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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 19042 OF 2024

Miss Yushika Vivek Gedam,	)	
Age 16 Yrs. Occupation – Education	)	
Through her Natural Guardian Mother,	)	
Mrs. Prerana Vivek Gedam,	)	...Petitioner
Vs.		
1. Union of India,	)	
through the Ministry of External Affairs	)	
2. The Regional Passport Officer, Pune	)	
3. Vivek Kumar Gedam	)	...Respondents

Mr. Balasaheb G. Ligade, for the Petitioner.
Mrs. Shehnaz V. Bharucha, for the Respondents.

**CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATE : 08 January 2025

Oral Judgment (Per G.S. Kulkarni, J.)

1. The petitioner-Ms. Yushika Gedam is a minor pursuing Higher Secondary education, who has filed this petition under Article 226 of the Constitution of India through her mother-Mrs. Prerana Vivek Gedam, the natural guardian.
2. The grievance of the petitioner is against respondent no. 2 - the Regional Passport Officer, who has issued the impugned communication dated 18 November, 2024 informing the petitioner that her passport application dated 28 October, 2024 would not be processed, for the reason that the petitioner's father has objected for re-issuing passport to the petitioner. The impugned communication is required to be noted, which reads thus:

GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
REGIONAL PASSPORT OFFICE, PUNE

Tel. No. 2027209999
Fax No.:
File No: PN1070298980424

REGIONAL PASSPORT OFFICE
PUNE, PASSPORT BHAWAN,
SR. NO.522, BANER-PASHAN
LINK ROAD, BANER,
PUNE-411045,
MAHARASHTRA.
Date: 18/11/2024

Letter Reference No: OBJ/328981038/24

To,
YUSHIKA GEDAM
D/O. VIVEK KUMAR GEDAM, FLAT NO. 29,
WING C, TIRUPATI TOWNSHIP, BHAIKAV
NAGAR, DHANORI, PUNE CITY – 411015,
MAHARASHTRA, INDIA.

Subject: Objection(s) with reference to your Passport Application
Number -PN1070298980424

Dear Madam,

This is in reference to your Passport application number PN1070298980424
dated 28/10/2024.

On processing of the Application form, the following shortcomings came to
notice:-

1) Father of the minor has objected to issuing passport to the applicant.

In view of above, you are requested to furnish either father's consent on
Annexure D along with self attested copy of his passport or Court permission
allowing you (mother) to apply and obtain passport for the minor without the
consent of the other parent, i.e. father, for further processing of the
application.

You are requested to visit this office in person with all the relevant supporting
documents in ORIGINALS on Monday, Tuesday, Thursday & Friday (not on
Wednesday & Public Holidays) between 09:00 am to 11:30 am only for
further action on your application. Kindly carry a printout of this letter to
allow entry in this Office.

Yours Sincerely,

For Regional Passport Office, Pune.”

3. The relevant facts are : There is a marital dispute between the petitioner's
father Mr. Vivek Gedam and her mother-Mrs. Prerana. The marriage between
the petitioner's parents was solemnized on 1 November, 2006. The petitioner

(Yushika) was born on 1 November, 2008.

4. It is contended that the petitioner's mother was subjected to persistent harassment, physical and mental by the petitioner's father, hence the mother had filed Criminal Miscellaneous Application no. 2124 of 2015 against the petitioner's father as also against his parents and sister-in-law under Section 12 of the Protection of Women from Domestic Violence Act, 2005, in the Court of Chief Judicial Magistrate at Pune seeking maintenance for the petitioner and herself. The Court of the Additional Chief Judicial Magistrate, Pune passed an order dated 21 March, 2021 granting relief in favour of the mother by ordering maintenance to be paid to her.

5. It is contended that the petitioner's father on the other hand had filed a petition for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 before the Family Court at Durg, Chhattisgarh, which was later on withdrawn. Thereafter the petitioner's father filed Petition No. 37 of 2017 seeking divorce under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act before the Family Court at Durg, Chhattisgarh, which was dismissed by the Family Court by judgment and order dated 8 September, 2023. The order of the Family Court is challenged by the petitioner's father before the High Court of Chhattisgarh at Bilaspur. Further by an order passed by the Supreme Court on the wife's transfer application, the First Appeal filed by the petitioner's father is now transferred to be heard before the Bombay High Court bench at Aurangabad. Such proceedings are pending adjudication.

6. It is thus the petitioner's case that serious matrimonial disputes are pending between the petitioner's father and mother, which has become a matter of concern insofar as the petitioner's application for issuance/re-issuance of passport is concerned.

7. The petitioner is taking education at Kendriya Vidyalaya at Pune. In the last academic year, she was in the X Standard, in which she secured 92% marks. On 6 September, 2024, Kendriya Vidyalaya Sangathan issued a Circular that 12 students be nominated from the Kendriya Vidyalaya Schools for attending 'Sakura Science High School Programme' to be held at Japan, for which the eligibility was of the students from Kendriya Vidyalaya Schools, who have secured over and above 90% marks in X Standard examination.

8. It is contended that as the petitioner was a bright student having scored marks above 90% in the X Standard examination, she was being nominated by her school to attend the said programme in Japan, for which, she would need a valid re-issued passport.

9. The petitioner's mother accordingly made an application dated 28 October, 2024 to respondent no. 2 for re-issuance of her passport, supported by all relevant documents. It was numbered as passport application no. PN1070298980424. By the impugned communication as noted by us hereinabove, the petitioner's application is refused to be processed on the objection raised by the petitioner's father.

10. It is on the aforesaid backdrop, the present petition is filed praying for

the following substantive reliefs:

“a) This Hon’ble Court be pleased to issue a writ of certiorari or any other Writ or order in the nature of certiorari and be pleased to pass an order to quash and set aside the impugned letter/communication dated 18.11.2024 issued by respondent no. 2 being exhibit D annexed herewith to this petition.

b) That this Hon’ble Court may be pleased to have a Writ of Mandamus and/or any other appropriate Writ or Order or Direction in the nature of Writ of Mandamus thereby directing respondent no. 2 to issue a passport in the name of petitioner in pursuance of application No. PN1070298980424 submitted by the mother of the petitioner herein being natural guardian being exhibit C to this petition.”

11. Mrs. Bharucha, learned counsel for respondent nos. 1 and 2 in pursuance of the order passed by this Court on 6 January, 2025 has taken instructions. She has placed on record a written note of instructions along with the documents received by her, from respondent no. 2. The stand of the department is far from being adversarial and in fact is fair and reasonable.

12. The contention of respondent no. 2 is that the petitioner’s mother along with the petitioner’s passport application submitted a declaration in Annexure-D, which required signatures to be made on the passport application by both the parents of the minor applicant. For the reason that the application was signed only by the mother and the father’s signature was missing, as also, it was objected by the father, the impugned communication was issued by respondent no. 2 calling upon the deficiency to be complied by obtaining the father’s signature.

13. In such circumstances, the petitioner’s mother also additionally submitted a declaration in Annexure-C dated 29 October, 2024, being a declaration required to be submitted by “applicant’s parents or guardian for

issuance of a passport to minor when the parent has not given consent”, in which she selected option in Clause (II)(d) which is to the following effect:

“(d) There is an ongoing court case for divorce/custody of the minor child and the Court has not given any order prohibiting the issue of passport without the consent of the father/mother.”

14. Mrs. Bharucha has submitted that as there was a dispute between the petitioner’s parents, the petitioner’s mother also submitted contact details of the petitioner’s father along with e-mail id. In pursuance thereto, respondent no. 2 addressed an e-mail dated 29 October, 2024 to the petitioner’s father *inter alia* informing him that the petitioner’s mother had applied for re-issuance of the petitioner’s passport along with a single parent declaration in Form Annexure-C. The said communication also recorded that if the petitioner’s father wished to provide/confirm his consent for issuance of a passport to the petitioner, in Form Annexure-D, in that event along with self-attested copy of the petitioner’s father passport, Pan Card/Driving Licence, be submitted to respondent No.2 within 15 days, from the receipt of the said letter. It was recorded that in case, there was an objection for issuance of passport, the same be confirmed within 15 days and that if no reply is received within 15 days, it shall be presumed that the petitioner’s father had no objection to the issuance of passport to the petitioner, and in such event the same shall be issued based on the documents issued by the petitioner.

15. Mrs. Bharucha has submitted that the petitioner's father responded to respondent no. 2's letter dated 29 October, 2024 by his email dated 14 November, 2024 stating that “*the petitioner’s application is wrong and that the*

petitioner's mother was giving wrong information regarding single parent." It was recorded that he also tried to connect her but could not succeed and hence he was not giving NOC. It is submitted that after receipt of such letter, respondent no. 2 issued the impugned letter dated 18 November, 2024 to the petitioner calling upon the petitioner to provide the father's consent.

16. We have heard learned Counsel for the parties and with their assistance we have perused the record. At the outset we find that there is much substance in the submissions as urged on behalf of the petitioner that the petitioner would become entitled for issuance / re-issuance of a passport as per the requirement of law, for the reasons we discuss hereunder.

17. We may observe that the Passport Authority is certainly bound to consider variety of facts and circumstances in respect of the applications received by it for issuance of a passport and the assessment of such applications is required to be considered on the touchstone of the requirement of the provisions of law under the Rules also deal with variety of situations. The Government being alive of the variety of such requirements is writ large not only from the provisions of the Rules but the different forms which have been prescribed to deal with different situations. All such rules and the forms thereunder are required to be given due effect and on the touchstone of the mandate as prescribed by the provisions of the passport Act. It is in such context, we may observe that a specific provision has been made when a declaration in terms of Annexure-C is required to be made in cases where one parent of the minor has not given consent. For convenience, we note the contents of the

declaration issued in Annexure-C by the petitioner's **mother's mother** which reads thus:

"Annexure 'C'

**SPECIMEN DECLARATION BY APPLICANT'S PARENT OR
GUARDIAN FOR ISSUE OF PASSPORT TO MINOR WHEN ONE
PARENT HAS NOT GIVEN CONSENT**

(On plain paper)

I/We Prerana Gedam (name of the parent/guardian applying for passport) resident of Flat-29, Wing C, Tirupati Township, Bhairav Nagar, Dhanori Road, Pune 411015, solemnly declare and affirm as under:-

(I) That I/We am/are the mother/father/parents/guardian of YUSHIKA GEDAM (name of the minor child) who is minor and on whose behalf I/we have made an application for his/her passport.

(II) Signature/consent of Shri/Smt VIVEK KUMAR GEDAM (name of the father/mother) who is the father/mother/parents of the child has not been obtained by me for the following one or more reasons :-

(a) The father/mother of the minor applicant is travelling abroad/s on sea/travelling in India and unable to file consent; or/and

(b) The father/mother is separated and no court case is pending before the court regarding divorce/marital dispute/custody of the child; or/and

(c) The father/mother has deserted and the whereabouts are not known; or/and

(d) There is an ongoing court case for divorce/custody of the minor child and the court has not given any order prohibiting the issue of passport without the consent of father/mother; or/and

(e) There is a court order for the custody of the minor child with a parent who is applying for the passport and consent of other parent (who has visitation rights) is not available or he/she is refusing to give consent/the other parent is not availing the visitation rights and his/her whereabouts are not known; or/and

(f) The parents are judicially separated and custody of the minor child has not been defined In the court's decree; or/and

(g) The father mother of (name of minor child) has deserted me after the conception/delivery. That (name of minor child) is exclusively under my care and custody since separation/delivery.

(III) That I/we only am/are taking care of YUSHIKA GEDAM (name of the minor child) and he/she is exclusively in my/our physical custody."

(emphasis supplied)

18. Thus once the aforesaid declaration was submitted by the petitioner's mother in Annexure C, the same was required to be acted upon, as the status of the petitioner's application had underwent a change from the original application, which was submitted in Annexure D, which required the consent of both the parents. However, the impugned communication is solely based, considering that only declaration in Annexure D is being taken into consideration and not the declaration in Annexure C, which came to be filed by the petitioner's mother for the specific reason that the petitioner's father was not granting a consent/NOC.

19. It is also significant that the petitioner's father has not obtained any order from any Court that the petitioner or the petitioner's mother ought not to pursue any application for issuance/re-issuance of passport to the petitioner. Also, except for stating that he refuses NOC, the petitioner's father has not made out any legal, valid or justifiable ground or placed any material before respondent No.2 which could justify denial of the issuance of passport to the petitioner, as the law would mandate.

20. In the aforesaid situation, in our opinion, the entire purpose of inviting a declaration in terms of Annexure C (supra) becomes all the more relevant. Annexure -C in clause **(II)(b), (d) and (e)** as highlighted by us is relevant which deals with different situations where there exists disputes between the parents of the minor applying for passport. Also clause (II)(d) categorically includes a situation in regard to the ongoing court case on divorce proceedings, between

the parents of a minor child who has made an application for a passport.

21. The present case is also quite peculiar inasmuch as on one hand, the petitioner's father is pursuing his case against the petitioner's mother to obtain a divorce nonetheless he objects to the issuance of a NOC. It also appears to be clear that the petitioner is staying with her mother. The petitioner is a bright student having secured outstanding marks in the X Standard examination, which has qualified her to be eligible to be selected to participate in the study tour visiting Japan, being undertaken by Kendriya Vidyalaya. In these circumstances, in our opinion, considering the well-settled position in law, it cannot be that the petitioner's right to travel abroad by issuance of a passport can in any manner be scuttled and/or taken away by denying her a passport to be issued/re-issued merely for the reason that the father for the only reason that he has disputes with the mother, is not supporting the petitioner's application by consenting to it. Also the petitioner's mother has submitted a declaration in Annexure-C, which is now required to be considered and processed by respondent no. 2.

22. It is well-settled that the expression "person liberty" which occurs in Article 21 of the Constitution includes right to travel abroad and no person can be deprived of that right except according to the procedure established in law. It is held that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The right to travel abroad is a facet of fundamental right guaranteed under Article 21 of the Constitution of India (See. **Maneka Gandhi vs. Union of India (1978 1 SCC 248)**). The petitioner is

certainly entitled to such constitutional right guaranteed under Article 21.

23. We may also observe that in the contemporary times traveling abroad cannot be considered to be a fanciful affair but has become an essential requirement of modern life. Such need to travel which may be the requirement of a child, a student or an employee, professional or a person from any other strata of the society, has undergone a monumental change. Thus, the right to travel is required to be not only recognized but made more meaningful. This can be achieved and supported by the authorities implementing the provisions of the Passport Act by effectively recognizing such contemporary needs in dealing with passport applications. The present case is an example of a student being given an opportunity to undertake a study tour by visiting a foreign country. Any action of the Passport Authority in denying the passport would have severe consequence not only adversely affecting the applicant in a given situation, but it may cause irreparable harm to the prospects of the applicant, for any venture she or he intended to undertake. Thus, a mechanical approach in this regard by the Passport Authority cannot be countenanced.

24. We thus find that such valuable constitutional right of the petitioner cannot be prejudiced much less be taken away, and merely on the ground as contained in the impugned communication dated 18 November, 2024 issued by respondent no. 2. Further Section 6 of the Passport Act, 1967 provides for Refusal of passports, travel documents etc. The ground on which the application of the petitioner is not being processed is in no manner whatsoever recognized

by Section 6 of the Passport Act. In the aforesaid circumstances, we find that there is no warrant in law for respondent no. 2 to deny the re-issuance of passport to the petitioner when the declaration in Annexure-C was submitted by the petitioner's mother.

25. We accordingly dispose of the petition in terms of the following terms:

- (i) The impugned communication dated 18 November, 2024 issued by respondent no. 2 is set aside;
- (ii) Respondent no. 2 is directed to issue passport to the petitioner-Ms. Yushika Vivek Gedam under her application No. PN1070298980424 submitted by her mother - the natural guardian.
- (iii) The passport be granted to the petitioner within a period of two weeks from today in accordance with law.

26. Disposed of in the above terms. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]