

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23492 OF 2023

(An application under Article 226 of the Constitution
of India)

* * * *

AFR

Santosh Kumar Tripathy ***Petitioner***

-versus-

Union of India and another ***Opp. Parties***

Advocates appeared:

For Petitioner : Mr. Rajjeet Roy, Advocate

For Opp. Parties : Mr. Prasanna Kumar Parhi, DSGI
along with Mr. Dipti Ranjan Bhokta, CGC

CORAM:
JUSTICE K.R. MOHAPATRA

Heard and disposed of on 08.01.2024

JUDGMENT

1. This matter is taken up through hybrid mode.
2. Hard copy of Counter Affidavit filed in Court today is taken on record.

3. The Petitioner in this writ petition seeks to assail the order dated 15th May, 2023 (Annexure-4) passed by the Regional Passport Officer, Odisha, Bhubaneswar refusing to renew the passport of the Petitioner and granting liberty to make a fresh application for renewal of passport giving the undertaking in the format appended to the said order.

4. Mr. Roy, learned counsel submits that the Petitioner was issued with a passport bearing Registration No.K7858157. When

it was about to expire on 27th February, 2023, he made an application for renewal of the passport. The said application was rejected on the ground that a criminal case was pending against the Petitioner. Hence, this writ petition has been filed assailing the said order under Annexure-4.

5. Mr. Roy, learned counsel for the Petitioner submits that a criminal case is stated to be pending when cognizance is taken in the said case. In the police verification report submitted pursuant to the request of the Regional Passport Officer, it is stated that the applicant is facing charges under Sections 294/323/354/506/34 IPC in connection with Laxmisagar P.S. Case No.88 dated 10th March, 2021 and the Petitioner has been charge-sheeted. It is further clarified in the said police verification report that no warrant/summon for appearance of the Petitioner is pending. He, therefore, submits that when no summon/warrant has been issued against the Petitioner in the aforesaid criminal case, it cannot be said that a criminal case is pending against him. In support of his submission, he relied upon the office memorandum dated 10th October, 2019 issued by the Ministry of External Affairs, Government of India in the matter of issuance of passport to the applicants against whom criminal case is pending (appended to the impugned order under Annexure-4), which clarifies regarding pendency of criminal case at Paragraph-5(vi) of the said memorandum. The same reads as under:

“(vi) In case where the secondary Police Verification is also ‘adverse’, it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be

considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.”

(emphasis supplied)

5.1. He, therefore, submits that when cognizance of offences alleged against the Petitioner has not yet been taken, mere filing of charge-sheet will not amount to pendency of the case. He, also relied upon the decision in the case of **Venkateswara Rao Maladi –v- The Regional Passport Officer**, reported in AIR Online 2023 AP 112, wherein the High Court of Andhra Pradesh held as under:

“23. The Madhurai Bench of Madras High Court in J. Mathanagopal v. The Regional Passport Officer held as extracted hereinunder:

“19. It is not in dispute that the case that is pending before the Judicial Magistrate, is yet to be taken cognizance by the Sessions Court and the case is still pending before the Judicial Magistrate in P.R.C. No. 32 of 2016 and as such, it cannot be termed to be a pendency of criminal case. In view of the same, the provisions of the Indian Passports Act, 1967 may not be attracted. While that being so, it would not be appropriate to direct the petitioner to approach the "concerned court" to obtain an order by way of a direction to enable him to get the relief before the passport authorities.”

24. Learned counsel for the petitioner placed on record the Office Memorandum No.VI/401/1/5/2019 dated 10.10.2019 issued by the PSP Division, Ministry of External Affairs, Government of India, before this Court. In the said Office Memorandum, Point No.6 is extracted hereinunder:

“(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of Law and the court has taken cognizance of the same.”

25. xxxx xxxx xxxx xxxx

26. Considering the above settled law and the Office Memorandum No. VI/401/1/5/2019 dated 10.10.2019 issued by the Government of India, this Court has no hesitation to hold that Section 6(2)(f) of the Passport Act, 1967, would arise when there is pending proceedings before the Criminal Court after cognizance is taken.”

He, therefore, submits that in the facts and circumstances of the case, it cannot be held that a criminal case is pending against the Petitioner. He, therefore, submits that the impugned order under Annexure-4 is not sustainable and is liable to be set aside. The prayer of the Petitioner for renewal of the passport should be considered without insisting upon submitting information with regard to pendency of the criminal cases against him.

6. Mr. Parhi, learned DSGI submits that the Hon’ble Supreme Court in the case of ***Vangala Kasturi Rangacharyulu –v- Central Bureau of Investigation***, reported in 2021 SCC OnLine SC 3549 while discussing the scope of Section 6(2)(e) of the Passport Act, 1967 (for short ‘the Act’) held as under:

“.....The refusal of a passport can be only in the case where applicant is convicted during the period of 05 years immediately preceding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.....”

The Hon’ble Supreme Court in the aforesaid case was dealing with applicability of the application under Section 6(2)(e) of the Act and not an application under Section 6(2)(f) of the Act. Thus, the ratio in the case of ***Vangala Kasturi Rangacharyulu*** (supra) is not applicable to the instant case. However, pursuant to the said direction, a further clarification has been issued by office memorandum dated 14th March, 2023, which is filed in Court today along with an affidavit of the Regional Passport Officer. The said office memorandum reads as under:

“Ministry is in receipt of various reference from the Passport Issuing Authorities(PLAs) regarding handling of the cases wherein passport applicant has been convicted by the trial court for an offence and sentenced to imprisonment for not less than two years but applicant prefers the appeal against conviction which is pending in the Appellate Court proceedings are stayed by Appellate Court, cases wherein trial proceedings are stayed by the Appellate Court and cases wherein conviction is stayed by the Appellate Court.

2. The matter has been examined in consultation with the Department of Legal Affairs, Ministry of Law & Justice, Government of India who have opined as follows:-

- (i) The cases where the **trial is completed** and the accused is convicted by the trial court but **the convict/applicant prefers an appeal against the order of conviction**, which is pending in the Appellate Court, the Supreme Court in the case titled "Vangala Kasturi Rangacharyulu Vs CBI" has observed that the refusal of a passport can be only in the case where applicant is convicted during the period of 05 years immediately preceding the date of application for an offence involving moral turpitude and sentenced to imprisonment for not less than two years as per **Section 6(2)(e) of the Passports Act 1967** [which inter alia provides that the passport authority shall refuse to issue a passport or travel document on the ground then 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 turpitude and sentenced in respect thereof to imprisonment for not less than two years].*
- (ii) The cases where the Appellate Court has **stayed the conviction**, the legal effect would be that in such cases Section 6(2)(e) of the Passports Act 1967 may not be applicable.*
- (iii) The cases where **trial proceedings have been stayed** by the Appellate Court. applicability of Section 6(2)(1) [which inter-alia provides that the passport authority shall refuse to issue a passport or travel document 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], would depend upon the nature of stay, reasons for stay and stage at which proceedings*

have been stayed. No definitive view of such cases can be expressed.

3. All Passport Issuing Authorities in India & Abroad are advised to strictly follow the above mentioned instructions.”

He further submits that charge sheet has already been submitted against the Petitioner in the criminal case pending against him. Thus, the Petitioner has to give an undertaking as required under Section 6(2)(f) of the Act. The Petitioner has also been permitted to file a fresh application for renewal of his passport complying with the requirements of office memorandum dated 10th October, 2019. Thus, there is no illegality in the impugned order under Annexure-4.

6.1. He further submits that in a similar circumstance, a Collateral Bench of this Court has passed an order directing the Passport Authorities to renew/issue passport. The said order was challenged in W.A. No.1663 of 2022 and Hon’ble Division Bench vide order dated 13th April, 2023 held as under:

“2. In view of the above developments, the present appeal is in fact, peculiar facts of the case of the Respondent No.1, infructuous. Nevertheless, learned counsel for the Appellant states that several other writ petitions have been filed claiming similar relief, where the impugned judgment is being cited as a precedent. In that view of the matter, it is clarified that the impugned judgment will not constitute precedent and will be treated as having been passed in the peculiar facts and circumstances of the case. The questions of law arising from the said impugned judgment are left open for decision in some other appropriate case.”

Thus, while disposing of the appeal, Hon’ble Division Bench has already held that the order passed by the Collateral Bench cannot be treated as a precedent. As such, the said decision of the Collateral Bench is also not applicable to the case of the Petitioner. He also submits that the Petitioner has a remedy of

appeal under Section 11 of the Act, which he has not exhausted. As such, the writ petition should not be entertained and the same is liable to be dismissed.

7. Considering the rival contentions of the parties and on perusal of the record, this Court feels it proper to go through Section 6(2) of the Act, which reads as under:

“6. Refusal of passports, travel documents etc-

(1) xxx xxx xxx xxx

(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.”**

Section 6(2)(e) of the Act deals with issuance of passport or travel document, when during last five years of making such

application, the applicant is convicted in an offence involving moral turpitude and is sentenced to undergo imprisonment for more than two years. Section 6(2)(f) of the Act deals with a situation where the applicant is facing a criminal trial. In the case of *Vangala Kasturi Rangacharyulu* (supra), the Hon'ble Supreme Court has dealt with Section 6(2)(e) and Section 6(2)(f) of the Act. The legal position has also been clarified by the High Court of Andhra Pradesh in the case of *Venkateswara Rao Maladi* quoted supra.

8. Upon a close reading of the provision under Section 6(2) of the Act as well as the case laws cited and also Office Memorandum dated 10th October, 2019, there cannot be any iota of doubt that if in a case pending before any criminal Court, the Judicial Magistrate has not taken cognizance of the offences, it cannot be said to be a '*case pending*'. It has also been clarified in the office memorandum dated 10th October, 2019. In the instant case, although charge-sheet has already been submitted against the Petitioner in the aforesaid criminal case, there is no material on record to ascertain that cognizance has been taken for the offences. As such, this Court does not find any legal impediment to consider the application of the Petitioner for renewal of his passport.

9. On perusal of the order passed in W.A. No.1663 of 2022, it appears that the Hon'ble Division Bench has not discussed the legal aspect of the order of the Collateral Bench. Thus, I am of the considered opinion that this writ petition can be considered independently bereft of the order passed in W.A. No.1663 of 2022.

10. Availability of a statutory remedy is not a bar for this Court to exercise its discretion under Article 226 of the Constitution of India, more particularly when a legal interpretation is involved.

11. In view of the discussion made above, this Court has no hesitation to set aside the impugned order under Annexure-4. Accordingly, the impugned order under Annexure-4 is set aside. Since the application for renewal of passport has already been rejected, the Petitioner has to make a fresh application for renewal of his passport.

12. Accordingly, the writ petition is disposed of with a direction that if the Petitioner makes a fresh application for renewal of his passport bearing Registration No.K7858157, it shall be considered without insisting upon getting an order/NOC from the competent criminal Court with regard to pendency of the criminal cases.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

ms