

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 16.11.2022
Pronounced on:23.11.2022

WP(C)No.1534/2022
CM No.4238/2022

Rajesh Gupta

...Petitioner(s)

Through:- Mr. Pranav Kohli, Sr. Advocate with
Mr. Vastav Sharma, Advocate

V/s

Union of India and another

...Respondent(s)

Through:- Mr. Vishal Sharma, DSGI

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioner holds Indian passport bearing No.K0166531 issued by respondent No.2, which is valid w.e.f. 20th November, 2012 to 19th November, 2022. The petitioner filed an application on 20th December, 2021 for renewal/re-issue of the passport in his favour, which was going to expire on 19th November, 2022.

2. The grievance of the petitioner is that even after the lapse of substantial time, there was no intimation from respondent No.2 in respect of status of his request for renewal/re-issue of the passport. The petitioner was, however, informed that his police verification was awaited. With a view to know the reasons for delay in issuance of renewal/re-issue of the

passport, the petitioner moved an application under Right to Information Act for seeking information in respect of the latest status of his passport file submitted on 20th December, 2021. In response to the Right to Information application filed by the petitioner, the respondents intimated to the petitioner that the delay was due to non-receipt of police verification report. It was, however, on 13.04.2022, the petitioner received a message from the passport office that the police had submitted an adverse report against him. The adverse police report was, however, not shared with the petitioner. The petitioner filed another application under Right to Information Act on 18th April, 2022, which was replied by the Public Information Officer of the respondents on 13th May, 2022 by serving a copy of the communicated dated 21.04.2022 intimating to the petitioner that the passport office had received a report from the police, which indicates that FIR No.3/2019 is registered against him, as such, the petitioner is required to furnish No Objection Certificate from the Hon'ble Court. The petitioner submits that since there was no criminal proceeding pending in any Court, therefore, he could not submit No Objection Certificate from the Court. This made the respondent to close the case of the petitioner for renewal/re-issue of the passport, which fact was intimated to the petitioner by the Passport office through a text message dated 2nd June, 2022.

3. Feeling aggrieved by the communication of the respondents dated 21.04.2022 and the closure of request of the petitioner for re-issue of the passport, the petitioner has filed the instant petition seeking, inter alia, a

direction to the respondents to renew/re-issue the passport in favour of the petitioner before the earlier passport issued in favour of the petitioner expires. The petitioner also prays for a writ of certiorari to quash the impugned notice dated 21.04.2022, whereby the petitioner has been intimated that an FIR is registered against him and that he is required to furnish No Objection Certificate from the Court.

4. The impugned notice is assailed and the writ of mandamus prayed for in the petition is claimed primarily on the ground that under the Passport Act, 1967 [“ the Passport Act”] and the Rules framed thereunder, there is no provision for asking the applicant for passport to submit ‘No Objection Certificate’ from the Court when there are no criminal proceedings pending against him in any competent Court of law. It is submitted that mere registration of FIR and initiation of investigation by the police authorities is no ground to reject the request for grant or renewal of the passport. Reliance in this regard is placed by the petitioner on Section 6 of the Passport Act to argue that the passport authority can refuse to issue passport or travel documents for visiting any foreign country only on the grounds mentioned in Clause (a) to (i) of Sub Section 2 of Section 6 of the Passport Act. Clause (f) only provides for refusing the issue of passport on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India.

5. Mr. Pranav Kohli, learned Senior Counsel, appearing for the petitioner argues that the proceedings in respect of an offence shall be

deemed to be pending before a criminal Court only when a final report is presented to the Court by the police or cognizance of a criminal complaint against the applicant is taken by the competent Criminal Court. He submits that in the instant case, there is only an FIR registered and investigation undertaken by the police and, therefore, no criminal proceeding can be said to be pending before any Criminal Court. He, therefore, submits that the ground taken by respondent No.2 to close the case of the petitioner for re-issue/renewal of the passport is untenable and is not traceable to any provision of the Passport Act or the Rules framed thereunder.

6. On being put on notice, the respondents have filed their objections through Mr. Vishal Sharma, learned Deputy Solicitor General of India. It is admitted by the respondents that the petitioner has applied for passport facility in re-issue category on 20.12.2021 vide file No.JM 1075937147421. It is submitted that in his application the petitioner has declared under his signatures that he has not been charged with any criminal proceedings nor is there any arrest warrant or summon pending before any Court of law in India against him. It is submitted that on 12.04.2022, an adverse police report was received by the passport office with the remarks that the applicant is involved in case FIR No.3/2019 under Section 5(1)(d) of the Prevention of Corruption Act. The petitioner was asked to provide 'No Objection Certificate' from the Court with regard to the FIR mentioned in the police report but the petitioner failed to submit requisite NOC and rather submitted a clarification, which was not found satisfactory. It is submitted that in these circumstances, the passport

office was left with no option but to close the case and the same was, accordingly, closed on 02.06.2022.

7. Having heard learned counsel for the parties and perused the material on record, the only question that arises for determination in this case is “*whether mere registration of FIR and initiation of investigation by the Investigating Agency is a ground good enough to deny the issue/re-issue of the passport in favour of the applicant involved in such FIR?*”

8. Indisputably, the right to travel abroad is a facet of personal liberty guaranteed to the citizens of this Country under Article 21 of the Constitution of India. This is so authoritatively held in **Satwant Singh Sawhney v. D.Ramarathnam, AIR 1967 SC 1836** and **Menaka Gandhi v. Union of India and another AIR 1978 SC 597** and, therefore, this right can only be curtailed by imposing restrictions as are authorized by law. The Passport Act is an Act of Parliament that deals with the issue of passports and travel documents to regulate the departure from India of citizens of India and other persons and for the matters incidental or ancillary thereto. Section 5 of the Passport Act deals with applications, to be submitted for obtaining passports, travel documents and other orders thereon. The refusal of the passport or travel documents is dealt with by Section 6 of the Passport Act, which for facility of reference is reproduced hereunder:-

“**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 foreign country under clause (b) or clause (c) of

sub-section (2) of section 5 on any one or more of the following grounds, and 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 (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 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.”

9. Sub Section (1) of Section 6 of the Passport Act clearly provides that application for grant or renewal of passport shall be refused only on the grounds mentioned in the Section and on no other ground. Apart from other grounds, Clause (f) of Sub Section (2) of Section 6 provides that request for grant or renewal of passport or travel documents can be refused, if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India.

10. Mere registration of an FIR or pendency of investigation by the Investigating Agency is no ground to refuse issue or renewal of passport requested by the applicant. At this stage, when FIR alone is registered and investigation is undertaken by the Investigating Agency, there are no proceedings before a criminal Court. The criminal proceedings commence before the competent Court of criminal jurisdiction only when a final report is laid by the investigating agency before the Court or in case of a private complaint, when the criminal Court of competent jurisdiction takes cognizance and proceeds in the manner provided under the Code of Criminal Procedure. Till such eventuality happens, we cannot say that there are criminal proceedings pending in the Court. If that be the clear and unequivocal position emerging from the scheme of Code of Criminal Procedure, there is not even an iota of doubt that registration of FIR and

the investigation taken thereupon by the investigating agency cannot be said to be the proceedings pending before a criminal Court in India to attract disqualification laid down in Clause (f) of Sub Section (2) of Section 6 of the Passport Act.

11. To the similar effect are the provisions of Section 10 of the Passport Act, which deal with variation, impounding and revocation of passports and travel documents. Under Section 10 of the Passport Act, the passport authority may impound or cause to be impounded or revoke a passport or travel document, if apart from others, it is brought to its notice that the proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel documents are pending before a criminal Court in India. This is so provided in Clause (e) of Sub Section (3) of Section 10. Clause (h) of Sub Section (3) of Section 10 further provides that the passport already issued can be impounded or revoked by the passport authority, if it is brought to its notice that a warrant or summons for the appearance, or a warrant for the arrest of the holder of the passport or travel document has been issued by a Court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such Court.

12. The issue as to when can the proceedings be said to be pending before the Criminal Court was considered by the Madras High Court in **Venkatesh Kandasamy v. Government of India, Ministry of External Affairs, AIR 2015 Mad 3** and it was held that no proceedings can be said

to have been initiated under Clause (a) of Section 190 of the Criminal Procedure Code unless cognizance is taken by the Court for proceeding further in the matter.

13. In the aforesaid case, Madras High Court found that all criminal complaints as against the applicant were only at the stage of investigation and, therefore, it was not a case of the passport authorities that final reports have been filed in the criminal Court in any of the criminal complaint so as to make the case come within the four corners of Section 6(2)(f) of the Passport Act. Similar order passed by the passport authorities was set aside by the Madras High Court.

14. Mr. Vishal Sharma, learned DSGI relies upon GSR 570 (E) dated 25th August, 1993 read with Office Memo dated 10th October, 2019 and submits that in a case where FIR is registered against the applicant and investigation is pending, it is incumbent upon the applicant to obtain No Objection Certificate from the concerned Criminal Court. He, however, could not elaborate as to which Court the applicant is supposed to approach when there are no criminal proceedings pending in the Court and FIR is only at the stage of investigation.

15. Be that as it may, the circular instructions issued by the government of India cannot override the statutory provision of Section 6(2)(f), which is applicable to the instant case. The Section has already been interpreted herein above the light of various decisions rendered by various High Courts across the Country. Otherwise also, the circular and office memo

relied upon by the respondents also speak about proceedings in respect of offence alleged to have been committed by the applicant which are pending before a criminal Court in India and do not contemplate or encompass cases where there is only FIR registered and the same is at the stage of investigation.

16. Viewed thus, I am of the considered view that the ground on which the request of the petitioner for re-issue of the passport has been rejected is totally untenable and unsustainable in law. The respondents cannot insist upon the petitioner to produce NOC from the Court when there are no criminal proceedings pending in any competent Court of criminal jurisdiction. From the documents on record, it is abundantly clear that there is only an FIR pending investigation against the petitioner and no final report in the matter has so far been submitted to the Court.

17. In view of the above, I find merit in this petition. The same is, accordingly, allowed and a direction is issued to the respondent No.2 to grant passport facility to the petitioner in the re-issue category without insisting for production of NOC from the Court. However, before doing so, the respondents may verify as to whether final report in FIR No.3/2019 registered against the petitioner has been submitted to the competent Court of law or not.

Needless to say that in case final report in the FIR aforesaid registered against the petitioner has been presented to the competent Court of law, respondent No.2 shall pass appropriate orders after due application

of mind and if necessary may demand furnishing of NOC from the concerned Court to be submitted by the petitioner. Let the matter be considered and decision taken thereon within a period of four weeks from the date a copy of this judgment is served upon the respondent(s).

(Sanjeev Kumar)
Judge

JAMMU.
23.11.2022
Vinod.

Whether the order is speaking : Yes

Whether the order is reportable: Yes