

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 24<sup>TH</sup> DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S. DIXIT

**WRIT PETITION NO.14716 OF 2022(GM-PASS)**

BETWEEN:

1. DIVENA NAYUDU,

2. SMT. POULAMI BASU,

...PETITIONERS

(BY SRI. SWAMY M M, ADVOCATE)

AND:

1. THE GOVERNMENT OF INDIA,  
REP BY ITS SECRETARY,  
MINISTRY OF EXTERNAL AFFAIRS,  
SHRI LAKSHMI NARAIN, SO(DB),

74B SOUTH BLOCK,  
NEW DELHI – 110 001.

2. REGIONAL PASSPORT OFFICE,  
8<sup>TH</sup> BLOCK, 80 FEET ROAD,  
KORAMANGALA,  
BENGALURU – 560 095.  
REP BY ITS REGIONAL PASSPORT OFFICER.

... RESPONDENTS

(BY SMT.SAROJINI MUTHANNA K, CGSC FOR P1 &R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R2 TO ACCEPT THE APPLICATION DATED 12.04.2022 VIDE ANNEXURE-C OF THE P1 AND ISSUE PASSPORT TO HER WITHOUT INSISTING TO MENTIONED THE NAME OF HER FATHER OR HIS PRESENCE AND HIS SIGNATURE IN ANY OF THE FORMS.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

### **ORDER**

The short grievance of the 2<sup>nd</sup> petitioner is as to pendency of Passport application in respect of her minor ward i.e., 1<sup>st</sup> petitioner whose exclusive custody has been accorded to her by the Family Court in MC No.4388/2015 disposed off on 25.02.2022.

2. Learned counsel appearing for the petitioners submits that once exclusive custody is granted by the Family Court, the 2<sup>nd</sup> Respondent – Regional Passport

Officer is not justified in insisting upon the presence of father of the ward or for his consent and therefore, the passport must be granted *sans* such an insistence.

3. After service of notice the respondents having entered appearance through their learned Sr. Panel Counsel oppose the writ petition contending that the grant of Passport is regulated by the Passport Act, 1967 and the Manual issued thereunder which has got statutory force. He further contends that, the Manual prescribes consent of the estranged husband as a precondition for the grant of Passport. The said paragraph having not been challenged, the petition is liable to be rejected, argues she.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

a) The Apex Court in *MANEKA GANDHI vs. UNION OF INDIA*, (1978) 1 SCC 248, observed that the right to travel abroad is a fundamental right guaranteed under Article 21 of the Constitution of India. That being the position, the respondents have to interpret their legal literature consistent with the same.

b) Learned counsel for the petitioners are more than justified in contending that the Passport is only a travel document which enables the grantee to pass the port of his country and therefore it is not that passport *per se* that enables him to travel abroad *sans* Visa to be granted by the intended host country.

(c) This Court in a similar matter, i.e., in **W.P.No.19203/2021** **between SMT. KASTURI RAJUPETA and UNION OF INDIA** disposed off on **17.03.2022** had observed as under

*"...To go abroad, one needs Travel Documents namely, a Passport issued by his native country and the Visa that may be*

issued by the host country. At this juncture, it would be profitable to trace the historical and etymological origin of the use and nature of passports. The word Passport is derived from a French word, 'passer' (circa 15), literally meaning authorization to depart from the port. The word Visa is derived from Latin 'videre' (mid 19<sup>th</sup> century), which means 'to see', i.e., to see a place. The Madras High Court in *V.G ROW vs. STATE OF MADRAS AIR 1954 Mad 240* has succinctly traced the history of the passport at paragraph 11 as under:

"...11. Historically, the original meaning of the term "passport" appears to have been different from the modern sense. It was evidently a rule of common law in the 14th and 15th centuries in England that no subject could leave the realm without a license or passport. This was founded on the theory that by a person leaving the realm the King was deprived of his service. **This doctrine was apparently not universally acknowledged, because according to Stephen's Commentaries on Blackstone everyone at the common law was at liberty to leave the realm without license. The 41st clause of the Magna Carta which allowed all merchants to depart freely from England in time of peace was really embodying an exception to the common law rule that no person could leave the realm without a license or passport. As the common law rule would not 'apply to aliens, it was found necessary to pass statutes for the aliens not to leave the country**

***without a passport'. (38 Geo. III, C. 50, 43 Geo. III, c. 155)..."***

d) The above apart, the Family Court has also granted a Divorce Decree in the subject matrimonial cause whereby limited visitation rights have been accorded to the ex-husband of the 2<sup>nd</sup> petitioner i.e., father of the ward. However, mere grant of Passport would not *per se* result into curtailment of visitation rights as such. Thus, the apprehension of the learned Sr. Panel Counsel appearing on behalf of the respondents that such curtailment would occur if visaless travel abroad is possible in select nation-States can be alleviated by prescribing prior permission of the Family Court.

e) Further, a Coordinate Bench of this Court in more or less a similar fact matrix i.e., in W.P.No.32531/2017 (GM-PASS) in MASTER KISHAN Vs. UNION OF INDIA, disposed off on 15.02.2017, has made certain observations favourable to petitioners at paragraph nos. 6 & 7 which read as under:

*"6. If these aspects of the matter are kept in view, at this point in time, the communication dated 05.02.2015 would be irrelevant. That apart, when it is seen that the mother of the petitioner Smt G.C.Deepa has filed the application on his behalf and presently, since the minor petitioner is in her custody, if the declaration as indicated above at Annexure-C with the relevant clauses therein is filed by the mother Smt G.C.Deepa, the respondent No.2 shall take note of the same and consider the application of the petitioner subject to the same satisfying the normal requirements except the consent letter of the biological father, in view of the dispute between the parents of the petitioner. If a fresh application is required to be filed by the petitioner through the guardian, the same may also be filed by the petitioner.*

*7. In such event, the respondent No.2 is directed to take note of the same and consider the application of the petitioner without insisting on the 'No Objection Certificate' or the consent letter from the biological father and process the application for issue of passport in accordance with law if it satisfies the other requirement."*

In the above circumstances, this writ petition succeeds; the 2<sup>nd</sup> respondent – Regional Passport Officer is directed to consider the subject application for Passport *sans* insisting upon the presence or consent of

the father of the ward i.e., ex-spouse of the 2<sup>nd</sup> petitioner. All other contentions are kept open.

It is made clear that the 2<sup>nd</sup> petitioner shall not travel without taking permission of Family Court. If an application is made in that regard, the same shall be expeditiously decided by the said court.

Time for compliance is four weeks from the date a copy this judgment is produced.

No costs.

**Sd/-  
JUDGE**

Bsv