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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/215/2024
IA NO: GA/1/2024

MAHESH KUMAR AGARWAL
VS
UNION OF INDIA AND ANR.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 4th April, 2025.

Mr. Partha Sarathi Sengupta, Sr. Adv.
Mr. Niloy Sengupta, Adv. ..for appellant.

Mr. Ashok Kr. Chakraborty, Sr. Adv. , Ld. ASG,
Mr. Kumar Jyoti Tiwari, Sr. Adv.
Ms. Amrita Pandey, Adv. ...for respondents.

The Court :- The appellant is the writ petitioner in WPO/352/2024 which was filed for direction upon the Regional Passport Office, Kolkata to renew the appellant's passport which expired on 28.8.2023. The learned writ court has gone into the legal issue and examined the various provision of the statute and has held that the prayer sought for cannot be granted. After we have heard learned senior advocate appearing for the appellant on an earlier occasion, that is, on 7.2.2025, we recorded the following prima facie finding :

"The Court : We have heard Mr. P.S. Sengupta, learned senior counsel appearing for the appellant and the learned Additional Solicitor General for the respondents.

Prima facie we are of the view that the order passed by the Learned Single Bench would not call for interference. This prima facie view is on account of the fact that the writ Court cannot be converted into an executing court to execute an order passed by a Special Judge, NIA, Ranchi, Jharkhand State.

Secondly, the High Court of Calcutta while entertaining a criminal appeal against an order of conviction had only suspended the sentence imposed on the appellant/writ petitioner but had not stayed the conviction. Apart from that, we find that passport can be refused on any of the grounds mentioned in Section 6(2) of the Passports Act, 1967. It also appears that distinction between an application for renewal and an application for grant of passport has been removed after the form for renewal in Form EA(P)-2 was omitted by GSR 860(E), dated 1.11.1985 (w.e.f 1.11.1985). On account of such form being deleted, all conditions which are required to be complied with by an applicant for grant of a fresh passport would mutatis mutandis apply to an application for renewal or extension of the passport. Apart from that, we find from Section 6(2)(f), the passport can be refused on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. No doubt there are certain office memorandum issued by the Ministry of External Affairs, Government of India as to what is the procedure to be adopted when criminal cases are pending. However, in terms of Section 6(2)(f), there is an embargo for issuance of the passport when an offence has been committed by the applicant and pending before a criminal court in India. In the instant case, one case is pending before the Special Court at Ranchi and the in the other case, the appellant has suffered a conviction.

Therefore, prima facie we are of the view that the order passed by the Learned Single Bench would not call for interference.

Learned senior Advocate for the appellant requests time to make submissions on the above prima facie view which has been recorded above passed by this Court.

The matter stands adjourned.”

In furtherance to the above order, the learned senior advocate appearing for the appellant had made elaborate submissions before us and taken us through the various provisions of the statute including the office memorandum issued by the Ministry of External Affairs, Government of India dated 10.10.2019. The learned Additional Solicitor General appearing for the respondents has supported the order passed by the learned single Bench and has referred to section 10(3)(d) read with

section 6(2)(f) of the Passport Act, 1967 and submitted that there is a statutory embargo for the appellant to obtain a passport in the light of the conviction in a criminal case registered against the appellant against which an appeal is pending before the High Court at Delhi and order suspending the sentence granted, however, there was no stay of conviction. Apart from that, there is another case pending before the Additional Judicial Commissioner XVI-cum-Special Judge, NIA, Ranchi in which the appellant has been added as an accused and the case is pending for trial. The learned senior advocate for the appellant had referred to the order passed by the High Court at Delhi in an application filed by the appellant seeking no objection/permission of the court for renewal of passport of the applicant for a period of ten years. To be noted that the High Court at Delhi in criminal appeal no.189 of 2022 while suspending the sentence by an order dated 23.5.2022 issued a direction that the appellant shall not leave the country without the permission of the court. Admittedly, the Regional Passport Authority, Kolkata was not a party to the application which was filed by the appellant before the High Court of Delhi in Criminal Appeal No.189 of 2022. Similarly, the Special NIA Court at Ranchi passed an order on 10.7.2023 directing the passport of the appellant to be handed over to the appellant for limited purpose for renewal on furnishing an indemnity bond of Rs.50,000/- with two sureties each of like amount with the condition that one of the sureties shall be resident of Ranchi, Jharkhand. The copy of the said order was directed to be forwarded to the Ministry of External Affairs and Regional Passport Authority, Kolkata for information and needful. Thus, what the appellant seeks before this court is to execute the orders passed by the High Court of Delhi and Special NIA court at Ranchi which, obviously, cannot be done by this court exercising its powers under Article 226 of the Constitution. Much emphasize was placed on the office memorandum dated 16.10.2019. In the said office memorandum an earlier notification in GRS 570(E) dated 25.8.1993 was reproduced. The said notification can be of no assistance to the

appellant because the said notification will apply only if the concerned court permits the applicant to depart from India and if such permission was granted then the concerned court should specify the period in the order and then only the authority can act upon. There is a restraint order against the appellant for travel outside the country.

In the light of the above legal position, apart from that the distinction between issuance of passport and renewal has been done away with and the conditions which are applicable for renewal are to be followed mutatis mutandis while conditions to be complied with for renewal are the same as that of the conditions to be complied for issuance of a new passport. The terminology used for renewal is “re-issue”. Therefore, on that score also the appellant faced much difficulty. The other embargo would be that the application for re-issue was filed on 22nd September, 2023 after the original passport had expired.

Faced with the above situation, the only option left with us is to affirm the order passed by the learned Single Bench. However, having realised such situation, the appellant now seeks leave to approach the concerned Courts, namely, the High Court at Delhi and/or Special NIA Court at Ranchi for necessary directions so that his prayer can be met.

In the light of the above, while holding that the legal principle laid down by the Learned Single Bench is just and proper, we do not wish to foreclose the rights of the appellant and therefore, leave it open to the appellant to approach the High Court of Delhi or the Special NIA Court at Ranchi for appropriate directions.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)

