

Nedurumalli Srinivasulu Reddy vs Union Of India on 20 September, 2024

APHC010403542024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3329]

FRIDAY ,THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 20702/2024

Between:

Nedurumalli Srinivasulu Reddy

...PETITIONER

AND

Union Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. PAPUDIPPU SASHIDAR REDDY Counsel for the Respondent(S):

1.

The Court made the following: ORDER:

This writ petition is filed under Article 226 of the Constitution of the India seeking the following reliefs:-

"to issue a writ in the nature of Writ of Mandamus and/or any other appropriate writ /Writs/direction or Order declaring the inaction of the respondents more particularly Respondent No.2 in not renewing/reissuing the petitioners Passport bearing No. K3645416 pursuant to the application vide File number VJ6074619009122 dated 23.09.2022 for a period of 10 years on the ground of pending criminal case as illegal arbitrary unconstitutional and unjust and in violation of Article 14, 19 and 21 of the Constitution of India and violation of principles of natural justice and contrary to the provisions of the Passports Act 1967 and consequently direct the 2nd respondent to renew/reissue petitioners passport for a period of 10 years bearing No K3645416 pursuant to the application dated 23.09.2022 so as to facilitate my travel and pass such other order".

2. The case of the petitioner is as follows:-

3. Petitioner herein applied for renewal of the passport bearing No. K3645416, which was initially issued on 15.06.2012 and was valid until 14.06.2022. After the expiry of the passport, the petitioner filed an application for its renewal on 23.09.2022 before the 2nd respondent.

4. Later, the 2nd respondent herein issued a show cause notice dated 16.01.2023 seeking clarification regarding the renewal of the passport as it is evident from the police verification that the petitioner has been involved in a criminal case registered at Nellore Police Station and the same is pending vide C.C.No.112 of 2021 before the V Additional Judicial Magistrate of First Class, Nellore, SPSR Nellore District. Pursuant to which the petitioner submitted an explanation dated 14.07.2023 along with the renewal application to the Respondent Authorities.

5. Pursuant to the petitioner's explanation, respondent No.2 issued a show cause notice dated 16.01.2023, stating that the petitioner has suppressed the material information regarding pendency of criminal case in his passport application and a complaint had been filed against him by the Food Safety Officer, Nellore, alleging offenses punishable under sections 3(1)(zz)(viii), 26(2)(i), 27(1), and 59(i) of the Food Safety and Standards Act, 2006, read with Regulation 3.1.2(6) of the Regulations, 2011. After coming to know about his crime, he had filed a quash petition, CRLP No.1950 of 2023, on 16.03.2023 before this Court, and a stay was granted vide proceedings in C.C.No.112 of 2021, which is pending before the V Additional Judicial Magistrate of First Class, Nellore, SPSR Nellore District, for appearance of the petitioner which was subsisting till date.

6. The learned counsel for the petitioner submits that the Respondent Authorities more particularly respondent No.2 is not accepting the representation of the petitioner and denying the renewal of the passport of the petitioner is nothing but an infringement of Fundamental Rights guaranteed under Articles 19 and 21 of the Constitution of India. Hence, the writ petition.

7. Learned counsel for the petitioner submits that it is the fundamental right of the petitioner to hold a passport and freedom to go abroad as per his wish as held in catena of judgments rendered by the Hon'ble Apex Court particularly in Maneka Gandhi vs. Union of India¹.

8. Learned counsel for the petitioner also relied upon the ratio laid down by this Court in Dr. Venkata Rao Vara and Union of India and others². In view of the settled principles of law, the petitioner is entitled for renewal of the passport.

9. On the other hand, learned counsel for the Respondents submitted that as per the Ministry's GSR 570(E) Notification dated 25.08.1993, when a criminal case is pending against the applicant in any Criminal Court, the applicant has to produce either an Acquittal Order or No Objection Certificate 1978 AIR 597 W.P.No.4196 of 2024, dated 20.02.2024 (NOC) from the Court below where case is pending along with GSR 570(E) undertaking. Hence, if the Court gives permission to the applicant to travel abroad and directs the Respondent Authorities to issue passport, the Respondents will comply the order in accordance with the GSR 570(E).

10. It is also further contended that in the light of the decision of the learned Judge in Khadar Valli Shaik's Case 3 , the petitioner is required to obtain orders from the Court below, where the C.C is pending against him.

11. Heard the learned counsel for the petitioner and the learned counsel for the Respondents and also perused the material placed on record.

12. As contended by the petitioner that this Court was pleased to pass an order of stay of all further proceedings dated 16.03.2022 in W.P.No.1950 of 2023 against C.C.No.112 of 2021, as such the Court below would not consider an application/petition much less petition to granting NOC as directed by 2nd respondent is valid and sustainable for this reason until and unless the interim orders are vacated, petitioner for NOC cannot be considered. As such the criminal proceedings were stayed the respondent shall consider the claim of the petitioner without insisting NOC from the Court below for certain period.

13. In Kadar Valli Shaik's Case(3 Supra), the learned Judge had dealt with various case law on the subject and passed a detailed order., the operative portion of which reads as follows:-

W.P.No.1392 of 2023, dated 07.03.2023

(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.

14. Further in W.P No.30373 of 2022, a learned Judge of this Court disposed of the same vide orders dated 28.09.2022, the relevant portion of which reads as follows:-

"9. A learned Single Judge of the High Court at Madras dated 04.02.2021 in W.P.No.20058 of 2020 held that mere pendency of a First Information Report cannot be the legal basis for denial of issuance of a regular passport to the petitioner and that it is only after cognizance is taken by an appropriate Court that it can be held that criminal proceedings have commenced and issuance or renewal of the passport would be depend on no objection being given by the concerned Court.

10. The Central Government has also issued G.S.R.No.570(E), dated 25.08.1993 stipulating that a no objection order would be required from a Court only if it falls within the ambit of Section 6(2)(f)."

11. In view of the fact that Section 6(2)(f) would arise only when there is a pending proceedings before the Criminal Court after cognizance is taken, it would have to be held that as of now there is no pending criminal proceeding before the Court."

15. In Narige Ravindranath vs. The Union of India and others⁴, the Higher Court for the State of Telangana held as follows:

6. The Apex Court in the judgment reported in 2013 (15) SCC page 570 in Sumit Mehta v State of NCT of Delhi at para 13 observed as under:

"The law presumes an accused to be innocent till his guilt is proved. As a presumable innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution of India."

16. The Division Bench of the Apex Court in its judgment dated 09.04.2019 reported in LAWS 2019(2) SCC online SC 2048 in Satish Chandra Verma v Union of India (UOI) and others at para 4 observed as under:

"The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and W.P.No.25141 of 2023, dated 03.10.2023 friendship which are the basic humanities which can be affected through refusal of freedom to go abroad and this freedom is a genuine human right."

17. In Kasturi Rajupeta vs. The Union of India and others⁵, the High Court for the State of Karnataka held as follows:-

(c) The impugned Endorsement is structured on the ground that a criminal case is pending inter alia against the petitioner in C.C.No.11606/2020, in the Court of learned XVII ACMM, Bengaluru City. The same having been challenged in W.P.No.14431/2020, a Co-ordinate Bench of this Court has stayed all further proceedings before the Trial judge vide interim order dated 10.12.2020, is not in dispute. That being the position, the respondent- RPO is not justified in asking the petitioner to go to the learned Trial Judge to seek permission to travel aboard in the 'stayed proceedings'. The Notification dated 25.08.1993 purportedly issued under Section 22 of the Act, normally expects an order of the kind and this norm is applicable in ordinary circumstances, in the sense that the criminal proceedings are not stayed and hands of the Trial Judge are free to work, and not in the circumstances that have tied his hands. A contention to the contrary amounts to

asking the citizen to do an impossible act. Ordinarily, an act W.P.No.25141 of 2023, dated 03.10.2023 impossible of performance is treated as either having been accomplished or waived vide *lex non cogit ad impossibilia* which Maxwell on Interpretation of Statutes 12th Edition, Butterworths Wadhwa at pages 326 to 328 extensively discusses. Thus, the insistence on production of an order as mentioned in the impugned Endorsement is not justified. (4) In the above circumstances, this petition succeeds. A Writ of Certiorari issues quashing the impugned Endorsement. A Writ of Mandamus issues to the 3rd respondent-Regional Passport Officer to consider petitioner's subject application in light of the observations hereinabove made and without insisting upon any order from the Criminal Court concerned. Time for compliance is six weeks.

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

18. In the light of the settled legal position, this Court is inclined to dispose of the writ petition with a direction to Respondent No.2 to consider the application of the petitioner, and renew his passport, in accordance with law, without raising any objection relating to the Criminal Case vide C.C.No.112 of 2021 on the file the V Additional Judicial Magistrate of First Class, Nellore, SPSR Nellore District, within two (02) weeks from the date of receipt of copy of this order.

19. Further, if the petitioner intends to travel abroad, he shall obtain prior permission from the Court concerned for such travel and shall appear before the trial Court, whenever his presence is required by the Court.

20. However, this order shall not preclude the prosecution from taking such steps as are necessary to ensure the presence of the petitioner for any other purposes. There shall be no order as to costs.

Consequently, miscellaneous applications pending if any, shall stand closed.

VENKATESWARLU NIMMAGADDA, J 20.09.2024
Klk HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA WRIT PETITION NO: 20702 of 2024 20.09.2024 klk