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

+ **W.P.(C) 12136/2018**

RAJIV CHATURVEDI

..... Petitioner

Through Mr Gaurav Gupta, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms Anjana Gosain, Ms Shalini Nair,

Mr Himanshi, Advocates for R1, 3, 4 & 5.

Mr Chandrachur Bhattacharya, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **13.05.2019**

1. The petitioner has filed the present petition, *inter alia*, impugning an Office Memorandum dated 28.03.2018 issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training. The petitioner also impugns an Office Memorandum dated 02.08.2018 issued by PEC Limited, denying the petitioner's request for issuance of a No-Objection Certificate (NOC) for the renewal of his passport.
2. The principal grievance of the petitioner is with regard to denial of passport facilities by respondent no. 5 (Regional Passport Office). The said facilities have been denied to the petitioner, as he has been charged with offences under Section 420 of the Indian Penal Code, 1860 and Section 13 of the Prevention of Corruption Act, 1988. It is the case of the respondents that since charges have been framed in view of the aforesaid criminal case,

passport facilities have been denied to the petitioner in view of Section 6(2)(f) of the Passports Act, 1967 (hereafter ‘the Act’), which reads 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;”

3. It is relevant to note that by virtue of Section 22 of the Act, the Central Government is empowered to exempt any person or class of persons from the operation of the provisions of the Act. Section 22 of the Act, is set out below:-

“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.”

4. In exercise of the powers conferred under Section 22(a) of the Act, 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, 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.”

5. In view of the said notification, the petitioner had applied to the concerned Court for permission for the renewal of his passport. The concerned Court (Court of Special Judge for CBI City Civil & Session Court, Greater Bombay) had considered the said application and by an order dated 24.04.2018, has permitted the petitioner to obtain the renewal of his passport for a period of two years. The operative part of the order is set out below:-

“

ORDER

1. Misc. Application at Ex-87 in CBI Special Case No. 64/2017 @ 62/2016 is hereby allowed.
2. This Court has no any objection for renewal of the passport of applicant/original accused RAJIV CHATURVEDI for a period of two years only, if permissible as per Passport Rules.
3. Issue Certificate accordingly.
4. Applicant/original accused is hereby further directed to abide by all other conditions of bail without fail.
5. Misc. Application at Ex-87 in CBI Special Case No. 64/2017 @ 62/2016 stands disposed of accordingly.”

6. In view of the above, the provisions of Section 6 (2)(f) of the Act cannot be read to deny passport facilities to the petitioner, as he has obtained the necessary permission from the concerned Court.

7. The learned counsel appearing for the PEC Limited (respondent no.2) had contended that the said order dated 24.04.2018 passed by the Court of the Special Judge is conditional and permits issuance of a passport only if it is otherwise permissible as per the relevant passport rules. However, apart from referring to Sections 6(2)(f) and 10 of Act, he has not drawn the attention of this Court to any other rule, which would preclude the petitioner from obtaining passport facilities. The reliance on Section 10 of the Act is *ex facie* misplaced, since it pertains only to impounding and revocation of passports and travel documents. The relevant provision is Clause (f) of Sub-section (2) of Section 6 of the Act. However, the rigors of that provision, as

noticed above, have been relaxed by the notification dated 25.08.1993.

8. In view of the above, it is directed that if the petitioner submits an application for renewal of the passport, the same would be processed for renewal for a period of two years. This is also subject to the petitioner submitting an undertaking to respondent no.5 that if required by the Court concerned, the petitioner would appear before it at any time during continuance of the passport so issued.

9. The petition is disposed of.

10. Order *dasti* under signatures of the Court Master.

MAY 13, 2019

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VIBHU BAKHRU, J