

18  
28.03.2024  
Mb

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P.A. No. 4772 of 2024

Rahamat Mallick & Anr.  
Vs.  
The State of West Bengal & Ors.

Mr. Sanjib Seth  
... for the petitioners

Mr. Swapan Banerjee,  
Ms. Sunita Shaw  
...for the State  
Mr. Kumar Jyoti Tewari,  
Mr. Tirtha Pati Acharyya  
...for the Regional Passport Officer

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel appearing for the petitioners submits that the petitioners were denied passports. The ground for such refusal is that a criminal case is pending against the petitioners.
3. Learned counsel for the petitioners submits that the petitioners seek to perform *Hajj*, which is a religious right and, as such, the same ought not to have been denied.

4. Learned counsel for the petitioners cites two coordinate Bench unreported judgments of this Court in support of his propositions.

5. Learned counsel appearing for the respondent no. 4 places reliance on a Notification issued by the Ministry of External Affairs, bearing No. G.S.R. 570(E) dated August 25, 1993, in which a relaxation was made in operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967 to the effect that if an order/permission is obtained by the concerned person against whom a criminal case is pending, from the jurisdictional criminal court, the passport authorities shall, accordingly, grant permission to travel in terms of the said permission granted by the jurisdictional court.

6. A perusal of the first cited judgement of the coordinate benches in the matter of *Arabul Islam & Ors. Vs. Union of India & Ors.*, indicates that the learned Single Judge had taken into consideration the concerned Notification and had directed the passport authorities to issue passport to the petitioners therein considering the relevant provisions of the 1967 Act and the Notification.

7. Thus, nothing is indicated or held in the said judgment to negate the effect of the concerned

Notification, which the Ministry of External Affairs has the authority to issue.

8. In the second judgment, in the case of *Nirmal Mondal vs. The State of West Bengal & Ors.* the learned Single Judge merely followed the proposition laid down in *Arabul Islam* (supra) and reiterated the same.

9. A careful scrutiny of the Notification dated August 25, 1993 indicates that the same has not introduced any stringent provision; rather, a relaxation to the provisions of Section 6(2)(f) of the 1967 Act has been provided thereby. The said Section provides that the passport authority shall refuse to make an endorsement for visiting any foreign country on any of the grounds following thereafter, including if any proceeding in respect of an offence alleged to have been committed by the applicant is pending before any criminal court in India.

10. The Notification-in-question provides that citizens of India against whom proceedings in respect of an offence so alleged are pending are exempted from the rigour of Section 6 (2) (f) in case they can produce orders from the court concerned permitting them to depart from India and stipulates the periods for which passport can be issued in consonance with the said permission.

11. Thus, the remedy before the petitioners lies in obtaining permission from the jurisdictional criminal court where the criminal trial against the petitioners is now pending.

12. Accordingly, W.P.A. No. 4772 of 2024 is disposed of by granting liberty to the petitioners to approach the jurisdictional criminal court where the criminal trial is pending against the petitioners for the purpose of obtaining permission in terms of the contemplation of Notification dated August 25, 1993 issued by the Ministry of External Affairs.

13. If such an application is made before the jurisdictional court by the petitioners, the said court, it is expected, shall decide on the said application within a week thereafter.

14. In the event an order is passed in favour of the petitioners by granting the petitioners permission to leave the country, the petitioners will be at liberty to approach the respondent no. 4 for the purpose of renewal of their request for issuance of passport.

15. If so approached, the respondent no. 4 shall expeditiously decide on the same, preferably within a week thereafter, keeping in view the urgency involved due to the oncoming *Hajj*.

16. Parties shall act on the server copy of this order without insisting upon prior production of a certified copy thereof.

17. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)