

**HIGH COURT OF ORISSA: CUTTACK**

**W.P.(C) No.35289 of 2023**

(In the matter of an application under  
Article 226 of the Constitution of India, 1950)

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*Aishwarya Sahoo* ... *Petitioner*  
-versus-  
*Government of India and another* ... *Opposite Parties*

Advocate for the Parties

For the Petitioner : Ms. Sujata Jena, Advocate  
For Opp. Party : Mr. Prasanna Kumar Parhi, DSGI  
along with Mr. D.R. Bhokta, CGC

**CORAM:**  
**JUSTICE KRUSHNA RAM MOHAPATRA**

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**Heard and Disposed of on 08.01.2024**  
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**JUDGMENT**

***K.R. Mohapatra, J.***

1. This matter is taken up through hybrid mode.
2. Petitioner in this writ petition seeks to set aside the letter dated 4<sup>th</sup> October, 2023 (Annexure-6) issued by the Regional Passport Officer, Bhubaneswar, Odisha-Opposite Party No.2 directing the Petitioner to obtain the order from the concerned criminal Court allowing him to go abroad and to submit the same along with the prescribed undertaking before the Passport Authority for renewal of her passport.

3. Ms. Jena, learned counsel for the Petitioner submits that the Petitioner was issued with a passport bearing Number W5519561. It was issued on 24<sup>th</sup> November, 2022 and was valid upto 23<sup>rd</sup> November, 2023. Accordingly, the Petitioner made an application for renewal of her passport. Considering her application, letter under Annexure-6 has been issued.

4. It is her submission that the Petitioner had obtained a loan from the Canara Bank. Alleging misutilization of the money for which it was obtained, an FIR was lodged on 17<sup>th</sup> August, 2021 (Annexure-1) against her. Till date, no charge sheet has been submitted pursuant to the said FIR. In view of the above, it cannot be said that a criminal case is pending against the Petitioner. Thus, the provision under Section 6(2) (f) of the Passport Act, 1967 (for brevity 'the Act') has no application to the case of the Petitioner. Hence, she prays for a direction to the passport Authority to consider the application for renewal of passport without insisting upon the restriction under Section 6(2) (f) of the Act.

5. Mr. Parhi, learned DSGI along with Mr. Bhokta, learned CGC submits that admittedly an FIR has been lodged against the Petitioner and it is under investigation. Thus, she is required to submit an order from the concerned criminal Court allowing her to move abroad. In absence of such document, it would be difficult on the part of the Regional Passport Authority to take a decision on renewal of her passport.

6. 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.”*

7. 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 –v- Central Bureau of Investigation***, Hon’ble Supreme Court 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 sentenced w imprisonment for not less than two years”*

8. In the aforesaid case law, Hon’ble Supreme Court has dealt with and explained the scope of 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 –v- The Regional Passport Officer***, reported in AIR Online 2023 AP 112, in which it is 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.”**

9. Para-5(vi) of the Office Memorandum dated 10<sup>th</sup> October, 2019 issued by the Ministry of External Affairs, Government of India, 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)*

10. 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 10<sup>th</sup> 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 10<sup>th</sup> October, 2019. In the instant case, no charge sheet has been submitted against the Petitioner in the aforesaid criminal case. As such, this Court does not find any legal impediment to consider the application of the Petitioner for renewal of his passport.

11. 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.

*12.* 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.

*13.* In view of the discussion made above, this Court has no hesitation to set aside the letter under Annexure-6. Since the application for renewal of passport is still pending for consideration, it should be considered keeping in mind the discussion and observation made above.

*14.* Accordingly, the writ petition is disposed of with a direction that application of the Petitioner for renewal of passport bearing Registration No. W5519561 shall be considered without insisting upon getting an order/NOC/order from the competent criminal Court as required under Annexure-6.

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

**(K.R. Mohapatra)**  
**Judge**

*High Court of Orissa, Cuttack*  
*Dated 8<sup>th</sup> day of January, 2024/ Rojalin*