

13.12.2022
Ct. 5
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WPA 26769 of 2022
With
IA No. CAN 1 of 2022

Anupam Mahalanabish
-Vs-
The Principal Commissioner CGST & CX, Kolkata
North Commissionerate & Ors.

Mr. Bharat Bhusan,
Mr. Atindranath Misra

... for the petitioner

Mr. K. K. Maiti,
Mr. Tapan Bhanja

... for the respondents

The petitioner asks for quashing of an impugned letter issued by the Assistant Commissioner (P&E), Kolkata North Commissionerate rejecting the petitioner's application for a private visit outside India with family. The application was made on 15th November, 2022 for leave from 11.12.2022-18.12.2022.

The petitioner has filed subsequent application being CAN 1 of 2022 praying for quashing of the rejection dated 25th November, 2022 but in terms of new dates for leave from 12.12.2022-23.12.2022.

The point taken on behalf of the respondents by learned counsel is first being dealt with. CAN has been necessitated since the earlier period of leave from

11.12.2022-18.12.2022 in the writ petition has already passed by the time the matter was taken up for hearing.

Learned counsel appearing for the petitioner also submits that the writ petition could not be moved by reason of resolution taken by the Bar on at least two days in the last week.

This Court finds the explanation to be satisfactory. Contrary to the submission made on behalf of the respondents, there is no change in the nature or character of the writ petition since the prayer in the CAN is also for quashing of the order of rejection dated 25th November, 2022. The typographical errors in certain statements made in the CAN may be disregarded.

The reason given in the impugned rejection dated 25th November, 2022 is that two criminal proceedings are pending before a competent Court against the petitioner. The Assistant Commissioner relies on an Office Memorandum dated 27th July, 2015 under which permission for leave for going abroad on a private visit may be denied in the interest of security and pending investigation/enquiry. The OM is a part of records and merely sets out the reasons for which the grant of leave for personal travel abroad may be denied. The OM does not assist the case of the respondents since the specific reason given in the impugned rejection is pendency of two criminal proceedings.

An order passed by the Judicial Magistrate, Alipore on 5th January, 2021 clearly records that the petitioner has a right to travel outside India under Article 21 of the Constitution of India. The petitioner was hence given leave to take permission of the Court. Subsequent order passed by the 4th J.M., Alipore dated 30th November, 2022 in one of the criminal proceedings namely BGR-1915 of 2015 records the presence of the petitioner before the Court and further that the petitioner furnished documents giving details of the proposed journey. The Court came to a specific finding that upon perusal of the documents, the prayer for foreign travel is allowed and the petitioner is at liberty to leave the country for the specified period mentioned in the petition. The petitioner was, however, directed to intimate the Court of his return to the country and be physically present before the Court on the next date, which is 3rd February, 2022.

A similar order was passed in the other criminal proceeding being BGR-3479 of 2015 which is also part of the records. By that order, the petitioner was found to be permitted to apply for renewal of his passport and the Passport Authorities were directed to renew the passport for six months for the purpose of the petitioner's travel to USA to meet his daughters who are studying in that country.

The documents before the Court show that there is no existing embargo on the petitioner's travel for

personal reasons outside the country. The reason given for the impugned rejection, namely pendency of two criminal proceedings, lose all relevance in the light of the orders passed by the Court where the criminal proceedings are pending. Since the Court has specifically permitted the petitioner to travel to the country where his daughters are studying at present and also directed the Passport Authority to renew the petitioner's passport, the impugned rejection cannot be sustained.

It is, however, made clear that the petitioner shall comply with the direction passed by the Court on 30th November, 2022 in terms of intimating the Court upon the petitioner's return to India and being physically present on the next date of hearing which is 3rd February, 2023.

WPA 26769 of 2022 and CAN 1 of 2022 are accordingly disposed of by quashing the impugned letter/order of rejection dated 25th November, 2022. The respondents shall not interfere with the petitioner's travel plans from 12.12.2022-23.12.2022. The respondents shall accordingly sanction the application for earned leave made by the petitioner in terms of the revised dates of travel.

(Moushumi Bhattacharya, J.)