

Court No. - 39

Case :- WRIT - C No. - 6450 of 2024

Petitioner :- Smt. Rita Verma

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Raghav Dev Garg

Counsel for Respondent :- A.S.G.I., Yogendra Kumar

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Surendra Singh-I,J.

1. Heard Shri Anurag Khanna, learned Senior Advocate assisted by Shri Raghav Dev Garg, learned counsel for the petitioner and Shri Yogendra Kumar, learned counsel for the respondents.

2. Present petition has been filed for the following main relief :

"Issue writ, order or direction in the nature of mandamus, directing the passport authorities, i.e., Respondent no. 2 and 3, to process the application and renew the passport of the Petitioner, sought vide Application Reference No. (ARN) 23-0008434106 dated 10.05.2023, being uninfluenced by the pendency of a criminal case against the Petitioner, which is still pending investigation."

3. At the outset, Shri Anurag Khanna, learned Senior Advocate states that in similar circumstances, other writ petitions have been disposed of by this Court following **Basoo Yadav Vs. Union of India and 4 Others in Writ-C No. 29605 of 2022 decided on 16.12.2022**. Certain additional directions have been issued in **Pawan Kumar Rajbhar Vs. Union of India and 2 others, Neutral Citation No. - 2024:AHC:9963-DB**.

4. At present, learned Senior Advocate for the petitioner would submit, directions issued in **Pawan Kumar Rajbhar (supra)** requiring the applicant (to reissue passport), to apply to the Court for permission under whose territorial jurisdiction an FIR may

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have been registered, for permission to travel abroad as a pre-condition for re-issuance of passport, is contrary to the own Circular of Government of India bearing No. VI/401/1/5/2019 dated 10.10.2019. In material parts, Clause 5 (vi) of the Circular reads as below :

"(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."

5. Reference has also been made to two decision of other Courts namely **Rajesh Gupta Vs. Union of India and another, 2022 SCC OnLine J&K 899** and **Sharath Chandrasekhar Vs. Union of India, NC: 2024:KHC:6357**. Thus, it has been submitted, directions issued by this Court in **Pawan Kumar Rajbhar (supra)** have been issued in ignorance of the binding Circular of the Government Of India and in any case they are too harsh to be applied every time. As to the facts of the present petitioner, we find that an FIR has been registered against the petitioner bearing No. RCBD1/2020/E/001, dated 19.10.2020 at P.S. CBI, BSFB, New Delhi, under Section 420, 467, 468 and 471 IPC read with Section 120B IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

6. While it is true that the Circular of the Government of India referred to above was not placed before the Court inasmuch as the same has not been considered in **Pawan Kumar Rajbhar (supra)**, at the same time, it cannot be forgotten that Circulars are not pieces of statutory legislation or delegated legislation. They remain

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executive instructions and at most subject to fulfilment of certain conditions, they may be read against the issuing authority, here the respondents-State authorities, on the principle of contemporaneous reading. At the same time where a Circular may be found to be contrary to the law, it may not compel a constitutional Court to enforce it against the law.

7. Considering the provision of Section 6 of the Passports Act, 1967 (hereinafter referred to as the 'Act, 1967'), in **Pawan Kumar Rajbhar (supra)**, the Court had the occasion to consider the interpretation to be given to the word 'proceeding' used in Section 6(2)(f) of the Act, 1967. In that regard, it was observed as below :

"20. To the extent the narrow construction of the word 'proceeding', under the Code may appear inadequate to administer the purpose of the Act, the same must be enlarged. Therefore, we have enlarged the scope of the word "proceeding" used in Sections 6(2)(f) and 10(3)(e) of the Act, to help achieve the purpose of the Act. All that it does is, ensure that the jurisdictional Criminal Court be informed in advance - of the foreign travel plan of a person accused of a criminal offence. While travel is a basic human right at the same time its regulation by law is not unconstitutional. To the extent the regulatory measure in question may aid speedy inquiry, investigation, and trial, we allow for that enlarged meaning to be given to the term 'proceeding' under the Act – to include within its sweep a criminal investigation, if pending on the relevant date.

21. Therefore, we are inclined to read the word 'proceeding' used in Sections 6 (2) (f) and 10 (3) (e) of the Act to allow minimum scrutiny/application of mind by the jurisdictional Criminal Court under whose territorial jurisdiction a criminal investigation or enquiry or trial may be pending, as may be the case. Thus, where an offence may be pending investigation at a Police Station, the Court/Judicial Magistrate having territorial jurisdiction over that Police Station may grant permission to a person accused of that criminal offence, to travel abroad. Insofar as NCR are concerned, learned A.S.G.I. has

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categorically and most fairly stated, there is no reason to withhold issuance, renewal or reissue of a passport. The Regional Passport Authority do not and in any case they shall not withhold issuance, renewal or re-issuance of individual passports against report of NCR against any citizen applicant.

22. Primarily, that Criminal Court would have to be satisfied if the desired permission may be granted to an applicant citizen and the terms and conditions on which such permission may be granted and the period for which such travel permission may be granted. Such discretion when exercised judiciously would temper with reason, the uninhibited administrative discretion that may otherwise be claimed, in such matters. Perhaps, it is the lethargy or doubt in exercise of such administrative discretion that leads to the continuous flow of such petitions to this Court.

23. Also, unless the above expansive interpretation is given to the phrase "proceedings in respect of an offence" and the other phrase "pending before a criminal court" used in Sections 6(2)(f) and 10(3)(e) of the Act, an incongruent situation may arise where permission to travel abroad may come to be granted to an accused in a heinous offence solely for reason of a narrow construction given to the word 'proceeding'. The investigation, the eventual trial and therefore the goal of speedy justice would stand inadvertently prejudiced and compromised, though the same may remain the cherished goal of state policy, on paper.

24. On the other hand allowing such competent Court to apply its mind to the permission sought to travel abroad, does not cause any injury to the applicant. It only enables the trial Court to fix its calendar efficiently. In matters where pre-trial criminal investigation or inquiry may be pending, it would allow the competent Court to test the impact of the travel proposed (by the accused) on the pending criminal investigation etc. It would also allow the competent Court to see if such accused person has cooperated in the criminal investigation and/or if his presence would be imperative during the period of travel proposed.

25. Plainly, the object of the provision demands purposive construction to be made. It dictates - no hyper-technical distinction be drawn between a person facing a criminal trial before a competent Criminal Court and a person who

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may be facing a criminal investigation when both such persons seek to travel abroad."

8. In view of the above, though the Circular may never be read to offer a narrow view to interpret the word 'proceeding', to mean only a criminal case registered after submission of charge sheet and cognizance taken. That view of the 'Executive authority' may not co-exist with the law declared by the coordinate bench, of which one of us (Justice Saumitra Dayal Singh) was a member.

9. Since we do not find any good ground to take a view different from that expressed in **Pawan Kumar Rajbhar (supra)**, the prayer sought on the strength of the Circular dated 10.10.2019, may not be granted contrary to the law declared by the coordinate bench.

10. Accordingly, the writ petition is **disposed of** on the following terms [laid down in **Pawan Kumar Rajbhar (supra)**]

"26. Paragraph 2 of Part A of the existing form for Police Verification Report reads:

"2. Is the applicant facing any criminal charges in any Court ? Yes / No

(if YES, please provide specific details of the criminal case)"

Thus, as to the modalities to enforce the above, as suggested by Sri A.K. Sand, learned Government Advocate, henceforth all police reports submitted to the Regional Passport Office would specify against the above field the desired/relevant information as below:

(1) In 'Part A' of the Police Verification Report (submitted through online mode), against item '2', for the time being, option 'YES' may be selected in all cases where either a NCR and/or FIR may be found registered against the applicant. Second in that field (that may then be activated), details of such NCR and/or FIR may be given on the following format:

AND/OR

FIR No..... ; U/s(section description); P.S. (details of Police Station), under Court (Court details).....

27. On the above intimation being received, the Regional Passport Offices, for the State of Uttar Pradesh shall ensure: (1) Such minimum information is uploaded on its web portal visible to the individual applicant. In addition, whenever any FIR may be registered, that web portal would indicate to the applicant to apply and obtain permission from the competent Court of criminal jurisdiction, before his application may be processed. (2) That information may also be communicated to the applicant by issuance of a physical notice as before. (3) The Union of India/respondent No. 1 may upgrade its infrastructure to (i) ensure sending intimation of such notice to the applicant through appropriate message on his mobile phone, wherever such details are available. (ii) upload the entire notice on its web portal. Demand of good e-governance may prompt such step to be taken expeditiously, as has already been done in case of fiscal statutes. (4) As fairly stated by the learned A.S.G.I., in cases where any NCR may be registered, the necessary Passport may be issued, reissued, renewed, as the case may be, without any delay. No permission may be sought or required from the competent court of criminal jurisdiction, in those cases.

28. Considering the time required by an applicant to apply to the competent Court of criminal jurisdiction and the time that may be consumed in grant of such prayer, the Regional Passport Office, Uttar Pradesh may also ensure that the intimation of pendency of criminal proceeding is shared with the applicant at the earliest i.e. within one week from the date of receipt of such intimation from the relevant State Authority. Thereupon, adequate time-not less than eight weeks may be granted to the concerned applicant to obtain that permission and inform the Regional Passport Office, accordingly. During that period his application may be kept pending. Once due permission is received the Regional Passport Officer may not delay the issuance, re-issuance, renewal of passport beyond one week from receipt of such information.

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29. *As to the further course to be adopted we do not make any observation and leave it to the Regional Passport Officer and the State Authorities to continue to act in accordance with law. In that regard, we have been apprised of certain directions issued by other High Courts requiring a deep revision of the procedures. The present order does not seek to add or modify any such order. We only seek to ensure efficiency under the current procedures .*

30. *Last we clarify that these directions have been issued in addition to and not by way of substitution of any direction issued in the case of Basoo Yadav (supra).*

31. *In so far as the present petitioners are concerned, we require the State Authorities to send fresh intimation to the Regional Passport Officer in compliance of these directions, within a period of two weeks from today. The Regional Passport Office shall act in accordance with these directions and issue necessary communications to the individual petitioners, in writing.*

32. *Since two month time has been granted to all individual applicants, therefore, subject to the petitioners applying to the concerned Court within two weeks from the date of receipt of intimation from the Regional Passport Office, we expect the concerned Courts to pass appropriate orders not later than four weeks therefrom. However, in cases involving urgency, those orders may be made expeditiously, commensurate to the urgency cited."*

Order Date :- 28.2.2024

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(Surendra Singh-I, J.) (S.D. Singh, J.)