

(2024) 03 TEL CK 0028

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 7663 Of 2024

Srinadh Reddy Mamilla

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: March 26, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 14, 21, 300A
- Indian Penal Code, 1860 - Section 294, 323, 326, 420, 427, 506
- Passports Act, 1967 - Section 5(2)(c), 6(2), 6(2)(e), 6(2)(f), 10(d)
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Hon'ble Judges: Surepalli Nanda, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. Heard Mr. Kotagiri Sreedhar, learned counsel appearing on behalf of the petitioner and Mr.K. Rajesh Reddy, learned counsel representing Mr.Gadi Praveen Kumar, Deputy Solicitor general of India, appearing on behalf of the respondents.

2. The petitioner approached the Court seeking prayer as under:

“...to pass an order writ or direction more particularly one in the nature of writ of Mandamus declaring the action of the Respondent No.2 in not Reissuing Petitioner’s Passport bearing No.M5007741 pursuant to the application vide File No HY75C5075013323 dated 17-08-2023 on the ground of pending criminal cases vide Cr. No. 125 of 2019 of P.S.Khammam Rural and its CC. No. 1632 of 2019, under Sections 326, 323, 294, 506, and 427 IPC on the file of II-Additional Judicial First Class Magistrate at Khammam as illegal, arbitrary unconstitutional and violation of Articles 14, 21, and 300-A of Indian Constitution, in violation of principles of natural justice and contrary to the provisions of The Passports Act, 1967 and consequently direct the Respondent No.2 to reissue the Passport bearing No M5007741 pursuant to the application dated 17.08.2023 without reference to the said criminal case and

pass such other order or orders as the Hon'ble court deems fit and proper in the circumstances of the case, in the interest of justice."

3. The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition, is as follows:

a) It is the specific case of the petitioner that petitioner was issued passport bearing No.M5007741 and the validity period for the said passport of the petitioner is dated 31.12.2014 to 30.12.2024. The petitioner vide File No.HY75C5075103323 dated 17.08.2023 sought for reissuance of petitioner's passport.

To the shock of the petitioner, the 2nd respondent issued proceedings dated 27.02.2024 to the petitioner wherein the petitioner had been informed that the competent authority decided to refuse passport services to the petitioner under Section 5 (2) (c) of the Passports Act, 1967 read with Section 6(2)(f) of Passports Act, 1967 due to pendency of Cr.No. 125 of 2019 under Sections 326, 323, 294, 506, and 427 of IPC of PS Khammam Rural which is in PT vide C.C. No. 1632 of 2019, registered against petitioner. Further the petitioner was informed vide the said impugned order dated 27.02.2024 of the 2nd respondent to submit acquittal order from the case or obtain permission to travel abroad from the same Court where the criminal case is still pending. Aggrieved by the order dated 27.02.2024 of the 2nd respondent the petitioner filed the present writ petition.

4. Learned counsel appearing on behalf of respondents submits that the 2nd respondent could be directed to pass appropriate orders on petitioner's application File No. HY75C5075013323, dated 17.08.2023 in accordance to law.

PERUSED THE RECORD.

DISCUSSION AND CONCLUSION:

5. The learned counsel for the petitioner contends that, respondents cannot refuse the issuance of passport facilities to the petitioner on the ground of the pendency of the aforesaid criminal case against the petitioner and the said action of the respondents is contrary to the procedure laid down under the Passports Act, 1967.

6. This Court opines that pendency of criminal cases cannot be a ground to deny passport facilities to an individual or to hold a passport. Since petitioner's Right to personal liberty not only includes petitioner's right to travel abroad but also petitioner's right to hold or possess a passport.

7. It is also relevant to note that the Apex Court reported in 2020 Crl.L.J. (SC) 572 in "Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation" had an occasion to examine the provisions of the Passports Act, 1967, pendency of criminal cases and held that refusal of a passport can be only in case where an applicant is convicted during the period of five (05) years immediately preceding the date of

application for an offence involving moral turpitude and sentence for imprisonment for not less than two years. Section 6 (2)(f) relates to a situation where the applicant is facing trial in a criminal Court. The petitioner therein was convicted in a case for the offences under Sections 420 IPC and also Section 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988, against which, an appeal was filed and the same was dismissed. The sentence was reduced to a period of one (01) year. The petitioner therein had approached the Apex Court by way of filing an appeal and the same is pending. Therefore, considering the said facts, the Apex Court held that Passport Authority cannot refuse renewal of the passport on the ground of pendency of the criminal appeal. Thus, the Apex Court directed the Passport Authority to issue the passport of the applicant without raising the objection relating to the pendency of the aforesaid criminal appeal in S.C.

8. The Apex Court in another judgment reported in 2013 (15) SCC page 570 in *Sumit Mehta v State of NCT of Delhi* at para 13 observed as under:

"The law presumes an accused to be innocent till his guilt is proved. As a presumable innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution of India."

9. The Apex Court in "Maneka Gandhi vs Union of India" reported in 1978 (1) SCC 248, held that no person can be deprived of his right to go abroad unless there is a law enabling the State to do so and such law contains fair, reasonable and just procedure. Para 5 of the said judgment is relevant and the same is extracted below:

"Thus, no person can be deprived of his right to, go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports, Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law.

Therefore, such a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

10. The Division Bench of the Apex Court in its judgment dated 09.04.2019 reported in 2019 SCC online SC 2048 in *Satish Chandra Verma v Union of India (UOI) and others* observed at para 5 as under:

"The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship which are the basic humanities which can be affected through refusal of freedom to go abroad and this freedom is a genuine human right."

11. Referring to the said principle and also the principles laid down by the Apex Court in several other judgments, considering the guidelines issued by the Union of India from time to time, the Division Bench of High Court of Punjab and Haryana at Chandigarh in "Noor Paul Vs. Union of India" reported in 2022 SCC online P & H 1176 held that a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

12. In the judgment dated 08.04.2022 of the Andhra Pradesh High Court reported in 2023 (4) ALT 406 (AP) in "Ganni Bhaskara Rao Vs. Union of India and another" at paras 4, 5 and 6, observed as under:

"This Court after hearing both the learned counsel notices that Hon'ble Supreme Court of India, in Criminal Appeal No. 1342 of 2017, was dealing with a person, who was convicted by the Court and his appeal is pending for decision in the Supreme Court. The conviction was however stayed. In those circumstances also it was held that the passport authority cannot refuse the "renewal" of the passport.

This Court also holds that merely because a person is an accused in a case it cannot be said that he cannot "hold" or possess a passport. As per our jurisprudence every person is presumed innocent unless he is proven guilty. Therefore, the mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years. The use of the conjunction and makes it clear that both the ingredients must be present. Every conviction is not a ground to impound the passport. If this is the situation post conviction, in the opinion of this Court, the pendency of a case/cases is not a ground to refuse, renewal or to demand the surrender of a passport.

The second issue here in this case is about the applicability of Section 6(2)(e) of the Passport Act. In the opinion of this Court that section applies to issuance of a fresh passport and not for renewal of a passport.

It is also clear from GSR 570(E) which is the Notification relied upon by the learned counsel for the respondents and is referred to in the counter affidavit. This Notification clarifies the procedure to be followed under Section 6 (2) of the Passport Act against a person whom the criminal cases are pending. This notification permits them to approach the Court and the Court can decide the period for which the passport is to be issued. This is clear from a reading of the Notification issued.

Clause (a) (i) states if no period is prescribed by the Court the passport should be issued for one year. Clause (a) (ii) states if the order of the Court gives permission to travel abroad for less than a year but has not prescribed the validity period of the passport, then the passport should be for one year. Lastly, Clause (a) (iii) states if the order of the Court permits foreign travel for more than one year but does not specify the validity of the passport, the passport should be issued for the period of travel mentioned in the order. Such a passport can also be renewed on Court orders. Therefore, a reading of GSR 570(E) makes it very clear that to give exception or to exempt applicants from the rigour of Section 6(2)(f) of the Act, GSR 570(E) has been brought into operation. The issuance of the passport and the period of its validity; the period of travel etc., are thus under the aegis of and control of the Court."

13. Taking into consideration the aforesaid facts and circumstances of the case, and duly considering the law laid down by the Apex Court and other High Courts in the various Judgments (referred to and extracted above), the Writ Petition is allowed, the order impugned dated 27.02.2024 vide File No.HY75C5075013323 of the 2nd respondent is set aside and the 2nd respondent is directed to reconsider the petitioner's application dated 17.08.2023 seeking reissue of petitioner's Passport vide File No. HY75C5075013323, issued to the petitioner, duly taking into consideration the law laid down by the Apex Court and the other High Courts in the various Judgments referred to and extracted above, within three (03) weeks from the date of receipt of copy of the order and pass appropriate, without reference to the Criminal Proceedings pending against the petitioner in Cr. No. 125 of 2019 of P S Khammam Rural and its CC. No. 1632 of 2019 under Sections 326, 323, 294, 506, and 427 IPC on the file of II Additional Judicial Magistrate of First Class at Khammam, subject to the following conditions:

- i) The petitioner herein shall submit an undertaking along with an affidavit in Cr. No. 125 of 2019 of P S Khammam Rural and its CC. No. 1632 of 2019 under Sections 326, 323, 294, 506, and 427 IPC on the file of II Additional Judicial First Class Magistrate at Khammam, stating that he will not leave India during pendency of the said case without permission of the Court and that he will co-operate with trial Court in concluding the proceedings in the said case.
- ii) On filing such an undertaking as well as affidavit, the trial Court shall issue a certified copy of the same within two (02) weeks therefrom;
- iii) The petitioner herein shall submit certified copy of the aforesaid undertaking before the Respondent Passport Officer for renewal of his passport;
- iv) The Respondent-Passport Officer shall consider the application dated 17.08.2023 of the petitioner seeking re-issuance of passport bearing No.M5007741 in the light of the observations made by this Court herein as well as the contents of the undertaking given by the petitioner for re-issuance of petitioner's passport in

accordance to law;

v) On renewal of the Passport, the petitioner herein shall deposit the original reissuance of Passport before the trial Court i.e., II Additional Judicial Magistrate of First Class at Khammam; and

vi) However, liberty is granted to the petitioner herein to file an application before the trial Court seeking permission to travel aboard and it is for the trial Court to consider the same in accordance to law.

Miscellaneous petitions, if any pending, in this writ petition shall stand closed.