

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14116 OF 2024

Pilaji Sursinh Jadhavrao

Age about 53 years, occ. Agriculturist,

1202/2/14 Laxmi Vilas Apte Road,

Deccan Gymkhana,

Taluka-Purandar, Pune-411 004

...Petitioner

Versus

Regional Passport Office Pune

Passport Bhawan, Sr. No.522,

Baner-Pashan Link Road, Baner,

Pune-411 045

...Respondent

Mr. Abhijit P. Kulkarni a/w Mr. Shreyas Zarkar, Mr. Gaurav Shahane,
Mr. Abhishek Roy and Mr. Krushna Jaybhay for the Petitioner.

Ms. Leena Patil for Respondent.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 14 JANUARY 2025

ORAL JUDGMENT (Per Advait M. Sethna, J.):

1. Rule returnable forthwith. With consent of the parties, heard finally.
2. This writ petition is filed under Article 226 of the Constitution of India, prays for the following substantive relief :-

“a) This Hon’ble Court, by way of approximate Writ Order or direction, may kindly be pleased to direct Respondents to consider Petitioner’s case for Re-issue of Passport for a period of 10 year;”

3. The petitioner is thus seeking orders from this court for the reissue of his passport for a period of 10 years, which had expired on 23 April

2024.

Factual Matrix :-

4. The following are the relevant facts necessary facts for adjudication of this petition.

5. The petitioner is a social worker and a leader of a political party and the respondent is the Regional Passport Office, Pune.

6. On 22 June 2005 a first information report (“**FIR**” in short) was registered against the petitioner and 52 others under sections 143, 145, 147, 332, 333, 452, 427 of the Indian Penal Code, 1860. The petitioner was granted bail on 30 June 2005 by the Additional Sessions Judge, Pune upon furnishing a bail bond of Rs. 15,000/-.

7. On 28 November 2022, the petitioner filed an application before the Ld. Sessions Judge, Pune, seeking the renewal of his passport, which had expired on 19 December 2019. By an order dated 22 December 2022, the court dismissed the application, stating that permission of the court is not necessary to process the application for renewal of passport. Pursuant to this order, the petitioner was issued a passport with a one-year validity on 24 April 2023.

8. Following the renewal of his passport, the petitioner obtained an order from the Additional Sessions Judge, Pune, permitting him to travel. With the necessary clearances in place, the petitioner traveled to the United Kingdom from 1 June 2023 to 15 July 2023.

9. The petitioner's passport expired on 23 April 2024. Consequently, the petitioner once again approached the Ld. Sessions Judge, Pune, seeking the renewal of his passport. By an order dated 25 June 2024, the court reiterated its earlier position, dismissing the application on the ground of renewal of passport, court permission is not required.

10. Relying on the above order, the petitioner submitted an application to the respondent on 6 August 2024, requesting the reissuance of his passport. However, vide communication dated 26 August 2024, the respondent deferred to decide the said application, citing the pendency of a criminal case, relying on the the notification dated 25 August 1993 and on the judgment of a co-ordinate Bench of this court in **Cyrus Keki Balsara v. Union of India and Anr.**¹

11. In the aforementioned backdrop, the petitioner has approached this court, seeking reissuance of his passport for a period of 10 years.

Submissions :-

12. Mr. Abhijit Kulkarni, learned counsel for the petitioner, at the very outset urged that the respondent, i.e., Regional Passport Office, Pune, had declined to reissue the passport, on the sole ground of pending criminal proceedings *qua* the petitioner. He urged that this is not a case where the petitioner is convicted of any offence under the applicable criminal laws. In this context, he would rely on Section 6(2)(e) of The Passports Act,

¹ 2024 SCC OnLine Bom 1085

1967 (“*Passports Act*” for short), to contend that this is not a situation where the petitioner is convicted by a court in India for such offence(s).

13. Mr. Kulkarni, would urge that the petitioner has duly and fully complied with all legal obligations in regard to the pending criminal proceedings. He has been fully cooperating with the law enforcing agencies in respect of which, according to him, even the respondent would nurture no grievance.

14. Mr. Kulkarni, would urge that right to travel abroad is a fundamental right guaranteed under the Article 21 of the Constitution of India, 1950 (“**Constitution of India**” for short). Depriving a person of such right by denying reissuance of the passport only on the ground of pending criminal proceedings, violates such fundamental right of the petitioner.

15. According to Mr. Kulkrani, the Sessions Court ought to have followed precedents where the reissuance of a passport was permitted despite pending criminal proceedings, provided there was no conviction. Mr. Kulkarni, would then submit that the petitioner was constrained to approach this court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India, for the reason that the petitioner requires the passport urgently, as he intends to travel to United Kingdom, where his younger daughter has applied for further studies. As the petitioner is required to travel abroad frequently to visit his daughter, reissuance of his passport which has admittedly expired, cannot be denied to him by the

respondent-authority. In view thereof, Mr. Kulkarni, would urge that appropriate directions be issued to the respondent for reissuance of the petitioner's passport for a period of 10 years. He would thus submit that the petition be allowed.

16. Ms. Leena Patil, learned counsel for the respondent would contest the petition. She would refer to a communication dated 26 August 2024, addressed by the respondent/Regional Passport Office, Pune to the petitioner, in response to his passport application dated 6 August 2024.

The said communication reads thus :-

"This is in reference to your Passport application number PN1079966572624 dated 06/08/2024.

On processing of the Application form, the following shortcomings came to notice:-

1) A criminal case is pending against you as per Police Verification Report.

It is informed that you have applied for RE-ISSUE of passport and not RENEWAL of passport as can be confirmed from the service applied for in the application form. Renewal of passport is no longer permitted and all existing passports are reissued now.

Please note that all passport applicants against whom proceedings in respect of an offence alleged to have been committed are pending before a criminal court in India are governed by the existing provisions of GSR 570(E) dated 25.08.1993.

The above requirement is already clarified by The Hon'ble Bombay High Court in order dated 08.04.2024 in WRIT PETITION (L) NO. 1576 OF 2024 Cyrus Keki Balsara

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In view of above, you are requested to furnish Court permission for passport/ permission to depart from India from the concerned court as per existing provisions of GSR 570(E) dated 25.08.1993 for further processing of your passport application An undertaking as pe: GSR 570(E) for the pending case also needs to be submitted Please furnish the same for further processing of your passport application.

Please send self attested photocopies of the relevant documents only by post. The originals of such documents need to be carried while visiting Passport Office on Monday Tuesday Thursday & Friday (not on Wednesday) between 09:00 am to 12:30 pm only. Send the documents by registered post to the address of the Passport Office mentioned above. Please make sure to mention your file number and date on top of each page/document and also on the envelope

If you live in the vicinity of Passport Office Pune or have been specifically asked to appear in person you could choose to submit the required documents to the Enquiry Officer at the Passport Office on on Monday Tuesday Thursday & Friday (not on Wednesday) between 09.00 12:30 pm only. If am to the service is rendered, please ignore this letter or please treat this letter as cancelled.”

17. Ms. Patil, would hence submit that the case of the petitioner squarely falls within the provisions of section 6(2)(f) of the Passports Act which categorically refers to pending proceedings in respect of the offences alleged to have been committed, which are pending before the competent criminal court in India. In light of the said provision, according to her, the petitioner ought to seek orders from the competent criminal court for reissuance of passport, as also provided in the notification dated 25 August

1993, i.e., G.S.R. 570(E). The said provisions of 6(2)(e) and 6(2)(f) of the Passports Act; along with the notification dated 25 August 1993 reads as thus :-

“6. Refusal of passports, travel documents. etc-

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of subsection (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;”

The Notification dated 25 August 1993, issued by the Ministry of External Affairs, Government of India, in G.S.R. 570(E) reads thus :-

“G.S.R. 570(E).—In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976,

the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempt 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 orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of section 6 of the said Act, subject to the following conditions, namely :—

(a) the passport to be issued to every such citizen shall be issued—

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (i) and (a) (iii) above can be further renewed for one year at a time,

provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.”

18. She would accordingly submit that under the said notification dated 25 August 1993 (Supra), where there are proceedings pending before a competent criminal court, appropriate orders are required from such court, permitting the person concerned to depart from India. Accordingly, she would submit that considering the statutory framework under the Passports Act and the rules, the petitioner ought to follow such procedure as contemplated under the statutory provisions, and approach the competent criminal court for the purpose of reissuance of passport. Ms. Patil would contend that considering the above statutory provisions/framework/scheme the petition is devoid of merits and ought to be dismissed.

Analysis :-

19. Considering the factual conspectus of the present case, we find that it is an undisputed fact that this is a case where criminal proceedings in respect of the offences alleged/charged, are pending before the criminal court against the petitioner. It is equally undisputed that the petitioner is not convicted by any court(s) in India for any offence charged. Therefore, one has to examine the petitioner's case in the light of provision under section 6(2)(f) of the Passports Act (Supra), which would be applicable in the given facts and circumstances. So also, a perusal of the above notification dated 25 August 1993 (Supra) makes it clear that, one of the conditions provides for issuance/reissuance of a passport. It alternatively provides that, if no period for issuance/reissuance of passport for traveling abroad is specified, then in that event, a passport shall be issued for a period of one year. The said notification further mandates that citizens of India against whom the proceedings are pending before any court in respect of an offence alleged to have been committed by him, they ought to furnish orders from the concerned court permitting them to depart from India. It is thus clear that in the given factual matrix, the provisions under section 6(2)(f) of the Passports Act (Supra) read with the notification dated 25 August 1993 (Supra) will be applicable.

20. At this juncture, it would be apposite for us to refer to the decision of this court **Cyrus Keki Balsara v. Union of India and Anr** (Supra)

rendered by a co-ordinate Bench of this court of which one of us, (Mr. G.S. Kulkarni, J) was a member. In such case the court was dealing with a similar situation as in the present case wherein a direction was sought to issue a fresh passport on the basis of an online application submitted on behalf of the said petitioner on 28 August 2023. The Court in the said decision had the occasion to examine the relevant provisions of the Passports Act, Rules read with the notification dated 25 August 1993. The court had also referred to the various decisions on this issue. In the context in hand the relevant paragraphs of the said decision (Supra) need to be noted which read thus :-

15. The present case is certainly not a case which would fall under the provisions of Section 6(2)(e) of the Passport Act as there is no conviction. It is a case falling under the provisions of sub-section (2)(f) of section 6 where the criminal proceedings are pending. Thus the reliance of Mr. Kantawala on the decision of Vangala Kasturi angacharyulu (Supra) as also on the order of the Division Bench in the case of Abbas Hatimbhai Kagalwala (Supra) which is an order solely relied on, would not assist the case of the petitioner which is a case for re-issuance of the passport.

16. Further, it appears that when the petitioner says that his application is for renewal of a passport, it is a misnomer, as the Act and the rules provide for re-issuance of a passport after the same expires. As the Passport Act does not contain any separate provision for renewal of a passport as the prescribed form also provides for re-issuance, we have not been shown any provision, otherwise.

17. In the light of the above discussion, we accept the contention raised on behalf of the respondents that the petitioner's case falls under the provisions of section 6(2)(f) and also stands covered by the notification issued by Central Government dated 25th August 1993. In these circumstances, the petitioner would be required to make applications to the criminal courts where the cases are pending for re-issuance of a passport. We thus, find that the relief as prayed for by the petitioner in the present proceedings, cannot be granted.

18. We however, keep open the petitioner's rights to make application to the appropriate criminal courts so as to obtain orders in terms of the notification dated 25th August 1993.

19. All contentions in that regard are expressly kept open.

20. Petition stands disposed of. No costs.

21. Needless to observe that, if the petitioner makes such applications, the petitioner is at liberty to move the court for an early hearing in the event of any urgency is shown by the petitioner to travel abroad.

21. In our considered view, the said decision (Supra) of this court would be binding on us in dealing with the present case, wherein the facts and circumstances, the reliefs sought coupled with the applicable legal provisions under the Passports Act (Supra), read with notification dated 25 August 1993 are similar. Thus, the inescapable conclusion would be to follow the decision (Supra) and the findings, reasons recorded in the said judgment.

22. We may now also advert to an order passed by this court **Bhimesh**

Narendra Mehta v. The Union of India & Anr.² passed by this Court (Coram : G.S. Kulkarni J. and Advait M. Sethna, J.) wherein considering decision of this court in the case of **Cyrus Keki Balsara** (Supra). The order in the said writ petition passed by us reads thus :-

"1. We have heard learned counsel for the parties on this petition. The substantive prayers as made in the petition which reads thus:

"a. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus, thereby directing Respondent No.2 to re-issue/renew passport to petitioner.

b. That this Hon'ble Court be pleased to pass an order restraining Respondents from taking any coercive action against Petitioner in furtherance of notice dated 25.1.2023."

2. Learned counsel for respondent has placed for consideration a decision of the Division Bench of this Court in Cyrus Keki Balsara Vs. Union of India & Anr. to which one of us (G. S. Kulkarni, J.) was a member. Considering the position of law as considered in the said decision. Learned counsel for the petitioner has fairly stated that the petitioner would make an application before the appropriate Criminal court for orders be passed in regard on the passport application of the petitioner.

3. Let such an application be filed within one week from today. If the same is filed, let appropriate orders on such application be passed by the concerned Court within two weeks of the filing of the said application.

4. All contentions of the parties on such proposed proceedings are expressly kept open.

5. Petition stands disposed of in the aforesaid terms. No costs."

23. In the light of the above discussion and considering the consistent view taken by the Court on such proceedings, we accept the contention raised on behalf of the respondents that the petitioner's case falls under the

² W.P. No. 5467 of 2023

provisions of section 6(2)(f) and also stands covered by the notification issued by Central Government dated 25th August 1993. In these circumstances, the petitioner would be required to make applications to the criminal court seeking orders that the petitioner be permitted reissuance of his passport. We thus, find that the relief as prayed for by the petitioner in the present proceedings, cannot be granted.

24. The petitioner is permitted to make application to the appropriate Criminal Courts to obtain orders for reissuance/renewal of his passport. If such an application is made, the same be decided by the Criminal Court within 10 days from its filing. Ordered accordingly.

25. All contentions of the parties are expressly kept open.

26. Petition stands disposed of. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]