

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO.9141/2020 (GM-PASS)

BETWEEN:

MR. KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA

...PETITIONER

(BY SRI LOMESH KIRAN N., ADVOCATE)

AND:

1. THE UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
SOUTH BLOCK,
NEW DELHI-110 001.
2. PASSPORT AUTHORITY OF INDIA
REPRESENTED BY ITS CHIEF PASSPORT OFFICER,
PSP DIVISION, MINISTRY OF EXTERNAL AFFAIRS,
ROOM NO.8, PATIALA HOUSE, TILAK MARG,
NEW DELHI-110 001.

3. REGIONAL PASSPORT OFFICE
REPRESENTED BY ITS
REGIONAL PASSPORT OFFICER,
8TH BLOCK, 80 FEET ROAD,
KORAMANGALA,
BENGALURU-560 095, KARNATAKA.
4. CENTRAL BUREAU OF INVESTIGATION (CBI)
REPRESENTED BY ITS DIRECTOR,
HAVING ITS HEAD OFFICE AT,
PLOT NO. 5-B, 6TH FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003.
5. CENTRAL BUREAU OF INVESTIGATION (CBI)
OFFICE OF HEAD BRANCH, CBI,
ACB NO.36, BELLARY ROAD,
GANGANAGAR,
BENGALURU-560 032, KARNATAKA.

...RESPONDENTS

(BY SRI C. SHASHIKANTH, ASG FOR R-1 TO R-3;
SRI P. PRASANNA KUMAR, ADVOCATE FOR R-4 AND R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT R-1 TO 3 TO ALLOW THE PETITIONER'S APPLICATION DATED 22.1.2020 (ANNEXURE-A) FOR RENEWAL OF HIS PASSPORT NO.J2032048 (ANNEXURE-B) AND ACCORDINGLY RENEW AND ISSUE A FRESH PASSPORT TO THE PETITIONER; DIRECT THE R-1 TO 3 NOT TO TAKE ANY COERCIVE STEPS OR ACTIONS AGAINST THE PETITIONER INCLUDING BUT NOT LIMITED TO FACILITATING THE DEPORTATION OF THE PETITIONER FROM USA TO INDIA TILL RENEWAL AND ISSUANCE OF FRESH PASSPORT TO THE PETITIONER BY R-1 TO 3 AND ETC.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING THIS DAY, THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner states that, he was working at Sri Sarita Software Industries Limited at Srikakulam District, Andhra Pradesh from 1996 to 2002. In 2002, he moved to Tanzania, East Africa, where he was employed in Pharmaceutical Company. In 2006, he relocated to USA as an ERP consultant and since then residing there along with his family on H1B visa. He further states that his passport was renewed in 2010 .

2. On 6.12.2019, petitioner traveled to India to attend Visa interview at the Consulate General of the United States of America in Chennai and on 16.1.2020, he went back to USA after completing the Visa interview. On 22.1.2020, he applied for renewal of his passport bearing No.J2032048 through his travel agency before the Indian Consulate, New York, USA. On 18.5.2020, petitioner sent an e-mail to the Indian Consulate, New York USA informing that his passport

was due to expire on 6.7.2020 and followed it up with several requests to renew his passport.

3. In response to the multiple requests made by the petitioner, finally on 17.6.2020, he received an e-mail from respondent No.3 stating that a letter has been received from respondent No.4 informing that a criminal case has been registered against the petitioner. Petitioner was shocked to learn that a criminal case has been registered against him which he was not aware and also the nature of the proceedings pending against him.

4. In response to the communication dated 17.6.2020, the petitioner replied on 18.6.2020 stating that he has absolutely no knowledge of any criminal case pending against him and he has been residing abroad since 2002 and has not received any information in this regard from any Authority. Petitioner also made request with respondent No.3 so as to issue a temporary passport so that he can travel to India to ascertain the details of alleged criminal case pending

against him. Since there was no response by respondent No.3, petitioner has filed the instant writ petition.

5. Learned counsel for the petitioner has made the following submissions:

i) Alleged criminal case pending against the petitioner is not a ground for refusal to renewal of his passport;

ii) Petitioner was not aware of the pendency of the criminal case and non bailable warrant issued by the jurisdictional Magistrate against him at the time of renewal of his passport in 2010 before the Consulate General of India at New York;

iii) Section 6(2)(f) of the Passport Act, 1967 is not applicable to cases where an applicant seeks for renewal of passport and is applicable to cases for issuing fresh passport as held by the Delhi High Court in Ashok Khanna -vs- Central Bureau of Investigation (265 (2019) DLT 614);

iv) Right to travel is indeed a fundamental right and the same cannot be arbitrarily and illegally denied by the State. In support of his submission, reliance has

been placed on the decision of the Apex Court in the case of Satwant Singh Sawhney -vs- D Ramarathnam and Ors. (AIR 1967 SC 1836), he also relied on the decision of the Apex Court in the case Suresh Nanda -vs- CBI ((2008) 3 SCC 674), wherein it was held that despite criminal case filed against the petitioner therein he was entitled to hold the passport since the passport had not been impounded in accordance with law;

v) Petitioner does not fall in the category so as to obtain an Emergency Certificate under the Passport Act, 1967 read with Passport Rules 1980 since no Lookout Circular and Red Corner notice are issued against the petitioner till date;

vi) The Notification dated 25.8.1993 issued by the Ministry of External Affairs, Government of India is applicable only to the applicant who intends to travel abroad and not to an applicant who wants to travel back to India. Hence, the petitioner is not required to obtain written permission from the jurisdictional Magistrate for renewal of his passport.

6. Learned Additional Solicitor General for respondents No.1 to 3 submits that 3rd respondent had

written to the CBI for furnishing latest status of the criminal case pending against the petitioner to which the CBI informed that the jurisdictional Magistrate at Hyderabad had issued a NBW against the petitioner and it was requested not to renew the passport. He submits that, since a criminal case is pending against the Petitioner, he cannot be issued with passport as stipulated u/s 6(2)(f) of the Passport Act. However, the said request can be considered subject to the condition that the written permission is granted by the Court concerned allowing the applicant to travel abroad which is provided under the Notification bearing No.GSR 570(E) dated 25.8.1993 issued by the Ministry External Affairs, Government of India. In support of his submission, he places reliance upon the decisions of this Court in WP No.57756/2015 (DD 14.6.2015) and WP No.40164/2018 (DD 19.9.2018).

7. He also submits that the petitioner cannot insist for renewal of his passport to travel to India and he can

obtain an Emergency Certificate to travel to India. Hence, he submits that the request of the petitioner for renewal of passport cannot be considered.

8. Learned counsel for the CBI reiterating the submission made by the learned ASG submitted that the charge sheet is filed against the petitioner and others in 20087 for the offences punishable under Sections 120B read with 420, 419, 467, 468 and 471 of IPC in CC No.83/2008. He further submitted that NBW has been issued against the petitioner since he did not appear before the Court personally or through an Advocate and he is not entitled for renewal of his passport.

9. I have considered the submissions made by the parties and also the writ petition papers.

10. As per Section 6 of the Passport Act, 1967, the Passport Authority shall refuse to make an endorsement for visiting any country under Clause (b) or (c) of Sub-Section 2

of Section 6 of the said Act on any or more of the grounds mentioned in Section 6 of the Act, which reads thus:

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

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(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 © of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(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;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

11. A reading of Section 6(2)(f) of the Passport Act indicates that, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country, if a criminal proceeding is pending against the applicant in India . However, the said provision does not provide for refusing to issue a passport for a person who intends to travel back to India . Hence, reading of this provision clearly indicates that it is applicable only for issuing a fresh passport and not for renewal of passport and this view is fortified by

the decision of the Delhi High Court rendered in the case of Ashok Khanna –vs- Central Bureau of Investigation (supra). Delhi High Court while interpreting Section 6 of the Passport Act, 1967 has held that the Passport Authority can refuse to issue passport or an endorsement for visiting any country but nowhere in the provision it is mentioned that even for renewal of passport, the Authority can refuse to renew the passport. It was further held that for renewal of passport, an applicant has to submit Form EA(P)-2 which reads as under:

FORM EA(P)-2
GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS

APPLICATION FORM FOR MISCELLANEOUS SERVICES ON INDIAN PASSPORT FOR (USE IN INDIA) (A) RENEWAL (B) ADDITIONAL VISA SHEET, (C) ADDITIONAL BOOKLET, (D) CHANGE OF ADDRESS, (E) PCC (F) additional endorsement (G) chief inclusion/deletion (H) any other service (specify) (please delete inapplicable)

Amount of Fee paid Rs..... by ... (Mode of payment)
Mode of Submission of application (A) and Delivery (D).

(i) Personally, (ii) By Post, (iii) Through Rec. Travel Agent, (iv) Through auth rep.

(A) (D) (A) (D) (A) (D) (A) (D)

Please tick mode (i) and (ii) only if previous Passport containing valid visa for U.K., U.S.A etc. submitted with application.

(For delivery tick marked by post Rs.10 extra to be paid as postal charges or each passport enclosing self-addressed envelop of size 16cm. x 10cm).

1. Name (Please give expanded initials)
2. (a) Father's Name
(b) Mother's Name
(c) Husband/Wife Name
3. Passport No..... Place of issue date of issue valid up to.....
4. File No. of passport
5. **Are any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under section 10(3).**
6. Particulars of children to be included/deleted.

| Name | Place and Date of Birth | Sex (M/F) |
|-------|-------------------------|-----------|
| | | |
| | | |
| | | |

7. Declaration.- I solemnly affirm that-
 - (i) I owe allegiance to the sovereignty and integrity of India, and
 - (ii) Information given above in respect of myself, my son/daughter/ward is correct and nothing has been concealed and I am aware that it is an offence under the Passports Act, 1967 to knowingly furnish false information or suppress material information, which attract penal and other punishments under the acts, and

- (i) I undertake to be entirely responsible for expenses of my son/daughter/ward,
- (ii) I declare that I have not lost or surrendered my citizenship of India since the above passport or travel document was issued to me. I further declare that I have no other passport.

.....
Signature of applicant or Thumb Impression
or his legal guardian (Left hand Thumb
Impression of male and right hand Thumb
Impression of female)

Place

Date

8. Two specimen signatures or T.I. required for services at (c) within the space given below:

Thus, in Form EA (P-2), there is no such condition or requirement to take written permission from the Court.

12. The submission of the learned ASG that, written permission of the jurisdictional Magistrate is required for renewal of the passport as provided in the Notification bearing No.G.S.R 570 (E) dated 25.8.1993 issued by the Ministry External Affairs, Government of India is also not acceptable. The said Notification is applicable to an applicant requesting

for issuing passport so as to travel abroad. It is not the case of the Petitioner that he intends to travel abroad. Petitioner is requesting for renewal of passport which he has submitted in Form EA (P)-2 and in the said Form there is no requirement for obtaining permission from the jurisdictional magistrate before whom a criminal case is pending to travel abroad. The said notification applies to an applicant who intends to travel abroad against whom a criminal case is pending. The decisions of this court relied upon by the Learned ASG are not applicable to the facts of this case.

13. In the instant case, petitioner is seeking for renewal for his passport, therefore, said request cannot be rejected by taking shelter under Section 6(2)(f) of the Act and Notification bearing No.G.S.R 570 (E) dated 25.8.1993 issued by the Ministry External Affairs, Government of India.

14. The submission of the learned ASG that the petitioner can obtain Emergency Certificate to travel to India cannot be accepted for the reason that part-II to the

Schedule-II of the Passport Rules that provides for issuing Emergency Certificate is not applicable to the petitioner. It only applies to classes of persons listed in the said Schedule. Petitioner does not fall in any of the classes of persons listed in the said schedule. It is also a fact, that the petitioner's passport has not been refused and also not impounded or revoked. Hence, the Rules providing for obtaining Emergency Certificate is not applicable to the petitioner's case.

15. The Apex Court in the case of Satwant Singh Sawhney supra, has held that under Article 21 of the Constitution of India, no person can be deprived of his right to travel except according to procedure established by law. Hence, Petitioner's right to travel cannot be curtailed on the pretext that a criminal case is pending against him by refusing to renew his passport.

16. The Apex Court in the case Suresh Nanda -vs- CBI supra has held that despite criminal case filed against the petitioner therein he was entitled to hold the passport

since the passport had not been impounded in accordance with law. Hence, merely because a criminal case is pending against the Petitioner, he cannot be disqualified from holding a passport, when admittedly his passport has not been impounded under Section 10(3) of the Passport Act.

17. The Respondents have not produced any document to establish that the Petitioner was served with summons issued by the Jurisdictional Magistrate or having been issued with any notices by the Authorities informing him about the pendency of criminal case against him. Hence, the Petitioner cannot be held guilty of suppressing the fact that he did not disclose the pendency of criminal case at the time of renewal of his passport in 2010.

18. The offences alleged against the Petitioner are not punishable with death or life imprisonment. Petitioner has filed an affidavit stating that he may put on terms for renewal of his passport. In his affidavit, he has stated that he would enter appearance in C.C.No.1503/2019 (RCNo.2(E)/2005

pending before the Hon'ble XXI Additional Chief Metropolitan, Magistrate, Hyderabad subject to Respondents 1 to 3 renewing his passport.

19. For the aforesaid discussion, I am of the view that the Petitioner is entitled for renewal of his passport for a limited period subject to certain terms and conditions. Accordingly, I pass the following:

ORDER

- i) Writ Petition is allowed.
- ii) Respondents 1 to 3 keeping in view the observations made in this order are hereby directed to renew the Petitioner's passport bearing No. No.J2032048 for a period of nine months from the date of renewal subject to the condition that petitioner furnishes bank guarantee for a sum of Rs.5,00,000/-.
- iii) Petitioner is hereby directed to enter appearance in C.C.No.1503/2019 (RCNo.2(E)/2005 pending before the

Hon'ble XXI Additional Chief Metropolitan, Magistrate, Hyderabad within six months from the date of renewal of his passport failing which the Respondents 1 to 3 are at liberty to cancel the renewal of passport of the Petitioner and also encash the bank guarantee furnished by the Petitioner.

Sd/-
JUDGE

bkm