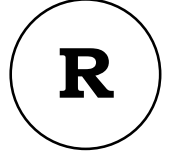


Reserved on : 18.04.2024
Pronounced on : 04.06.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.8969 OF 2024 (GM-PASS)

BETWEEN:

SHANY JOSE
AGED ABOUT 48 YEARS
DAUGHTER OF JOY CHERIAN
RESIDING AT NAGANOOILIL HOUSE
GANDIBAGILU, NERIA
BELTHANGADY - 574 292
DAKSHINA KANNADA DISTRICT.

... PETITIONER

(BY SRI. S.SUSHANT VENKATESH PAI, ADVOCATE)

AND:

1 . THE UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
SOUTH BLOCK, SECRETARIAT
BUILDING, RAISINA HILL
NEW DELHI - 110 011
REPRESENTED HEREIN BY ITS SECRETARY

- 2 . JOINT SECRETARY (GULF)
MINISTRY EXTERNAL AFFAIRS
SOUTH BLOCK, SECRETARIAT BUILDING
RAISINA HILL, NEW DELHI - 110 011.

- 3 . REGIONAL PASSPORT OFFICE BANGALORE
80 FEET ROAD, 8TH BLOCK
KORAMANGALA, BENGALURU - 560 095.

... RESPONDENTS

(BY SRI. H.SHANTHI BHUSHAN, DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO RELEASE THE PETITIONERS PASSPORT BEARING NO. U0754974 DTD. 30.09.2019 WHICH HAS BEEN SEIZED AND WITHHELD BY THE RESPONDENTS PURSUANT TO SEIZURE MEMO DTD. 20.08.2023 AT ANNX-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.04.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus to release passport of the petitioner issued on 30-09-2019 which is presently seized and withheld by the respondents in terms of the seizure memo dated 20-08-2023.

2. Heard Sri S.Sushant Venkatesh Pai, learned counsel for the petitioner and Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents.

3. The facts, in brief, germane are as follows:-

The petitioner who has a Diploma in General Nursing and Midwifery is a qualified Nurse by avocation. The petitioner in search of a job is shown a job opportunity in Yemen at Al-Noor Hospital Aden city as a staff nurse. She joins the said Hospital at Yemen in February 2011; works there for about 9 years; secures another job at Kara General Hospital, Marib again in Yemen. She works there up to July 2022 and later secures a better job as a Nurse at Shabwa General Hospital again at Yemen. The petitioner has been residing at Yemen for the aforesaid work and would have used to visit India intermittently. The petitioner is said to have visited India on two occasions viz., in the months of April, 2014 and December, 2020. During her stay in Yemen passport that she had in her possession was to expire and accordingly she approaches the

Indian Embassy at Yemen which issues fresh passport to the petitioner with a validity of 10 years till 29-09-2029.

4. The father of the petitioner is said to have fallen seriously ill and was diagnosed with stomach cancer. For the said reason, she travelled back to India from Yemen on 19-08-2023 and lands at International Airport at Delhi to visit her father. The Immigration Authorities seized her passport on landing on the ground that her travel itself was in violation of the Notification issued by Government of India which prohibits Indian citizens travelling from Yemen. It is the seizure of the passport in terms of the Notification that has driven the petitioner to this Court in the subject petition.

5. The learned counsel for the petitioner would vehemently contend that the petitioner is a Nurse. She does not know issuance of a notification or otherwise. It is not for the first time that she travels to India and back to Yemen. She had done so twice. No Immigration Authorities have stopped the petitioner from travelling from Yemen. It is only now in 2023, for the first time, alleging that it is in violation of the Notification the passport is seized. After the

seizure of the passport a show cause notice is issued seeking the petitioner to explain why she travelled to Yemen. The petitioner has also submitted her written response to the show cause notice. Since the passport is not de-seized, the petitioner is before this Court.

6. Per contra, the learned Deputy Solicitor General of India would vehemently oppose the petition to contend that the passport of the petitioner cannot be handed over to her as there is express bar under the Notification that one who travels to Yemen contrary to the Notification would face seizure of the passport for a period of seven years and, therefore, the passport cannot be returned. He would further contend that instead of approaching this Court, a representation should have been given to the Passport Authorities and the Passport Authorities would have taken an appropriate action in accordance with law. The learned Deputy Solicitor General of India would contend that contrary to the Notification, the Government of India cannot be directed to release the passport of the petitioner.

7. In reply, the learned counsel for the petitioner submits that the petitioner cannot alone be blamed for the action. She was never stopped by any Immigration Authorities. The seizure of the passport for seven years now will take away her chances of employment anywhere in the globe. She being a Nurse should not be made to suffer for the ignorance of law or ignorance of the Authorities in implementing the law.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute; they are all a matter of record. The passport of the petitioner was in operation up to 30-09-2019 which was issued for a period of 10 years. The petitioner is a qualified Nurse having a Diploma in General Nursing and Midwifery. Looking at job opportunities outside the Nation, the petitioner finds a job in Yemen at the hospitals indicated hereinabove. All was well; the relationship between India and Yemen gets strained and the Government of India issues a notification on 26-09-2017 owing to national security. The

Notification speaks for itself as to why it is issued. The Notification reads as follows:

"MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 26th September, 2017

S.O. 3223(E).- Whereas, the security situation in Yemen continues to be fragile with armed hostilities continuing in parts of the country and Yemen remains vulnerable from the security point of view;

And whereas, in view of the precarious security situation in Yemen, the Government of India issued various travel Advisories wherein Indian nationals have been strongly advised to avoid travelling to that country under any circumstances, by any mode of travel, including air, land or sea for any purpose till further notice:

And whereas, despite the existing travel advisories, some Indian nationals have continued to travel to Yemen:

And whereas, section 19 of the Passports Act, 1967 (15 of 1967) empowers the Central Government to issue a notification to make invalid the Passports and travel documents for travel to certain countries; and clause (d) of said section provides that upon the issue of the notification by the Central Government that a foreign country to which travel must be restricted in the public interest because such travel would seriously impair the conduct of foreign affairs of the Government of India, and a passport or travel document for travel through or visiting such country shall cease to be valid for such travel or visit unless in any case a special endorsement in that behalf is made in the prescribed form by the prescribed authority;

Now, therefore, in exercise of the powers conferred by clause (d) of section 19 of the Passports Act, 1967 (15 of 1967), the Central Government, being of the opinion that it is necessary and expedient in the public interest so to do. hereby issues the following directions, namely:-

- (i) the passport or travel document issued by the Central Government is invalid for the travel of holder to Yemen as the travel of the holder to Yemen would seriously impair the conduct of foreign affairs of the Government of India;*
- (ii) any Indian national who travels to Yemen in violation of this notification, shall be liable for action under section 12 of the said Passports Act, 1967 and the passport shall be liable for impounding or revocation, as the case may be, under sub-section (3) of section 10 of the said Act:*
- (iii) violation of the directions issued by this notification by any holder shall be liable for refusal of passport under section 6 of the said Act for a period of seven years from the date of revocation of such passport;***
- (iv) any Recruiting Agent or a Company sending Indian nationals to Yemen shall be individually or collectively held responsible, and all such Agents or Company, including all its Directors, shall personally be liable to be prosecuted under the relevant provisions of the Indian Penal Code, if the Indian nationals so sent are killed or kidnapped or come to any harm, while travelling to Yemen:*
- (v) in addition to above, criminal proceedings also may be initiated against owners of the foreign ships carrying Indian nationals to Yemen and visas shall be denied to them for any future travel to India.*

2. The aforesaid directions are not applicable to the officials of the Government of India posted in the Indian Embassy in Sana by the Ministry of External Affairs and for the officials

of the Government of India or any State Government travelling to Yemen for attending of their official duties.

3. The aforesaid directions may also be relaxed by the Central Government for specific and essential reasons of travel, for which permission for a limited time period may be granted by the Central Government at the express request of the applicant who would, nevertheless, travel at his or her own personal risk without any liability to the Government of India or any State Government concerned and any such request for exemption may be sent to jsguif@mea.gov.in

4. That the aforesaid directions may be read in conjunction with any fresh Travel Advisory separately and simultaneously issued by the Indian Embassy in Sana for travel to Yemen."

(Emphasis supplied)

The Notification has certain conditions issued in terms of power conferred under Clause (d) of Section 19 of the Passports Act, 1967 ('the Act' for short). One such condition is that any Indian national who travels to Yemen in violation of the said Notification would become liable for action under Section 12 of the Act and the passport would become liable for impounding or revocation. The violation of the directions in the notification by holder of an Indian passport would result in refusal of passport under Section 6 of the Act for a period of 7 years from the date of revocation of such passport.

10. As observed hereinabove, for the third time, the petitioner enters the shores of the nation on 20-08-2023. By then, the passport of the petitioner was to expire while her stay in Yemen. She applies for a fresh passport in the Indian Embassy at Yemen. A fresh passport is granted, validity of which is up to 29-09-2029. It is on that strength, the petitioner enters the shores of the nation and the aftermath of such entry is the seizure of the passport. The issue now is, '**whether the respondents should be directed to hand over the passport to the petitioner?**'

11. Several High Courts have taken certain views interpreting this very Notification. The High Court of Kerala in a judgment reported in **SHIRIN SHAHANA v. UNION OF INDIA REPRESENTED BY THE SECRETARY**¹ has held as follows:

"....

9. *On perusal of the notification extracted above, it is evident that any Indian national who travels to Yemen in violation of the notification is liable for inaction under Section 12 of the Passport Act, 1967 with an exception that the aforementioned notification would not be applicable to the officials of the Government of India posted in the Indian Embassy in Sana by the Ministry of External Affairs and for*

¹ 2022 SCC OnLine Ker. 10123

*the officials of the Government of India or any State Government travelling to Yemen for attending their official duties. It is further clarified that the aforementioned direction can be relaxed by the Central Government for specific and essential reasons of travel, for which permission for a limited time period can be granted by the Central Government at the express request of the applicant who would, nevertheless, travel at his/her own personal risk without any liability to the Government of India or any State Government concerned. **Once the applicability of the aforementioned notification, as per the later instructions dated 18.8.2022 are in intact and Government is empowered to grant exemption and relaxation to the employees to travel would equally have the jurisdiction to entertain the request of the individual person whose passport for reaching India after having travelled to Yemen during the validity of the notification of 2017 to consider the request individually and pass an appropriate order and in case it is found that the travel was inevitable without any mens rea, there would not be any bar for the Central Government to carve out exception. In this view of the matter, in case the petitioners in both the writ petitions make individual representations to the Secretary (Gulf), Ministry of External Affairs within a period of one month from the date of receipt of a certified copy of the judgment explaining the hardship and attenuating circumstances of travel, the respondent will decide the same in view of the observations recorded above and in accordance with law within another period of 30 days thereafter.***

(Emphasis supplied)

The High Court of Kerala found that the travel was inevitable without any *mens rea*. The Central Government was therefore

directed to carve out an exception and consider the hardship of the petitioner therein and pass necessary orders within 30 days.

12. The High Court of Kerala in **AJIKUMAR DAMODARAN PILLAI v. CHIEF PASSPORT OFFICER**² has held as follows:

"...."

3. Sri.Vivek, the learned counsel appearing for the petitioner, in refutation of the afore submissions, contends that the alleged suspicion harboured by the respondents is totally untenable because he has declared in Ext.P5 application that he does not intend to travel to Yemen and that he is no longer employed there. He says his client only wants to travel to the UAE on a visit visa and that he will not make any attempt to travel to Yemen as long as the travel ban is in force.

In the afore circumstances, I direct the second respondent to consider Ext.P5 application of the petitioner and after obtaining all necessary undertaking from him that he will not travel to Yemen as long as it is proscribed under law, release the passport to him or if that is not possible, issue a fresh passport, so that the valid Yemen visa cannot be misused by him."

(Emphasis supplied)

The High Court was dealing with a similar situation and a direction was issued to the respondents to consider the application of the

² W.P.(c) No.3691 of 2019 decided on 14-02-2019

petitioner therein after obtaining necessary undertakings that he will not travel to Yemen as long as it is prohibited in law.

13. The High Court of Delhi in **JAYAN RAVEENDRAN v. UNION OF INDIA**³ while considering the notification has observed as follows:

"...."

8. The undisputed facts of the case reveal that on account of violation of the notification dated 26.09.2017 the passports of the Petitioners have been seized in exercise of the powers conferred under Section 14 of the Passports Act, 1967. Learned Counsel for the Petitioner, at this stage, was fair enough in stating before this Court that the Petitioners be granted an opportunity individually to submit a detailed representation to the Passport Officer/competent authority and in case such a representation is preferred by the Petitioners, the Passport Officer/competent authority shall decide the representation in accordance with law, within reasonable time.

9. The prayer made by the Petitioners is a genuine prayer and, therefore, any representation preferred in the matter shall be decided in accordance with law by the Passport Officer/competent authority within a period of 8 weeks thereafter."

(Emphasis supplied)

The petition was disposed of by the Division Bench granting an opportunity to individual petitioners to submit detailed

³ W.P.(C) 12078 of 2022 decided on 26-09-2022

representations to the Passport Officer and the Passport Officer to consider the same in accordance with law. Therefore, the interpretation of the Notification in all these cases has led to a direction being issued by the High Court of Kerala and the High Court of Delhi, as the case would be, to consider those representations in accordance with law.

14. In yet another judgment, again the High Court of Kerala in the case of **SATHEESH KEERTHIYIL v. UNION OF INDIA**⁴ has held as follows:

"....

6. I have considered the submissions advanced by Sri. Shibin K.F and Sri.S Manu, the learned DSGI.

7. The petitioner has placed materials before this Court to substantiate that the petitioner has been working in a trading firm by the name "Abdulghani Ali Alherwi Trading Houses" in Yemen since September 2002. He has been granted a Residence Permit by the Republic of Yemen, and his employer has issued a certificate that he can possibly work in that firm for at least till December 2025. From Ext.P5 order issued by the RPO, following directions issued by this Court, it is luculent that the authority had taken a decision to impound the passport on the premise that the petitioner had traveled to Yemen while the travel ban issued by Gazette Notification dated 26.9.2017 was in force. The specific case of the petitioner is that at the time of issuing the travel ban, the petitioner was working in Yemen, and he became aware of the ban only in the year 2020. Immediately thereafter,

⁴ W.P.(C) No.1291 of 2023 decided on 13-04-2023

while he was in Yemen, he gave Ext.P8 and P10 representations seeking exemption in terms of clause 3 of Notification dated 26.9.2017. From Ext.P5 order, his request was rejected by insisting that the request for exemption must be given before traveling to the foreign country. The respondents have failed to take note that the petitioner has been working in Yemen from 2002 onwards and that he was abroad at the time of issuance of notification. The records produced by the petitioner before this Court clearly substantiate the said fact. In that view of the matter, I am of the view that the petitioner has not intentionally and with malafide intent violated the notification. It is trite that impounding the passport of a citizen based on reasons which cannot be sustained would affect the right to life guaranteed to the citizen under Article 21 of the Constitution of India. In that view of the matter, Ext.P5 order issued by the 2nd respondent cannot be sustained under law.

8. The next question is whether directions can be issued to the respondents to grant exemption to the petitioner to travel to the Republic of Yemen following clause 3 of Ext.P3 notification issued by the Ministry of External Affairs. Clause 3 of Ext.P3 notification reads as under:

The aforesaid directions may also be relaxed by the Central Government for specific and essential reasons of travel, for which permission for a limited time period may be granted by the Central Government at the express request of the applicant who would, nevertheless, travel at his or her own personal risk without any liability to the Government of India or any State Government concerned and any such request for exemption may be sent to jsgulf@mea.gov.in.

9. By virtue of clause 3, the Central Government is entitled to grant exemption to travel to a country where a travel ban has been imposed for a limited time period at the express request of the applicant. However, the applicant will have to travel at his or her own personal risk without any liability to the Government.

10. In the counter affidavit, the respondents highlighted that the security situation in Yemen is fragile and adverse. They have also highlighted the extreme nature of the conflicts and the details of Indians who have lost their life. In the notification, it has also been stated that travel to Yemen would seriously impair the conduct of foreign affairs of the Government of India. The petitioner has not challenged the notification but has only requested to grant an exemption following clause 3. As rightly submitted by the learned DSGI, notification clearly states that exemption for travel can only be granted for a limited time period. The exemption orders produced by the petitioners as Exts.P16 and P17 also reveal that No Objection Certificate has been issued for short periods. It would be open to the petitioner to approach the respondents and seek a No Objection Certificate for travel for shorter periods and there is no reason why such requests shall not be taken up for consideration and proper orders are issued."

(Emphasis supplied)

The High Court of Kerala holds that the Notification clearly states that exemption to travel can only be granted for a limited time. Exemption orders were directed to be granted on appropriate representation being made by the petitioner therein.

15. The issue in the case at hand is not that the petitioner is wanting to travel back to Yemen. She was already in Yemen, when the Notification was issued. She comes to India and has

undertaken that she will never travel back to Yemen in the light of the Notification coming to the knowledge of the petitioner. The issue now is to redeem the situation as the petitioner is wanting to secure employment for which the passport is necessary. The notification prohibits re-delivery of passport after seizure for a period of seven years, for redeeming such circumstances, the learned Deputy Solicitor General of India has placed on record an Office Memorandum dated 26-10-2022. The Office Memorandum reads as follows:

"Subject: Releasing Passports of Persons who travelled to Yemen-reg.

In view of the adverse security situation in Yemen, the Ministry had issued Gazette Notification No.S.O.3223(E) dated 26.09.2017. subsequently. Passports of those Indian citizens who happened to travel to Yemen were seized by FRRO/Police Authorities and sent to concerned RPOs for further action. As a result of this, many representations from such passports holders to release their passports have been received by PIAs who in turn have approached the Ministry for directions.

2. In this regard the PIAs are advised to process the release of the passports in such cases as per the procedure given below:-

- I. PIAs to examine such cases in detail by recording an internal note.***
- II. PIAs to refer such cases thereafter to JS(Gulf) giving full facts and a clear recommendation. Duly endorsing a copy to PSP Division.***

III. JS (Gulf) to take decision whether to release the passport or not and to communicate the same to the concerned PIA, with a copy to PSP Division."

(Emphasis supplied)

The passport issuing authorities are directed to process release of passports in cases which are covered under the Notification on the aforesaid three conditions. It would not be inapposite to mention that a starred question was raised in the Rajya Sabha. While answering the question, the Minister for External Affairs with regard to the seizure of passport has replied as follows:

"(a) to (d): In view of the fragile political and security situation in Yemen, Government of India promulgated a travel ban to Yemen through Gazette Notification S.O.3223 (E) dated 26 September 2017 (Annex-I). The Notification continues to remain in force. Under the provisions of this Notification so far, 422 passports have been seized by Indian authorities for travelling to Yemen despite the travel ban. No passports have been seized for travel to any other country.

In order to mitigate the sufferings of the people who had travelled to Yemen due to job compulsions or due to ignorance, Government has issued guidelines to all Passport Issuing Authorities to process the release of passports on case-to-case basis. A final decision for release of passports is taken by the Ministry of External Affairs and conveyed to Passport Issuing Authorities. So far, 169 passports have been released.

Any Indian citizen whose passport has been seized for travel to Yemen despite the travel ban can approach the respective Passport Issuing Authority for release

of the passport. Government continues to take a compassionate view on individuals who have travelled to Yemen despite the travel ban”

(Emphasis supplied)

The reply is, any Indian citizen whose passport has been seized for travel to Yemen despite the travel ban can approach the respective authorities for release of the passport. The Government would take a compassionate view is what is replied to. It also indicates that 169 passports of the kind have already been released.

16. In the light of the aforesaid circumstances what becomes unmistakably clear is, that this Court would not enter into doing any violence to the Notification, as the Notification is issued in furtherance of security of the nation. If any Notification or law is brought into force for the purpose of security of nation, Courts exercising jurisdiction under Article 226 of the Constitution of India would be ***loathe*** to even consider such cases, as the security of the nation is paramount, though the Notification is not under challenge in the case at hand. Nevertheless, it is the interpretation of the Notification that is projected by the petitioner. In the light of the aforesaid answer by the Minister for External Affairs, I deem it

appropriate to permit the petitioner to submit a detailed representation to the Regional Passport Officer, in whose custody the passport of the petitioner is, to consider the case of the petitioner strictly in consonance with what is observed in the course of the order, as also the orders passed by the High Court of Kerala and the High Court of Delhi. Therefore, the writ petition deserves to succeed, *albeit* in part, only for a direction for consideration of the representation of the petitioner, for redressal of the grievance.

17. For the aforesaid reasons, the following:

ORDER

- (i) The Writ Petition is disposed.
- (ii) Liberty is reserved to the petitioner to submit a representation for redressal of her grievance.
- (iii) If a representation is submitted by the petitioner within 4 weeks from the date of receipt of a copy of this order, the same shall bear consideration at the hands of the Regional Passport Officer, the 3rd respondent, within 4 weeks thereafter in accordance with law, bearing in mind the observations made in the course of the order.

- (iv) It is made clear that no delay should be brooked by the 3rd respondent.

**Sd/-
JUDGE**

bkp
CT:SS