

OD 6

WPO/1778/2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ARABUL ISLAM AND ORS.
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 18th December, 2023.

Appearance:
Mr. Sudip Deb, Adv.
Mr. Sumitava Chakraborty, Adv.
Mr. Aranyak Saha, Adv.
...for the petitioners

Mr. Kumar Jyoti Tewari, Adv.
Ms. Anamika Pandey, Adv.
...for the respondents

The Court: Learned counsel for the petitioners contends that the petitioners sought for re-issuance of passports to them. However, the respondent authorities have been withholding the same on grounds unknown to the petitioners, despite being bound by an order of a coordinate Bench in that regard.

Learned counsel, by placing reliance on the said order, contends that the respondent authorities are bound by the same to re-issue passports to the petitioners.

Learned counsel appearing for the respondent authorities places reliance on the concerned Notification dated August 25, 1993, issued by the Ministry of External Affairs, Government of India. In the said Notification, exemption has

been granted to 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 order from the court concerned permitting them to depart from India. It is submitted that in the present case, no order has been obtained by the petitioners from the jurisdictional criminal court and as such, the passports could not be re-issued in favour of the petitioners.

Learned counsel for the respondents also takes preliminary objection as to a single writ petition not being entertainable at the behest of three separate petitioners having three separate causes of action regarding their individual passports.

In reply, learned counsel for the petitioners submits that the petitioners have already put in additional court fees equivalent to three separate writ petitions.

On merits, it is submitted that even during pendency of the criminal cases against the petitioners, a coordinate Bench had directed the respondents, on September 28, 2022 in WPO/2633/2022, to issue passport to the petitioners subject to certain conditions being satisfied by the petitioners, pursuant to which passports had been issued by the respondent authorities without adhering to the rigours of the Notification-in-question. Learned counsel for the petitioners raises a question as to whether in view of the original passports having been issued in the teeth of the Notification, at the juncture of re-issuance/renewal, the said Notification can be cited to refuse re-issuance, as such re-issuance is virtually a mere renewal of the passports already granted.

With regard to the preliminary objection, the same is technical in nature. The petitioners, no doubt, have individual causes of action, but in view of deposit

of court fees equivalent to three separate writ petitions, they have overcome such hurdle substantially. The ends of justice would be subserved if their causes are, thus, decided by treating the present writ petition to be three separate challenges by each of the three petitioners.

In so far as the argument of the petitioners regarding the passport having previously been issued in their favour pursuant to the direction of a learned Single Judge of this Court without adhering to the rigours of the Notification, the same simpliciter cannot be a ground for the petitioners claiming similar relief at the juncture when a re-issuance of the passports have been sought. The matter pertains to the applicability of the Section 6(2)(f) of the Passports Act, 1967 and its interplay with the Notification cited by the parties.

Section 8 of the 1967 Act clearly provides that where a passport is issued for a shorter period than the prescribed period under Section 7, the said period shall, unless the passport authority for reasons to be recorded in writing otherwise determines, be extendable for a further period as stipulated therein and the provisions of this Act shall apply to such extension as they apply to the issue thereof.

The expression “provisions of this Act shall apply to such extension as they apply to the issue thereof” clearly indicates that for all practical purposes, all modalities applicable to initial issuance of passport are also applicable at the juncture of renewal/re-issuance of passport.

Hence, in the present case, Section 6(2)(f) as well as the Notification concerning the same both apply to the re-issuance of passport as if it were the original issuance of passport.

In so far as the order dated September 28, 2022 passed by the coordinate Bench is concerned, it is seen that the petitioners were directed to furnish undertaking in writing to the Passport Authority that the petitioners shall appear before the Court concerned at any time and as and when required in the proceedings.

Thus, the premise of the learned Single Judge was more on the basis of a vindication of the right to life as well as right to freedom of the petitioners as enshrined in Article 21 of the Constitution, subject to certain riders being put in for issuance of passport to the petitioners, than on the provisions of the Passports Act as such.

Although the Notification-in-question was considered, the specific rider therein as to an order from the jurisdictional Court being mandatory to get relief under the said Notification did not fall for consideration or was argued before the said Court. Hence, insofar as the applicability of the said rider in the Notification is concerned, the said judgment, with utmost respect, is not a precedent on such issue.

The Notification-in-question clearly provides that the exemption is granted to citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court, which is squarely under the contemplation of Section 6(2)(f) of the Passports Act, 1967. The exemption granted, however, is subject to the rider that such a person shall have to produce orders from the “court concerned” permitting them to depart from India.

The expression “court concerned” has to be read with reference to the expression “criminal court” used in the previous portion of the said clause of the

Notification. Thus, the order which is to be obtained permitting the applicants to depart from India is to be obtained from none other than the jurisdictional criminal court where the criminal trial against the said applicant is pending.

The subsequent riders in the said clause only speak about the tenure of such passport. Sub-clause a (i) speaks about the tenure of the passport, in case the criminal court has specified a particular period, to be co-extensive with such period. The rest of the sub-clauses in the said provision only stipulate that the default period of issuance of passport otherwise is one year.

The same has to be read in conjunction with Section 6(2)(f), which provides that the passport authorities shall refuse to issue a passport or travel document for visiting any foreign country under Clause (c) sub-section (2) of Section 5 on any of the conditions including that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. Read in conjunction, Section 6(2)(f) and the Notification mandatorily stipulate that to get the exemption under the Notification if a person is the accused in a pending criminal case as envisaged in Section 6(2)(f) of the Passports Act, the person has to obtain an order from the criminal court permitting him to depart from India.

In the present case, admittedly the petitioners have not obtained any such order as yet, thereby justifying the refusal of the passport authorities to re-issue their passports on such ground. However, in the event the petitioners do obtain such orders from concerned criminal court(s), there is nothing to prevent the petitioners from having a re-issuance of their passports.

Accordingly, WPO/1778/2023 is disposed of by granting liberty to the petitioners to apply before the concerned jurisdictional criminal court/courts for

an order permitting them to depart from India as contemplated in the Notification bearing no. G.S.R. 570 (E) dated August 25, 1993. If such applications are made within a week from date, the concerned criminal court(s) shall decide on such applications within a further week thereafter by acting on server copy of this order without insisting upon prior production of certified copy.

Upon obtaining such orders from the criminal court, if permitted to leave India, the petitioners will be at liberty to approach the passport authorities afresh for re-issuance of their passports. In the event such orders permitting them to leave India are produced by the petitioners before the passport authorities, the passport authorities shall decide the applications of the petitioners for re-issuance of passport afresh in the light of the said orders obtained from the criminal court(s), positively within a fortnight from the date of such approach being made with the copies of the criminal court's orders, and re-issue their passports in due process of law.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)