



IN THE HIGH COURT OF ANDHRA PRADESH

W.P. No.30286 of 2021

Between:

Marupudi Dhana Koteswara Rao
S/o. Uma Maheswara Rao
Hindu, aged about 61 years, Properties
R/o. D.No.3-79, Vantena Down
PENAMALURU - 521139
Penamaluru Mandal
Krishna District

.... Petitioner

AND

Union of India
rep. by its Principal Secretary
Ministry of External Affairs
South Block
NEW DELHI – 110 001 and four others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **06.05.2022**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J



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*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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.... Respondents

! Counsel for Petitioner

: Sri G.V.R. Choudary

^ Counsel for Respondents

**: Assistant Solicitor General
representing the respondents**

< Gist:

> Head Note:

? Cases referred:

- 1) 265(2019)DLT614 = MANU/DE/3767/2019
- 2) AIR 1967 SC 1836 = MANU/SC/0040/1967
- 3) MANU/SC/0133/1978

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****Writ Petition No.30286 of 2021****ORDER:**

The petitioner prays for a writ of mandamus declaring the action of respondents 1 to 5 in refusing to renew his passport bearing No.K1839017 which was issued on 23.02.2012 and expired on 22.02.2022 as illegal, unjust and violative of Article 21 of the Constitution and for a consequential direction to the respondents to renew his passport.

2. The petitioner's case succinctly is thus:

(a) The petitioner is a resident of Penamalur in Krishna District. The petitioner holds passport bearing No.K1839017 which was issued on 23.02.2012 and expired on 22.02.2022. The petitioner submitted application dated 10.12.2021 for renewal of the passport. However, the 5th respondent declined to consider his application for renewal of passport on the ground that the petitioner is involved in two criminal cases i.e., (1) CC No.161/2020 on the file of Ist Metropolitan Magistrate, Vijayawada for offences under sections, 341, 143, 188, 290 r/w 149 of IPC wherein the petitioner is accused No.3 and (2) SC No.4/2019 on the file of IV Metropolitan Sessions Judge, Vijayawada for the offences under sections 147, 148, 324, 307, 341, r/w 149 of IPC where the petitioner is arrayed as accused No.2.

(b) Questioning the summons issued to him in SC No.4/2019, the petitioner filed Criminal Petition No.2291/2019 u/s 482 Cr.P.C before



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this Court to quash the proceedings and this Court by its order dated 01.10.2020 granted interim orders staying all further proceedings in SC No.4/2019.

(c) Petitioner's second daughter is residing in United States of America and the petitioner has to visit her to attend housewarming ceremony of his daughter. Therefore the petitioner needs renewal of the passport at the earliest.

(d) Petitioner contends that under Section 6(2)(f) of the Passport Act, 1967, the passport authority cannot refuse renewal of passport on the ground that pendency of criminal cases. Hence the writ petition.

3. Learned counsel for the petitioner Sri G.V.R Choudary would submit that what is required by the petitioner is the renewal of the passport and therefore the passport authorities shall, while considering the application for renewal, scrupulously act within the parameters of the Passport Act, 1967 either in granting or refusing renewal. Without issuing any written order, it was orally informed to the petitioner that because he was involved in two criminal cases which are pending for trial, his renewal was rejected. He would submit that application for renewal of the passport has to be made in Form EA(P)-2 prescribed under the Schedule III of the Passport Act and as per the Clause-5 of the said Form, the passport authority can only seek for information as to any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under Section 10(3) of the passport Act. Learned counsel would submit that the said clause did



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not specifically mention that if criminal cases pending against the applicant, the authorities can refuse the renewal. In this regard, he relied upon a decision in **Ashok Khanna V. Central Bureau of Investigation**¹ case. He thus prayed to allow the writ petition. While thus prayed to allow the writ petition, the learned counsel would request that a direction may be issued to passport authorities to renew his passport and if any condition is imposed on the petitioner to appear before the Criminal Courts and execute bonds for his due return to the Country and appear in the concerned criminal cases, he will abide.

4. Per contra, learned Assistant Solicitor General argued that since the petitioner is involved in two criminal cases, it is apposite for him to obtain NOC from the concerned Criminal Courts so as to enable the passport authorities to renew his passport.

5. The point for consideration is whether there are merits in the writ petition to allow ?

6. **POINT:** In its wide spectrum, the personal liberty envisaged in Article-21 of the Constitution of India encompasses the right to travel abroad for any lawful purpose such as for tourism, employment, education, to meet the friends and relations etc., and the State cannot smother such a right except according to the procedure established by

¹ 265(2019)DLT614 = MANU/DE/3767/2019



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law. It was so held by Hon'ble Apex Court many a times. In **Satwant**

Singh Sawhney v. D. Ramarathnam² case it was held thus:

“For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Art. 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating depriving persons of such a right.”

Similarly in a decision rendered by 7 Judge Bench of Apex Court in **Maneka Gandhi v. Union Of India**³ case it was observed thus:

“Now, it has been held by this Court in Satwant Singh's case that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh's case was struck down as invalid. It will be seen at once from the language of Article' 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State Law'. Vide A. K. Gopalan's case. Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure.”

7. It has now to be seen whether the oral rejection made by the respondent authorities to renew the passport of the petitioner on the alleged ground of his involvement in two criminal cases is backed by any law.

8. In this context, a perusal of the decision in **Ashok Khanna**'s case (1 supra) cited by the petitioner would show that the facts are more or less similar. In that case the petitioner was convicted for the offences

² AIR 1967 SC 1836 = MANU/SC/0040/1967

³ MANU/SC/0133/1978



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under Section 13(a)(d) of the Prevention of Corruption Act and sentenced to undergo 2½ years of imprisonment and with fine of Rs.20,000/-. The petitioner therein possessed valid Indian Passport which was due to expire on 01.06.2019. He used to frequently travel to USA to see his daughter, hence he applied for renewal on 05.02.2019. However, the authorities opposed the application stating that as per Section 6 of the Passport Act, 1967, if conviction was for more than two years, then for renewal of passport, permission was required from the Court concerned. Aggrieved, he approached the High Court of Delhi. In that context, learned single Judge of Delhi High Court while referring to various provisions of Passport Act, observed that Section 6 of the passport Act, 1967 has no application to the cases where the application was filed for renewal of the passport and not for issuance or re-issuance of passport. Learned Judge held that Rule-5 of Passport Rules, 1980 applies for the renewal of the passport and as per Rule-5, the application Form EA(P)-2 is the relevant Form which is applicable for applying renewal. In the said Form at Clause No.5, it was only mentioned whether any criminal proceedings were pending against the applicant in a Criminal Court in India or any other disqualification was acquired by him under Section 10(3). Except that there was no condition mentioned therein to obtain No Objection Certificate from the concerned Criminal Court. Learned single Judge ultimately held that the authorities misread the provisions and insisted the applicant/petitioner to obtain NOC from the concerned Criminal



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Court. He ultimately directed the passport authorities to renew the passport of the petitioner.

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.

(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.

10. In the result, this writ petition is disposed of directing the petitioner to approach the concerned Criminal Courts where he is appearing as accused and seek for NOC for renewal of his passport, in which case the concerned Courts shall consider his application and pass



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appropriate order and in case they issue NOC, they may impose suitable conditions. Such orders have to be passed by the concerned Courts within one week from the date of filing of applications by the petitioner. On production of NOCs by the petitioner, the respondent authorities shall consider his renewal application and issue renewal of the passport within two weeks from the date of production of NOCs. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

06.05.2022
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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

W.P No.30286 of 2021

06th May, 2022

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