



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 15th OF JANUARY, 2025

WRIT PETITION No. 403 of 2025

***[REDACTED] (MINOR) D/O SHRI NITISH JANARDAN
BHARADWAJ AND SMT. SMITA NITISH BHARADWAJ AND OTHERS***

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Naman Nagrath – Senior Advocate with Shri Kapil Duggal – Advocate for petitioner.

Shri Devesh Bhojne – CGSC for respondents No.1 and 2.

Shri Shreyas Pandit – Advocate for respondent No.3 alongwith Shri Nitish Bhardwaj – Respondent No.3.

ORDER

Per: Justice Vinay Saraf

1. Petitioners are minor daughters of respondent No.3. Petitioners through their mother applied to Regional Passport Office, Bhopal, Ministry of External Affairs for renewal of their passports.
2. After receipt of application, the Regional Passport Office, Bhopal issued a communication to the father of petitioners i.e. respondent No.3 and as respondent No.3 in the reply to communication not only refused to extend the consent for renewal of passport of the children, has strongly



objected for issuance of passports to his minor daughters. The Assistant Passport Officer by impugned communicated dated 08.11.2024 asked the mother of petitioners to obtain the Court permission for issuance of passport to minor children.

3. It is an admitted position that father of the children applied before Family Court, Mumbai for obtaining a decree of divorce against the mother of petitioners and the matter is still pending before the Family Court, Mumbai wherein the issue of custody of minor children is also pending. After receipt of impugned communication from the Passport Office, the mother of children submitted an application to the Family Court, Mumbai at Bandra on 18.11.2024 requesting authorization for renewal of passport of her children. Copy of the application was supplied to father of children and case has been fixed for hearing upon application on 18.01.2025.

4. Thereafter, one purshis was moved on behalf of mother of the petitioners before Family Court, Mumbai to not press the application moved on 18.11.2024 wherein it is mentioned that she intends to file an appropriate petition seeking intended relief before the High Court of Madhya Pradesh at Jabalpur. That withdrawal application will be considered by Family Court Mumbai on the next date of hearing i.e. 18.01.2025.

5. In the meanwhile, petitioners through their mother and natural guardian Smt. Smita Bharadwaj has approached this Court by present petition on 07.01.2025 seeking the following relief:-

“(a) Issue a writ of certiorari quashing the impugned order dated 08.11.2024 passed by Respondent No.2.

(b) To issue a writ of mandamus directing respondent No.2 to renew the passport of the petitioners forthwith.

(c) To award the cost of the present litigation in favour of the petitioner.



(d) Any other order writ or direction that this Hon'ble Court may deem fit in the interest of justice"

6. This Court on 08.01.2025 considering the urgency, issued notice to respondent No.3 (father of petitioners) and ordered to list the case on 10.01.2025, when counsel for respondent No.3 appeared and sought short adjournment and as the case is listed today.

7. Learned Senior Advocate appearing on behalf of petitioners submits that every citizen of India is having Fundamental Right to obtain passport and travel as per his own wish. The Supreme Court has extended the scope of Article 21 by holding that the right to life and personal liberty includes the right to travel abroad. He further submits that the petitioners have achieved several awards and they have been invited Bharat Mahotsava scheduled to take place in the House of Lords, United Kingdom for special facilitation and book promotion on 14th February and on 17th February at University of Oxford during Bharat Mahotsav scheduled to take place from February 14th to 17th, 2025 in London Kingdom.

8. Learned Senior Advocate further submits that the invitation is annexed as Annexure P-3 with petition which contends the details of program and for the purpose of attending the said program, the petitioners are in need of valid passport which are going to be expired on 16.01.2025. He further submits that upon the application submitted for renewal of passport, the Passport Office, Bhopal has erroneously issued the impugned communication to the mother of petitioners for obtaining Court permission for the purpose of renewal of passport of minor children. He submits that as per the Annexure-C annexed to the application for renewal of passport, there is a provision that a single parent may apply for renewal of passport, if there is no prohibitory order issued by any competent Court. The mother



of petitioners submitted a declaration in the form of Annexure-C declaring that there is an ongoing court case for divorce and custody of minor children and the competent Court has not given any prohibitory order to issue passport without consent of the father.

9. Learned Senior Advocate further submits that as there is a provision to submit the declaration in the form of Annexure-C, the Passport authority is under obligation to accept the same and renew the passport. He further submits that once the aforesaid declaration is submitted by the mother of petitioners in the form of Annexure-C, the same is required to be acted upon and the Passport Authority cannot ask for obtaining the permission of the Court. Learned Senior Advocate has heavily relied upon the judgment delivered by Division Bench of Bombay High Court in the matter of **Miss Yushika Vivek Gedam vs. Union of India & ors. in WP No.19042/2024** decided on 08.01.2025 wherein in the similar circumstances, the Division Bench of Bombay High Court has issued direction to Passport Authority to issue the passport of minor child without insisting upon the consent of father or Court permission.

10. The relevant paras of the said judgment read as under:-

“2. The grievance of the petitioner is against respondent No.2 – the Regional Passport Officer, who has issued the impugned communication dated 18 November, 2024 informing the petitioner that her passport application dated 28 October, 2024 would not be processed, for the reason that the petitioner’s father has objected for re-issuing passport to the petitioner.

12. The contention of respondent no. 2 is that the petitioner’s mother alongwith the petitioner’s passport application submitted a declaration in Annexure-D, which required signatures to be made on the passport application by both the parents of the minor applicant. For the reason that the application was signed only by the mother and the father’s signature was missing, as also, it was objected by the father, the



impugned communication was issued by respondent no. 2 calling upon the deficiency to be complied by obtaining the father's signature.

13. In such circumstances, the petitioner's mother also additionally submitted a declaration in Annexure-C dated 29 October, 2024, being a declaration required to be submitted by "applicant's parents or guardian for issuance of a passport to minor when the parent has not given consent", in which she selected option in Clause (II)(d) which is to the following effect: "(d) There is an ongoing court case for divorce/custody of the minor child and the Court has not given any order prohibiting the issue of passport without the consent of the father/ mother.

18. Thus once the aforesaid declaration was submitted by the petitioner's mother in Annexure C, the same was required to be acted upon, as the status of the petitioner's application had underwent a change from the original application, which was submitted in Annexure D, which required the consent of both the parents. However, the impugned communication is solely based, considering that only declaration in Annexure D is being taken into consideration and not the declaration in Annexure C, which came to be filed by the petitioner's mother for the specific reason that the petitioner's father was not granting a consent/NOC.

19. It is also significant that the petitioner's father has not obtained any order from any Court that the petitioner or the petitioner's mother ought not to pursue any application for issuance/re-issuance of passport to the petitioner. Also, except for stating that he refuses NOC, the petitioner's father has not made out any legal, valid or justifiable ground or placed any material before respondent No.2 which could justify denial of the issuance of passport to the petitioner, as the law would mandate.

20. In the aforesaid situation, in our opinion, the entire purpose of inviting a declaration in terms of Annexure C (supra) becomes all the more relevant. Annexure -C in clause (II)(b), (d) and (e) as highlighted by us is relevant which deals with different situations where there exists disputes between the parents of the minor applying for passport. Also clause (II)(d) categorically includes a situation in regard to the ongoing court case on divorce proceedings, between the parents of a minor child who has made an application for a passport.

21. The present case is also quite peculiar inasmuch as on one hand, the petitioner's father is pursuing his case against the petitioner's mother to obtain a divorce nonetheless he objects to the issuance of a NOC. It also appears to be clear that the petitioner is staying with her mother. The petitioner is a bright student having secured outstanding marks in the X Standard examination, which has qualified her to be eligible to be selected to participate in the study tour visiting Japan, being undertaken by Kendriya Vidyalaya. In these circumstances, in our opinion, considering the well-settled position in law, it cannot be that the petitioner's right to travel abroad by issuance of a passport can in any manner be scuttled and/or taken away by denying her a passport to be



issued/re-issued merely for the reason that the father for the only reason that he has disputes with the mother, is not supporting the petitioner's application by consenting to it. Also the petitioner's mother has submitted a declaration in Annexure-C, which is now required to be considered and processed by respondent no. 2.

22. It is well-settled that the expression "person liberty" which occurs in Article 21 of the Constitution includes right to travel abroad and no person can be deprived of that right except according to the procedure established in law. It is held that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The right to travel abroad is a facet of fundamental right guaranteed under Article 21 of the Constitution of India (See. Maneka Gandhi vs. Union of India (1978 1 SCC 248)). The petitioner is certainly entitled to such constitutional right guaranteed under Article 21.

23. We may also observe that in the contemporary times traveling abroad cannot be considered to be a fanciful affair but has become an essential requirement of modern life. Such need to travel which may be the requirement of a child, a student or an employee, professional or a person from any other strata of the society, has undergone a monumental change. Thus, the right to travel is required to be not only recognized but made more meaningful. This can be achieved and supported by the authorities implementing the provisions of the Passport Act by effectively recognizing such contemporary needs in dealing with passport applications. The present case is an example of a student being given an opportunity to undertake a study tour by visiting a foreign country. Any action of the Passport Authority in denying the passport would have severe consequence not only adversely affecting the applicant in a given situation, but it may cause irreparable harm to the prospects of the applicant, for any venture she or he intended to undertake. Thus, a mechanical approach in this regard by the Passport Authority cannot be countenanced.

24. We thus find that such valuable constitutional right of the petitioner cannot be prejudiced much less be taken away, and merely on the ground as contained in the impugned communication dated 18 November, 2024 issued by respondent no. 2. Further Section 6 of the Passport Act, 1967 provides for Refusal of passports, travel documents etc. The ground on which the application of the petitioner is not being processed is in no manner whatsoever recognized by Section 6 of the Passport Act. In the aforesaid circumstances, we find that there is no warrant in law for respondent no. 2 to deny the re-issuance of passport to the petitioner when the declaration in Annexure-C was submitted by the petitioner's mother.

25. We accordingly dispose of the petition in terms of the following terms:



- (i) The impugned communication dated 18 November, 2024 issued by respondent no. 2 is set aside;*
- (ii) Respondent no. 2 is directed to issue passport to the petitioner- Ms.Yushika Vivek Gedam under her application No. PN1070298980424 submitted by her mother - the natural guardian*
- (iii) The passport be granted to the petitioner within a period of two weeks from today in accordance with law.”*

11. Learned Senior Advocate prays for quashment of impugned communication issued by Passport Officer as well as issuance of direction to renew the passport of petitioners expeditiously.

12. Per contra, respondent No.3 who appeared in person, opposes the application on the ground that earlier also efforts were made by the mother of petitioners to obtain the permission from the Family Court. He submits that the documents filed alongwith petition are suspicious as Bharat Mahotsav, 2024 has already been organized in the year 2024 and is not scheduled to be organized in February, 2025. He submits that there are serious disputes in respect of custody of minor children and for the purpose of taking away the children from the father, the mother has moved an application on the basis of false documents. He has raised serious objections in respect of reasons assigned by the petitioner in the petition and submits that once the application is pending before Family Court, Mumbai, during pendency of the application, this petition is not maintainable. He has drawn the attention of this Court towards various documents downloaded by respondent No.3 through internet to demonstrate that the alleged Bharat Mahotsav, 2024 is not scheduled in February, 2025 and the documents filed by the petitioners as Annexure P-3 and additional document i.e. IA(1) filed alongwith IA are false, forged and fabricated documents. He further submits that possibility of the petitioners'



mother taking away the children to a foreign land for admission to some foreign school cannot be ruled out. He submits that the existence of pending custody case before the Family Court is a significant factor and the same indicates an ongoing dispute regarding the guardianship and welfare of the petitioners. He prays for dismissal of the petition.

13. Learned standing counsel on behalf of respondents No.1 and 2 submits that the impugned communication has been issued by the Passport Authority after considering the objection raised by the father of minor children. He further submits that as per procedure, when the application was received without consent of father of minor children, the same is required to be communicated to the father for giving his consent and when the father raised objection, as per the directions issued by the Ministry, the Passport Officer has issued impugned communication to the mother for obtaining the Court permission. He further submits that if Court will issue a direction for renewal of passport without consent of the father, the Passport Officer will honour the order of the Court.

14. Considering the arguments advanced by the parties and considering the fact that the petitioners who are having very impressive academic record and achieved several awards and appreciation from various dignitaries including Prime Minister of India, without commenting upon genuineness of the documents, this Court is examining only legal issue that whether passport can be renewed without consent of the father of minor child, if there is no prohibitory order from any competent Court. All the issues in respect of the invitation from House of Lords or Oxford University or Bharat Mahotsava, 2024 are not required to be considered in the present petition and respondent No.3 will be at liberty to raise these



issues including allegation of alleged forgery and genuineness of documents before the Family Court, Mumbai, if he wishes.

15. As per the passport rules, in case one of the parent of the minor child has not given consent for issuance of passport, the parent who has applied for passport is required to submit declaration in the form of Annexure (C) which reads as under :-

*“ANNEXURE ‘C’
SPECIMEN DECLARATION BY APPLICANT’S PARENT OR GUARDIAN FOR ISSUE
OF PASSPORT
TO MINOR WHEN ONE PARENT HAS NOT GIVEN CONSENT*

(On plain paper)

*I/we (name of the parent / guardian applying for passport) resident Of
..... solemnly declare and affirm as under :-*

*(I) That I/we am/are the mother/father/parents/guardians of
(name of the minor child) who is minor and on whose behalf I/we have made an
application for his/her passport.*

*(II) Signature/consent of Shri/Smt. (name of the father/mother)
who is the father/mother/parents of the child has not been obtained by me for
the following one or more reasons:-*

*(a) The father/mother of the minor applicant is travelling abroad/is on
sea/travelling in India and unable to file consent; or/and*

*(b) The father/mother is separated and no court case is pending before the
court regarding divorce/marital dispute/custody of the child; or/and*

*(c) The father/mother has deserted and the whereabouts are not known;
or/and*

*(d) There is an ongoing court case for divorce/custody of the minor child
and the court has not given any order prohibiting the issue of passport
without the consent of father/mother; or/and*

*(e) There is a court order for the custody of the minor child with a parent
who is applying for the*

*passport and consent of other parent (who has visitation rights) is not
available or he/she is refusing to give consent/the other parent is not*

availing the visitation rights and his/her whereabouts are not known; or/and

*(f) The parents are judicially separated and custody of the minor child has
not been defined in the court’s decree; or/and*

*(g) The father/mother of (name of minor child) has deserted me
after the conception/delivery. That (name of minor child) is
exclusively under my care and custody since separation/delivery.*

*(III) That we only am/are taking Care of (name of the minor child)
and he/she is exclusively in my/our physical custody*

*(IV) I/we also affirm that in the case of a court case arising due to issue of a
passport to the minor child (name of the minor child), I/we would
be solely responsible for defending the case and not the Passport Issuing
Authority.*



*Signature of the parent(s)
Guardian(s) applying for the Passport*

Date:
Name(S):
Aadhaar Card No.*or*
Voter ID Card No. *Or*
Passport No. ”

Place:

16. Declarant in the form of Annexure (C) is required to declare that there is an ongoing case between the parents for divorce and custody of minor child is also pending but the competent Court has not issued any prohibitory order for issuance of passport without consent of other parent. Similarly a single parent is required to give a declaration that child is being exclusively in the physical custody of that parent. There is no prohibition in the Passport Rules that without any consent of the father, passport cannot be issued to minor child. Even there is no provision that in the absence of any prohibitory order, the permission from the Court is required.

17. Under these circumstances, after perusing the judgment delivered by the Division Bench of the Bombay High Court in the case of of ***Miss Yushika Vivek Gedam (supra)***, the present petition is allowed to the following extent:-

- (i) The impugned communication dated 08.11.2024 issued by respondent No.2 is hereby quashed.
- (ii) Respondent No.2 is directed to renew the passport of petitioners – Miss Devyani Nitish Bharadwaj and Miss Shivaranjani Nitish Bharadwaj upon the application which is already submitted by them through their mother after considering declaration submitted by her in the form of Annexure (C).



(iii) Respondent No.3 (father of petitioners) will be at liberty to take appropriate steps before the Family Court, Mumbai at Bandra in respect of apprehension of the father that the documents filed with present petition are not genuine. At the same time, respondent No.3 shall be at liberty to approach the Family Court seeking prohibitory order for restraining the petitioners from travelling abroad, if so wishes. If any such application is moved, the same shall be decided by the Family Court without influenced by this order in accordance with law.

(iv) Respondent No.2 is directed to complete the formalities for renewal of passport within a period of one week from today in accordance with law.

- 18.** With the aforesaid, the writ petition is disposed of.
- 19.** Certified copy today.

(VINAY SARAF)
JUDGE

vibha