

HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION Nos. 1392 & 2896 of 2023 & 38869 of 2022

W.P.No.1392 of 2023

Between:
Kadar Valli Shaik

..... PETITIONER

AND

The Union of India, Ministry of External Affairs,
Rep.by its Secretary, New Delhi & 3 ors.

.....RESPONDENTS

W.P.No.2896 of 2023

Between:
Nalluri Yugandhar

..... PETITIONER

AND

The Union of India, Ministry of External Affairs,
Rep.by its Secretary, New Delhi & 4 ors.

.....RESPONDENTS

W.P.No.38869 of 2022

Between:
Pallavali Radha Krishna Reddy

..... PETITIONER

AND

The Union of India, Ministry of External Affairs,
Rep.by its Secretary, New Delhi & 3 ors.

.....RESPONDENTS

DATE OF ORDER PRONOUNCED: **07.03.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI,J

* **THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

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.....RESPONDENTS

! Counsel for the Petitioner: Sri P. Sree Ramulu Naidu

^ Counsel for respondents 1 to 3 : Sri G. Arun Showri, Central Govt. Counsel
^ Counsel for respondent No.4 : GP for Home

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.....RESPONDENTS

! Counsel for the Petitioner: Sri K. V. Aditya Chowdary

^ Counsel for respondents: Ms. Alekhya Tadasina, Central Govt. Counsel

W.P.No.38869 of 2022

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.....RESPONDENTS

! Counsel for the Petitioner: Sri Surepalli Madhava Rao

^ Counsel for respondents: Ms. Alekhya Tadasina, Central Govt. Counsel

< Gist :

> Head Note:

? Cases Referred:

1. IA.52346/2021 in Cri.A.No.1343/2017, SC decided on 27.09.2021
2. 2018 SCC Online MP 1775
3. 2022 SCC Online Bom 1992
4. 2020 SCC Online Kar 3437
5. 2013 SCC Online Del 3007
6. 2021 SCC Online MP 2326
7. 2023 (1) ALD 394 (TS)
8. WP(c)No.4834 of 2022, Orissa HC at Cuttack, decided on 23.03.2022
9. 2022 SCC Online AP 1180
10. (2019) 265 DLT 614
11. (2008) 12 SCC 372
12. (1985) 3 SCC 53
13. (2018) 9 SCC 472
14. (2005) 6 SCC 344
15. (2009) 10 SCC 552
16. Writ Petition (Lodging) No.699/2020 Bombay HC

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**WRIT PETITION Nos. 1392 & 2896 of 2023 & 38869 of 2022****COMMON JUDGMENT:**

Heard Sri P. Sree Ramulu Naidu, Sri Ch. Madhava Rao on behalf of Sri K. V. Aditya Chowday and Sri Surepalli Madhava Rao, learned counsels for the petitioners, Sri G. Arun Showri and Ms. Alekhya Tadasina, learned Central Government Counsel and learned GP for Home for the respondents.

2. As the issue involved in all these writ petitions is common, on the request of the learned counsels for the parties, all these three writ petitions were heard together and are being decided by the common judgment, at this stage.

FACTS OF THE CASE:

3. **W.P.No.1392 of 2023** has been filed under Article 226 of the Constitution of India by the petitioner for the following relief:

“to issue a Writ Direction Order or Orders more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in refusing to renew not renewing the Petitioner’s Passport No.L0037632 on the ground that FIR in Crime No.223/2018 u/s 498 A of IPC and 3 and 4 of Dowry Prohibition Act dated 02.06.2018 was registered on the file of S.H.O, T-Sundupalli Police Station in CC No.03/2019 on the file of Honourable Principal Junior Civil Judge-cum-J.F.C.M, Rayachoty, YSR District, Andhra Pradesh against the petitioner as illegal, arbitrary, contrary to the provisions of Passport Act 1967, judgments of the Honourable Supreme Court and this Honourable High Court and consequently direct the respondents to renew the petitioner’s Passport No.L0037632 forthwith and pass such order...”

4. The petitioner – Kadar Valli Shair was issued Passport No.L0037632 to work in private company at Kuwait and returned to India in 2011 and got married. Thereafter, he was issued the present passport No.L0037632, valid up to 21.04.2023. Since the validity of the passport is due to expire, he approached the concerned authorities at Kuwait for renewal of his passport vide application reference No.22-2001757970. He was informed through letter No.KUW/CONS/OBJ/607/2022, dated 09.06.2022 that he is an accused in FIR in Crime No.223/2018, dated 02.06.2018 for the offences punishable under Section 498-A IPC and under Sections 3 & 4 of Dowry Prohibition Act which was pending trial in the Court of Principal Junior Civil Judge, Rayachoti and hence he was not recommended for renewal of his passport.

5. The prayer in the writ petition is for direction to the respondents for renewal of the petitioner's passport.

6. It is not disputed that the criminal case is pending against the petitioner in the Court of Principal Junior Civil Judge, Rayachoti.

7. Learned GP for Home for the 4th respondent on the basis of the instructions submitted that non-bailable warrants for appearance of the petitioner are issued but could not be executed.

8. **W.P.No.2896 of 2023** has been filed under Article 226 of the Constitution of India by the petitioners for the following relief:

“to issue a Writ Order or one in Direction more particularly the nature of Writ of Mandamus declaring the action of Respondents in insisting to get the NOC to renew the Petitioner passport bearing No.K9169975, through application No.22-204358108 in accordance with the provisions of Passport Act

1967 is arbitrary unjust illegal incorrect and violative fundamental rights guaranteed under Art 21 of the constitution of India and consequently direct the Respondents to renew the petitioner Passport K9169975 and pass such order...”

9. The petitioner – Nalluri Yugandhar, who is a Doctor and completed his MBBS from Pinamaneni Siddhartha Medical College at Vijayawada and left the Germany to complete his higher studies in MS and for that purpose he applied and was granted passport bearing No.K9169975 on 26.03.2013 which is valid from 26.03.2013 to 23.05.2023. A case in FIR No.72/2019 dated 05.04.2019 at Agiripally Police Station for the offences punishable under Sections 419, 420, 465, 467, 468, 471, 506, 509, 120B IPC was lodged against the petitioner and others and after completion of investigation CC.No.1095 of 2021 was registered and is pending before the II Additional Judicial First Class Magistrate, Nuzvid.

10. The petitioner made an application No.22-204358108 before the Indian Embassy for renewal of his passport, in response to which the petitioner was informed that the criminal case was pending in CrI.P.No.2621 of 2022, requiring the petitioner to submit an undertaking and to obtain NOC from the concerned Court to enable the Embassy of india, Berlin to process the application. The petitioner approached the concerned Court i.e., II Additional Judicial First Class Magistrate at Nuzvid to issue No Objection Certificate for renewal of the passport but the same was returned with endorsement that “under which provision this Court is empowered to issue No Objection Certificate be clarified, hence returned” by order dated 02.02.2023.

11. The order of the Court concerned dated 02.02.2023 is not the subject matter of the present petition.

12. Learned counsel for the petitioner during arguments submitted that if this Court finds that the petitioner has to obtain order from the Court concerned pursuant to the notification dated 25.08.1993, the petitioner may be permitted to approach the Court concerned afresh.

13. **W.P.No.38869 of 2022** has been filed under Article 226 of the Constitution of India by the petitioners for the following relief:

“to issue a writ order or direction one in the nature of writ of Mandamus declaring the e-mail dt. 20-06-2022 sent by the 2nd Respondent to the petitioner informing him of the refusal to reissue/ renew passport applied for on the ground that adverse report had been received against him from the police authorities in India and that the Passport cannot be reissued/renewed until the charges against him are cleared as arbitrary unreasonable illegal and violative of Art 14 and 21 of the Constitution of India and to set aside the same and consequently direct the Respondents 2 and 4 to reissue/renew his passport and pass such order...”

14. The petitioner – Pallavali Radha Krishna Reddy, while residing in India, applied for passport and the passport authority at Hyderabad issued Passport No.K8258036 on 12.03.2013 for a period of 10 years which is due to expire by 11.03.2023. Having passed Masters’ degrees, for further studies, he got admission to Doctoral Programme in Electrical and Computer Engineering (Doctor’s Degree) in the University of Porto in Portugal for the period from 2018-19 to 2023-24. He left India and entered Portugal on 04.09.2018 for the purpose of his study programme in University of Porto. His wife lodged a complaint registered as FIR No.479/2018 dated 10.10.2018 for the offences punishable under Section 498-A IPC and under Sections 3 & 4 of Dowry

Prohibition Act. After completion of the investigation, the police filed charge sheet, including against the petitioner, upon which, the Court took cognizance of the offences on 20.06.2019 in C.C.No.418/2019 which case is pending before the Court of Additional Junior Civil Judge at Badvel. The petitioner applied for reissue of the passport and in response it was informed that there is adverse report received from the police authorities in India.

15. Learned counsel for the petitioner submits that if the passport is not reissued, the petitioner's studies of his Doctoral Programme would have to be abandoned which would otherwise be completed at the end of 2024.

16. Learned Central Government Counsel submitted that the competent authority can refuse the passport services to the petitioner under Section 5 (2) (c) of the Passports Act 1967 to be read with Section 6 (2) (f) in view of the pendency of the criminal cases in the Court concerned. She submitted that the passport authorities can consider the reissue application of the petitioner if the petitioner submits the acquittal order from the Court concerned or obtain permission from the concerned Court where the criminal case is pending. She further submitted that in case the petitioner wishes to visit India to attend the Court hearings, he can approach the Embassy of India at Lisbon, Portugal and accordingly, the petitioner will be issued an Emergency Certificate to travel to India.

17. In all the petitions common argument has been advanced by the learned counsels for the petitioners that,

- (i) On mere pendency of the criminal case in a criminal court in India, there cannot be refusal to renew the passport, under Section 6(2)(f) of the Passport Act.
- (ii) The provision of Section 6(2)(f) of the Passport Act applies to issuance of the passport i.e., for the first time, and not to its renewal.
- (iii) The Central Government notification dated 25.08.1993 with reference to Section 6(2)(f) of the Passport Act shall not apply,
- a) for renewal of the passport and
 - b) where the applicant for renewal of the passport had already departed from India under the Passport of which renewal is applied.

18. Learned counsels for the petitioners placed reliance on the following judgments:

- 1) *Vangala Kastruri Rangacharyulu v. Central Bureau of Investigation*¹**
- 2) *Navin Kumar Sonkar v. Union of India*²**
- 3) *Abbas Hatimbhai Kagalwala v. State of Maharashtra*³**
- 4) *Krishna Chiranjeevi Rao Palukuri Venkata v. Union of India*⁴**
- 5) *Manish Kumar Mittal v. Chief Passport Officer*⁵**
- 6) *Hardik Shah v. Union of India*⁶**

¹ IA.52346/2021 in CrI.A.No.1343/2017, SC decided on 27.09.2021

² 2018 SCC Online MP 1775

³ 2022 SCC Online Bom 1992

⁴ 2020 SCC Online Kar 3437

⁵ 2013 SCC Online Del 3007

⁶ 2021 SCC Online MP 2326

7) *Pervez Mohammad Abdul v. Union of India and another*⁷

8) *Asutosh Amrit Patnaik v. State of Orissa*⁸

19. Learned Central Government Counsel submitted that the provisions of Sections 5 and 6(2) of the Passport Act shall apply for renewal of the passport as well and in case of Section 6 (2) (f), if any criminal case is pending for trial, the passport shall not be renewed unless the applicant produces an order from the concerned court where the criminal case is pending, granting permission to depart, as provided by the notification dated 25.08.1993.

20. Learned Central Government Counsel placed reliance in the judgment of this Court in ***Marupudi Dhana Koteswara Rao v. Union of India***⁹.

21. In view of the aforesaid submissions, the points that arise for consideration are:-

- i) Whether Section 6 applies also to renewal of passport?
- ii) Whether renewal of the passport shall be refused on the ground of pendency of a criminal case for trial in a criminal court in India, in view of Section 6 (2) (f) of the Passport Act?
- iii) Whether for renewal of passport the applicant against whom criminal case is pending for trial in a criminal court in India, has to produce an order from the concerned court, in terms of the notification dated 25.08.1993, so as to be exempted from the operations of Section 6(2)(f) of the Act?

⁷ 2023 (1) ALD 394 (TS)

⁸ WP(c)No.4834 of 2022, Orissa HC at Cuttack, decided on 23.03.2022

⁹ 2022 SCC Online AP1180

- iv) Whether the notification dated 25.08.1993 would also apply to the applicant for renewal of the passport to which Section 6 (2) (f) is attracted, who has already departed from India under the passport of which renewal is sought?

22. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

23. All the points for determination are related to each other and are being considered simultaneously.

24. The relevant provisions of the Passport Act 1967 deserve to be mentioned first.

25. Section 5 of the Passport Act, 1967 provides as under:

“5. Applications for passports, travel documents, etc., and orders thereon:-

[(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by [Such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents].

Explanation:- In this section, "named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

- (i) a passport under this Act for visiting a named foreign country; or
- (ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport

authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.]

(1B) Every application under this section shall be in such form and contain such particulars as may be prescribed.]

(2) On receipt of an application [under this section], the passport authority, after making such inquiry, if any. as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing, -

- a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or
- b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or
- c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.”

26. Section 6 of the Passport Act, 1967 provides as under:

“6. Refusal of passports, travel documents. etc:- (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of

sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely:-

- (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
- (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
- (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;
- (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(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.”

27. A bare reading of Section 5 shows that on receipt of application under Section 5(1), the Passport authority after making such enquiry, if any, as it may consider necessary, shall, subject to the other provisions of the Act, by order in writing, issue the passport or travel document with endorsement, as per clauses (a) & (b) or shall refuse to issue the passport or travel document or as the case may be, refuse to make on the passport or travel document any endorsement as per clause (c).

28. A bare reading of Section 6 (2) of the Passport Act 1967 makes it evident that the Passport Authority shall refuse to issue a passport under Clause (c) of Sub-Section (2) of Section 5, *inter alia*, on the ground of Clause (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India.

29. Another ground to refuse to issue a passport is under Clause (g) of Section 6 (2), 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.

30. Section 22 of the Passports Act 1967 confers the power to exempt. It provides that where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,

- (a) Exempt any person or class of persons from the operation of all or any of the provisions of the Passports Act or the Rules made thereunder:
- (b) As often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions;

31. The Central Government, in exercise of the power to exempt under Section 22 (a) of the Act issued notification dated 25.08.1993.

32. The Notification dated 25.08.1993 reads as under:

“MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 25th August, 1993

G.S.R. 570(E).—In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India 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, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:—

- (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 gives 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 of 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 a 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.

[No. VI/401/37/79]

L.K. Ponappa, Jt. Secy. (CPV)”

33. Thus, the Central Government by means of Notification, dated 25.08.1993 granted exemption from the operation of Section 6 (2) (f) of the Passports Act, if such an applicant produces order from the Court concerned permitting him to depart from India. In other words, even if the proceedings in

respect of an offence alleged to have been committed by the applicant for the passport are pending before the criminal Court in India the passport authority shall not refuse to issue passport if such applicant produces the order from the Court concerned permitting him to depart from India.

34. In exercise of powers conferred by Section 24 of the Passports Act 1967, the Passports Rules, 1980 (in short 'Rules 1980') have been framed.

35. Rule 5 of the Rules 1980 provides for Form of applications, which is reproduced as under:

“5. Form of applications.-[(1)] An application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in such form:

[Provided that every application for any of the aforesaid purposes shall be made only in the form printed and supplied by—

- (a) the Central Government; or
- (b) Any other person whom the Central Government may notification to .
the condition that such complies that Government behalf:

Provided further that] in the course of any inquiry under sub-section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application.

(2) The price of the new application forms referred to in sub-rule (1) shall be as specified in column 3 or 4, as the case may be, of Schedule III A for that particular category:

(3) The Passport Authority may authorise any person or authority to collect passport applications on its behalf for issue of a passport or travel document or for the renewal thereof or for any miscellaneous service on payment of a service charge specified by the Central Government under sub-rule (2) of rule 8 in

addition to the fee payable under sub-rule (1) of rule 8 and the service charge shall be paid by the applicant to such person or authority.”

36. Rule 5 of the Rules 1980 provides for an application for the issue of a passport or travel document or for the renewal thereof to be made in the appropriate Form set out therefore in Part I of Schedule III.

37. The expression 'Form' as defined under Rule 2 (b) means a Form set out in Schedule III.

38. The proviso to Rule 5 (1) of the Rules 1980 also provides that in the course of any inquiry under sub-section (2) of Section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application. The application as referred in the proviso, is the application for the issuance of the passport as also an application for renewal of the passport. Sub-rule (3) of Rule-5 also uses the expression 'renewal'.

39. In proper disposal of an application, may be for issuance or for renewal of passport, the passport authority may require the applicant to furnish the additional information, documents or certificates, as may be considered necessary.

40. Thus, Rule 5 of the Rules 1980 deals with an Application for issue of Passport and also for the renewal/reissue of the Passport.

41. Form EA(P)-1 External Application Form for Indian Passport at an Indian Mission/Post is as under:

**“FORM EA(P)-1 EXTERNAL
APPLICATION FORM FOR INDIAN PASSPORT
AT AN INDIAN MISSION/POST**

Please Staple one 35
mm x 45 mm
photograph and enclose
two more photographs

(for the issue of an ordinary international
Passport Fresh / After 10 years
(Final/and for duplicate in lieu of lost
Damaged passport)
(Please delete inapplicable)

Payment of Fee (to be filled by applicant)

Amount paid \$/.....by.....Mode of payment

For delivery by mail \$/extra to be paid as postal charges for each passport

1.(A). Full name.....
(expanded initials) (Surname)

(B) Aliases, if any.....

(C) Has applicant ever changed his/her name?
If so, give previous name in full.....

(D) Maiden name, if applicant is a married woman.....

2. Date of birth.....place of birth.....Country.....
Height.....(cms) Colour of eyes.....Hair.....
Visible distinguishing marks, if any.....

3. Permanent Address
(a) In India.....
(b) In country of domicile.....

4. (i) Name of father.....Country of his birth.....

- (ii) Name of mother.....Country of her birth.....
- (iii) Nationality of father at the time of applicant’s birth.....
- (iv) Nationality of mother at the time of applicant’s birth.....

- 5. Married/Unmarried (Tick mark).....

- 6. Name and Nationality of Spouse.....

- 7. (i) Name of applicant’s eldest son or daughter (first child).....
 (ii) Name of applicant’s eldest brother or sister.....

- 8. Present Passport/national identity card, if any. No....Date and Place of issue.....

- 9. Local car driving Licence No.....Date and Place of issue.....

- 10. Educational qualification.....
 (In order to determine emigration status)

- 11. When did applicant first leave India?....When was he/she in India last?

- 12. How long has applicants continuously resided abroad?.....

- 13. Present Emigration Status (ECR or ECNR).....
 (with documentary evidence)

- 14. Profession and business address.....Telephone.....

- 15. Please mention, if citizen of India by
 birth/descent/naturalization/Registration.

- 16. Did applicant ever possess any other nationality or travel document of any other country, if so, please give detail.

- 17. Was applicant ever refused an Indian Passport? (Yes/No)

- 18. Was applicant’s passport ever impounded/revoked? (Yes/No)
 If so, details please

- 19. Name and address of two relatives/friends

Name	Address
(i).....	(i).....
(ii).....	(ii).....

- 20. Is applicant in Government Service/Public Undertaking Service/Statutory Bodies Service of India? If so, please give details and enclose ‘No Objection

Certificate' from your employer in original.....

21. (i) Are any criminal proceedings pending against applicant in any Court in India? If so, please give details.....

(ii) Has applicant ever been repatriated from abroad to India at the expense of the Government of India? If so, details please.....

22. No. of lost/damaged passport.....Place of issue.....
 Date of issue.....Valid until.....

23. (i) Briefly state circumstances of loss/theft/damage of passport on a plain paper and attach copy of report lodged with local police in case of loss/theft.

(ii) Details of restriction, if any, put on applicant's damaged/lost passport.

(iii) Did applicant avail transfer of residence, foreign travel scheme facility on lost/damaged passport. If so, details please.....

24. Is applicant registered with Indian Mission/Post? If not, is he a member of any Indian Organisation?

25. Particulars of children, if any, to be included/deleted.

Name	Place and Date of Birth	Sex (M/F)

Note:- In case of fresh inclusion or inclusion on a new passport in lieu of lost/damaged passport, enclose (i) birth certificate(s) bearing names of both parents (ii) passports of both parents and (iii) marriage certificate of parents. Children below fifteen years of age can either apply for inclusion in their parent's passports, generally mother's or apply for separate passport. Children above fifteen years must apply for separate passport.

26. Declaration:

I solemnly affirm that

- (i) I owe allegiance to the sovereignty and integrity of India, and
- (ii) Information given above in respect of myself, my son/daughter/ward is correct and nothing has been concealed and I am aware that it is an offence

under the Passports Act, 1967 to knowingly furnish false information or suppress material information, which attract penal and other punishments under the Acts, and

(iii) I undertake to be entirely responsible for expenses of my son/daughter/ward.

.....
Signature of applicant or T.I. or his legal
Guardian (Left hand T.I of male and
Right hand T.I of female)

Place.....

Date.....

Specimen Signature or T.I. within the space given below:

For Office use”

42. Form EA(P)-2, Application Form for miscellaneous services on Indian Passport for (use in India) (A) Renewal etc., is as under:

FORM EA(P)-2
GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS

APPLICATION FORM FOR MISCELLANEOUS SERVICES ON INDIAN PASSPORT FOR (USE IN INDIA) (A) **RENEWAL** (B) ADDITIONAL VISA SHEET, (C) ADDITIONAL BOOKLET, (D) CHANGE OF ADDRESS, (E) PCC (F) ADDITIONAL ENDORSEMENT (G) CHIEF INCLUSION/DELETION (H) ANY OTHER SERVICE (SPECIFY)
(Please delete inapplicable)

Amount of Fee paid Rs.....by.....(Mode of Payment)
Mode of Submission of application (A) and Delivery (D).

(i) Personally, (ii) By Post, (iii) Through Rec. Travel Agent, (iv) Through auth rep.
(A) (D) (A) (D) (A) (D) (A) (D)

Please tick mode (i) and (ii) only if previous Passport containing valid visa for U.K., U.S.A. etc. submitted with application.
(For delivery tick marked by post Rs.10 extra to be paid as postal charges or each passport enclosing self-addressed envelop of size 16 cm x 10cm).

- 1. Name (please give expanded initials).....
- 2. (a) Father’s Name
(b) Mother’s Name
(c) Husband/Wife Name
- 3. Passport No.....Place of issue....date of issue.....Valid upto
- 4. File No. of passport
- 5. Are any criminal proceedings pending against applicant in criminal Court in India or any other disqualifications under section 10(3).
- 6. Particulars of children to be included / deleted.

Name	Place and Date Of Birth	Sex (M/F)
.....
.....
.....

- 7. Declaration – I solemnly affirm that-----
 - (i) I owe allegiance to the sovereignty and integrity of India, and
 - (ii) Information given above in respect of myself, my son/daughter/ward is correct and nothing has been concealed and I am aware that it is an offence under the Passports Act, 1967 to knowingly furnish false information or suppress material information, which attract penal and other punishments under the acts, and
 - (iii) I undertake to be entirely responsible for expenses of my son/daughter/ward,
 - (iv) I declare that I have not lost or surrendered my citizenship of India since the above passport or travel document was issued to me. I further declare that I have no other passport.

.....
 Signature of applicant or Thumb Impression or his legal
 Guardian (Left hand Thumb Impression of male and
 Right hand Thumb Impression of female)

Place:.....

Date:.....

8. Two specimen signatures or T.I. required for services at (c) within the space given below.

43. As per the instructions for filling up EA(P)-2 Form, in Schedule-III to the Rules, 1980 it is provided that this Form is to be used for the miscellaneous services on ordinary Indian Passports, for '**(a)**' – **Renewal**. Further, "Instructions for filling up Passport Application Form and Supplementary Form Caution" provided in Schedule-III under instructions, B-Column-wise guidelines for filling up Passport Application Form, Column No.1.2 deals with 're-issue of passport'. There are therefore specific instructions in Schedule-III for filling up the Application Form for fresh passport, for re-issue of Passport and for renewal of Passport.

44. When Section 5 is read along with Rule 5 and the Forms in Schedule-III in which form the application is to be submitted, it is evident that renewal of the Passport is also covered under Section 5 of the Act and issue or refusal shall be subject to the other provisions of the Act, which would include Section 6 as well.

45. Learned counsels for the petitioners placed reliance in the case of ***Abbas Hatimbhai Kagalwala*** (supra) of the Bombay High Court to contend that Section 6 (2) (f) of the Passports Act 1967 and Notification dated 25.08.1993 will apply to the case of issuance of passport and not renewal of the passport.

46. The aforesaid judgment is reproduced as under:

“1. The Petitioner had applied for renewal of the Passport. Said application is not being entertained for the reason that the Petitioner should obtain a permission from the Court where a criminal case is pending against the Petitioner.

2. Learned Counsel for the Petitioner submits that for renewal of the Passport, permission from the Court where a criminal case is pending against the Petitioner, is not necessary. If a criminal case is pending, then the only limitation would be, the Petitioner can not travel abroad without the permission from the Court where a criminal case is pending against the Petitioner. He relies upon order passed by the Apex Court in Criminal Appeal No. 1342/2017 dated 27.9.2021.

3. Learned Counsel for the Union relies upon Notification dated 25.8.1993 and Section 6.2 (f) of the Passport Act, 1967, to conclude that the Petitioner has to obtain a permission of the Court where criminal case is pending against the Petitioner for the purpose of issuance of the Passport. **It will be a case of issuance of the Passport and not renewal of the Passport.**

4. It is the case of the Petitioner that validity of the Passport came to an end in the year 2017. The Petitioner applied for renewal and said application is pending for more than 4 years. It is also a fact that a criminal case is pending against the Petitioner u/s 420, 465, 467 r/w 120-B of the Penal Code, 1860.

5. In view of the fact that petitioner is already issued a Passport earlier and the Petitioner would be seeking renewal of the Passport and the said application is pending with the Respondent, so also, considering the Order passed by the Apex Court in Criminal Appeal No. 1342/2017 (supra) we pass the following order.

Order

- i) The Respondent shall process the application of the petitioner for renewal of Passport without insisting for permission of the Court, where a criminal case is pending against the Petitioner. If the Petitioner is travelling abroad, then

the Petitioner would be required to seek permission from the Court where criminal case is pending.

- ii) Decision shall be taken as observed above, within 2 months.
- iii) The impugned communication is quashed and set aside.
- iv) If as per procedure on-line application is required to be made, the same shall be made by the Petitioner.

6. The petition is disposed of.

7. No costs.”

47. With respect, I am unable to subscribe to the view as in **Abbas Hatimbhai Kagalwala** (supra) as made therein in para-3 “it will be a case of issuance of the passport and not renewal of the passport”, for the reason that from the scheme of the Act, the renewal of the passport is also governed by the provisions of the Passports Act including Sections 5 & 6, as also Rule 5 of the Rules 1980 and the Forms in the Schedule III.

48. Further, There is no specific provision for renewal, in the Act. If it is to be considered that Sections 5, 6 (2) of the Passports Act do not apply to renewal of passport, then there would be no provision entitling the holder of the passport for its renewal. If renewal is not permitted, then the holder of the passport will have to apply for issue of the passport afresh. If that be the case, Sections 5 & 6 of the Act & Rule 5 with specified forms under the Rules shall again be applicable, consequently, there is no warrant for the view that Section 6 would not apply to an applicant for renewal of passport. In fact, from a combined reading of the Act, Sections 5 & 6 in particular, and the Rule-5 along

with the contents of the Forms prescribed, this Court is of the considered view that the expression 'issue' as used in Section 5 of the Act has been used not only for issuance of the passport for the first time, but also for its renewal.

49. Further, the judgment of the Hon'ble Apex Court in ***Vangala Kasturi Rangacharyulu*** (supra) was a case in which the request was for direction to the authorities for renewal of the passport and direction was issued to renew the passport.

50. Learned counsels for the petitioners also placed reliance in the case of ***Krishna Chiranjeevi Rao Palukuri Venkata*** (supra) High Court of Karnataka to contend that Section 6 (2) (f) of the Passports Act 1967 is applicable only for issuing a fresh passport and not for renewal of the passport. The Karnataka High Court placed reliance on the judgment of the Delhi High Court in the case of ***Ashok Khanna v. Central Bureau of Investigation***¹⁰.

51. For the reasons already assigned, I am unable to subscribe to the above view taken in ***Krishna Chiranjeevi Rao Palukuri Venkata*** (supra) by the Hon'ble High Court of Karnataka.

52. Learned counsels for the petitioners submitted that the pendency of the criminal case before a criminal Court in India cannot be a ground to refuse issuance of the passport. They placed reliance in ***Vangala Kasturi Rangacharyulu*** (supra).

53. Placing reliance on the judgment in ***Vangala Kasturi Rangacharyulu*** (supra), it was further contended that when in the matter of

¹⁰ (2019) 265 DLT 614

pendency of the criminal appeal, the passport authority was directed to renew the passport, without raising of objection to the pendency of the criminal appeal even after conviction, the passport authority cannot refuse issuance of the passport, at a stage when the criminal proceedings are pending before a criminal Court in India, as such applicants stand on the better footing, as there is no order of conviction at all against such applicants who are presumed to be innocent under law.

54. The above submissions of the learned counsels for the petitioners deserve rejection being without substance.

55. ***Vangala Kasturi Rangacharyulu*** (supra) was a case for renewal of the passport, which had expired. The applicant therein was convicted for the offence punishable under Sections 120-B, 420, 468, 471, 477A of the Indian Penal Code read with Section 13 (2) read with Section 13 (1) of the Prevention of Corruption Act, 1988. The appeal filed by the applicant was dismissed by the High Court, however, the sentence was reduced to a period of one year. His application for renewal of the passport was not being considered for the reasons, orally informed, due to pendency of the criminal appeal before the Hon'ble Apex Court. The Hon'ble Apex Court directed the passport authorities to renew the passport of that applicant without raising the objection relating to the pendency of the criminal appeal before the Apex Court.

56. In ***Vangala Kasturi Rangacharyulu*** (supra) the Hon'ble Apex Court held that Section 6 (2) (f) of the Passports Act, relates to a situation where the applicant is facing trial in a criminal Court. In ***Vangala Kasturi***

Rangacharyulu (supra), there was no trial pending in a criminal Court. What was pending was the criminal appeal in the Hon'ble Apex Court. So, Section 6 (2) (f) of the Passports Act was not attracted.

57. Secondly, Section 6 (2) (e) was also not attracted because the sentence awarded to the applicant therein was reduced by the High Court to a period of one year. So it was also not a case of "not less than two years imprisonment".

58. Section 6 (2) (e) of the Passports Act, which is also one of the grounds for refusal to issue a passport, provides as under:

"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;"

59. A perusal of clause (e) of sub-section (2) of Section 6 of the Passports Act clearly shows that there should be conviction by a Court in India for any offence involving moral turpitude and the applicant should have been sentenced in respect thereof to imprisonment for not less than two years. The sentence of imprisonment, in **Vangala Kasturi Rangacharyulu** (supra) was only for one year.

60. Under those circumstances, renewal of the passport of the applicant in **Vangala Kasturi Rangacharyulu** (supra) could not be refused. Consequently, direction was issued to renew the passport.

61. Learned counsels for the petitioners could not point out from **Vangala Kasturi Rangacharyulu** (supra) as to where it has been held by

Hon'ble the Apex Court that in spite of the case being covered under clause (f) of sub-section (2) of Section 6 of the Passports Act, the passport authority shall issue the passport or grant renewal and shall not refuse issuance or renewal.

62. The judgment of the Hon'ble Apex Court in ***Vangala Kasturi Rangacharyulu*** (supra) does not hold that mere pendency of a criminal case under Section 6 (2) (f) of the Passports Act in the Court concerned at the trial stage is no bar for issuance or renewal of the passport.

63. Thus considered, the judgment in ***Vangala Kasturi Rangacharyulu*** (supra) is of no help to the petitioners for the proposition as argued.

64. In ***Navin Kumar Sonkar*** (supra) the passport was impounded under Section 10 (3) (e) of the Passports Act 1967 because the criminal case was pending before the Court against the holder of the passport.

65. Section 10 of the Passport Act, 1967 provides as under:

"10. Variation, impounding and revocation of passports and travel documents:- (1) The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central

Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document:-

- a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;
- b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

{Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport }

- c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;
- d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, 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;
- e) **if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.**
- f) if any of the conditions of the passport or travel document has been contravened;
- g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;
- h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder

of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document: Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel

document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.”

66. Clause (e) of sub-section (3) of Section 10 of the Passports Act provides that if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal Court in India.

67. In ***Navin Kumar Sonkar*** (supra), the Madhya Pradesh High Court held that the pendency of a criminal case in a Court, may give a cause to initiate the action under Section 10(3)(e) to the Passport Officer, but that could not be treated to be the reason for impounding the passport. The ultimate order of impounding was to be passed on assigning of reasons, different from the ground for initiation of the proceedings for impounding of passport.

68. The judgment in ***Navin Kumar Sonkar*** (supra) is of no help to the petitioners, firstly, because the present is not a case of impounding of passport, and secondly, from a comparative reading of Section 6 (2) and Section 10(3) of the Passports Act, it is apparent that in the matters of refusal of issuance of passport, under Section 6 (2) the Legislature has used the expression ‘shall’ in “passport authorities shall refuse to issue passport”, whereas expression ‘may’ has been used in “the passport authority may impound or cause to be impounded or revoked a passport or travel document” under Section 10 (3) of the Passports Act. So in the matters of issuance of passport and its refusal if any of the grounds exist under clauses (a) to (i) of Section 6 (2), the passport authority cannot issue or renew the passport, but it has to reject because of the

statutory mandate, whereas under Section 10(3) even if any of the grounds under clauses (a) to (e) exists, that would only enable the passport authority to initiate the proceedings for impounding etc., of the passport and there should be additional reasons for impounding of passport as held in ***Navin Kumar Sonkar*** (supra).

69. In ***Bachahan Devi v. Nagar Nigam, Gorakhpur***¹¹, the Hon'ble Apex Court held that it is well settled that use of the word 'may' in statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the Court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. The Hon'ble Apex Court held that the ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover legislative intent, and use of words 'may' and 'shall' is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help Courts in ascertaining legislative intent without giving to either a controlling or a determining effect. It was held that as a general rule, the word 'may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty.

¹¹ (2008) 12 SCC 372

70. In **Bachahan** Devi (supra) the Hon'ble Apex Court, referred to its earlier judgment in **Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta**¹² in which it observed and held that where the legislature uses two words 'may' and 'shall' in two different parts of the same provision, *prima facie*, it would appear that the legislature manifested its intention to make one part directory and another mandatory, though that by itself is not decisive.

71. In **State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti**¹³ the Hon'ble Apex Court referred to its judgment in **Salem Advocate Bar Assn. v. Union of India**¹⁴ in which it was observed and held that the use of the word 'shall' in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory.

72. In **Union of India v. A. K. Pandey**¹⁵ the Hon'ble Apex Court held that when the word 'shall' is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such.

73. The used of the word 'shall' in Section 5 (2) read with Section 6 (2), with respect to refusal of issuance of passport on existence of ground under clause (f) of Section 6 (2), but the use of the expression 'may' in Section 10 (3)

¹² (1985) 3 SCC 53

¹³ (2018) 9 SCC 472

¹⁴ (2005) 6 SCC 344

¹⁵ (2009) 10 SCC 552

with respect to the same ground in clause (e) of Section 10 (3) i.e., the use of the word 'shall' and 'may' differently, with respect to the same ground, but under different sections of same statute i.e., the Passports Act is indicative of the clear legislative intention under Section 5 (2) (c) r/w. Section 6 (2) that on existence of ground in clause (f), the issuance of the passport shall be refused but if it comes to Section 10 (3) the passport authority may not impound / revoke the passport mandatorily. The discretion has been conferred in the passport authority, making such provision directory, though such discretion is to be exercised judiciously.

74. The expression 'shall' in Section 6 (2) for refusal to issue passport can be only on the grounds specified there under and on no other ground. The expression 'shall' therefore is followed by the negative words "and on no other ground", the intention of the legislature is very clear the if anyone or more of the grounds of clauses (a) to (i) exist the passport authority shall refuse to issue a passport. If no such ground exists the passport authority shall not refuse to issue a passport on any other ground. So in the matter of issuance of passport the refusal can be only on the specified grounds from (a) to (i). Similarly, the mandate is that if any of the grounds under clauses (a) to (i) does not exist, then the passport authority has not to refuse issuance of the passport. Then also, it has no discretion to refuse the issuance of the passport. When the word 'shall' is followed by the negative words or prohibitive words the mandatory nature of the provision is manifested, as held in ***Union of India v. A. K. Pandey*** (supra).

75. Further, in view of Section 22 the power to grant exemption is only with the Central Government, in the public interest, by notification in the official gazette. When Sections 5, 6 (2) are read along with Section 22, it follows that the exemption from any of the clauses (a) to (i) in sub-section (2) of Section 6 can be granted only by the Central Government under Section 22. Consequently, the intention of the legislature that Section 5 (2) r/w. Section 6 (2) is mandatory, is manifested that the exemption cannot be granted by the passport authority and there is no such discretion vested in the passport authority to grant exemption from any of the clauses (a) to (i). Consequently, on existence of ground (f), unless the conditions for grant of exemption imposed by the notification are fulfilled, there will be no exemption from the operation of clause (f) and in view of the existence of such a ground the passport authority shall have to refuse issuance of the passport and/or renewal of the passport, as the case may be.

76. This Court do not find any reason to read 'shall' in Sections 5 (2) & 6 (2) as directory granting discretion in the passport authority, contrary to the general rule that 'shall' is ordinarily 'imperative' and it 'imposes a duty'.

77. The ground under Section 6 (2) (f) and under Section 10 (3) (e) are the same but because of the use of 'shall' in Section 6 (2) and 'may' in Section 10 (3), passport shall be refused under Section 5 (2) (c) r/w. Section 6 (2), whereas passport may or may not be impounded under Section 10 (3).

78. Learned counsels for the petitioners further contended that the notification dated 25.08.1993 provides for seeking an order from the Court

where the criminal proceedings are pending against him, only for permitting him to depart from India, and therefore where the person is in India and against him criminal proceedings are pending in any criminal Court in India and if he wants to depart from India then only the order from the concerned Court is required but where the applicant for renewal of passport is already at abroad, such permission or order from the Court concerned would not be required as then there is no question of such person departing from India.

79. If the aforesaid submission of the petitioners' counsels is accepted, this would mean that the notification not being applicable to such persons who are seeking renewal of the passport, while already at abroad, they would not be entitled to claim the exemption, granted from operation of Section 6 (2) (f) of the Passports Act, by way of the notification dated 25.08.1993. In other words, then Section 6 (2) (f) would apply in the cases of those applicants and their applications for renewal of the passport shall be rejected. Whereas, those applicants for renewal of the passport in whose cases Section 6 (2) (f) is applicable but they are in India, if they produce an order from the concerned Court in terms of the notification, then their applications for renewal of the passport would not be rejected as they would avail the benefit of the exemption granted by the notification.

80. Though the notification dated 25.08.1993 is not under challenge in the writ petitions, but if the interpretation of the learned counsels for the petitioners, given to the notification, is accepted and the notification is held confined only to those persons who are in India, then those applicants who are

at abroad and the validity of their passports is expiring, they would not be able to get renewal of the passport as they would not be entitled for the exemption under the notification.

81. This Court is of the considered view that the applicants seeking renewal of the passport may be in India or may be outside India, in order to get renewal, where Section 6 (2) (f) applies, in view of the notification of the Central Government asking for submission of an order from the concerned Court where a criminal case is pending, on furnishing of such order from the Court concerned would be entitled for exemption from the applicability of the Section 6 (2) (f) of the Act. The expression "permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the Act" in the notification dated 25.08.1993 is to be read not only to those applicants who are in India and intends to depart from India, but also to those applicants who have already departed from India but intends to continue their such departure from India for the reasons eg., as in the present cases, pursuing and for completion of higher studies. In other words, they also have to produce an order from the Court concerned in terms of the notification dated 25.08.1993. Otherwise, grant of exemption and its denial only on the basis of the place of stay, in India and outside India, may not be a reasonable basis of such classification, particularly when their departing from India is a matter left by the notification to the permission of the Court concerned where the criminal case is pending, and depending upon the nature of the court's

order, the application for renewal of the passport is to be considered by the passport authorities.

82. The judgment in ***Krishna Chiranjeevi Rao Palukuri Venkata*** (supra) also relied upon by the petitioners' counsels in support of the above contention is of no help as in that case it was observed that Section 6 (2) (f) of the Passports Act 1967 does not provide for refusing to issue a passport for a person who intends to travel back to India. The petitioners in some petitions are intending to continue to depart from India, due to the reasons stated i.e., for studies, for which they have applied for renewal.

83. Reliance was also placed in ***Abbas Hatimbhai Kagalwala*** (supra) to contend that in that case after considering the judgment of the Hon'ble the Apex Court in ***Vangala Kasturi Rangacharyulu*** (supra) the direction was issued to process the application of the petitioner therein for renewal of the passport without insisting the permission of the Court where a criminal case was pending against him.

84. From perusal of judgment in ***Abbas Hatimbhai Kagalwala*** (supra) this Court is unable to find out any proposition of law, except the direction, in the 'Order' part. For the consideration made by this Court as above of the Hon'ble Apex Court's judgment, this Court, with respect is not in agreement for issuance of such order as in ***Abbas Hatimbhai Kagalwala*** (supra).

85. The judgment of the Delhi High Court in ***Ashok Khanna*** (supra) relied upon by the Karnataka High Court in ***Krishna Chiranjeevi Rao Palukuri Venkata*** (supra) came for consideration by this Court in ***Marupudi***

Dhana Koteswara Rao (supra) which was also a case where renewal of the passport was refused. This Court held that when criminal cases are pending against a person who seeks for renewal, it cannot be concluded that passport authorities shall not insist for obtaining NOC from the concerned criminal Court. It was further held by this Court that a legal duty is cast on the Court to see that such visit of the applicant/accused will not hamper the criminal proceedings pending against him/her. Similarly, the passport authorities seeking such information as in the Form EA(P)-2 is not without any purpose and it is not any empty rhetoric. If any criminal cases are pending against the applicant who seeks renewal or he attains disqualification in terms of Section 10 (3), the authorities can reconsider to renew the passport and such right or discretion is implicit in Rule-5. This Court, with due respect was unable to agree with the observation of the Delhi High Court in **Ashok Khanna** (supra).

86. This Court in **Marupudi Dhana Koteswara Rao** (supra) clearly held that the authorities can seek for NOC in case of renewal of passport also.

87. It is apt to reproduce para-9 in **Marupudi Dhana Koteswara Rao** (supra) as under:

“9. True is that, Rule-5 of Passport Rules and Form EA(P)-2 of Schedule-III applies for renewal of passport. In Clause-5 of Form EA(P)-2 it is mentioned as follows:

“5. Are any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under section 10(3)”

In Clause-5 of Form EA(P)-2, it is only mentioned that an information has to be provided by the applicant as to whether any criminal proceedings are pending against him in a Criminal Court in India or whether he attained any

disqualification under Section 10(3). It is also true there is no specific mention in it that if criminal cases are pending, he should necessarily obtain NOC from the concerned Criminal Court. To this extent I fully agree with the observations of the learned Judge. However, in my view, when criminal cases are pending against a person who seeks for renewal, it cannot be concluded that passport authorities shall not insist for obtaining NOC from the concerned criminal Court. In my considered view a legal duty is cast on the Court to see that such visit of the applicant/accused will not hamper the criminal proceedings pending against him/her. Similarly, the passport authorities seeking such information is not without any purpose and it is not an empty rhetoric. If any criminal cases are pending against the applicant who seeks renewal or he attains disqualification in terms of Section 10(3), the authorities can re-consider to renew the passport and such right or discretion is implicit in Rule-5. In that view, with due respect I am unable to agree with the observation of the learned Judge.

9. (a) It should be noted that Form EA(P)-1 of Schedule-III applies for new/re-issue/replacement of lost/damaged passport and in the said Form in Clause-17(b) and (c), it is mentioned that whether any criminal proceedings are pending against the applicant before a Court in India and if so he has to obtain NOC from the concerned Court for grant of passport. Therefore for fresh issue of passport or re-issue in case of loss or damage of the passport, NOC is required from the concerned Criminal Court. It goes without saying that the authorities can seek for NOC in case of renewal of passport also. The avowed object in seeking for NOC from the Criminal Court is to see that the absence of the applicant from India should not hamper the criminal proceedings. Since the concerned Criminal Court is the best authority to say whether the absence of the applicant/accused will hamper criminal proceedings or not, seeking NOC from the Criminal Court by the passport authorities cannot be found fault on the mere ground that in Form EA(P)-2 seeking for NOC is not specifically mentioned. Running the risk of pleonasm it must be mentioned that such a power to seek for NOC from the Criminal Court is implicit in Rule-5.”

88. **Hardik Shah** (supra) is also a case for impounding / revoking of the passport under Section 10 (3) (h) of the Passports Act 1967, in which reliance was placed by the Madhya Pradesh High Court upon its earlier judgment in **Navin Kumar Sonkar** (supra). The petitioner in **Hardik Shah** (supra) was also not afforded with any pre or post decisional hearing before impounding his passport. This was not a case of renewal, attracting Section 6 (2) (f) of the Act. Consequently, the provisions of Section 6 (2) (f) of the Passports Act read with the notification dated 25.08.1993 was not for consideration nor was considered in that respect by the High Court of Madhya Pradesh in **Hardik Shah** (supra).

89. In **Hardik Shah** (supra) The reference to the Gazette Notification dated 25.09.1993 was made, referring to its consideration in **Roshan Lawrence Menezes v. Union of India**¹⁶ of the Bombay High Court, but as is evident from the paragraphs-5 and 6 of the judgment of the Bombay High Court, as quoted, that, what was under consideration there was, the period for which there should be renewal, if the passport authority is to renew it, whether for a period of one year, if there is no period prescribed by the Court concerned, or for a period of 10 years as was the direction issued by the Division Benches of the Bombay High court, previously, in various cases. The Bombay High Court, had held that the renewal of the passport should be for 10 years, as per the law declared by it and the passport authorities could not have renewed the passport for any period less than 10 years.

¹⁶ Writ Petition (Lodging) No.699/2020 Bombay HC

90. A reading of the judgment in ***Hardik Shah*** (supra) shows that it has nowhere been held that on the existence of the ground under Section 6 (2) (f) of the Passports Act, the applicant for renewal of the passport has not to obtain requisite certificate/order from the concerned Court, but, only it follows that if in the order of the Court period has not been specified, renewal cannot be for one year i.e., for any period less than 10 years and that too in view of the Division Bench judgments of the Bombay High Court. The judgment in ***Hardik Shah*** (supra) is of no help to the petitioners.

91. ***Manish Kumar Mittal*** (supra), also relied upon by the learned counsels for the petitioners, was also a case of impounding of passport under Section 10 (3) of the Passports Act and the order was passed even without giving a show cause notice and was also not a speaking order in terms of Sub-Section (5) of Section 10. Even a post decisional hearing was not given and for the said reason as the petitioner therein was denied an opportunity of hearing, contrary to the statute, the order of impounding was quashed. The Delhi High Court observed that even if a criminal case is pending against a person that by itself does not require the Regional Passport Officer to impound/revoke the passport in every case. It is only in appropriate cases and for adequate and cogent reasons that such an order can be passed. The said observation is with respect to impounding/revoking the passport under Section 10 (3) and not in the context of renewal of the passport under Section 5 read with Section 6 (2) of the Passports Act.

92. In ***Asutosh Amrit Patnaik*** (supra), the High Court of Orissa at Cuttack observed that mere pendency of the criminal case cannot be a ground for refusal or renewal of the passport and direction was given to consider the renewal application on submission of the required affidavit/undertaking in terms of clause (d) of the Notification GSR 570 (E), dated 25.08.1993.

93. This Court has already considered the distinction between Sections 5 & 6 on the one hand and Section 10 on the other. The judgments with respect to the impounding of the passport under Clause (e) of Section 10 (3) therefore will not apply to a case of renewal of the passport under Section 6 (2) (f) because of the use of the expression 'shall' in Section 6 and 'may' in Section 10.

94. So far as, the direction in ***Asutosh Amrit Patnaik*** (supra) to consider renewal of the submission of the undertaking in terms of clause (d) of the notification dated 25.08.1993 is concerned, the said condition reads as under:

“(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.”

95. Condition (d) is an additional requirement, with production of an order from the Court concerned where the criminal case is pending granting permission to depart from India. The condition (d) is not to be read in isolation and cannot be read in substitution of the requirement of producing the order from the Court concerned.

96. For the aforesaid additional reason, the judgment in the case of ***Asuthosh Amrit Patnaik*** is of no help to the petitioner.

97. In ***Pervez Mohammad Abdul*** (supra) of the High Court for the State of Telangana at Hyderabad, direction was given to the passport authority to consider the renewal of the passport of the petitioner therein submitting an undertaking as in the notification, after holding that the calendar cases were pending against such petitioner, but in none of those cases he was convicted by the trial Court, and then observing that the petitioner therein stood on better footing than the appellant in ***Vangala Kasturi Rangacharyulu's*** case (supra).

98. In ***Pervez Mohammad Abdul*** (supra) also inference was drawn that as in ***Vangala Kasturi Rangacharyulu*** (supra) even during the pendency of the criminal appeal before the Hon'ble Apex Court after conviction, the direction was issued to renew the passport without raising objection to the pendency of the criminal appeal, the petitioner in ***Pervez Mohammada Abdul*** (supra) was also entitled for a direction to be issued to the passport authority for renewal of his passport as there was no conviction by the trial Court and only the cases were pending in that Court.

99. For the reasons assigned above as also the consideration of the Hon'ble Apex Court judgment in ***Vangala Kasturi Rangacharyulu*** (supra), I am unable to draw such inference that only because there is no conviction by the trial Court and only the cases are pending before the criminal Court the direction to renewal can be issued to the passport authorities contrary to Sections 5 (2) and 6 (2) (f) without compliance with the conditions of the notification.

100. Another argument was raised by the learned counsels for the petitioners that the Forms prescribed in Part-I of Schedule-III for renewal of the passport, though there is column asking for the detailed information of the criminal cases if pending against the applicant, but there is no requirement in such Forms of producing the order of the Court before which the criminal case is pending for trial, and consequently, the passport authorities cannot insist for production of such order of the Court.

101. The aforesaid submission deserves to be rejected, for the reason, that asking the information with respect to the pendency of the criminal case is not without any purpose or object and it is not a mere empty formality as has been observed by this Court in ***Marupudi Dhana Koteswararao Rao*** (supra). Further, Section 22 of the Passports Act itself provides for issuance of the notification by the Central Government granting exemption from any of the provisions of the Passports Act, in public interest, subject to such conditions, if any, as may be specified in the notification. The condition to produce the order from the concerned Court, subject to which exemption is granted, along with other conditions in the notification, are therefore, in the exercise of the power conferred by the statute under Section 22 and therefore, even if there is no specific column with respect to the production of such order from the Court concerned, it cannot be said that the applicant for renewal of the passport has not to comply with the conditions of the notification. Unless there is compliance with the conditions of the notification, there would be no exemption from the operation of Section 6 (2) (f) of the Passports Act. The

notification or the conditions therein are not subject matter of challenge in the present writ petitions.

102. In view of the law as laid down by this Court in ***Marupudi Dhana Koteswara Rao*** (supra) that the authorities can seek NOC in case of renewal of passport which is implicit in Rule-5, with which view I am also in agreement that the renewal of passport is also governed by the provisions of the Passport Act, including Sections 5, 6 and the Rules, 1980, the submission of the learned counsels for the petitioners to the contrary based on the view taken by the other High Courts is not acceptable and is rejected.

103. To sum up, this Court holds that;

- (i) 'Issue' of passport in Section 5 of the Passports Act includes 'renewal' of the passport as well;
- (ii) While considering the renewal of the passport, the passport authority would be within its jurisdiction and authority to refuse renewal, on the same grounds as in the cases of issuance of the passport for 'the first time', provided by Section 6 (2) of the Passport Act. In other words, Section 6 (2) of the Passport Act applies to renewal of the passport, as well;
- (iii) In the cases for renewal, to which Section 6 (2) (f) of the Passports Act is attracted, i.e., where the applicant is facing criminal trial in a criminal Court in India, renewal of the passport shall be refused, subject to the fulfillment of the condition under the notification of the Central Government, dated 25.08.1993, issued in exercise of the powers

- conferred by Section 22 of the Passports Act, upon which such applicant shall stand exempted from the operation of the provisions of Clause (f) of sub-section (2) of Section 6;
- (iv) In a case where clause (f) of Section 6 (2) is attracted, the holder of the passport, for its renewal, will have to produce an order from the Court concerned, where the proceedings against him are pending trial in respect of an offence alleged to have been committed by him, permitting him to depart from India;
- (v) The notification dated 25.08.1993 applies to the citizen applicants for renewal of the passport even if already departed from India under the passport of which renewal is sought.
- (vi) On production of an order, from the concerned Court, as referred in the notification, the renewal of the passport shall not be refused only on the ground of Section 6 (2) (f), i.e., mere pendency of the criminal case for trial;
- (vii) Condition (d) of the notification dated 25.08.1993 is an additional requirement and is not in substitution of the requirement from those citizen/applicants who have to produce an order of the Court concerned, where the criminal case is pending, permitting him to depart from India.

104. The points for determination as framed in para-21 (supra) are answered accordingly, as per para-103 (supra).

105. In the result, the Court passes the following order, disposing of all the writ petitions in the following terms:

- (a) The prayer of writ petitioners seeking direction to the respondent passport authorities to renew the passport without insisting on compliance with the notification dated 25.08.1993, notwithstanding the pendency of the criminal case in the Court concerned for trial, is rejected.
- (b) A direction is issued to the respondents No.1 to 3 to consider the cases of the petitioners covered under clause (f) of Section 6 (2) of the Passports Act, for renewal of the passport, on production of the order from the concerned Court where the criminal case is pending for trial.
- (c) On production of an order from the concerned Court, as aforesaid, the application for renewal shall not be rejected on the ground of mere pendency of the criminal case in Court, but subject to compliance of other requirements under notification dated 25.08.1993.
- (d) If the petitioner approaches the concerned Court where the criminal case is pending trial, for an order, seeking No Objection Certificate / Permission to depart from India or to continue to his departing from India, with respect to those petitioners, who already departed under the passport, the renewal of which is requested, their applications would be considered by the concerned Court, as per law, taking into account the relevant

facts and circumstances of their respective cases and appropriate orders shall be passed according to law.

(e) The judgment in the case of ***Vangala Kasturi Rangacharyulu*** (supra) by the Hon'ble Apex Court, shall be considered in the correct perspective, as discussed in this judgment, by the concerned Court.

(f) If there is an additional ground, under any other clause of Section 6 (2), i.e., other than clause (f), the same shall be considered independent of the directions issued in these writ petitions.

(g) The petitioner of W.P.No.2896 of 2023 is granted liberty to approach the Court concerned afresh.

106. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 07.03.2023

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Note:

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