

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 353 of 2024

**Aditya Sarda
Vs
Regional Passport Officer and Anr.**

For the petitioner	:	Mr. Sudhir Mehta, Adv. Mr. Anurag Bagaria, Adv. Mr. Devansh Sonthalia, Adv. Ms. Riya Debnath, Adv.
For the Union of India	:	Mr. Kumar Jyoti Tewari, Adv. Mr. Tirtha Pati Acharyya, Adv. Mr. Amrit Sinha, Adv. Mr. Aniruddha Tewari, Adv.
Hearing concluded on	:	02.05.2024
Judgment on	:	07.05.2024

Sabyasachi Bhattacharyya, J:-

1. In the present writ petition, the petitioner has challenged the *vires* of Clause (a)(ii) of a Notification issued by the Ministry of External Affairs, Government of India bearing no. G.S.R 570(E) dated August 25, 1993 in as much as the said sub-clause restricts the issuance of passport to one year in cases where the jurisdictional criminal court, where a criminal case is pending against the applicant, grants

permission to the applicant to depart from India without specifying the period for the same.

2. Learned counsel for the petitioner argues that Section 6(2)(f) of the Passports Act, 1967 (hereinafter refer to as, “the 1967 Act”), provides a bar to issuance of passports in respect of persons against whom proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. The concerned Notification bearing no. G.S.R 570(E) dated August 25, 1993 provides exemption to such bar in cases where the applicant produces orders from the court concerned permitting him/her to depart from India.
3. Sub-clause (i) of Clause (a) thereof stipulates that such passport shall be issued, in cases where the court permits the person to depart from India and specifies a period, for such period.
4. Sub-clause (ii), however, provides that if no such period is specified in the order although the person is permitted to depart from India, the passport shall be issued for the period on one year.
5. Learned counsel for the petitioner argues that what the Central Government grants in one hand in sub-clause (i), is taken away by it in sub-clause (ii). It is argued that sub-clause (ii) should be read down by striking out the period of one year and replacing the same with ten years, inline with Rule 12 of the Passports Rules, 1980 which provides the default period of issuance of Passport to be ten years.
6. The logic behind such argument is that in cases where the court specifies a period for permission to travel abroad, sub-clause (i)

mandates that the Passport Authority shall abide by the same by issuing the passport for such a period, thus conferring the power entirely on the jurisdictional court to decide the period for which such passport shall be issued.

7. However, when the court passes a similar order permitting the applicant to travel abroad in an unbridled manner without restricting such time, the Central Government restricts the period of such passport to merely one year under sub-clause (ii), which is in stark contravention of Rule 12 of the 1980 Rules, which stipulates ten years as the norm regarding the period of passport by default. It is argued that where the court granting such permission itself does not restrict the time, the period of the grant of passport should be in consonance with the default period as provided in law and cannot be more restrictive than where the court specifies a time.
8. Having conferred the discretion on the court under sub-clause (i), the same cannot be taken away in a case where a more liberal order is passed by the Court, granting permission without restricting the time.
9. Learned counsel for the petitioner submits that there has not been any challenge before any High Court to the *vires* of sub-clause (ii) of the Notification. However, learned counsel cites several judgments of different High Courts and the Supreme Court to prove his point otherwise by analogy.
10. The first judgment cited by learned counsel appearing for the petitioner is *Venkata Siva Kumar Yadhanaputi Vs Union of India*, reported at 2024 SCC OnLine TS 402. The other judgments cited are

Ravi Kumar Panasa Vs Union of India, reported at 2022 SCC OnLine TS 3474, an unreported judgment passed by the Andhra Pradesh High Court in *Writ Petition No. 220 of 2022 [Ganni Bhaskara Rao vs. The Union of India and another]*, *Anantula Karunakar Reddy vs Union of India and Ors.*, reported at 2023 SCC OnLine TS 4019 and a judgment of the Madras High Court in *W.P. No. 332 of 2022 [Karti P. Chidambaram vs. The Regional Passport Officer]*.

11. That apart, learned counsel cites *Kasturi Rangacharyulu vs Central Bureau of Investigation*, reported at 2021 SCC OnLine 3549, a judgment by the Supreme Court, in support of his proposition that the Passport Authority is required to renew the passport of the applicant without raising any objection relating to the pendency of a criminal appeal.
12. Learned counsel for the petitioner, in his rejoinder to the respondents' reply, cites another unreported judgment of the Bombay High Court in *Ashok Roopchand Jain Vs The State of Maharastra and others [Criminal Application No. 1 of 2019 in Criminal Appeal No. 306 of 2019]*.
13. Learned counsel for Union of India controverts the submissions of the petitioners and argues that the Notification-in-question provides exemptions to the general Rule stipulated under Section 6 (2) (f) of the 1967 Act, which debars a passport from being issued in case a criminal proceeding is pending against the applicant.
14. Such power to exempt, it is argued, is derived from Section 22 of the 1967 Act, which empowers the Central Government, if it is of the opinion that it is necessary or expedient in the public interest so to do,

by notification in the Official Gazette to exempt any person or class of persons from the operation of all or any of the provisions of the Act or the Rules made thereunder and as often as may be to cancel any such notification and again subject, by a like notification, the person of class of persons to the operation of such provisions.

15. It is argued that the present petitioner seeks issuance/renewal of an 'ordinary' passport as contemplated in Section 4(1)(a) of the 1967 Act. The general norm of 10 years as stipulated in Rule 12 of the 1980 Rules, it is argued, cannot be applied in case of a person against whom a criminal case is pending, since such a person is by default debarred under Section 6(2)(f) to get a passport in the first place.
16. Clause (a)(i) confers jurisdiction on the court to decide the period for which the applicant shall be permitted to travel abroad, in which case the Central Government honours such decision and issues the passport for such period.
17. However, the moment the court grants a general permission to travel abroad without stipulating a particular time, it is to be deemed that such power is conferred on the Central Government, the court choosing not to exercise the same. Hence, in sub-clause (ii) of Clause (a), the Central Government, in its discretion, has stipulated passport to be issued in such cases for a period of one year which according to the Central Government is a reasonable period, keeping in view the fact that a criminal trial is going on against the person concerned and a larger period might be detrimental to such trial.

- 18.** Learned counsel appearing for the Union argues that the Passport Authority, under Section 7 of the 1967 Act, has the power to issue a passport or travel document for shorter period than that prescribed (10 years) if the Passport Authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period. Such discretion is conferred on the Passport Authority under Clause (b) of the proviso to Section 7 of the 1967 Act.
- 19.** Similarly, under Section 8 of the said Act, where a passport is issued for a shorter period than that prescribed under Section 7, such shorter period shall, unless the Passport Authority for reasons to be recorded in writing otherwise determines, be extendable for a further period which, together with the shorter period, shall not exceed the prescribed period in which case the provisions of the act shall apply to such extension as they apply to the issue thereof.
- 20.** Thus, the same provisions applicable to issuance of passport applies to grant of extension as well. Hence, Sections 7 and 8 empower the Passport Authority to issue passports for a shorter period than that prescribed under normal circumstances as well, in its discretion. Thus, Clause (a)(ii) is entirely inconsonance with such power under Section 7 of the 1967 Act, as grant of passport in exempted cases, where a criminal proceeding is pending, cannot be equated with normal circumstances envisaged under Rule 12.
- 21.** It is next contended on behalf of the Union of India that Article 19(1)(d) grants the citizens the right to move freely throughout the

territory of India. It is argued that, by virtue of a passport, such constitutional right cannot be extended beyond that conferred on citizens under Article 19. Article 19(1), it is argued, is circumscribed by Article 19 (5) which provides that nothing in sub-clause (d) shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clause either in the interest of the general public or for the protection of the interests of any Scheduled Tribe. Thus, the Notification-in-question derives justification from the Constitution of India.

- 22.** Learned counsel for the respondents next argues that Item 11 of Schedule-V of the 1980 Rules provides one of the conditions subject to which a passport or travel document shall be issued or renewed. The said item enumerates that the passport or travel document should be surrendered to the Passport Authority if the holder of the same ceases to be eligible to hold one. Hence, the Passport Authority has ample power to restrict the period for which a passport is granted and to enforce surrender of the passport after its eligibility is exhausted.
- 23.** Learned counsel of the Union of India seeks to dwell upon the scheme of the Passports Act, 1967 by placing reliance on several provisions, including Section 5(2)(c) which empowers the Authority to refuse to issue passport or travel document or as the case may be and to refuse to make on the passport or travel document any endorsement on receipt of an application for passport by an order in writing.

- 24.** Learned counsel also places reliance on Section 6 (2), Clauses (e) and (f) which respectively preclude a passport from being issued if at any time during the preceding 5 years of the application, the applicant is convicted by a court in India for any offence involving moral turpitude and sentenced to imprisonment of not less than 2 years and if criminal proceedings are pending against the applicant.
- 25.** Apart from Section 7, proviso (b) and Section 8, as discussed earlier, learned counsel also highlights the power to grant exemption conferred on the Central Government under Section 22.
- 26.** Also, under Section 10(3)(d), the passport authority may impound or cause to be impounded or revoke a passport or travel document if the holder has, at any time after the issue of the same, been convicted by a court in India for any offence involving moral turpitude and sentenced to imprisonment for not less than two years.
- 27.** It is thus argued that on a holistic interpretation of the entire scheme of the 1967 Act, the Central Government retains ample power to impose reasonable restrictions in public interest to issuance of passports.
- 28.** Hence, it is reiterated, Clause (a)(ii) of the impugned Notification stands on sound legal and constitutional footing.
- 29.** Before entering into the merits of the adjudication, it is noticed at the outset that the judgments cited by the petitioner do not deal with the *vires* of the impugned Notification, but hold in general lines that under normal circumstances, passport should be issued for a period of ten years, more or less in consonance with Rule 12 of the 1980 Rules.

In *Venkata Siva Kumar Yadhanaputi (supra)*, eligibility for extension of passport was being considered which was held to be for regular period of ten years as provided in the Rules. In the said case, the petitioner had a valid passport which was due to expire, for which an application for renewal was filed. The respondent-Authorities sought clarification from the petitioner for issuing the renewed passport on the ground of adverse police report at that juncture. The court directed the petitioner to submit an undertaking stating that he will not leave India, on which the renewal was permitted.

30. In *Kasturi Rangacharyulu (supra)*, the Supreme Court was not dealing with the validity of the present Notification. In a case which fell under Section 6(2)(f) of the 1967 Act, the Supreme Court directed the passport authority to renew the passport of the applicant without raising objection to the pendency of the criminal appeal in the Supreme Court. However, the same does not comprise any *ratio decidendi* in respect of the present context but was merely a direction passed under Article 142 of the Constitution of India.
31. In *Ravi Kumar Panasa (supra)*, the Telangana High Court was also dealing with a matter where the petitioner's passport was set to expire and he approached the authority for renewal of the passport. In such context, clarification was sought from the petitioner and the renewal was blocked. The Sessions Judge in the said case had observed that pendency of criminal case cannot be a ground for denying the petitioner's right to renew the passport and observed that it should be given only for the period he is eligible. The use of the word 'eligible'

was interpreted by the court to connote that the extension may be for regular period of ten years as provided in the Rules.

32. In *Ganni Bhaskara Rao's* case, the petitioner had surrendered his passport, which was retained on the ground of adverse police report, which fact is somewhat different from the present case. In *Anantula Karunakar Reddy (supra)*, the Telengana High Court was considering the case of a petitioner who had a valid passport which had expired and the petitioner had applied for renewal of the same. In the said case as well, a clarification was sought regarding pendency of criminal case. The court held that the passport authority cannot refuse the delivery and release of passport to the petitioner which was in the custody of the passport authority on the ground of Section 6(2)(f) on the ground of pendency of criminal case.
33. In the said case, the petitioner was held not to be covered by Section 6(2)(f) at all.
34. In *Karti P. Chidambaram's* case, the Madras High Court was dealing with the withholding of additional booklets in respect of the passport to the petitioners. The court held that such a situation will not be governed by Section 6(2)(f). Thus, the invocation of the present Notification was not in question at all in the said judgment.
35. In *Ashok Roopchand Jain's* case, the Bombay High Court was dealing with a case where the Magistrate had clearly observed that the application for renewal of passport should be made "as per the Act and the Rules framed thereunder". Thus, relying on Rule 12, it was held that the issuance of passport should be for ten years.

- 36.** Hence the ratio laid down in none of the above judgments applies to the present case.
- 37.** While adjudicating the issue at hand, the provisions of Article 19 of the Constitution is required to be considered. Article 19(1)(d) provides that all citizens shall have the right to move freely throughout the territory of India. Sub-clause (e) provides similar right to reside and settle in any part of the territory of India. The right to travel abroad is merely an extension of the said rights. However, sub-clauses (d) and (e) of Article 19(1) are subject to Article 19(5) which provides that nothing in the said sub-clauses shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interest of general public or for protection of the interest of any Scheduled Tribe.
- 38.** Seen from such perspective, Section 6(2)(f) is a reasonable restriction imposed by law within in the framework of Article 19(5) of the Constitution and debars issuance of passport where proceedings in respect of an offence alleged to have been committed by the applicant is pending before a criminal court in India.
- 39.** Section 22 of the 1967 Act is an exception carved out from the restrictions imposed by the Act itself. The said Section confers on the Central Government the power to exempt where it is of the opinion that it is necessary or expedient in the public interest to do so, by Notification in the Official Gazette. Such exemption by Notification includes exemption of any person or class of persons from the

operation of all or any of the provisions of the Act or the Rules made thereunder. Thus, the impugned Notification dated August 25, 1993 was issued by the Central Government under the powers conferred on it by Section 22(a), which is also reflected from the Notification itself.

- 40.** Hence, we have to keep in mind the wider backdrop that Section 6(2)(f) is the parent provision which has been enacted by virtue of the legislative power conferred under Article 19(5) of the Constitution of India.
- 41.** Section 22 of the Act provides an exception thereto and thus, is a relaxation in favour of a category of persons who are otherwise reasonably restrained from obtaining a passport within the confines of Section 6(2)(f).
- 42.** Hence, the very source of power of the Central Government to publish the concerned Notification is vested by Section 22 of the 1967 Act. Thus, the repository of such power of exemption is not the court but the Central Government, flowing from Section 22 of the 1967 Act which carves out an exception to restrictions provided under Article 19(5) of the Constitution itself.
- 43.** Being such repository of power, the Central Government in its discretion has issued the impugned Notification dated August 25, 1993 and in its power of delegated legislation, has stipulated Clause (a)(ii) where it is provided that if no period of permission to travel abroad is provided in the court's order, the passport shall be issued for a period of one year.

- 44.** Sub-clauses (i) and (ii) of Clause (a) of the Notification had been promulgated by the same authority that is the Central Government under its power of delegated legislation conferred by the same source that is Section 22 of the 1967 Act. Thus, the two sub-clauses operate on parallel footing and cannot carve out exceptions from each other.
- 45.** Hence, when sub-clause (i) confers power on the court to decide as to the period for which the applicant is permitted to depart from India, which would be adhered to by the passport authority, the discretion of the court does not flow from general law but is the creature of the said Notification as reflected in sub-clause (i) itself. As such, the power of the court under sub-clause (i) does not emanate from any law or the Constitution but has been conferred by the Central Government in its power of delegated legislation under Section 22 of the 1967 Act.
- 46.** Similarly, when sub-clause (ii) restricts the issuance of passport to one year where the court does not specify any period, the Central Government deliberately retains with itself the power to stipulate the period of issuance of passport where the court does not exercise such discretion. Such exercise of delegated legislation is perfectly within the confines of Section 22 of the 1967 Act.
- 47.** The principle that the wisdom of the legislature has primacy in respect of the legislative domain can also be extended to delegated legislation exercised by the Central Government in publication of the Notification-in-question under the aegis of Section 22 of the 1967 Act.
- 48.** The matter can be looked at from another perspective as well. The discretion envisaged in sub-clause (ii) can be viewed from two

standpoints. One view can be that the court chooses to grant unbridled permission to the applicant to leave the country by not stipulating any time-frame for such permission. The other equally valid view, however, is that the court chooses not to exercise the discretion conferred sub-clause (i) by granting such permission to depart from the country but abstaining from stipulating the period therefor. Hence, the interpretation lent by the Central Government to its own delegated legislation accepting the latter view cannot be faulted on the ground of unreasonableness or arbitrariness.

- 49.** It is well-settled that a legislation or a delegated legislation, to be held unconstitutional or contrary to its parent legislation, a high ground of unconstitutionality/irrationality has to be made out. Interference with the legislative domain, either in respect of a principal legislation or a delegated legislation, requires much higher tests to be satisfied than in case of Executive action. The very concept of separation of powers ingrained in the Constitution of India is an inbuilt safeguard to unbridled power being exercised by any of the three pillars of Democracy.
- 50.** Accordingly, it cannot but be construed that the Central Government, in exercise of its power under Section 22 of the 1967 Act, has chosen in its legislative wisdom to delineate the two situations as encapsulated in sub-clauses (i) and (ii) of Clause (a) of the Notification in issue.
- 51.** While in case of a sub-clause (i) scenario, the court not only grants permission to the applicant to depart from India but specifies a period

therefor, which has been deliberately left to the discretion of the court by the Central Government in its delegated legislation, if the court chooses to grant permission to the applicant to depart from India but abstains from specifying the period therefor, the power of determining the period reverts back to the residuary authority of the Central Government, which is conferred on the Central Government in the first place by the source of its power, that is, Section 22. Hence, the provision in sub-clause (ii) of Clause (a) of the impugned Notification restricting the period of issuance of passport where the court does not exercise such discretion is fully in consonance with Section 22 of the parent statute that is the Passports Act, 1967 as well as Article 19(5) of the Constitution, read in the context of Section 6(2)(f) of the 1967 Act.

- 52.** The argument on the premise of Rule 12 cannot be sustained, since Rules framed under the 1967 Act cannot override a Notification which has been promulgated under the powers conferred by Section 22 of the parent Act itself. That apart, as rightly argued by the Union of India, Rule 12 contemplates normal situations where a passport is sought by an ordinary citizen and not where there is specific bar under Section 6(2)(f) of the said Act.
- 53.** In such view of the matter, the challenge to the *vires* of the impugned Notification cannot be sustained.
- 54.** Accordingly, WPO No. 353 of 2024 is dismissed on contest, thereby holding Notification No. G.S.R.570(E) dated August 25, 1993 published by the Ministry of External Affairs, Government of India to

be *intra vires* the Passports Act, 1967 as well as the Constitution of India.

55. There will be no order as to costs.
56. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.**)