IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.2422 OF 2024

Between:

Sannith Reddy Mandhadi

... Petitioner

And

The Union of India & another

... Respondents

JUDGMENT PRONOUNCED ON: 26.02.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether Their Lordships wish to see the fair copy of the Judgment? : Yes

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SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.2422 OF 2024

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< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.N.Sreedhar Reddy

^ Counsel for Respondent : Mr.K.V.V. Vedantha Charya

? Cases Referred:

(1) 2020 Crl.L.J. (SC) 572
(2) 2013 (15) SCC page 570
(3) 1978 (1) SCC 248
(4) 2019 SCC online SC 2048
(5) 2022 SCC online P & H 1176
(6) 2023 (4) ALT 406 (AP)
(7) 2014 SCC OnLine Bom 356
(8) 2016 SCC OnLine Bom 14539

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No.2422 of 2024

ORDER:

Heard Mr.N.Sreedhar Reddy, learned counsel appearing on behalf of the petitioner and Mr.K.V.V. Vedantha Charya, learned counsel appearing on behalf of the respondents.

2. The Petitioner approached the Court seeking prayer as under :

> "...to issue a Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring the action of 2nd Respondent in not renewing the passport of petitioner made vide File No.HY7075704548723 dated 22.8.2023, as illegal, arbitrary and without jurisdiction and to consequently direct the Respondents to forthwith renew the passport of the petitioner made vide File No. HY7075704548723 dated 22.8.2023 for a period of 10 years, under Section 10 of Passports Act, 1967 and under Rule 12 of Passport Rules, 1980 without reference to the criminal proceedings pending against the petitioner in C.C.No.3674 of 2022 on the file of the Hon'ble II Additional Junior Civil Judge cum II Additional Metropolitan Magistrate at LB Nagar and also the Gazette Notification issued by the Central Government vide GSR No 570(E) dated 25.8.1993..."

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:

a) The petitioner was issued Passport bearing No. L8717578 on 29.04.2014 which is valid up to 28.04.2024. As the petitioner's passport was about to expire, an application for its renewal was filed vide File No. HY7075704548723 dated 22.08.2023 and the 2nd respondent, vide letter in Ref.No. SCN316068225/23 dated 28.10.2023 sought clarification from the petitioner for issuing the renewed passport on the ground of adverse police report, that the petitioner was involved in a criminal case vide FIR No. 465 of 2022 and that the said crime is now registered as C.C.No. 3674 of 2022.

b) Thereafter, as the file was still pending with the 2nd Respondent, the petitioner has approached the office of 2nd Respondent on 19.01.2023 and then the petitioner was informed that his passport would not be renewed until the finalization of criminal proceedings pending against the petitioner in C.C No. 3674 of 2022.

c) Furthermore, the Passport Authority can refuse to issue the passport only if an applicant is convicted during the period of 5 years immediately preceding the date of application for offences involving moral turpitude and sentenced for imprisonment of not less than two years. Even as per the Police Verification Report and the notice issued by the 2nd Respondent, the criminal case registered against the petitioner is pending trial, that too with regard to an offence of trespass. Therefore the 2nd Respondent cannot keep the petitioner's application pending for renewal of passport nor can refuse to grant such renewal. Aggrieved by the action of 2nd respondent in not renewing the passport of petitioner made vide File No. HY7075704548723 dated 22.08.2023, the present Writ Petition is filed.

PERUSED THE RECORD.

DISCUSSION AND CONCLUSION:

4. A bare perusal of the contents of the notice dated 28.10.2023 issued to the petitioner by the 2nd respondent herein indicates that the petitioner is involved in Crime Number 465 of 2022 under Sections 427, 447, 506 read with

34 IPC of P.S. LB Nagar in C.C.No.3674/2023 on the file of II Additional Metropolitan Magistrate, Ranga Reddy District Court, and the petitioner is called upon vide the said notice of the 2nd respondent to provide suitable explanation regarding the circumstances under which petitioner had suppressed the said material information in petitioner's passport application with File Number HY7075704548723 dated 22.8.2023 within 30 days. The petitioner in response to the said notice vide explanation dated 05.01.2024, explained to the 2nd respondent that the petitioner never had any intention to suppress pendency of crime No.465 of 2022, under Sections 34, 427, 447, 506 IPC of LB Nagar Police Station in C.C. No.3674 of 2022 against the petitioner and others and further that the petitioner was falsely implicated in the said case and that issue pertains to certain immovable property which belongs to his relative and that the petitioner is always available to the police and would cooperate with the investigation. It is the specific case of the petitioner that pendency of criminal cases against the petitioner should not lead to denial of passport facilities to the petitioner and

further that petitioner's passport should be renewed for a period of ten years.

5. This Court opines that pendency of criminal cases should not be a ground to deny passport facilities to an individual or to hold a passport.

6. It is also relevant to note that the Respondents cannot refuse the renewal of passport of the petitioner on the ground of the pendency of the aforesaid criminal case against the petitioner and the said action of the respondents is contrary to the procedure laid down under the Passports Act, 1967 and also the principle laid down by the Hon'ble Supreme Court reported in 2020 Crl.L.J. (SC) 572 in **"Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation".**

7. It is also relevant to note that the Apex Court in **Vangala Kasturi Rangacharyulu**'s case (cited supra) had an occasion to examine the provisions of the Passports Act, 1967, pendency of criminal cases and held that refusal of a passport can be only in case where an applicant is convicted during the period of five (05) years immediately preceding the date of application for an offence involving moral

turpitude and sentence for imprisonment for not less than two years. Section 6.2(f) relates to a situation where the applicant is facing trial in a criminal Court. The petitioner therein was convicted in a case for the offences under Sections 420 IPC and also Section 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988, against which, an appeal was filed and the same was dismissed. The sentence was reduced to a period of one (01) year. The petitioner therein had approached the Apex Court by way of filing an appeal and the same is pending. Therefore, considering the said facts, the Apex Court held that Passport Authority cannot refuse renewal of the passport on the ground of pendency of the criminal appeal. Thus, the Apex Court directed the Passport Authority to issue the passport of the applicant without raising the objection relating to the pendency of the aforesaid criminal appeal in S.C.

8. The Apex Court in another 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."

9. The Apex Court in "Menaka Gandhi vs Union of India" reported in 1978 (1) SCC 248, held that no person can be deprived of his right to go abroad unless there is a law enabling the State to do so and such law contains fair, reasonable and just procedure. Para 5 of the said judgment is relevant and the same is extracted below:

> "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. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports, Act, 1967 that is lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law.
>
> Therefore, such a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

10. The Division Bench of the Apex Court in its judgment dated 09.04.2019 reported in 2019 SCC online SC 2048 in Satish Chandra Verma v Union of India (UOI) and others observed at para 5 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 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."

11. Referring to the said principle and also the principles laid down by the Apex Court in several other judgments, considering the guidelines issued by the Union of India from time to time, the Division Bench of High Court of Punjab and Haryana at Chandigarh in "Noor Paul Vs. Union of India" reported in 2022 SCC online P & H 1176 held that a right to travel abroad <u>cannot be deprived except by just, fair and reasonable procedure.</u>

12. In the judgment dated 08.04.2022 of the Andhra Pradesh High Court reported in 2023 (4) ALT 406 (AP)

in "Ganni Bhaskara Rao Vs. Union of India and another"

at paras 4, 5 and 6, observed as under:

> **"This Court after hearing both the learned counsel notices that Hon'ble Supreme Court of India, in Criminal Appeal No. 1342 of 2017, was dealing with a person, who was convicted by the Court and his appeal is pending for decision in the Supreme Court. The conviction I was however stayed. In those circumstances also it was held that the passport authority cannot refuse the "renewal" of the passport.**
>
> This Court also holds that merely because a person is an accused in a case it cannot be said that he cannot "hold" or possess a passport. **As per our jurisprudence every person is presumed innocent unless he is proven guilty. Therefore, the mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years.** The use of the conjunction and makes it clear that both the ingredients must be present. Every conviction is not a ground to impound the passport. **If this is the situation postconviction, in the opinion of this Court, the pendency of a case/cases is not a ground to refuse, renewal or to demand the surrender of a passport.**
>
> The second issue here in this case is about the applicability of Section 6(2)(e) of the Passport Act. In the opinion of this Court that section applies to issuance of a fresh passport and not for renewal of a passport. **It is also clear from GSR 570(E) which is the Notification relied upon by the learned counsel for the respondents and is referred to in the counter**

affidavit. This Notification clarifies the procedure to be followed under Section 6 (2) of the Passport Act against a person whom the criminal cases are pending. This notification permits them to approach the Court and the Court can decide the period for which the passport is to be issued. This is clear from a reading of the Notification issued. Clause (a) (i) states if no period is prescribed by the Court the passport should be issued for one year. Clause (a) (ii) states if the order of the Court gives permission to travel abroad for less than a year but has not prescribed the validity period of the passport, then the passport should be for one year. Lastly, Clause (a) (iii) states if the order of the Court permits foreign travel for more than one year but does not specify the validity of the passport, the passport should be issued for the period of travel mentioned in the order. Such a passport can also be renewed on Court orders. **Therefore, a reading of GSR 570(E) makes it very clear that to give exception or to exempt applicants from the rigour of Section 6 (2)(f) of the Act, GSR 570(E) has been brought into operation. The issuance of the passport and the period of its validity; the period of travel etc., are thus under the aegis of and control of the Court."**

13. This Court earlier had an occasion to consider the Gazette Notification issued by the Central Government vide GSR No.570 (E) dated 25.08.1993 wherein instructions were issued to renew the passport only for a period of one year, in case where criminal cases are pending, if no time frame is mentioned by the Courts. This Hon'ble Court, while interpreting the provisions of the said Gazette Notification and Rule 12 of Passport

Rules 1980, has held that Passports shall be renewed for a period of ten years in accordance with Rule 12 of the Passport Rules, 1980. The relevant portion of the order dated 18.04.2022 passed in W.P.No.11674 of 2022 in particular paras 7, 8, 9 and 10, read as under:

> "7. Having regard to the rival contentions and the material on record, it is noticed that where there is criminal case pending against an Indian citizen who is seeking issuance or renewal of passport, the Government of India Notification in GSR 570(E) dt.25.08.1993 is applicable. Accordingly, the petitioner has approached the criminal Court by filing Crl.M.P.No.234 of 2020 and the criminal Court has allowed the Crl.M.P. by directing renewal of passport only for the period the petitioner is eligible. As per the Passport Act and the Rules framed thereunder, a citizen is entitled for issuance of an ordinary passport for a period of 10 years and thereafter, the passport holder will have to make appropriate application for renewal of the passport which is again extendable for a further period of 10 years. The Sessions Judge in the order dt.27.10.2020 has observed that pendency of criminal case against W.P.No.11674 of 2022 7 the petitioner cannot be a ground for denying his right to renew his passport. However, it is observed that it should be given only for the period he is eligible. (emphasis supplied by this Court). The usage of word 'eligible

connotes that the extension may be for regular period of 10 years as provided in the rules. The judgments on which the petitioner has placed reliance upon are on similar set of facts.

8. In all of those cases, the petitioners therein were frequent travellers and the relevant criminal Court therein had directed for renewal of passport in accordance with the prescribed Rules. As the prescribed Rules permit issuance of passport for 10 years, the Courts have held in favour of the petitioners therein. Therefore, in the case before this Court, as the language used by the Magistrate/Judge is 'eligible', the petitioner is also eligible to be issued passport for a period of 10 years.

9. In view of the same, this Court deems it fit and proper to direct the respondents to issue the passport for a period of 10 years under Section 10 of the Passports Act.

10. The Writ Petition is accordingly allowed. No costs."

Similar view had been taken by this Court vide its order dated 10.11.2023 passed in W.P.No.17965 of 2023.

14. The Division Bench of Bombay High Court in the Judgment dated 13.03.2014, reported in 2014 SCC

OnLine Bom 356 in "Narendra K. Ambwani v. Union of India", observed at Paragraph Nos.6 and 7, as under:

"6. This court held that the Rules have been framed under the Passport Act and under Rule 12, a passport other than for a child aged more than 15 years, shall be in force for a period of 10 years or 20 years as the case may be from the date of its issue.

7. In the present case, the Respondents contended that the order of the learned Magistrate did not specify the period for which the passport is issued and in the light of Notification dated 23rd August, 1993 (Annexure "6" to the petition), the passport of the citizen against whom the proceedings are pending in the criminal court in India, shall be issued for a period specified by the court and if no period is specified, the passport shall be renewed for a period of one year. This court held that interpretation of the order of the learned Magistrate dated 20th September, 2006 is contrary to the express language of the order. **When the order speaks about renewal of the passport in terms of the Passport Rules, reference must be made to Rule 12 alone and the Passport Officer was bound to issue the passport either for a period of 10 years or for a period of 20 years as the case may be in his discretion. The Passport Officer could not have at any rate renewed the passport for a period less than 10 years. Accordingly, the Rule was made**

absolute and the Regional Passport Officer was directed to issue the passport, renewed for a period of 10 years or 20 years."

15. Another Judgment dated 30.11.2016 of the Division Bench of Bombay High Court reported in 2016 SCC OnLine Bom 14539 : (2020) 3 AIR Bom R 459 in Mr. Samip Nitin Ranjani v. Union of India and others, observed at relevant paragraphs 3 and 4, as under:

"3. The grievance of the Petitioner is that the Passport Authorities, instead of renewing the passport for a period of 10 years as provided under the provisions of the Passports Act, 1967, has renewed the passport only for a period of one year. Challenging the same, writ was filed.

4. In our view, the ratio of the judgment of this Court in the case of *Narendra Ambwani* (supra) would squarely apply to the facts of the present case. The Division Bench of this Court has issued guidelines which are to be followed by the Respondents on the receipt of application for renewal of passport. It is observed in paragraphs 10 and 11 as under:

"10. In the circumstances, we propose to issue guidelines to be followed by the Respondents on receipt of the applications for renewal of the passports, in all cases, where the Magistrate's

court has directed that the passport may be renewed as per the "Rules".

11. Accordingly, we issue the following directions:-

(a) In all cases where the Magistrate's court directs renewal of the passports under the Rules, the Passport Rules, 1980 shall apply and passports other than for a child aged more than 15 years shall be renewed for a period of ten years or twenty years as the case may be from the date of its issue. All qualifying applicants are entitled to have passport renewed for at least ten years. The Regional Passport Office shall renew the passports of such qualifying applicants at least for ten years.

(b) In case where the passports are valid and the applicants hold valid visas on existing passport, the Regional Passport Officer shall issue the additional booklet to the same passport provided the applicant had obtained permission to travel abroad.

(c) If the learned Magistrate passes an order making the reference to the said

> Notification No. G.S.R. 570(E) dated 26th August, 1993, the passport shall be renewed only for such period that the Magistrate may specify in the order or as otherwise specified in the said Notification where the passport of the applicant is valid for less than one year, the additional booklet may be issued subject to the orders to be obtained in this behalf only of the Magistrate concerned."

16. Taking into consideration the aforesaid facts and circumstances of the case, and duly considering the law laid down by the Apex Court and other High Courts in the various Judgments (referred to and extracted above), the Writ Petition is allowed, the 2nd respondent is directed to consider the explanation dated 05.01.2024 furnished by the petitioner to the notice dated 28.10.2023, issued to the petitioner, duly taking into consideration the law laid down by the Apex Court and the other High Courts in the various Judgments referred to and extracted above and pass appropriate orders on petitioner's application for issuance of passport with File Number HY7075704548723 dated

22.08.2023 for a period of ten years, under Section 10 of the Passports Act, 1967 and under Rule 12 of Passport Rules, 1980, without reference to the Criminal Proceedings pending against the petitioner in C.C.No.3674 of 2022 on the file of the II Additional Junior Civil Judge cum II Additional Metropolitan Magistrate at LB Nagar and also the Gazette Notification issued by the Central Government vide GSR No.570(E) dated 25.08.1913, subject to the following conditions:

i) The petitioner herein shall submit an undertaking along with an affidavit in Crime No. 465 of 2022 on the file of P.S. LB Nagar, stating that he will not leave India during pendency of the said case without permission of the Court and that he will co-operate with trial Court in concluding the proceedings in the said case.

ii) On filing such an undertaking as well as affidavit, the trial Court shall issue a certified copy of the same within two (02) weeks therefrom;

iii) The petitioner herein shall submit certified copy of aforesaid undertaking before the Respondent Passport Officer for renewal of his passport;

iv) The Respondent-Passport Officer shall consider the said application in the light of the observations made by this Court herein as well as the contents of the undertaking given by the petitioner for renewal of his passport in accordance with law, within two (02) weeks from the date of said application;

v) On renewal of the Passport, the petitioner herein shall deposit the original renewed Passport before the trial Court in Crime No. 465 of 2022 on the file of P.S. LB Nagar; and

vi) However, liberty is granted to the petitioner herein to file an application before the trial Court seeking permission to travel aboard and it is for the trial Court to consider the same in accordance with law.

Miscellaneous petitions, if any pending, in this writ petition shall stand closed.

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SUREPALLI NANDA, J

Date: 26.02.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr*