

Court No. - 2

Case :- WRIT - C No. - 5587 of 2024

Petitioner :- Umapati

Respondent :- Union Of India Thru. Secy. Ministry Of
External Affairs New Delhi And 3 Others

Counsel for Petitioner :- Deepak Kumar

Counsel for Respondent :- A.S.G.I.

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Deepak Kumar, learned counsel for petitioner as well as Sri S.B. Pandey, learned Deputy Solicitor General of India, on behalf of Union of India and learned Standing Counsel on behalf of respondent Nos. 2 & 3.

2. It has been submitted by learned counsel for petitioner that petitioner had applied for issuance of a passport on 20.01.2022 under Section 5 of Indian Passport Act and on receipt of the said application a report was called for from the Superintendent of Police, Sultanpur. It was submitted that two criminal cases are pending against the petitioner being Criminal Case Crime No. 164 of 2018 U/S 323, 504, 506 I.P.C. and Criminal Case Crime No. 585 of 2021, U/S 323, 504, 506, 427, 336 I.P.C., P.S. Kadipur, District Sultanpur. He further submits that merely on account of the said cases, no decision has been taken by the passport authority under Section 5 of the Indian Passport Act and accordingly in the present writ petition a prayer has been made for a direction to respondent No. 4 to take a decision on the application of the petitioner for issuance of a passport.

3. Sri S.B. Pandey, learned Dy. Solicitor General of India has opposed the writ petition and submitted that respondent No. 4 is not obliged to take any decision and the petitioner should apply to the court of competent jurisdiction where the criminal cases are pending for obtaining a passport.

4. We have given thoughtful consideration to the submission. The manner of dealing with an application for issuance of passport has been dealt with in Sections 5 & 6 of the Indian Passport Act. Under the Indian Passport Act, the application for grant of passport can be rejected on any of the conditions as prescribed under Sections 5 & 6 of the said Act which is quoted hereinbelow:-

"5. Applications for passports, travel documents, etc., and

orders thereon

1[(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by 2[Such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents].

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

(1A) An application for the issue of-

(i) a passport under this Act for visiting a named foreign country; or

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

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

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

(2) On receipt of an application 3[under this section], the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

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

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document

any endorsement.

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

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."

5. The scheme of the Act clearly demonstrate that the application for issuance of passport has to be considered and decided by the passport authority as per Section 5(2) of the Act of 1967, and there is further provision of an appeal against order passed under Section 5(2) of the Act of 1967 is provided under Section 11 of the Act of 1967.

6. In the present case, there is no dispute with regard to the fact that respondent No. 4 has not taken any decision on the application preferred by the petitioner as required under Section 5 of Indian Passport Act. This Court is of the considered view that the competent authority under the Indian Passport Act is under a mandate to take a decision as per Sections 5. If he is of the opinion that it is a fit case for grant of a passport, he may pass an appropriate order for issuance of the passport and in case he feels that conditions exists for refusal for grant of the passport he may pass an appropriate order considering grounds of Section 6 of Indian Passport Act.

7. There is no mention in the writ petition of the fact that the petitioner plans to go abroad in which case he would undoubtedly have to apply to the court of competent

jurisdiction where the criminal cases are pending to seek such a permission. This Court is of the considered view that no prior permission from the competent court is required where the criminal cases are pending for issue of passport under the Indian Passport Act and no such provision has been envisaged in the said Act.

8. Sri S.B. Pandey, learned Dy. Solicitor General of India has also relied upon the circular dated 10.10.2019 where again in paragraph 5 Sub- Clause (i), it has clearly been stated that the passport authority shall take a decision in writing to issue or refuse a passport after making such inquiry. The said circular has correctly interpreted the provisions of Section 5 & 6 of Indian Passport Act and even the said circular does not anywhere provide that any permission of court of competent jurisdiction is required before grant of the said passport and accordingly the objections raised by Dy. Solicitor General of India in this regard is rejected. Once an application is made for grant of a passport then the authority has to take a decision in terms of statutory provisions under the Indian Passport Act and accordingly a case for interference is made out.

9. Accordingly, the respondent No. 4 is directed to consider and decide the application preferred by the petitioner dated 20.01.2022 in accordance with the law expeditiously, say, within a period of four weeks from the date a certified copy of this order is produced before him.

10. In light of the aforesaid observations / directions, the writ petition stands **allowed**.

(Arun Kumar Singh Deshwal, J.) (Alok Mathur, J.)

Order Date :- 25.6.2024

Ravi/