

AFR IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.4834 of 2022

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Asutosh Amrit Patnaik

....

Petitioner

Versus

State of Orissa & Ors.

....

Opposite Parties

For Petitioner

...

Mr.D.P.Dhal, Sr.Advocate assisted
by Mr.S.Mohapatra, Advocate.

For Opposite Parties

...

Mr. S.P.Panda, Additional
Government. Advocate
(O.P.Nos.1 & 2)
Mr.P.K.Parhi, Asst. Solicitor
General of India assisted by
Mr. D.Gochhayat, C.G.C.
(O.P.No.3)

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 23.03.2022

Biswanath Rath, J. This writ petition involves the following prayer:

“It is, therefore prayed that this Hon’ble Court may graciously be pleased to consider the facts stated in the Petition, admit the same and issue notice to the Opp. Parties, call for records from the Court below and after hearing the counsels from both the sides, allow the same and issue

directions to Opp. Party No.2 to grant renewal of Petitioner's passport bearing passport No.J0813101 without creating any further hindrance in the greater interest of justice;

And/or pass such other order/s, whichever this Hon'ble Court deems fit and proper.

And for this act of kindness, the Petitioner as in duty bound shall ever pray."

2. Background involving the case is that petitioner being a working professional working in oilfields in the UAE. For the material disclosure in the writ petition, it appears petitioner has a contractual service in a firm in UAE with 30 days renewal basis. Having a passport bearing No. J0813101 already granted, petitioner is continuing with his service on the basis of visa granted by the competent authority going to be expired on 17.05.2022. It is finding the passport going to expire, as a consequence rendering Visa becomes infructuous, petitioner made an application for renewal of the passport to get Visa continuity in order to continue his service in the overseas oilfields. It is averred on the application being filed, petitioner has been served with a communication by the opposite party no.2, Regional Passport Officer, Regional Passport Office, Bhubaneswar thereby declining to entertain the request of the petitioner on the issue of renewal of passport on the shortcomings by way of pendency of 2 criminal cases at least against the petitioner and thus declined to entertain the request of the petitioner vide Annexure-2 herein giving rise to the filing of the present writ petition.

3. Being aggrieved by such communication, filing the writ petition, petitioner pleaded that looking to the nature of offence involved and further the complaint involved therein being at the instance of his wife for involvement of difference between the husband and wife. Petitioner claims that until unless there is final outcome in such criminal proceedings, petitioner remaining in the

status of accused, mere pendency of such criminal proceedings should not come in the way of the renewal of passport and consequential grant of Visa. It is in the above premises, the writ petition is filed seeking a direction from this Court to the Passport Authority to allow the renewal of the petitioner's Passport bearing Passport No. J0813101 in facilitating grant of Visa accordingly.

4. Mr.Dhal, learned Senior Counsel appearing for the petitioner taking through the pleadings and the grounds taken therein contended that mere pendency of criminal proceedings and for such proceedings being initiated at the instance of the wife for there is difference between the husband and wife should not have been a ground declining to entertain the renewal application. Mr.Dhal, learned Senior Counsel also contended that in the event there is refusal in renewal of the passport involving the petitioner, petitioner will also become jobless and such action may also create a stigma in the petitioner's getting further employment. It is at this stage of the matter, taking this Court to the provision at Section 6 (2) (f) of the Passports Act, 1967 and the notification No.GSR 570(E) dated 15.8.1993 issued by the competent authority and further relying on catena of decisions in the cases of ***Navin Kumar Sonkar Vs. Union of India & Ors.***, I.L.R. (2018) M.P.677, ***Krishna Chiranjeevi Rao Palukuri Venkata Vs. Union of India Ministry of External Affairs, represented by its Principal Secretary and Others.*** 2020 SCC OnLine Kar 3437, ***Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation***, (I.A.No.52346/ 2021 in Crl.A.No.1343/2017) decided on 27.09.2021, in the case of ***Hardik Shah Vs. Union of India and Another***, 2021 SCC OnLine MP.2326, in the case of ***Durydhan Sahoo Vs. Republic of India***, (2011) 50 OCR -587 and in the case of

Ballav Kr @ Sriballav Kar Vs. Govt. of India and another, (2019) 75 OCR-747 also attempted to take support of all these decisions to the case of the petitioner.

5. In his contest, Mr.Parhi, learned Assistant Solicitor General of India appearing for the Passport Authority taking through the counter averments though not disputed the petitioner has the support of the notification No.GSR 570(E) dated 15.8.1993 and also the decisions relied on however taking this Court to the disclosures at Annexure-2 contended that since the petitioner's attempt is to leave this country in the pendency of the criminal cases, there is difficulty in granting the renewal of passport as the petitioner may not be available with the competent authority in the event there is criminal proceeding culminated with conviction. In the above background and for the clear disclosure on pendency of criminal cases, Mr.Parhi objected to the claim of the petitioner while defending the impugned order.

6. Considering the rival contentions of the parties, this Court finds undisputedly 2 criminal cases appear to be pending against the petitioner. Looking to the disclosure at Annexure-2, impugned herein, this Court finds the criminal cases involved one Laxmisagar P.S. Case No.82 dated 13.03.2020 under Sections 294, 341, 323, 354, 500, 506, 507, 509,43 I.P.C., whereas the second case i.e. Bhubaneswar Mahila P.S. Case No.59 dated 27.07.2017 under Sections 498 A, 323, 506, 34 IPC, 4 D.P.Act both registered against the petitioner and undisputedly both the proceedings are still pending with an order of bail in favour of the petitioner. It is at this state of the matter, this Court looking to the provision at Section 6 (2) (d) & (f) of the Passports Act, 1967 finds the provision reads as follows:

“6. Refusal of passports, travel documents etc-

xxx xxx xxx

(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 grounds, namely:

xxx xxx xxx

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

xxx xxx xxx

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India;”

xxx xxx xxx

Reading the aforesaid provision, this Court finds the aforesaid provision restricts grant or renewal of passport in certain circumstance indicated therein.

7. This Court here takes into account the notification relied on by both the parties. Reading the notification No.GSR 570(E) dated 25.8.1993, this Court finds in considering the difficulties in renewal aspect, above notification has been issued by the competent authority to consider the pendency of criminal case in the granting of renewal of the passport in certain circumstance more particularly issuing a set of guidelines which read as follows:

“(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;

(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."

Above notification clearly provides opportunity for grant of renewal of passport subject to several rider but, however, the citizen so applying shall have to 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 of the passport so issued. The contingency prescribes herein appears to be clearly covering the case of petitioner and in the opinion of this Court there is in fact no restriction in the renewal of the passport or even grant of passport in the pendency of the criminal proceeding involving the party concerned which may be a time based renewal or grant. This Court here takes note of reason of rejection of renewal finds place in Annexure-2 where it has been clearly mentioned that in the circumstance stated therein, petitioner's application cannot be considered under Tatkal category and at the same time he has been asked to apply under normal category. This Court here through paragraph-5 end of counter affidavit finds the file involving petitioner is still pending and petitioner on the other hand did not turn after the communication vide annexure-2 is made. In the circumstance, this Court observes nothing prevents to the petitioner to attend to the query at Annexure-2 and by submitting necessary undertaking can very well apply for the renewal.

8. It is at this stage, considering the apprehension of petitioner that the Passport Authority is not willing to renew the Passport on sole

premises of pendency of criminal cases, this Court here proceeds to discuss the law applying to such cases as follows:

A). Looking to the direction of the Hon'ble Apex Court in the case of ***Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation***, (I.A.No.52346/ 2021 involving Crl.A.No.1343/2017 decided on 27.09.2021, this Court finds here the case involves conviction of the party involved therein under Sections 120-B, 420, 468, 471, 477 A of the Indian Penal Code read with section 13(2) and 13(1) of the Prevention of Corruption Act, 1988. This Court reading the aforesaid judgment of the Hon'ble Apex Court finds there has been permission for renewal of passport even after a party is convicted and his challenge to such conviction is pending consideration vide Criminal Appeal No.1343 of 2017 but in consideration of I.A.No.52346 of 2021 involving Crl. Appeal No.1343 of 2017.

B) In the case of ***Navin Kumar Sonkar Vs. Union of India & Ors.***, I.L.R. (2018) M.P.677, this Court here finds the decision involves charges under Sections 498-A & 406 of I.P.C. vis-à-vis a refusal of the passport. The High Court involved relying on a decision in the case of ***Union of India and Ors. Vs. Charanjit Kaur***, AIR 1987 (SC) 1057, considering the request for renewal of the passport directed the competent authority to issue passport within two weeks but however upon furnishing an undertaking in terms of Clause 6 (2) (d) taken note hereinabove.

C) Similarly, in the case of ***Krishna Chiranjeevi Rao Palukuri Venkata Vs. Union of India Ministry of External Affairs, represented by its Principal Secretary and Others***. 2020 SCC OnLine Kar 3437, the Karnataka High Court in similar situation involving a

criminal case pending against the applicant therein under Section 120B read with Section 420, 419, 467, 468 and 471 of I.P.C. again taking into consideration the provision in the Passports Act, 1967 and the Government circular has come to allow the claim of the petitioner. This decision has also taken into account the decision in *Ashok Khanna Vs. Central Bureau of Investigation*, (2019) 265 DLT 614 allowing the application with direction to the Passport Authority.

D) In the case of *Hardik Shah Vs. Union of India and Another*, 2021 SCC OnLine MP.2326. Going through the decision, this Court finds this is also a similar case of refusal of grant of passport again involving a criminal case against the petitioner therein involving F.I.R. alleging demand of dowry etc. and there has been allowing of renewal of passport.

E) In the case of *Durydhan Sahoo Vs. Republic of India*, (2011) 50 OCR -587 disposed of by this Court involving offence under Sections 7.13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and there has been direction for grant of passport.

F) In the case of *Ballav Kr @ Sriballav Kar Vs. Govt. of India and another*, (2019) 75 OCR-747, this Court also gave permission for availing the passport.

This Court finds all the above decided cases have the support to the claim of the petitioner.

9. In the above facts and legal position, this Court here observes, in considering the application of the petitioner for renewal of passport, there is in fact no right appreciation of the matter, there is even no consideration of the provision in the Act read together with the GSR

570 (E) dated 25.08.1993 coming to the rescues of the petitioner and there is mechanical disposal of application and illegal asking.

10. In the above circumstance, while interfering in the impugned order at Anenxure-2, particularly this Court permits the petitioner to submit the required affidavit/undertaking giving therein the position involving both the criminal cases and supporting documents establishing the petitioner is on bail at least one week of this judgment to the concerned Passport Authority at Bhubaneswar. In the event of receipt of such affidavit, the Passport Authority at Bhubaneswar shall do well in completing the issue of renewal of passport involving the petitioner within a week thereafter.

11. In the result, the writ petition succeeds. No cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 23rd day of March, 2022/SKS*

