, the petitioner filed an application seeking no objection from the Trial Court for renewal of his passport. The learned Trial Court acceded to the petitioner's request and granted the NOC. However, the petitioner could not complete the formalities for renewal of the passport prior to completion of the trial.

7. The Trial Court convicted the petitioner by a judgment dated 12.09.2014. By an order dated 15.09.2014, he was sentenced to undergo rigorous imprisonment for three years with a fine of ₹10,00,000/-. This Court is informed that the petitioner has deposited the fine as directed.

8. Aggrieved by the conviction and the order of sentence, the petitioner filed an appeal in this Court (Crl. Appeal No. 1464 of 2014) impugning the judgment dated 12.09.2014 and the order of sentence dated 15.09.2014. On 21.08.2017, this Court passed an order suspending the sentence of the petitioner till the disposal of the criminal appeal.

9. After the suspension of sentence, the petitioner filed an application for renewal of his passport. However, the same was not processed as the petitioner had not enclosed an NOC by the concerned Court.

10. In view of the above, the petitioner filed an application in the appellate proceedings pending before this Court (Crl. Misc. Application No. 18189 of 2017 in Crl. Appeal No. 1464 of 2014) seeking permission for renewal of his passport. Respondent no.3 (CBI) opposed the said application and filed a reply on 11.12.2017. CBI contended that there was no requirement for issuance of an NOC, as NOC was required only in cases where criminal proceedings against the accused were pending and not in cases where he was already convicted.

11. The petitioner claims that in view of the aforesaid stand, he withdrew his application for an NOC and approached respondents (respondent no.1 and 2) by way of representations dated 01.02.2018 and 26.02.2018, respectively. According to the petitioner, he received no response to the said representations. Consequently, the petitioner filed a writ petition – being W.P.(C) 2291 of 2018 – which was disposed of by this Court by an order dated 13.03.2018 directing the respondents to deliberate upon the representation filed by the petitioner and pass a speaking order within a period of ten weeks from the said date.

12. Thereafter, the petitioner made another representation dated 17.04.2018 to respondent no.1 requesting to expedite the process for re-issuance of his passport. Since the petitioner did not receive any response in respect to the said representation, the petitioner filed another petition – W.P.(C) 7292 of 2018. The said petition was disposed of by this Court on 19.07.2018 in view of the statement made

on behalf of respondent no.1 that an order dated 17.07.2018 had been passed, whereby the petitioner's request for re-issuance of the passport had been rejected under the provisions of Section 6(2)(e) of the Passports Act, 1967 (hereafter 'the Passports Act'). The petitioner has filed the present petition impugning the said order.

13. The controversy in the present case relates to interpretation of the provisions of Clauses (e) and (f) of Section 6(2) of the Passports Act and the notification dated 25.08.1993 issued by the Central Government. Respondent no.1 and respondent no.3 have taken somewhat divergent stands. According to respondent no.1, the petitioner would not be entitled to a passport by virtue of Clauses (e) and (f) of Section 6(2) of the Passports Act. However, the Central Government has, in exercise of powers under Section 22 of the Passports Act, issued the notification granting certain exemptions from the operations of Section 6(2)(f) of the Passports Act by issuing a notification dated 25.08.1993. According to respondent no.1, in terms of the said notification, a passport can be issued to the petitioner provided the petitioner secures a no objection from the concerned court where criminal proceedings against him are pending. It is contended that the petitioner's appeal before this Court (Crl. Appeal No. 1464 of 2014) is a continuation of criminal proceedings and a no objection from this Court would entitle the petitioner for reissuance of a passport. Respondent no.3 has countered the aforesaid submission. According to respondent no.3, the aforesaid notification is not relevant as it does not relax the application of Clause (e) of Section 6(2) of the

Passports Act. Respondent no.3 contends that a passport can be issued on the basis of an NOC by a concerned Court only where criminal proceeding for an alleged offence are pending and the said notification would have no application where an accused has been convicted of an offence.

Reasons and Conclusion

14. At the outset, it would be relevant to refer to Clauses (e) and (f) of sub-section 2 of Section 6 of the Passports Act. The relevant provisions are set out below:-

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

XXXX XXXX XXXX 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: -

(a) XXXX XXXX

(b) XXXX XXXX

(c) XXXX XXXX

(d) XXXX XXXX

(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 committed by the applicant are pending before a criminal court in India;”

15. A plain reading of the aforesaid provision indicates that Clauses (e) and (f) refer to different situations. Clause (f) is applicable only in cases where criminal proceedings are pending in respect of an allegation of an offence. Clearly, the said clause is inapplicable where the criminal proceedings have culminated in a conviction and the offence alleged to have been committed has been established. Plainly, in such circumstances, the offence cannot be described as “*alleged to have been committed*”. Clause (e) of Section 6(2) of the Act relates to a case where an applicant has been convicted of an offence involving moral turpitude and has been sentenced in respect thereof to an imprisonment for not less than two years. It is also relevant to note that the rigor of Clause (e) is applicable only for a period of five years after such conviction.

16. Undisputedly, the Central Government has the power to grant exemption from the application of provisions of Passports Act. Section 22 of the Passports Act reads 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....”

17. In exercise of the aforesaid powers, the Central Government has issued a notification dated 25.08.1993 – GSR 570 (E). According to respondent no.1, the said notification is applicable and the petitioner would be entitled to a passport provided an NOC is issued by the concerned Court before which criminal proceedings against the petitioner are pending.

18. The said notification is set out 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...”

19. A plain reading of the said notification indicates that its scope is limited to exempt persons from the operation of Clause (f) of sub-section (2) of Section 6 of the Passports Act. The opening paragraph of the said notification makes it amply clear that it only exempts citizens against whom proceedings, in respect of an offence alleged to have been committed by them, are pending before a Criminal Court in India.

20. There is merit in respondent no.3's contention that in case of the petitioner the matter has travelled beyond the stage of a mere

allegation. Although the petitioner has preferred an appeal against his conviction, this Court has not passed any order staying the same. Thus, as it stands today, the petitioner stands convicted of an offence involving moral turpitude and has been sentenced to undergo imprisonment for a period of three years. In the aforesaid view, the notification dated 25.08.1993 has no application.

21. It is also relevant to note that respondent no.1 has not denied the petitioner's request for issuance of a passport under Section 6(2)(f) of the said Act. In view of the above, this Court finds no infirmity with the decision of respondent no.1 to deny the petitioner the facility of passport. However, the reference to the notification dated 25.08.1993 in the impugned order is misplaced.

22. The petitioner had relied on the decisions in the case of ***Satwant Singh Sawhney vs D Ramarathnam, Assistant Passport Officer, New Delhi & Ors.: AIR 1967 SC 1836*** and ***Maneka Gandhi vs Union of India (1978) (1) SCC 248*** in support of his contention that the petitioner has a fundamental right to a passport and the same cannot be denied. This is without merit. Although, the petitioner has a right to a passport, the same is circumscribed by the provisions of the Passport Act. And, the validity of the said provisions have not been challenged.

23. Mr Prakash, learned counsel appearing for the respondents had placed reliance on the decision of the High Court of the State of Telangana and Andhra Pradesh in ***Subhas Chandra Bose Mandava v Union of India, Ministry of External Affairs and Ors.: Writ Appeal No. 1026 of 2018, decided on 01.08.2018 [MANU/AP/0383/2018]*** in

support of his contention that appellate proceedings would also fall within the scope of criminal proceedings as referred to in the notification dated 25.08.1993. The reliance on the said decision is misplaced, as in that case, an appeal against an order of acquittal (not conviction) was pending. Thus, clause (e) of Section 6(2) of the Passport Act was not applicable and the case of the applicant therein could be processed in terms of the notification dated 25.08.1993.

24. It is also relevant to observe that in terms of Section 6(2)(e) of the Act, a passport can be denied to a citizen if he is convicted of an offence at any time during the period of five years preceding the date of application for a passport. In the present case, the petitioner was convicted of an offence on 12.09.2014 and, thus, any application made during the period of five years from that date – that is, till 11.09.2019 – can be rejected in terms of Section 6(2)(e) of the Passports Act. The petitioner would be at liberty to make an application for a passport after the said date under the provisions of Section 6(2)(e) of the Passports Act. Needless to state that if such application is made, the same cannot be denied on the ground as stated under Section 6(2)(e) of the Passports Act.

25. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

JANUARY 11, 2019
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