Neutral Citation No. - 2024:AHC-LKO:54426

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 7309 of 2023
Petitioner :- Fareed Alam
Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Sectt. U.P. Lko. And 3 Others
Counsel for Petitioner :- Osama Ahmad Abbasi
Counsel for Respondent :- C.S.C.,Devrishi Kumar

Hon'ble Shamim Ahmed,J.

1. Heard Sri Osama Ahmad Abbasi, learned counsel for the petitioner as well as Sri Surya Bhan Pandey, learned Sr. Advocate and Deputy Solicitor General of India assisted by Sri Varun Pandey, learned counsel for the Union of India and Sri Ashok Kumar Srivastava, learned A.G.A. for the State and perused the record.

2. The instant writ petition has been filed seeking following main relief:

> *"I. Issue a writ in the nature of certiorari whereby quash the impugned order dated 14.08.2023 passed by the Ld CJM court, Ambedkar Nagar.*
>
> *II. Issue a writ, order or direction in the nature of mandamus, thereby directing the Respondent No 4, to re-issue/renew the passport of the applicant ."*

3. Learned counsel for the applicant submits that the brief facts of the case is that the applicant had been working in Al-Fagmas Road construction company in Saudi Arabia as a labour and provide maintenance and livelihood to his family residing herein Ambedkar Nagar. The applicant had lastly returned from Saudi Arab on 18.01.2020 and was about to return back tentatively to Saudi Arab on 12.06.2020, but due to the sudden outbreak of deadly corona virus, the Applicant could not went back to Saudi. Later the applicant had applied in advance for the renewal of his passport at Regional passport office, Vipin Khand, Gomti Nagar, Lucknow, U.P on 01.09.2021 as his passport was about to expire on 02.10.2021. The Regional Passport office, Lucknow had sent a letter to the applicant wherein stated about the adverse police verification report corresponding to his passport application and thus had asked him to furnish the final judgment and order from the court for the purpose of renewal of passport.

4. Learned counsel for the applicant further submits that during his stay at his home, i.e in Ambedkar Nagar, the complainant (Tanvir Alam) in result of petty quarrel occurred against the applicant, had registered the bogus and concocted FIR against the applicant and other co-accused under section 323, 504, 427, and 325 of IPC in P.S: Ibrahimpur, Ambedkar Nagar on 27.09.2021 after the delay of more than three months. The above said FIR has been registered by exaggerating the fact in issue. 7. That without proper investigation and without recording the statements of the witnesses, the 1.0 has filed the chargesheet in cognizance of the same and issued summons to the applicant without applying his judicial mind and logic, That the validity of the passport of the applicant expired on 02.10.2021, due to which he could not return back to his workplace in Saudi Arabia. Later when the applicant applied for the renewal of his passport, he got to know from the Regional passport office that during the pendency of criminal proceeding against the accused, the passport cannot be renewed.

5. Learned counsel for the applicant further submits that thereafter the applicant has applied for the regular bail before the Ld CJM court wherein the Ld CJM court has granted him bail vide order dated 01.11.2022. That in result of which the applicant has filed an application before the concerned CJM court, Ambedkar Nagar with regard to grant of NOC for re-issuance of a passport.

6. Learned counsel for the applicant further submits that the learned Chief Judicial Magistrate has declined to grant relief/NOC with regard to renewal of the passport of Applicant upon the application produced by the applicant. The Ld CJM court has erroneously rejected the application without considering the merits of this case and taking into account the relevant provisions of Passport Act.

7. In support of his argument, learned counsel for the applicant has relied upon the notification of Ministry of External Affairs, New Delhi dated 25.08.1993, which is being quoted hereunder:-

> *"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 exempts 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 specified a period for which the passport has to be issued; or

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

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of 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)(ii) and (a) (iii) above can be further renewed fr 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 f 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."

8. Thus, learned counsel for the applicant submits that the impugned order dated 14.08.2023 is totally illegal, perverse and arbitrary as the same is passed without application of judicial mind and also without considering the notification of Ministry of External Affairs, Government of India, New Delhi, therefore, the same is liable to be quashed.

9. On the other hand, learned counsel for the Union of India has placed a notification of the Government of India dated 25.08.1993 (which has already been quoted above) and an Office Memorandum dated 10.10.2019 (which is being quoted hereunder) issued by the Ministry of External Affairs, Government of India, New Delhi. He has also placed an order passed by co-ordinate Bench of this Court dated 02.02.2024 passed in Application under Section 482 Cr.P.C. No.839 of 2024 and submits that there is no restriction to the learned trial court to direct for grant of permission for renewal of passport. He further submits that as per aforesaid notification and order passed by the co-ordinate Bench of this Court, the impugned order dated 14.08.2023 passed by Chief Judicial Magistrate, District Ambedkar Nagar, on its face appears to be passed without application of judicial mind and without considering the aforesaid notification. Thus, the impugned order is liable to be quashed and authorities may be directed to consider the case for renewal of her passport. The Office Memorandum dated 10.10.2019 is being quoted hereunder:

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Office Memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India, New Delhi:-

No. VI/401/1/5/2019
Government of India
Ministry of External Affairs
PSP Division

Patiala House Annexe, Tilak Marg
New Delhi, the l0th October 2019

OFFICE MEMORANDUM

Subject: Issue of passports to applicants against whom criminal cases are pending before a court of law in India.

Reference is invited to Notification No. GSR 570(E) dated 25.8.1993 regarding issuance of passports to applicants who have criminal proceedings pending against them and whose applications would attract the provisions of clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967.

2. GSR 570(E) dated 25.8.1993 is reproduced below for reference:

> *"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 exempts 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 specified a period for which the passport has to be issued; or*
>
> *(ii) if no period either for the issue of the passport for the travel abroad is specified in such order, the passport shall be issued for a period of one year;*
>
> *(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of 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) (ii) and (a)(iii) above can be further renewed fr 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 f 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."

3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6(2) of the Passports Act, 1967. Section 6(2)(f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceedings in respect of an offence alleged to have been committed by the applicant arc pending before a criminal court in India. GSR 570(E) dated 25.8.1993 was introduced to give relief to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity for the period specified by the Court.

4. It has been noticed that there are an increasing number of references being received regarding passport applications attracting Section 6(2)(f). It has also been brought to Ministry's notice that there are a number of complex issues involved while processing such applications. During the proceedings in a recent court case, the Hon'ble

High Court of Delhi in W.P. (CRL) No. 2844/2018 /CRL.M.A. 48674/2018 has directed that guidelines be issued by the Ministry reiterating the procedure for processing of such applications and emphasizing that such applications need to be processed with due care and diligence.

5. In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

(i) The provisions of GSR 570 (E) may be strictly applied in all case. GSR 570 (E) is a statutory notification and hence, forms part of the Rules. It is to be noted that as per Section 5 (2) of the Passports Act, 1967, the passport authority shall be order in writing take a decision whether to issue or refuse a passport, *after making such inquiry*, if any, as it may consider necessary. Moreover, Section 7 of the Passports Act, provides that a passport or travel document may be issued for a shorter period than the prescribed period 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. Rule 12 of the Passport Rules, 1980 only states that an ordinary passport shall be in force for a period of 10 years which implies that an ordinary passport cannot be issued beyond a period of 10 years.

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that undertaking as per GSR 570(E) should be complete in all respects and should mention all

the pending criminal cases against the applicant. The undertaking will have a not clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected.

(iii) Extant instructions clearly lay down that such applications should be processed on pre- Police Verification (PV) mode. “Pre-PV” would be mandatory in all cases of applications submitted with GSR 570(E) to ensure that the undertaking submitted by the applicant is properly matched with the criminal cases mentioned in the Police Verification Report (PVR). Hence, such applications should not be accepted under Tatkaal nor such applications be moved to “post-PV” mode or “No-PV” mode without proper justification and approval to be recorded in writing.

(iv) If an undertaking is incomplete or misleading and the applicant is found to have suppressed details of other criminal cases against the applicant, a Show Cause Notice should be issued to the applicant and action initiated against that applicant as per provisions of Section 12 of the Passports Act, 1967. If information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per provision of Section 10 (3) (b) of the Passports Act, 1967 after following the due procedure.

(v) In case where the first police verification (PV) is 'Adverse', secondary police verification may be generated. While a secondary

PV is generated, it should be accompanied by a detailed letter seeking clarification regarding the pending criminal cases against the applicant and the status of these cases. Apart from generating secondary PVR, the passport officers may, if considered necessary, call for discreet enquiry through the police authorities by sending the court order submitted by the applicant or even seek verification from other government agencies/departments, as the case may be.

(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.

(vii) If the details given in the police report and the undertaking submitted by the applicant are matching, then the 'No Objection Certificate' issued by a Court of law submitted by the applicant would take precedence over any 'Adverse' report submitted by the police. In such cases, the 'Adverse' report may be overruled with the written approval of the Passport Officer.

(viii) If the details given in the PVR and the undertaking submitted by the applicant are at variance, then a notice may be issued to the applicant calling for clarification

and advising the applicant to submit details of all pending criminal cases as well as to submit a revised No Objection Certificate (NOC).

(ix) If it is brought to the notice of the authority that an applicant has criminal proceedings arrayed against applicant before several courts of law, then the applicant may be advised to get NOC from all the concerned court (s). Normally, the Court Order would make a mention of the cases pending against the applicant as well as the prayer made by the applicant. This may be examined along with the undertaking submitted by the applicant and complaints or other court orders, if any, that have been received against the applicant.

(x) It may noted that GSR 570(E) only exempts and applicant from the operation of Section 6 (2)(f) and none of the other sub-sections of Section 6(2) of the Passports Act, 1967.

(xi) A revised Undertaking under GSR 570(E) is attached at Annexure 'A'.

(xii) Passport Officers may issue an internal SOP along the above lines so that there is no confusion in handling of applications that would attract provisions of section 6(2)(f) of the Passports Act, 1967.

6. The above instructions may be noted for strict compliance with immediate effect.

Annexure 'A' UNDERTAKING (to be submitted on plain paper as per provisions of GSR-570(E) dated 25.08.1993)

I am applying/have applied for passport with the following details:-

(a) Name :.....

(b) Date of Birth :.....

(c)Father's Name :.....

(d)Mother's Name :.....

(e) Present Address :.....

(f) File No./ARN No. :..... Date:.....

2. The Criminal case(s) with following details is/are pending against me:

(if more than one case is pending, details of all cases may be provided. Additional sheet giving complete information may be attached)

(a) Case No. :.....

(b) Name of Court :.....

(c) Details of Investigating Agency (Please provide details of Police station Investigating Officer, etc.) :.....

(d)Last date of hearing :.....

(e)Next date of hearing :.....

3. I hereby undertake that I shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

4. I am aware that it is an offence under the Passports Act, 1967 to furnish any false information or to suppress any material information with a view to obtaining a passport or any other travel document.

5. The above information given by me in this undertaking and enclosures is true and I am solely responsible for its accuracy.

(Signature of the Passport applicant)

Name.....

Mobile No.....

Date:.....

Place:.....

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10. After considering the arguments as advanced by learned counsel for the parties as well as after perusal of record, this Court finds that Under Article 19(1)(d) and Article 21 of the Constitution of India, the citizens of the country are entitled for passport. In **Maneka Gandhi Vs. Union of India 1978 (1) SCC 248**, the Apex Court has held that having passport is a fundamental right of the citizen of India and a citizen can not be deprived of such fundamental right and the Hon'ble Supreme Court in paragraph Nos. 214 and 215 was pleased to observe as under:

> *214. In India, at any rate, we are all certainly governed by our Constitution. The fact that the affected petitioner may not, as a result of a particular order, be able to do something intended to be done by her abroad cannot possibly make the governmental action in India either ineffective or immune from judicial scrutiny or from an attack made on the ground of a violation of a fundamental right which inheres in an Indian citizen. The consequences or effects upon the petitioner's possible actions or future activities in other countries may be a factor which may be weighed, where relevant, with other relevant facts in a particular case in judging the merits of the restriction imposed. It will be relevant insofar as it can be shown to have some connection with public or national interests when determining the merits of an order passed. It may show how she has become a "person aggrieved" with a cause of action, by a particular order involving her personal freedom. But, such considerations cannot curtail or impair the scope or operation of fundamental rights of citizens as protections against unjustifiable actions of their own Government. Nor can*

> *they, by their own force, protect legally unjustifiable actions of the Government of our country against attacks in our own courts.*
>
> *215. In order to apply the tests contained in Articles 14 and 19 of the Constitution, we have to consider the objects for which the exercise of inherent rights recognised by Article 21 of the Constitution are restricted as well as the procedure by which these restrictions are sought to be imposed. Both substantive and procedural laws and actions taken under them will have to pass tests imposed by Articles 14 and 19 whenever facts justifying the invocation of either of these articles may be disclosed. For example, an international singer or dancer may well be able to complain of an unjustifiable restriction on professional activity by a denial of a passport. In such a case, violations of both Articles 21 and 19(1)(g) may both be put forward making it necessary for the authorities concerned to justify the restriction imposed, by showing satisfaction of tests of validity contemplated by each of these two articles."*

11. Thus, this Court after considering the aforesaid judgment of Hon'ble the Supreme Court in the case of **Maneka Gandhi (Supra) this court** is of the view that right to travel abroad is a part of the personal liberty guaranteed under Article 21 and 19 (1) (g) of the Constitution of India and in addition thereto a careful reading of provisions of the Passport Act and the Notification dated 25.08.1993 alongwith the Office Memorandum dated 10.10.2019 in the light of it's legislative backgrounds as mentioned above, it is clear that passport or travel document of a person, who is facing trial can be refused by the authority concerned during pendency of his criminal case, but there is no statutory bar for giving no objection by the court concerned. No hard and fast straight jacket formula can be laid down regarding issuance of permission or giving no objection by the court concerned for issuance of passport. It is always discretion of the court concerned and depend upon the facts and circumstances of each case, act and conduct of the accused as well as nature of alleged offence committed by him/her and stage of trial, etc. Some time on account of enmity or ill will one party enmesh the other party in a frivolous criminal case to settle his personal score, therefore, in the interest of justice, it is necessary to consider all aspects of the matter and surrounding circumstances while granting or refusing the no objection for renewal or reissue of passport or travel documents by the court concerned or by the authorities concerned and the trial in the above case is not likely to conclude very soon. These were relevant factors to be considered by the learned Trial Court while passing the impugned order.

The learned trial court had completely ignored the Notification issued by Ministry of External Affairs, New Delhi dated 25.08.1993 as well as Office Memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India, New Delhi (referred above) while passing the impugned order and had rejected the application of the applicant for grant of permission for renewal/re-issue of passport, thus, the impugned order is not sustainable in the eyes of law, therefore, the same is liable to be set aside/reversed.

12. In view of above, in the light of the notification dated 25.08.1993 and the Office Memorandum dated 10.10.2019 as well as the judgment passed by Hon'ble the Supreme Court in the case of Maneka Gandhi (Supra) and considering the larger mandate of the Article 19 and 21 of the Constitution of India, the impugned order dated 14.08.2023 passed by Chief Judicial Magistrate, District Ambedkar Nagar, by means of which application for renewal/re-issue of passport of appliant was rejected, is hereby **set aside and reversed.**

13. Accordingly, the instant writ petition is **allowed** with following directions:

(i) The applicant shall move a fresh application along with certified copy of this order for renewal/re-issue of her passport before the concerned Regional Passport Officer within 20 days from the date of this order.

(ii) In case such application is moved by the applicant, within the time stipulated by this Court, the concerned Regional Passport Officer/authority shall decide the application and pass an order for renewal/re-issue of the passport of the applicant within 01 month from the date of production of certified copy of this order, after completing the due formalities in accordance with law.

(iii) The applicant shall inform and take permission from the trial court concerned before going abroad and she shall appear before the trial Court on the date fixed as directed by the trial Court and she shall be bound by the terms and conditions imposed by the trial court.

(iv) Let a copy of this order be given to Sri Surya Bhan Pandey, learned Sr. Advocate and Deputy Solicitor General of India appearing for Union of India and Sri Ashok Kumar Srivastava, learned A.G.A. for the State for information and communication to the authorities concerned.

Order Date :- 05.08.2024
Arvind

(**Shamim Ahmed,J.**)