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10.04.2024
Mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 7890 of 2024

Chandan Sikdar
Vs.
The Union of India & Anr.

Ms. Pronoti Goswami
... for the petitioner

Mr. Kumar Jyoti Tewari,
Ms. Anamika Pandey
...for the Union of India

1. The petitioner contends that the petitioner was indicted in a proceeding for an alleged offence under Section 498A of the Indian Penal Code.
2. It is argued that on such flimsy ground, the passport was not being issued to the petitioner, for which the petitioner had to approach the criminal court having jurisdiction in the matter and obtained an order for issuance of passport to the petitioner.
3. Learned counsel for the petitioner places reliance on the said order and submits that the same does not stipulate any limited period for such permission to the petitioner to leave the country and, as such, the passport authorities

acted without jurisdiction in issuing a passport to the petitioner for only one year, which was done during the pendency of the writ petition. A copy of the said passport is annexed to the supplementary affidavit which is filed today.

4. Learned counsel cites two judgments, one of a coordinate Bench of this Court and another of a Division Bench of the Bombay High Court, in support of her contention that irrespective of the Circular, the passport ought to be given for a period of ten years or twenty years, as stipulated in Rule 12 of the Rules framed under the Passport Act, 1967.
5. Learned counsel appearing for the respondent-authorities refutes such contention and placing reliance on Clause (a) of the Notification No. GSR 570(E) dated August 25, 1993 submits that if no period is specified in the order of the jurisdictional court, passport shall be issued for a period of one year. Otherwise, it is contended, the bar stipulated in Section 6(2)(f) of the Act applies.
6. A careful consideration of Section 6(2)(f) of the Act indicates that there is a blanket bar provided in the said provision in issuance of passport if there is a pending criminal case in India against the applicant. The Notification

dated August 25, 1993 came by way of relaxation to the said absolute bar. As such, the Notification has to be read in its proper context. Sub-clause (i) of clause (a) of the same provides that the passport shall be issued for the period specified in the order of the court if the court specifies a period for which the passport has to be issued.

7. Sub-clause (ii), however, provides that if no period, either for the issue of passport or for travel abroad, is specified in the order, the passport shall be issued for a period of one year.
8. In fact, the subsequent sub-clauses give a wide liberty to the applicant inasmuch as even if the travel permission is given by the court for a period less than one year or does not specify the validity of the passport, the passport shall be issued for one year in such cases.
9. Taking into consideration the above provisions, the order of the jurisdictional court in case of the petitioner is required to be looked into. The operative portion of the said order reads that the court has no objection if the passport of the accused person is renewed by the concerned authority.

10. However, no time period is stipulated therein, thereby bringing the petitioner within the purview of Clause (a)(ii) of the Notification dated August 25, 1993. Since no period has been specified in the order, the passport has rightly been issued for a period of one year.

11. Insofar as the judgements cited by the petitioner are concerned, the order of the learned co-ordinate Bench of this Court as well as the order of the Bombay High Court Division Bench do not record the exact period for which the permission was granted by the jurisdiction criminal court.

12. In the said cases, both the courts relied on Rule 12 of the Passport Rules as well as the provisions of the Passport Act and directed the passport to be issued for a period of ten years.

13. However, with utmost respect, there was no adjudication or decision in either of the reports on the issue as to the applicability of Clause (a)(ii) of the Notification dated August 25, 1993, nor did any question on the veracity or validity of the said provision fall for consideration before the said courts.

14. Hence, it cannot be said that the principle of *stare decisis* operates inasmuch as the

applicability of Clause (a)(ii) is concerned. Applying the said clause to the case of the petitioner, since no time period was stipulated by the jurisdictional criminal court, the respondent-authorities were justified in issuing the passport for a period of one year.

15. However, needless to say, the petitioner always has the liberty to seek a modification from the jurisdiction court, thereby seeking the specification of the period for which the petitioner is granted permission to leave the country, as per the prayer of the petitioner.

16. Accordingly, W.P.A. No. 7890 of 2024 is disposed of without interfering with the passport issued in favour of the petitioner but granting the petitioner liberty to approach the jurisdictional criminal court, that is, the learned Additional Chief Judicial Magistrate at Chandannagore, District-Hooghly, for a modification of the order dated February 21, 2024, by which the petitioner was granted 'No Objection' to leave the country, for stipulating the time period for which such permission/no objection is given.

17. If so approached, the jurisdictional Magistrate shall decide on the said application as

expeditiously as possible, preferably within a fortnight from the date of such application being made by the petitioner.

18. In the event a time period is stipulated and the petitioner can get the benefit therefrom under Clause (a)(i) of the Notification dated August 25, 1993, it will be open to the petitioner to approach the passport-authorities for re-consideration of the period for which the passport is issued to the petitioner.

19. In case of such approach, the respondent-passport authorities shall revisit the period for which the passport shall be granted to the petitioner in terms of Clause (a)(i) of the said Notification and upon a consideration of the issue, within a fortnight thereafter, shall re-issue the passport in favour of the petitioner in accordance with the said provision.

20. The parties shall act on server copies of the order without insisting upon prior production of certified copies thereof for the purpose of compliance.

21. There will be no order as to costs.

22. 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.)