IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**WP.No.1190 of 2024**

Karti P.Chidambaram ... Petitioner

Vs.

The Regional Passport Officer, Chennai
Regional Passport Office,
No.2 & 3, 4th Floor,
Old No.785, New No.158,
Rayala Towers,
Anna Salai, Chennai – 600 002 ... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to consider the petitioner's online application dated 02.01.2024 and re-issue/renew the Petitioner's passport bearing No.Z6044131 for the normal period of ten years from 05.03.2024 as per Rule 12(1) of the Passport Rules, 1980 within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.P.Wilson
Senior Counsel
for Mr.N.R.R.Arun Natarajan

For Respondent : Mr.ARL.Sundaresan
Additional Solicitor General
Assisted by
Dr.G.Babu
Senior Panel Counsel

**O R D E R**

The petitioner is the holder of passport bearing No.Z2825031, issued on 06.03.2014 with validity till 05.03.2024. He is a Member of Parliament (Lok Sabha) having been duly elected from the Sivagangai Constituency in the general elections held in 2019.

2. As per the counter filed by the Regional Passport Officer, Chennai, sole respondent, there are six cases pending as against the petitioner, details of which are below:

i. *FIR No.RC-DAI 2011-A-0022 (Charge sheet filed & taken cognizance by Spl. Judge (PC Act), CBI-09 (MP's/MLA's cases), Rouse Courts, New Delhi)*

ii. *ECIR/05/DZ/2012/DD(RS)/1286-87/2012 (Charge sheet filed & taken cognizance by Spl.Judge (PC Act), CBI-09 (MP's/MLA's cases), Rouse Courts, New Delhi)*

iii. *FIR No.RC 220 2017 E 0011 (Charge sheet filed & taken cognizance by Spl.Judge (PC Act), CBI-09 (MP's/MLA's cases), Rouse Courts, New Delhi)*

iv. *ECIR/07/HIU/2017 (Charge sheet filed & taken cognizance by Spl. Judge (PC Act), CBI-09 (MP's/MLA's cases), Rouse Courts, New Delhi)*

v. *FIR No.190/2014 (Madras High Court)*

vi. *FIR No.217 2015 A 0111 (petitioner not named as accused in charge sheet filed by CBI)*

3. The petitioner had earlier filed Writ Petition (C) No.739 of 2018 before the Delhi High Court which had been transferred to the Hon'ble Supreme Court and numbered as Transfer Case (Crl.) Nos. 3 and 4 of 2018 challenging the initiation of cases by the Enforcement Directorate (in short 'ED').

4. The Delhi High Court had, on 09.03.2018, granted an interim stay of the ED taking any coercive action against the petitioner upon condition that the petitioner should deposit his passport with the Assistant Director of ED.

5. The petitioner has been approaching the Special Judge (PC Act) (CBI)-09, Delhi as well as the Supreme Court seeking permission to travel abroad and permission has been granted as follows:

| **S.No.** | **Date of the Order granting permission to travel abroad** | **Period for which permission was granted to travel** |
|---|---|---|
| 1. | 20.11.2017 | 01.12.2017 - 10.12.2017 |
| 2. | 16.02.2018 | 17.02.2018 - 28.02.2018 |
| 3. | 18.05.2018 | 19.05.2018 - 27.05.2018 |
| 4. | 18.05.2018 | 10.06.2018 - 22.06.2018 |
| 5. | 23.07.2018 | 24.07.2018 - 31.07.2018 |
| 6. | 23.07.2018 | 15.08.2018 - 31.08.2018 |
| 7. | 18.09.2018 | 20.09.2018 - 01.10.2018 |
| 8. | 30.01.2019 | 10.02.2019 - 26.02.2019 |
| 9. | 30.01.2019 | 23.03.2019 - 31.03.2019 |
| 10. | 07.05.2019 | 13.05.2019 - 21.05.2019 |
| 11. | 07.05.2019 | 09.06.2019 - 16.06.2019 |
| 12. | 14.02.2020 | 18.02.2020 - 01.03.2020 |

| | | | | |
|---|---|---|---|---|
| 13. | 22.02.2021 | 01.03.2021 | - | 23.06.2021 |
| 14. | 25.10.2021 | 25.10.2021 | - | 21.11.2021 |
| 15. | 01.02.2022 | 10.02.2022 | - | 28.02.2022 |
| 16. | 23.03.2022 | 25.03.2022 | - | 10.04.2022 |
| 17. | 23.03.2022 | 09.05.2022 | - | 24.05.2022 |
| 18. | 23.03.2022 | 05.06.2022 | - | 15.07.2022 |
| 19. | 23.03.2022 | 25.09.2022 | - | 10.10.2022 |
| 20. | 23.03.2022 | 19.10.2022 | - | 25.11.2022 |
| **SPECIAL JUDGE (PC ACT) (CBI)-09, ROUSE AVENUE COURTS, DELHI** | | | | |
| 21. | 30.01.2023 | 12.02.2023 | - | 01.03.2023 |
| 22. | 03.04.2023 | 09.04.2023 | - | 22.04.2023 |
| 23. | 11.05.2023 | 20.05.2023 | - | 31.05.2023 |
| 24. | 12.06.2023 | 25.06.2023 | - | 17.07.2023 |
| 25. | 25.08.2023 r/w11.09.2023 | 22.09.2023 | - | 01.10.2023 |
| 26. | 16.10.2023 | 21.10.2023 | - | 01.11.2023 |
| 27. | 07.11.2023 | 11.11.2023 | - | 20.11.2023 |
| 28. | 19.12.2023 | 26.12.2023 | - | 28.12.2023 |

6. I.A.No.15521 of 2021 had been filed seeking permission to travel between 01.03.2021 and 23.06.2021 and was ordered on 22.02.2021. The petitioner's request was accepted upon imposition of stringent conditions, one of the conditions being that the passport which was in the custody of ED shall be handed over to the petitioner who shall surrender the same after the scheduled travel was concluded.

7. Even during the tenure of the passport originally, the petitioner had exhausted the pages therein and had applied to the sole respondent, Regional Passport Officer, Chennai for issuance of additional pages. A new passport

came to be issued on 05.03.2021 bearing No.Z6044131 with validity till 04.03.2022 only, that is, for a period of one year.

8. To a query from the petitioner on 09.03.2021 as to why the tenure of the passport had been curtailed and reminder dated 08.04.2021, a response was received from the respondent citing GSR 570(E) dated 25.08.1993 and the order of the Hon'ble Supreme Court dated 22.02.2021 in I.A.No.15521 of 2021 in T.C.(Crl.) No.4 of 2018, where there is a direction to permit the petitioner to travel for a stipulated length of time.

9. The petitioner relied upon the decision of the Bombay High Court in *Narendra K.Ambwani V. Union of India*[1] which the respondent distinguished vide letter dated 24.08.2021 pointing out that there were no direction by the Supreme Court in the petitioner's case to renew the passport for 10 years and hence the decision in *Narendra K.Ambwani*[2] would not apply to him.

10. The petitioner challenged orders dated 08.04.2021 and 24.08.2021 by way of a Writ Petition in W.P.No.332 of 2022 seeking a direction to the respondent to re-issue the passport with additional pages with 10 year validity. That Writ Petition was disposed on 28.02.2022 holding the action of the respondents in restricting the period of validity of the passport as

1 W.P.No.361 of 2014, decided on 13.03.2014

2 (Supra) Foot Note 1

unsustainable, as there was no reasoning in those communications and as they were issued in violation of the principles of natural justice. The respondent was directed to re-issue passport either with the existing period of validity or for 10 years as per Rule 12 of the Passport Rules, 1980 (in short 'Rules'), in accordance with law, prior to the date stipulated in that order.

11. The respondent chose the first option above and renewed the passport till 05.03.2024 as per the original date of validity, acceding to the position that the curtailment of validity at the first instance (for a period of one year till 04.03.2022) was incorrect. Order dated 28.02.2022 has become final.

12. On the anvil of the passport expiring, the petitioner had submitted a representation on 22.12.2023 putting the respondent to notice that he would be seeking renewal of passport and requesting that the same be renewed for 10 years. By way of reply dated 01.01.2024, the petitioner was asked to submit an online application for re-issue of passport with supporting documents.

13. The respondent also made it clear that he was not in a position to commit on the period of validity of the passport, as no application has been received at that juncture. The petitioner has made an application on 02.01.2024 and has now filed this Writ Petition seeking a positive direction from this

Court, that the respondent issue a fresh passport with full validity of 10 years as per the Rules.

14. The apprehension of the petitioner is premised upon the action of the respondent earlier in curtailing the passport validity period which was found to be incorrect by the Court. Further, though this Court had originally granted two options, one of extending the passport for the original period of validity and secondly for 10 years, as per Rule 12 of the Rules, the respondent had availed only the first option, thus, making it clear that his intention, according to the petitioner, was to restrict his fundamental right at all costs.

15. Mr.Wilson, learned Senior Counsel appearing for Mr.N.R.R.Arun Natarajan, learned counsel for the petitioner relies on the judgment in the case of *Maneka Gandhi V. Union of India*[3], where the right to travel had been held to be an inherent part of Article 21 of the Constitution of India. Mr.Wilson then takes me through the scheme of the Act and Rules. Rule 12 states that an ordinary passport containing 36 or 60 pages may be issued for persons other than children below the age of 15 years, which shall be in force for a period of 10 years from the date of its issue.

3 (1978) 1 SCC 248

16. In the present case, the petitioner holds an ordinary passport and the application is only for such renewal. The specific argument is that the statutory provisions governing the issuance of a fresh passport and the issuance of a passport for renewal are different and distinct. According to the petitioner, the issue of a fresh passport is governed by Section 5 of the Act, whereas the re-issue/renewal of passport is governed by Section 9.

17. For this purpose, my attention is drawn to the phrase *'issued or renewed'* contained in Section 9 which, according to the petitioner, establishes that the act of issuance of a fresh passport and the act of issuance of a passport for renewal are different and are to be treated differently.

18. The petitioner also draws attention to the passport Forms pointing out that there was a specific form in Form EA(P)-2 which is for '*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).*

19. He specifically points out the distinction between Form EA(P) – 1 which is for '*New/Re-issue/Replacement of Lost/Damaged Passport'* and Form EA(P) – 2 stating that the very fact that there are two forms, one for new/re-issue

and the second for renewal of passport, would make it amply clear that the governing parameters for both are different.

20. Moreover, in Form EA(P) – 1 for new/re-issue of passport, column 17 requires the applicant to set out various details in regard to the criminal proceedings pending in his case, whereas in Form EA(P) – 2, column 5 simply asks whether there are criminal proceedings pending against the applicant without calling for any details thereof.

21. Thus the argument is that, in the cases of renewal, the rigour is far less than what is contemplated in the case of new/re-issue of passports. The embargo laid by virtue of Section 6 and GSR 570(E) issued by the Ministry of External Affairs on 25.08.1993 (in short 'Notification') do not apply in the cases of renewal of passports.

22. The request of the petitioner to travel has found favour with the Courts thus far. In fact, the Special Judge, (PC Act), CBI-09, New Delhi while disposing four applications filed seeking permission to travel to Riyadh, Kingdom of Saudi Arabia during the period 25.12.2023 to 28.12.2023, had noted at paragraph 18 that the request of the petitioner had been accepted on numerous occasions, that he had not abused the concession or liberty granted by the Court and that the petitioner had not breached any of the conditions

imposed upon him. Thus, there is no justification for the curtailment of period of passport, particularly when the law did not permit the same.

23. Reliance is placed on the decisions in *Narendra K.Ambwani*[4], *Vangala Kasturi Rangacharyulu V. Central Bureau of Investigation*[5], *Ramesh S. Taurani V. The State of Maharashtra and another*[6], *Abbas Hatimabhai Kagalwala V. State of Maharashtra and another*[7], *Jinal D/o Nishith Dalal V. The State of Maharashtra and another*[8] *Bharat Jayvant Parekh V. Regional Passport Officer and others*[9], *Rajendra Kumar Saraf V. Union of India and others*[10], *Ganni Bhaskara Rao V. The Union of India and others*[11], *Hardik Shah V. Union of India and others*[12], *Sannith Reddy Mandhadi V. The Union of India and another*[13], *Paruchuri Ashok Babu V. Union of India*[14] and *Ashok Khanna V. Central Bureau of Investigation*[15] confirmed by the Supreme Court in SLP[16].

---

4 Supra Foot Note 1
5 2021 SCC Online SC 3549
6 2016 SCC Online Bom 9026
7 2022 SCC Online Bom 1992
8 W.P.No.174 of 2021 dated 03.02.2021
9 2021 SCC Online Bom 6732
10 2022 SCC Online Bom 8520
11 AIR2022AP108
12 AIR 2022MP57
13 W.P.No.2422 of 2024 dated 26.02.2024
14 2023 SCC Online AP 1820
15 2019 SCC Online Del 11080
16 Special Leave Petition (Criminal) Diary No.6142 of 2022 dated 02.05.2022

24. Mr.AR.L.Sundaresan, learned Additional Solicitor General, assisted by Dr.G.Babu, learned Senior Panel Counsel would argue that the scheme of the Act, insofar as it relates to fresh/re-issue and renewals, is one and the same and that there is no distinction in this regard. The provisions of Section 5 form a complete code and deal with '*Applications for passports, travel documents, etc., and orders thereon'* and this admits of all applications including applications for renewal of passport. Section 9 which has been relied on by the petitioner only deals with the form to be filed for either type of passport and applicable conditions.

25. He states that Form EA(P)-2 has been deleted with effect from 01.11.1985 and provides an extract of the Passport Rules containing a foot note, to the effect '*Omitted by G.S.R.860(E), dated 1.11.1985 with effect from the same date'*.

26. Thus, Section 6, which empowers an authority to refuse passports or travel documents applies in all situations including for renewal of passports. Section 6(2)(f) states that the passport authority shall refuse to issue a passport or travel document for visiting a foreign Country if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India.

27. The counter filed sets out the details of six criminal cases pending against the petitioner and hence Section 6(2)(f) operates as a bar, straight away, disentitling the petitioner to the issue/re-issue of the passport. The only relief available is under the Notification which requires an order of Court in order to exempt an applicant from the rigour of Section 6.

28. The respondent relies upon the decisions in *Vijay Madanlal Choudhary & ors. Vs. Union of India & Ors.*[17], *Nataraj Kumar V. The Regional Passport Officer, Chennai.*[18], *Karti P. Chidambaram V. The Regional Passport Officer, Chennai.*[19], *Prashant Bhushan V. Union of India & anr.*[20], *Santhosh Beejadi Srinivasa V. Union of India and ors.*[21]and *Kadar Valli Shaik V. The Union of India, Ministry of External Affairs, Rep. by its Secretary, New Delhi & 3 ors and batch.*[22]

29. I have heard learned counsel and have studied the matter carefully. The judgment in *re. Satwant Singh V. Assistant Passport Officer*[23] paved the way for the enactment of the Passport Act, 1967 (in short 'Act') regulating the

17 Supreme court order in I.A.No.15521/2021 in T.C.(CRL).No.04/2018
18 High Court of Madras in W.P.No.24427 of 2009 dated 28.04.2010
19 High Court of Madras in W.P.No.332 of 2022 dated 28.02.2022
20 High Court of Delhi in W.P.(C)No.1524 of 2015 dated 07.01.2016
21 High Court of Karnataka in W.P.No.24269 of 2023 dated 04.12.2023
22 In the High Court of Andhra Pradesh in W.P.No.1392 of 2023 & batch dated 07.03.2023

23 (1967) 3 SCR 525

conditions for grant and rejection of passport and setting out the parameters for such issuance.

30. Section 5 of the Act provides for issuance of passports and sub-section (2) sets out the procedure to be followed by the authority for such issuance. The authority has the discretion to issue a passport with or without endorsement or refuse to issue the passport or travel document, and in the latter, reasons are to be recorded by the authority.

31. Section 6 sets out the grounds on which the passport or travel document may be rejected. The grounds for refusal set out under Section 6(1)(a) to (d) and are not attracted in this case. In fact, the respondent does express any intention to refuse the passport per se, but only limit the period of its validity.

32. The language of the provision is very clear, that the very pendency of proceedings before a criminal Court in India would be sufficient ground to refuse issuance of a passport or travel document.

33. Section 6(2) is finite and sets out 9 specific grounds for refusal to issue a passport or travel document. In the present case, the ground invoked as against the petitioner is that there are proceedings in respect of offences alleged

to have been committed by the applicant, that are pending before a criminal Court in India.

34. The first issue that thus arises is as to whether Section 6 applies only in the case of issuance of new passports or whether it can be invoked in cases of re-issue/renewal of passport also.

35. In this context, Mr.Sundaresan would submit that Section 5 applies to all situations of passport issuance, including new and renewal, whereas, Mr.Wilson would argue that Section 5 applies only to cases of new issuance and that re-issue/renewal would be governed by Section 9 of the Act.

36. Section 9 is entitled '*Conditions and forms of passports and travel documents'* and sets out the conditions subject to and the form in which a passport or travel document shall be *'issued or renewed'* as prescribed. The first proviso to Section 9 says that different conditions and forms may be prescribed for different classes of passports or travel documents or different categories inter se.

37. The second proviso states that in addition to the prescribed conditions, the passport authority may, with the previous approval of the Central Government impose additional conditions as well, in specific cases.

The categories of passports have been adumbrated in Section 4, being ordinary passport, official passport and diplomatic passport.

38. In my understanding, Section 9 only clarifies that each category of passport as set out under Section 4 is a distinct type and shall carry the form and conditions as prescribed for that category of passport. It further clarifies under the second proviso that the conditions that may be imposed for each category of passport holder may vary and that additional conditions may also be imposed with the sanction of the Central Government.

39. Section 9 is thus only an enabling provision to clarify the form, and enable the imposition of conditions, and not a substantive provision dealing with passport renewals. The mere use of the phrase *'issued or renewed'* in Section 9 would not alter this position or convert it to a substantive provision dealing with a distinct class of passports.

40. Section 5, on the other hand, is a comprehensive provision which deals with *'Applications for passports, travel documents, etc. and orders thereon'*. There is no distinction made in Section 5 between a passport issued for the first time and one that is issued on renewal. The procedure set out under Section 5(2) is the same both in cases of a new as well as renewal passport.

41. In fact, barring Section 5, there is no other substantive provision providing for the issuance of passports and thus my conclusion on this issue is that Section 5 is a comprehensive provision dealing with both issuance of new as well as renewal passports. The limited purpose of Section 9 is to draw attention to the differences in the Forms and the conditions attached to the passports.

42. Section 6 reads thus:

> ***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.*

43. The ground for refusal under Section 6(2)(f) thus stands attracted in this case, and what comes to the aid of an applicant who attracts this ground of refusal is Notification in GSR 570(E) dated 25.08.1993, extracted below:

*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)*

44. The above Notification has been issued in public interest and provides remedy/relief from the rigour of Section 6(2)(f) in certain specified conditions as enumerated under clauses (a) to (d). Thus, a passport may be issued despite the bar under Section 6(2)(f) upon permission being obtained from the criminal Court for the purposes specified by the Court or, if no period has been specified, for a period of one year.

45. In the event the Court has granted permission to travel abroad for a period less than one year but has not specifically spoken about passport validity, the passport has to be issued for one year or if the permission to travel exceeds one year, the passport shall be issued for the actual period of travel permitted.

46. Clauses (b) and (c) enable renewal of passport for which permission has been obtained by the Court for one year at a time in certain specified

conditions. Clause (d) requires that the applicant furnish an undertaking that he will appear before the Court at any time during the continuance of the passport issued. The legal position is thus that the Passport Act imposes an absolute bar for the issuance of a passport where the applicant faces criminal trial. Some relief is provided under the Notification upon satisfaction of the conditions set out therein.

47. Now I come to the cases cited at the bar. The oft quoted judgment in matters of issuance of passport is *Vangala Kasturi Rangacharyulu*[24]. In that case, the applicant was convicted for various offences under the Indian Penal Code read with Prevention of Corruption Act, 1988 and his appeal was dismissed by the High Court. The sentence was reduced by the High Court to one year. He challenged the judgment of the High Court by way of Special Leave and leave was granted by the Supreme Court.

48. Pending appeal, the applicant moved an application to the Central Bureau of Investigation for no objection for renewal of his passport. The application was not processed and the judgment of the Supreme Court records that the non-processing was on account of the bar under Section 6(2)(f) of the Act.

24 Supra Foot Note 5

49. The Court considered Section 6(2)(f), but found that the bar under that Section related only to a circumstance where the applicant was facing trial. In that case, while the conviction of the appellant continued till the disposal of the Criminal Appeal, the sentence was only for one year. Thus the Court held that the renewal of the passport could not be rejected on the ground of pendency of the criminal appeal and directed the authorities to renew the same.

50. Though this judgment has been cited by the petitioner, it would have no application in this case as the criminal cases which this Writ Petitioner is defending are pending at various stages. The parties have cited two sets of cases leading to diametrically opposing conclusions on the legal point under consideration. In *Narendra K.Ambwani*[25], a Division Bench of the Bombay High Court considered a prayer for mandamus for extension of validity of passport by 9 years/19 years. The challenge was to a passport that had been issued only for a period of one year.

51. The Court makes reference to Rule 12 which states that an ordinary passport has to be issued either for a period of 10 or 20 years and thus concluded that the Passport Officer did not have the discretion to renew the same for any other period than as stipulated under the Rules. In concluding so,

25 Supra Foot Note 1

they rely on an order passed by a co-ordinate Bench in the case of *Anil Vasantrai Upadhyay, Company Secretary of M/s.Johnson & Johnson Ltd.*[26].

52. The decisions in *Jinal D/o Nishith Dalal*[27], *Bharat Jayvant Parekh*[28], *Rajendra Kumar Saraf*[29] and *Roshan Lawrence Menezes V. Union of India and others*[30] have followed the decision in the case of *Narendra K.Ambwani*[31].

53. In *Paruchuri Ashok Babu*[32] the challenge was to restriction of the term of passport to one year and a direction that the passport be issued for 10 years. Relying on Section 7 of the Act which required that any restriction of passport term must be supported by reasons, the Court found that there were no reasons as to why the passport had been restricted to a shorter period, and directed the authorities to re-consider the issuance of the passport, in accordance with law.

54. In *Sannith Reddy Mandhadi*[33] and *Hardik Shah*[34], the decision in *Narendra K.Ambwani*[35] and *Vangala Kasturi Rangacharyulu*[36] have been

26 Writ Petition (Lodging) No.2520 of 2006 dated 13.11.2006
27 Supra Foot Note 8
28 Supra Foot Note 9
29 Supra Foot Note 10
30 Writ Petition (L) No.699 of 2020)
31 Supra Foot Note 1
32 Supra Foot Note 14
33 Supra Foot Note 13
34 Supra Foot Note 12
35 Supra Foot Note 1
36 Supra Foot Note 5

followed. In *Abbas Hatimabhai Kagalwala*[37], there had been an application for renewal of passport which had been rejected on the ground that the petitioner must obtain permission from the Court where the criminal case was pending.

55. The Division Bench of the Bombay High Court (headed by the present Chief Justice of the Madras High Court) held that no such permission was required for renewal of passport. However, permission from the criminal Court would be required if the applicant intended to travel abroad. Similar orders have been passed by the Courts in Madras jurisdiction also and those orders have attained finality.

56. In the case of *Ashok Khanna*[38], a distinction has been made between issuance of a new passport and renewal of passport. There is an observation at page 21 of the SCC Online report that, as there is a separate provision for renewal of the passport, Section 6 is not applicable in such cases. The Bench relies on a decision of the co-ordinate Bench in *Ashok Kumar Sharma V. The Regional Passport Officer*[39].

57. An appeal was filed by the Central Bureau of Investigation challenging the aforesaid order before the Supreme Court in SLP (Criminal) Diary No.6142 of 2022. Vide order dated 02.05.2022, the Supreme Court has

37 Supra Foot Note 7
38 Supra Foot Note 15
39 (2019) 256 DLT 437

expressed its disinclination to entertain the SLP and has disposed the same, leaving the question of law open. They make it expressly clear that the order of the High Court in *Ashok Khanna* will be restricted to the facts and circumstances of that case only, qua the Central Bureau of Investigation.

58. Similar is the decision in *Ganni Bhaskara Rao*[40], where the Andhra Pradesh High Court held that Section 6 would apply only to issuance of a fresh passport and not to cases of renewal. In *Ramesh S. Taurani*[41], the Court, considering the past record of that applicant, found it appropriate to deal with the request for travel on merits, and allowed the same, directing renewal of the passport for 10 years.

59. The respondent for his part, relies first on a decision of this Court in *Nataraj Kumar*[42]. In that case too, the challenge was to restriction of validity of the passport to one year. The Court considered Sections 6, 7 and 10 of the Act, Rule 12 of the Rules and the Passport Manual, 2001.

60. The conclusion was that passport may be given to an accused only for a limited period and that too with an undertaking that the holder of the passport shall appear before the Court at any time during the continuance of the

40 Supra Foot Note 11
41 Supra Foot Note 6
42 Supra Foot Note 18

passport. The Court opined that this position would continue till such time the applicant was acquitted.

61. In *Santhosh Beejadi Srinivasa*[43], the Karnataka High Court, after considering several decisions by the coordinate Benches of that Court concluded that both issuance and re-issuance would be subject to the rigour of Section 6(2)(f) of the Act. On the facts of that case and having regard to the charges as against the applicant there, the prayer for issuance of a passport with validity of 10 years was rejected and the applicant was given liberty to approach the criminal Court for issuance of a short validity passport. The Court made it clear that the criminal Court would consider the reasons put forth for travel on their merit, and shall not reject the application for short validity passport merely on the ground of pendency of the criminal case.

62. In *Kadar Valli Shaik*[44] the Andhra Pradesh High Court also concluded that Section 5 includes cases of issuance as well as renewal of passport and as a consequence, Section 6 and the grounds for rejection thereunder, would apply in both circumstances.

63. The provisions of Section 6(2)(f) were itself the subject matter of challenge in *Prashant Bhushan*[45] and have been upheld. In that judgment, the

43 Supra Foot Note 21
44 Supra Foot Note 22
45 Supra Foot Note 20

petitioner had moved the appropriate authority for re-issue of passport, since the leaves in the passport booklet had been exhausted. While re-issuing the passport, the validity had been curtailed to one year only. By referring to the Notification, the authority had stated that the request of the applicant for re-issue with full validity could not be acceded to until and unless the Court issued an order to that effect.

64. The prayer was originally for a declaration that the Notification was unconstitutional and void and was subsequently amended by including a prayer to quash Section 6(2)(f) on the ground that it was violative of Article 21 read with Article 14 of the Constitution of India.

65. The Division Bench noticed that the curtailment under Section 6(2)(f) was not absolute but has to be read with Section 22 which empowered the Executive to grant exemption to any person or class of persons. It is in exercise of power under Section 22 that the Central Government has carved out certain exceptions. The Notification confers powers of exemption of an applicant from the rigour of Section 6(2)(f) of the Act upon satisfaction of some conditions.

66. The exercise of power in this regard is itself not final but subject to remedies provided under the law. In fact, it is only the Notification which

provides some respite for an applicant who would otherwise be subject to the full rigour of Section 6(2)(f). The basic premise on which Section 6(2)(f) operates is that allowing a person with criminal charges pending against him to travel abroad without any check would be against the interests of the State.

67. On a conjoint reading of Section 6(2)(f) with the Notification, the Division Bench in *Prashant Bhushan's*[46] case held that the power under Section 6(2)(f) was not unfettered but was tempered with the availability of the power under Section 22 to provide respite by exempting certain classes of applications.

68. The reliance of the petitioner on the judgment in the case of *Maneka Gandhi*[47] would be of no avail in the present case. In that case, the challenge was to the impounding of the passport without any opportunity having been granted to that applicant, prior to such impounding. It was in that context that the Hon'ble Supreme Court held that such impounding was contrary to the principles of natural justice, laying down the proposition that the right to travel was an inherent part of the right to personal liberty under Article 21 of the Constitution of India.

46 Supra Foot Note 20

47 Supra Foot Note 3

69. In the present case, it has never been the stand of the respondent that the passport is to be impounded or that it was not under consideration for renewal. In fact, the respondent never indicates any intention to reject the application for renewal but only maintains that the tenure must be curtailed to one year as against 10 years. Thus, the judgment in re. Maneka Gandhi does not advance the case of the petitioner as the right of this petitioner to travel is not per se, under threat.

70. I have carefully studied the two lines of cases that have been presented for my appreciation. I am convinced that Section 5 is a substantive provision that deals with all cases of passport issuance, both new as well as renewal. From May, 2010, there is no distinction between cases of re- issue and renewal, as both involve issuance of a new passport booklet. This factual position reveals itself from the Passport Manual 2020[48], circulated by the respondents.

71. This procedural clarification amplifies, and is in line with the legal position that there is only one substantive provision under the Act dealing with issuance of Passports and that is Section 5. The reference to *'issued or renewed'* in Section 9 is incidental, as that provision deals only with the forms

48 Seventh Edition (updated upto 31st May 2020) issued by the Government of India, Ministry of External Affairs New Delhi – restricted copy – presented for appreciation of the Court during the hearing and returned to the respondent when this order is pronounced).

of passports and travel documents and the conditions applicable to the same. There is no indication whatsoever in that provision, to the effect that it sets out and governs a separate procedure for renewal/re-issue of passports.

72. On the contrary, Section 5 deals with the minute procedure to be followed in cases of issuance of passports in general and thus encompasses within its ambit all procedures for such issuance, including both new passports and renewals. Thus, the renewal of passport as sought for by the petitioner would be governed by section 5 and as a consequence, the grounds for refusal under section 6 are also attracted. I find support in this regard from the judgments of Karnataka High Court in the case of *Santhosh Beejadi Srinivasa*[49] and of the Andhra Pradesh High Court in the case of *Kadar Valli Shaik*[50].

73. That apart, the difference in language between Form EA(P) -1 relating to fresh passport applications and EA(P)-2 renewal passport applications is also unavailable to the petitioner now, in view of the omission of Form EA(P)-2 dealing with applications for renewal/re-issue vide GSR 860(E) dated 01.11.1985, with effect from the same date.

74. On and with effect from the aforesaid date, there has been a standardization of the passport application form and EA(P)–1 has been adopted

49 Supra Foot Note 21
50 Supra Foot Note 22

as the application form for all passports, whether new or renewal. Thus, serial number 17 of Form EA(P)-1 requiring minute details of criminal cases instituted as against the applicant and such pendency are required to be furnished in cases of renewals as well.

75. My conclusion is thus, that, Section 5 applies to both new as well as renewal of passport, and the grounds for refusal set out under Section 6(2) would apply equally to both situations, issuance of new as well as renewal passports. There is thus no merit in the submission of the petitioner that the grounds for refusal set out under Section 6(2) are unavailable in the case of passport renewals. This issue is answered in favour of the respondent.

76. I now advert to the curtailment of period of validity in the present case. Section 7 of the Act provides for duration of passports and travel documents and states that a passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed. It also provides for different periods to be prescribed for different classes of passports or travel documents. This provision then, takes us to Rule 12 under which an ordinary passport containing 36 pages shall be in force for a period of 10 years from the date of its issue.

77. Section 7 states that a passport or travel document may be issued for a shorter period than the prescribed period if (a) such request is made by the applicant; or (b) if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.

78. Section 8 deals with extension of period of passport and states that where a passport has been issued for a period shorter than that prescribed under section 7, then, such shorter period shall be applicable for all extensions unless the passport authority, for reasons to be recorded in writing, otherwise determines.

79. In other words, if the petitioner's passport were to be curtailed for a period of one year, then all extensions would only be for a period of one year, unless the authority concerned passes an order assigning reasons as to why the extension was made for a period other than one year. This reiterates the position that the curtailment must itself be made only for reasons to be set out in writing.

80. Section 10 which deals with variation, impounding and revocation of passports and travel documents states that a Passport Authority having regard to the provisions of Section 6(1) or any Notification under Section 19 which

deals with passports and travel documents to be invalid for travel to certain countries, may vary or cancel the endorsement on a passport or travel document, or may vary or cancel the conditions subject to which a passport or travel document has been issued, with the previous approval of the Central Government and for that purpose, may impound the passport.

81. Section 10(2) states that the conditions on a passport or travel document may be varied on the application of a passport holder with the previous approval of the Central Government. Section 10(3) vests wide power in a passport officer to impound or cause to be impounded a passport or travel document if the authority was satisfied that the holder of the passport or travel document is in wrongful possession thereof or if the passport or travel document was obtained by suppression of material information or wrongful information provided by the holder, if the impounding is necessary in the interests of sovereignty and integrity of India, its security, friendly relations to a foreign country, or in public interest, if the passport holder has been convicted for any offence involving moral turpitude and sentenced to two years imprisonment or more in respect thereof, if proceedings in respect of the offence alleged to have been committed by the holder of the passport or travel document was pending before the criminal Court in India, if any of the

conditions of the passport or travel document has been contravened, if a passport holder has failed to comply with a notice requiring him to deliver the same to the authority or if there is a pending warrant against a passport holder issued by a Court which prohibits the person from departure from India.

82. Section 10-A provides for suspension of passports or travel documents in certain cases and states that without prejudice to the general provisions for impounding of passport, the Central Government or the designated officer may, if satisfied, suspend a passport or travel document for a period not exceeding four weeks.

83. Thus, the Scheme of the Act contains a carefully crafted in-built code to protect against the possible misuse of passport. The grounds for non-issue are set out under Section 6(2) and the measures to protect against possible misuse are set out under Sections 7, 8 and 10.

84. In this case, we are concerned with curtailment of period of passport which is permissible in terms of Section 7 upon reasons to be communicated in writing to the applicant. A query was put by the Court as to whether the Writ Petition was pre-mature as no order had been passed on the application of the petitioner seeking extension for the full period of ten years.

85. Mr.Sundaresan orally, as well as the counter in writing, confirm the apprehensions of the petitioner to the effect that though the passport was intended to be issued, it would have contained only a shorter validity period of one year. The counter, at paragraph 12, confirms this position in the following terms:

> *"Furthermore, only one year Short Validity Passport may be issued to the applicant as per clause a(ii) of GSR 570(E) unless the court order specifies a period for which the passport has to be issued, in which case clause a(i) of GSR 570(E) will be applicable."*

86. There is thus no purpose to be served in directing the respondent to dispose the petitioner's application, as, the result of such a direction is a foregone conclusion. Section 7(b) permits the issuance of a short validity passport only in the event reasons have been assigned for such issuance. The counter does not set out any reasons at all for such curtailment, and there is no elaboration of this aspect of the matter by the learned ASG orally either, despite a specific query posed to him in this regard.

87. Though the pendency of the criminal cases is admitted, the petitioner has approached the Courts several times in the interim seeking permission to travel. Such permission is seen to have been granted and there is also a finding in the order of the learned Special Judge (PC Act) (CBI) – 09 dated 19.12.2023

to the effect that the petitioner has not breached any of the conditions imposed by the Courts thus far.

88. Thus, and also for the reason that the proposal to limit the period of passport is bereft of any reasoning, I see no impediment for the issuance of a passport with regular validity of 10 years and direct the respondent to do so forthwith. The passport, once received by the petitioner, shall immediately be surrendered to the Court in whose possession it has been thus far.

89. This writ petition is disposed in terms of this order with no order as to costs.

**28.03.2024**

Index : Yes
Speaking Order
Neutral citation:Yes
Sl

To

The Regional Passport Officer, Chennai
Regional Passport Office,
No.2 & 3, 4th Floor,
Old No.785, New No.158,
Rayala Towers,
Anna Salai, Chennai – 600 002

**DR.ANITA SUMANTH,J.**

**sl**

**WP.No.1190 of 2024**

28.03.2024