

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 539 OF 2015
with
CRIMINAL APPLICATION No. 252 OF 2015
with
CRIMINAL APPLICATION No. 281 OF 2015
IN
WRIT PETITION NO. 539 OF 2015

Goldie Purshottam Sud.Petitioner.
Versus
Union of India and Another.Respondents.

Mr. Goldie P. Sud, the Petitioner in-person.
Mrs. U. V. Kejriwal for Union of India.
Mrs. P. H. Kantharia, learned APP for the State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUESSAI, JJ.

Date : 31st JULY, 2015.

Oral Order :

1. The Petitioner has invoked the writ jurisdiction of this Court for direction to the Regional Passport Authority, Mumbai to issue passport to him at the earliest. During the pendency of the petition, the Petitioner filed Criminal Application No.252 of 2015 seeking a direction to issue passport to the Petitioner on or before 5th June 2015. By Criminal Application No.281 of 2015, the Petitioner has challenged the show cause notice dated 19th May 2015 issued by the Respondent.

2. The case of the Petitioner, in short, is as follows :

. The Petitioner is a businessman and in relation to his business connections, he is required to visit foreign countries frequently. Since 1973, he is residing at the address mentioned in the cause title of the writ petition. The passport issued to the Petitioner by the Respondent in the year 1985 bears the same address as is mentioned in the cause title of the writ petition. Between the period 1990 to 2006, the passport issued to the Petitioner was renewed seven times by the Passport Authorities. In the year 2008, the Respondent renewed the Petitioner's passport for 8th time. In year 2012, the Petitioner made an application for replacement of the damaged passport. The said application was rejected without affording an opportunity of hearing to the Petitioner, essentially on the ground that he does not reside at the address given in the passport.

. On 23rd January 2013, the Petitioner made an application for duplicate passport as his original passport bearing No. F7137989 was damaged. According to the Petitioner, for issuance of the duplicate passport no fresh declaration regarding pending criminal cases is required to be made and therefore he did not furnish such declaration, and such declaration is necessary in case of issuance of fresh passport. On 24th January 2013, when the Petitioner went to the

passport office at the appointed time, he was given an option to pay the fees and told that he would be given an extended passport. He accordingly deposited the additional fees.

. Since even after the lapse of one year of the application for issuance of duplicate / extended passport, no action was taken by the Passport authorities, on 10th December 2014, the Petitioner gave a legal notice to the authorities. The Petitioner did not get any reply to the same. Hence, he has approached this Court by filing above writ petition.

3. In the meanwhile in May 2015, the Petitioner's daughter got admission in Lasalle College of Arts in Singapore. The Petitioner wanted to visit Singapore, in order to arrange for his daughter's medical tests, accommodation/ hotels, studio apartment at Singapore, therefore, he filed Criminal Application 252 of 2015, seeking a direction to the Passport Authority to urgently issue passport to him on or before 5th June 2015.

4. During the pendency of writ petition, show cause notice dated 19th May 2015 was issued to the Petitioner by the Passport Authorities calling upon him to provide suitable explanation regarding

the circumstances under which he suppressed material information regarding the pending criminal cases and his residential address. The Petitioner has challenged this show cause notice by filing separate application being Criminal Application No. 281 of 2015.

5. The Petitioner submitted that at the instance of Mr. Baba Siddiquie, Ex-Minister, Government of Maharashtra several false CRs have been registered against him in order to pressurise him to succumb to the illegal demand of said Mr. Baba Siddiquie. It is also submitted that since 1973 he has been residing at the address given in the cause title of the petition, and on the same address original passport was issued in the year 1985 and it was renewed from time to time. It was further submitted that after taking permission from the concerned Courts, he has traveled abroad on many occasions, however, his present application for issuance of the duplicate passport is rejected because of pressure from said Mr. Baba Siddiqui. The Petitioner also submitted that in the present application for issuance of duplicate passport he did not give particulars of the pending criminal cases as the same was not at all required. He lastly submitted that actions of the Respondent in these circumstances is required to be deprecated and a direction may kindly be given to issue him passport.

6. Mrs. Kejriwal, the learned Counsel appearing for the Passport Authorities and Mrs. Kantharia, learned APP for the State vehemently opposed the petition and applications. They submitted that application of the Petitioner was not for issuance of the duplicate passport but was for the extended passport / renewal of the passport and he was required to disclose the particulars of the pending criminal cases against him, however he has suppressed the said particulars while applying for the issuance of passport or renewal of the passport. They also submitted that the police verification report shows that the Petitioner is not residing at the address given in the application and therefore his passport cannot be renewed or extended.

7. In order to show that he is residing at the address given in the passport, the Petitioner relied upon number of documents, viz., Aadhar Card, Ration Card, motor driving licence, telephone bills, bank statements, etc., These documents undoubtedly show that the Petitioner is residing at the address given in the cause title of the petition and his passport. However, learned APP for the State maintains that the police verification does show that the Petitioner is not residing at the said address.

8. An application for issuance of passport under sub-section (1) of section 5 of the Passports Act, 1967 is required to be made before the Passport Authority. Under sub-section (2) of section 5, the Passport Authority after making enquiry, can either issue the passport / travel document or refuse to issue the same. Sub-section (3) of section 5 makes it obligatory for the Passport Authority, in case they refuse to issue the passport or travel document, to record in writing the reasons for such refusal. Section 6 of the Act deals with the refusal of the passport. Sub-section (2) of section 6 has some bearing on the case in hand. Hence, same is reproduced below :

“(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.”*

The perusal of above provisions makes it abundantly clear that the passport can be refused only on the grounds enumerated in clauses (a) to (i) of sub-section (2) of section 6 and no other grounds. Thus, the Petitioner cannot be denied passport or renewal of the passport on the ground that he is not residing at the address shown in the earlier passport or at the address mentioned in the application for issuance of the passport.

9. Under clause (f) of sub-section (2) of section 6, issuance or renewal of the passport can be refused on the ground that the proceedings in respect of an offence alleged to have been committed by the Applicant are pending before the criminal Court in India. Mrs. Kejriwal contended that the Petitioner in his application before the Passport Authority has suppressed the information regarding the pending criminal cases. As stated above, it is the case of the Petitioner

that the suppression of information about the pendency of the criminal cases is not intentional. It is the case of the Petitioner that his application was for the issuance of duplicate passport and that application was converted into an application for extended passport or renewal of the passport. The Petitioner in this regard also contended that in the past he has visited many countries after obtaining permission from the concerned criminal Courts in which the proceedings are pending against him.

10. In exercise of powers conferred under clause (a) of section 22 of the Passports Act, 1967, the Ministry of External Affairs, Government of India, has issued a notification on 25th August 1993 exempting citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before the criminal Court in India and who produce orders from the Court concerned permitting them to depart from India, from the operation of the provisions of clause (f) of sub-section (2) of section 6 of the Passports Act subject to following conditions :

- “(a) the passport to be issued to every such citizen shall be issued-
 - (i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or
 - (ii) if no period either for the issue of the passport or for the travel

abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order give permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period or travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (I) above can be further renewed only on the basis of fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued."

11. In the light of the discussion made hereinabove, Mrs. Kejriwal having taken instructions from her client, also fairly stated that in terms of the provisions of clause (f) of sub-section (2) of section 6 of the Act read with Notification dated 25th August 1993, if the Petitioner makes a fresh application for extension or renewal of the passport after obtaining permission / orders from the concerned Court, then his application would be considered afresh in accordance with law. The statement is accepted.

12. The Petitioner has annexed a Chart at page No. 66 of Criminal Application No. 281 of 2015, wherein he has given particulars of 23 pending criminal cases against him. Out of these 23 cases, 7 cases are shown to have been either compounded or the Petitioner is discharged or no charge-sheet is filed therein. The statement is also made at bar that apart from these 23 cases, one more case against the Petitioner is pending before 22nd Metropolitan Magistrate Court, Railway Mobile Court, Andheri. The criminal cases referred to above in the Chart are pending either before 9th Metropolitan Magistrate's Court at Bandra or 39th Metropolitan Magistrate's Court at Vile Parle or 12th Metropolitan Magistrate's Court at Bandra. After perusal of the chart, we also find that the maximum punishment provided for the offences alleged against the Petitioner is two years or so. None of the offences alleged are of serious nature or involving the offence of moral turpitude.

13. In these facts and circumstances, we find it would be appropriate for the Petitioner to make an application before the concerned Magistrates seeking permission to apply for issuance of passport or renewal of passport and after obtaining such orders to approach the Passport Authority for issuance of renewal of passport or extended passport.

14. In the above conspectus of the matter, we dispose of the writ petition as well as criminal applications by issuing following directions :

- 1] The show cause notice dated 19th May 2015 issued by the Respondent – Passport Authority to the Petitioner is quashed and set aside.
- 2] The Petitioner is at liberty to apply to the concerned Magistrates in whose Court the criminal cases are pending against him, or in-charge magistrate for permission to apply for renewal of passport or for extended passport.
- 3] Learned Metropolitan Magistrate shall dispose of such applications as expeditiously as possible and at any rate within the period of two weeks of its filing. Learned Magistrate shall take a sympathetic view of the matter in the light of observations made hereinabove.
- 4] After obtaining such orders, the Petitioner is at liberty to apply to the Passport Authority for extended passport or renewal of passport.
- 5] The Passport Authority shall thereafter decide the Petitioner's application on its own merits as expeditiously as possible and at any rate within the period of two weeks from the date of its presentation.

6] It is made clear that Passport Authority shall not reject the Petitioner's application for extended passport or renewal of the passport on the allegation that the Petitioner is not residing at the address mentioned in original passport.

[SMT. ANUJA PRABHUESSAI, J.]

[RANJIT MORE, J.]