

Shiv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5490 OF 2021

Rajendra Kumar Saraf

...Petitioner

Versus

Union of India & Ors

...Respondents

Mr Akshay Deshmukh, for the Petitioner.

Mr S S Panchpor, AGP for the State/Respondent.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 7th March 2022

PC:-

1. Rule. We make Rule returnable forthwith and take up the Petition for hearing and final disposal. Notice was ordered to be issued to the Union of India on 15th September 2021. None appears for the Union of India.

2. The Petition seeks issuance of the Writ of Mandamus to the Regional Passport Authority, the 2nd Respondent, to issue a passport to the Petitioner in accordance with the rules. Specifically, the request is that the passport should be issued for a duration with validity of 10 years or 20 years as is done in the normal course, and not for just one year.

3. Very briefly, the facts are that the Petitioner was arrayed as Accused No 5 in a Sessions Case No 155 of 2014 registered under section 307 of the Indian Penal Code for abetment of suicide. The victim was a neighbour. There were seven accused in this case. The original passport of the Petitioner was No FH207721. It expired on 5th June 2016. The Petitioner applied for a passport. The Sessions Court allowed the renewal for a period of one year. The Petitioner is Environment Scientist and Lecturer and is asked to travel overseas often for this work including to Europe, United Kingdom and USA and so on.

4. We need only refer to the order of 24th December 2020 of the Additional Sessions Judge, Pune at Exhibit-8 page 31-32. In a remarkably compact order, the Additional Sessions Judge, H R Waghmare observed in paragraph 4 and quite correctly in our view, that free movement is the fundamental right of every citizen. He found no reason to reject the prayer of the present Petitioner for a no objection for renewal of a passport. However, he left it to the authority in question to decide the period of the passport renewal. This is what is assailed before us today.

5. The Petition says that when the Petitioner visited the Regional Passport office on 18th January 2021, and asked for a renewal of the passport for 10 years or 20 years, the Regional Passport Authority insisted that renewal could only be for one year at a time. The Petitioner was shown some notification to this effect. No copy of that notification

was given to the Petitioner. There is none present on the part of the Union of India to show us any such notification.

6. The renewal granted was only for one year and this was on 3rd March 2021. The Petitioner today challenges 24th December 2020 order simply because it failed to actually direct the renewal for 10 or 20 years.

7. We do not believe that it is necessary to set aside that order. It is otherwise unexceptionable. The learned Additional Sessions Judge only said that this renewal application had to be decided according to the rules. It simply cannot be that a regular 10 or 20 years' renewal as applicable, which is age dependent, should be rejected by the Regional Passport Officer citing some unknown and unspecified notification.

8. The Division Bench judgment in the case of *Narendra K Ambwani v Union of India*¹ says that Rule 12 of the Rules under the Passport Act require that a passport has to be valid for 10 or 20 years as case may be. *Ambwani*'s case is, to our mind, on all fours with the present case. The Magistrate in that case also did not specify the period. In paragraph 10 the Division Bench proposed guidelines and then proceeded to list these. We reproduce paragraphs 10, 11 and 12 of the judgment in *Ambwani*:

1 2014 SCC OnLine Bom 356 : (2014) 4 Bom CR 281.

“10. In the circumstances, we propose to issue guidelines to be followed by the Respondents on receipt of the applications for renewal of the passports, in all cases, where the Magistrate’s court has directed that the passports may be renewed as per the “Rules”.

11. Accordingly, we issue the following directions:

(a) **In all cases where the Magistrate’s court directs renewal of the passports under the Rules, the Passport Rules, 1980 shall apply and passports other than for a child aged more than 15 years shall be renewed for a period of ten years or twenty years as the case may be from the date of its issue. All qualifying applicants are entitled to have passport renewed for at least ten years. The Regional Passport Office shall renew the passports of such qualifying applicants at least for ten years.**

(b) In case where the passports are valid and the applicants hold valid visas on existing passport, the Regional Passport Officer shall issue the additional booklet to the same passport provided the applicant had obtained permission to travel abroad.

(c) If the learned Magistrate passes an order making the reference to the said Notification No. G.S.R. 570(E) dated 26th August, 1993, the passport shall be renewed only for such period that the Magistrate may specify in the order or as otherwise specified in the said Notification where the passport of the applicant is valid for less than one

year, the additional booklet may be issued subject to the orders to be obtained in this behalf only of the Magistrate concerned.

12. For avoidance of doubt, we clarify that the guidelines set out herein will be applicable only in the cases where the learned Magistrate ordered renewal of the passports as per Passport Rules, 1980 and to no other. In other cases, where the learned Magistrate had granted permission to the accused persons to depart from India, the provisions of section 6 (2) (f) of the Passports Act, 1967 and the Notification(s) issued thereunder from time to time by the Ministry of External Affairs or such other competent authority so empowered, will continue to apply and directions permitting the accused persons to depart from India and/or the orders permitting renewal of the passports of such accused persons shall continue to be governed by such Notification(s).”

(Emphasis added)

9. We apply those guidelines in this case also. In any case the decision in *Ambwani* is binding upon us being a decision of a Bench of coordinate strength.

10. Accordingly, Rule is made absolute in terms of prayer clause (b) of the Petition which reads thus :

“(b) Be pleased to call for record and proceedings of application filed by the petitioner before the respondent no 2 and after going through the same be pleased to issue writ of mandamus or writ in the nature of mandamus and be pleased to

direct the Regional Passport Authority/Respondent No 2 to grant Passport for the tenure of 10 years or 20 years as per the Passport Rules to the present Petitioner.”

11. Since the Petitioner’s passport has already expired the Petitioner will be required to apply for the issuance of a new passport. This order and these directions would apply to that application as well, namely the new passport will be permitted for a period of 10 years or 20 years as the case may be.

12. These directions do not set aside the order of 24th December 2020 but only add to it that which remained to be specified.

13. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

14. All concerned will act upon authenticated or digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)