

AD-18
Ct No.09
24.08.2023
TN

WPA No. 4017 of 2023

Sajal Kanti Bhattacharyya
Vs.
Union of India and another

Mr. Muhammad Obaid
.... for the petitioner

Mr. Nilanjan Bhattacharjee
.... for the UOI

Learned counsel for the petitioner contends that the petitioner had a valid passport which expired in the year 2016. In the meantime, the petitioner was accused in a proceeding for an offence primarily under Section 354 of the Indian Penal Code. Trial in that regard is still pending.

When the petitioner's passport came up for renewal, the petitioner was not granted such renewal on the ground of pendency of the criminal proceeding. It is argued that Section 6(2) of the Passports Act, 1967 (hereinafter referred to as "the 1967 Act") is relevant only in the context of issuance of a new passport. The petitioner, however, was already the holder of a valid passport and the present question pertains only to renewal.

It is submitted that the petitioner is required to go abroad urgently to meet his daughter, who is pursuing her higher studies in Sweden.

Learned counsel appearing for the petitioner also cites an unreported judgment of this court delivered on August 11, 2023 in WPA No.14132 of 2023 (*Deborima Banerjee vs. The Union of India and another*) in support of his contentions.

Learned counsel appearing for the respondent-authorities places reliance on Section 6(2)(f) of the 1967 Act and submits that the same debars the issuance of passports in the event any proceeding in respect of an offence alleged to have been committed by the applicant is pending before a criminal court in India. It is argued that the same principle is also applicable for renewal/issuance of a fresh passport.

Heard learned counsel. Section 6(2)(f) clearly stipulates that no passport can be issued to an applicant, criminal proceedings with regard to whom are pending before a criminal court in India.

A comprehensive perusal of the 1967 Act indicates that the duration of passports and travel documents has been mentioned in Section 7, which indicates that a passport shall continue in force for such period as may be prescribed.

Section 8 deals with extension of period of passport and, *inter alia*, provides that the provisions of the Act shall apply to such extension as they apply to the issue of passports.

As such, in the present case, there is no justification for not applying the bar as stipulated in Section 6(2) of the 1967 Act, even to renewal of passport, apart from grant of fresh passport to the petitioner.

Hence, the remedy of the petitioner does not lie in this court but before the appropriate criminal court, pursuant to a Notification of the Ministry of External Affairs, Union of India dated August 25, 1993, which has been fairly cited by learned counsel for the respondents, which provides for an application before the jurisdictional court in seisin of the criminal proceedings against the applicant.

In certain circumstances as stipulated therein, the said court can permit the petitioner to travel. Borrowing the said principle, in the present case, the petitioner is entitled to move the jurisdictional criminal court where the criminal proceeding against him is pending, for the purpose of getting permission to travel abroad.

Upon such permission being granted, there will be no fetter within the contemplation of Section 6(2)(f) to renew the passport of the petitioner.

However, insofar as the judgment cited the petitioner is concerned, the same was in different factual circumstances, where the applicant had actually applied before the Additional Sessions Judge, where the criminal case against the applicant was pending. While disposing of the said writ petition, this court had directed the Additional Sessions Judge, who was in seisin of such criminal case, to immediately grant a 'No Objection' to the petitioner in the context as specified therein.

As such, the facts of the said case are entirely distinguishable from the present case and, as such, the ratio therein cannot be imported in the present case.

Be that as it may, in view of the above discussions, WPA No. 4017 of 2023 is disposed of by granting the petitioner liberty to approach the jurisdictional criminal court, where the criminal proceeding against the petitioner is now pending, for leave to travel abroad. Upon such permission being granted by the said jurisdictional court, if the said jurisdictional court so deems fit in accordance with law, the petitioner will be entitled to immediately

approach the respondent no.2 for renewal of his passport. If so approached, the respondent no.2 shall consider such renewal and, subject to compliance of all other formalities by the petitioner, renew the same.

All concerned shall act on the communication of the learned Advocate for the petitioner for the purpose of compliance of the same.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)