

(2022) 03 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 19203 Of 2021(GM-PASS)

Kasturi Rajupeta

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 17-03-2022

Acts Referred:

Passports Act, 1967 — Section 22
Constitution Of India, 1950 — Article 13, 21

Citation : (2022) 03 KAR CK 0030

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : C V Nagesh, Ajay Kadkol T, Shanthi Bhushan H

Final Decision : Allowed

Judgement

Krishna S.Dixit, J

1. Petitioner-lady is knocking at the doors of writ Court seeking invalidation of the Endorsement dated 06.09.2021 (Annexure-A) issued by the respondent-Regional Passport Officer and for a direction to consider her application for renewal of the passport, which has since expired. The Endorsement reads as under:

"To,

KASTURI RAJUPETA,

W/O SHIVAKUMAR REDDY CHENNAREDDY, NO.14, RAMANASHREE,

29TH MAIN,BTM LAYOUT, II STAGE,

BENGALURU – 560 076.

KARNATAKA, INDIA.

Subject: Clarifications required regarding issuance of Passport facilities to Shri/

Smt/Kumari/Master KASTURI RAJUPETA.

This is in reference to your application for reissue, with file number BN1073465217721 dated 22/7/2021.

You are requested to submit the final disposal order of the case that is pending against you, to process your application for a full validity passport.

Alternatively, you may submit permission from the concerned Court for reissue of passport/travel abroad. The validity of the passport so issued would be subject to conditions mentioned in the court order as per gazette notification GSR 570(E) dated 25/08/1993.

Please quote the reference number mentioned in the top block of this letter for further correspondence."

2. After service of notice, the respondents having entered appearance through the learned ASG resist the writ petition by filing the Statement of Objections on 18.11.2021 principally contending that a criminal case is pending against the petitioner and therefore she should obtain and produce a facilitative order at the hands of the learned Judge of the said Court, so that her application for renewal of passport may be favourably considered. So contending, learned ASG seeks dismissal of the writ petition.

3. 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 Right to travel is an inviolable human right enshrined under Article 13 of the UNIVERSAL DECLARATION OF HUMAN RIGHTS. Under our Constitution, the Right to travel abroad is held to be a facet of fundamental right to life & liberty guaranteed under Article 21 vide MANEKA GANDHI VS. UNION OF INDIA AIR 1978 SC 597. The Apex court relying on the opinion of Justice William O. Douglas in the case of KENT V. DULLES 357 US 116 (1958) observed: "...Mr. Justice Douglas said in Kent v. Dulles that 'freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad like travel within the country, may be necessary for livelihood. It may be as close to the heart of the individual as the choice of what he eats, (1) [1950] S.C.R. 594 or wears, or reads. Freedom of movement is basic in our Scheme of values.' And what the learned Judge, said in regard to freedom of movement in his country holds good in our country as well. Freedom of movement has been a part of our ancient tradition which always upheld the dignity of man and saw in him the embodiment of the Divine..."

(b) 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 19th 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)..."

N. W. SIBLEY, in his paper, "The Passport System." Journal of the Society of Comparative Legislation, (1906) at page 26-33 writes:

"...The case of R V. BRAILSFORD AND MCCULLOCH (supra), clearly affords the most adequate, and apparently, the first, judicial definition of a passport in the ordinary sense. Lord Alverstone, L.C.J., observed that 'a passport is a document issued in the name of the sovereign, on the responsibility of a Minister of the Crown to a named individual intended to be presented to the governments of foreign nations, and to be used for that individuals protection as a British subject in foreign countries, and it depends for its validity upon the fact that the foreign office, in an official document vouches the respectability of the person named.'. Passports have been known and recognized for three centuries as official documents... Vattel observes: "Safe - conducts and passports are a kind of privilege ensuring safety to persons in passing and re-passing, or to certain tings during their conveyance from one place to another, From the usage and genius of the French Language, it appears that the term 'passport' is used on ordinary occasions, when speaking of persons who lie under no particular exception as to passing and re-passing in safety, and to whom it is only granted for greater security ..." (Driot des Gens, 1 iii. c. xvii. s. 265)..."

With the above in mind, the present day use of passport in all civilized jurisdictions may be summarized as: a passport is a document which, from its nature and object, is addressed foreign powers; purporting only to be a request that the bearer of it may pass safely and freely, and is to be considered rather in the character of a political document by which the bearer is recognized in foreign countries as an American Citizen..." vide KENT V. DULLES, supra. Without passport, one cannot leave the native soil. In the case of MANEKA GANDHI, supra while deliberating the right to travel abroad said: "...Thus, no person can

be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21..." Ordinarily, the consideration for the grant of passport varies a bit from the considerations that govern its renewal. In the former, quantum of compliance and the level of scrutiny are comparatively higher. However, there are circumstances in which law treats an application for renewal of passport as the one for fresh issuance. Arguably, case of the petitioner falls into this category. Be that as it may.

(c) The impugned Endorsement is structured on the ground that a criminal case is pending inter alia against the petitioner in C.C.No.11606/2020, in the Court of learned XVII ACMM, Bengaluru City. The same having been challenged in W.P.No.14431/2020, a Co-ordinate Bench of this Court has stayed all further proceedings before the Trial judge vide interim order dated 10.12.2020, is not in dispute. That being the position, the respondent-RPO is not justified in asking the petitioner to go to the Trial Judge to seek permission to travel abroad in the 'stayed proceedings'. The Notification dated 25.08.1993 purportedly issued under Section 22 of the Act, normally expects an order of the kind and this norm is applicable in ordinary circumstances, in the sense that the criminal proceedings are not stayed and hands of the Trial Judge are free to work, and not in the circumstances that have tied his hands. A contention to the contrary amounts to asking the citizen to do an impossible act. Ordinarily, an act impossible of performance is treated as either having been accomplished or waived vide *lex non cogit ad impossibilia* which Maxwell on Interpretation of Statutes, 12th Edition, Butterworths Wadhwa at pages 326 to 328 extensively discusses. Thus, the insistence on production of an order as mentioned in the impugned Endorsement is not justified.

(d) The subject 1993 Notification "...exempts against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal Court in India and who produce orders from the Court concerned permitting them to depart from India ...". Thus, it stipulates that the accused seeking issuance of a passport or its renewal has to obtain an order at the hands of the criminal Court concerned permitting him to travel to a foreign land. However, this Notification has to be construed consistent with the Fundamental Right of a person to travel abroad and of possibility of its invocation, as discussed above. When all further proceedings in the criminal case are interdicted by a higher Court, this Notification cannot be pressed into service to deny petitioner's request for renewal/re-issuance of passport, only on the ground that a criminal case is pending. What is to be seen is the intent, content

& invocability of the Notification. Otherwise, it amounts to burying the spirit of law by operating its black letter.

(e) The vehement contention of learned ASG that a criminal case is pending against the petitioner even when the proceedings are stayed cannot be much disputed. The Apex Court in *CHAMUNDI MOPEDS VS. CHURCH OF SOUTH INDIA TRUST* 1992 (3) SCC 1, has maintained the difference between an 'order stayed' and an 'order quashed'. As long as proceedings are not quashed, so long they can be stated to be pending, going by the logic of this decision. Merely because a criminal proceeding is said to be pending, the obtainment of permission from the Court concerned does not become imperative regardless of the circumstances. As already mentioned above criminal proceedings are pending, notwithstanding there being a stay, which has put them in suspended animation. The submission of learned Sr. Advocate appearing for the petitioner that till the presence of the accused after issuance of notice post cognizance stage, proceedings cannot be said to be pending, is bit difficult to countenance. Such an articulated position cannot be drawn from what has been observed by two Co-ordinate Benches in *W.P.Nos.35255-57/1997* between *DR.C.D.JOHN & OTHERS VS. UNION OF INDIA & OTHERS* disposed off on 09.07.1998 and also in *W.P.No.8958/2000 (GM-PASS)* between *B.KRISHNA BHAT VS. UNION OF INDIA & OTHERS* disposed off on 25.10.2002. The concept of pendency of proceedings as stated in Black's Law Dictionary does not much come to assistance since law is not slave of the dictionary. The legal concepts again do not have fixed contours. Their true meaning & scope depend upon the scheme of the statute in which they are employed, as rightly submitted by learned ASG. Therefore the provisions of Section 6(2)(f) employing the expression "proceedings ... are pending before a criminal court" have to be liberally construed keeping in view other specific scenario mentioned in the companion clauses of the said sub-section. That having been said, this court hastens to add that the observations made by a Co-ordinate Bench in its interim order in petitioner's *W.P.No.14431/2020* about furnishment of her travel itinerary itself can be construed as the permission contemplated under the 1993 Notification. There is no need for one more order at the hands of Trial Magistrate more particularly when no specific format is legally prescribed.

(f) Viewed from the above perspective, an eminent case of refusal to exercise jurisdiction has been made out warranting interference of this court. This is strengthened by the opinion that how long it would take for the pending writ petition to see its destination point is not possible to say, regard being had to enormous pendency of cases and paucity of working hands. Courts are meant for doing a real justice to the causes brought before them and they cannot turn away the aggrieved parties by quoting some constitutional theories, when justice is apparently due to them.

In the above circumstances, this petition succeeds. A Writ of Certiorari issues quashing the impugned Endorsement. A Writ of Mandamus issues to the 3rd

respondent-Regional Passport Officer to consider petitioner's subject application in light of the observations hereinabove made and without insisting upon any order from the Criminal Court concerned. Time for compliance is six weeks.

However, justice of the case warrants a stipulation by this Court that petitioner shall not travel abroad without leave of the Criminal Court concerned, regardless of she being issued or not issued the passport.

This court places on record its deep appreciation for the able assistance rendered by the Law Clerk cum Research Assistant, Mr.Faiz Afsar Sait.

Now, no costs.