



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5362 of 2025

Application under Articles 226 & 227 of Constitution of India.

Dr. Ashok Kumar Behera

....

Petitioner

-versus-

State of Odisha and others

....

Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. Sidheswar Mallik, P.C. Das,
M.Mallik, S. Mallick & A.P. Mohanty,
Advocates.

For Opp. Parties : Mr. S.N. Pattnaik,
Addl. Government Advocate.

Mr. P.K. Parhi, DSGI along with
Ms. S. Patra, CGC

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

11th November, 2025

SASHIKANTA MISHRA, J.

The petitioner is aggrieved by non-issue of No Objection Certificate by the authorities required for issuance of passport.



2. The petitioner is a doctor working under the State Government and is due to retire on 31.01.2026. His daughter resides in Singapore with her family. The petitioner desired to visit her at Singapore for few days and accordingly submitted online application before the authorities for issuance of passport. In view of the requirement in the application form, the petitioner being a government servant, requested the Additional Chief Secretary to Government, Health and Family Welfare Department, Odisha vide letter dated 09.06.2022 for issuance of No Objection Certificate (NOC). Said application was rejected by order dated 12.07.2022 on the ground that the petitioner was unauthorizedly absent since 28.09.2013 and three departmental proceedings were pending against him.

2.1. The petitioner approached this Court in W.P.(C) No.24138 of 2023 challenging such rejection. Said writ application was disposed of vide order dated 22.07.2024 granting liberty to the petitioner to reiterate his prayer before the concerned authority, if there is any change in circumstances as two years had elapsed since the rejection.



The petitioner accordingly submitted another application on 09.09.2024, inter alia, informing that in the meantime, one out of the three disciplinary proceedings had been dropped. Such application of the petitioner was also rejected by order dated 21.03.2025 more or less on the same ground as before. It is contended by the petitioner that one of the vigilance cases instituted against him (VGR Case No. 13 of 2012) has ended in acquittal and another vigilance case being VGR Case No. 34 of 2013 is pending, wherein charge sheet has been submitted but trial has not commenced. The petitioner had rendered all cooperation to the police during investigation and further undertook to appear before the vigilance Court. On such facts, the petitioner has filed this writ application with the following prayer.

“Under the aforesaid facts and circumstances the petitioner humbly prays that this Hon’ble Court may graciously be pleased to,

- 1. Quash the impugned rejection order dated 12.07.2022 as at Annexure -2 and order dated 21.03.2025 as at Annexure - 11*
- 2. Direct order that the opposite party No.1 shall issue NOC to the petitioner for enabling him to submit application to the opposite party No.4 for issue of passport as per law.*



3. Pass such other orders as may be deemed fit and proper in the interest of justice.

And for this act of kindness the petitioner as in duty bound shall every pray."

3. Counter affidavit has been filed by the State (opposite party No.1) stating that while continuing as Specialist in O & G at SDH, Talcher, the petitioner was placed under suspension vide order dated 29.02.2012. He was reinstated on 14.08.2013 and posted to DHH, Boudh, where he joined on 24.09.2013 but remained unauthorizedly absent since 28.09.2013 for which a disciplinary proceeding was initiated against him vide Department Memorandum No.10608/H Dated 01.06.2015, which is pending. Besides, two more departmental proceedings vide Department Memorandum No.19454/H dated 26.07.2012 and 6375/H dated 03.03.2017 are pending. Though the departmental proceeding vide Memorandum No.19454/H has been dropped, yet the other two departmental proceedings are pending.

4. Counter affidavit has also been filed by the Regional Passport Officer (opposite party No.4). Paragraphs 4.23 to 4.25 under Chapter-IV of Passport Manual, 2020



have been referred to which provide that NOC is a mandatory document to be obtained by the employee from his employer/controlling authority and produced before the passport authority during the time of processing of passport application and this requirement cannot be waived in respect of employees of Government, PSU and statutory bodies. Since the writ petition has not been filed against any statutory Rules and guidelines of Government of India, the Passport Officer has no comments to offer.

5. The petitioner has filed a rejoinder stating that the only purpose of his visiting Singapore is to visit his daughter and grandchild. His right to travel abroad is a fundamental right under Article-21 of the Constitution of India, which cannot be taken away by an executive instruction. The departmental proceedings in question are continuing since 2015, but his request for grant of NOC was rejected, which is in conflict with the law laid down by the Constitution Bench of the Supreme Court in the case of **Maneka Gandhi v. Union of India**¹.

¹ (1978) 1 SCC 248



6. Heard Mr. S. Mallik, learned counsel for the petitioner; Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State and Mr. P.K. Parhi, learned DSGI along with Ms. S. Patra, learned Central Government Counsel for the Union of India.

7. Mr. Mallik would argue that the right to travel abroad has been recognized as a fundamental right guaranteed under Article 21 of the Constitution of India and cannot be abrogated in the absence of any law. Here, law means enacted law and therefore, a mere executive order cannot curtail the fundamental right. Mr. Mallik further argues that the departmental proceedings are pending since 2015 and there is no likelihood of the same being concluded in the near future. Mere allegation cannot take the place of proof and therefore, the petitioner must be presumed to be innocent. Such being the case, his right to travel abroad cannot be abrogated. Mr. Mallik has cited the judgment of the Supreme Court in the Case of **Maneka**



Gandhi (supra) and of this Court in the case of **Nitin Kapoor vs. State of Odisha (DGGI)²**.

8. Mr. S.N. Pattnaik, learned Addl. Government Advocate on the other hand submits that the government in exercise of its executive power has issued a circular dated 28.01.2014 to the effect that vigilance clearance can be granted if there is no departmental proceeding or contemplated and NOC can be issued by the Administrative Department in the prescribed form without referring to the Home Department. Since two disciplinary proceedings are admittedly pending against the petitioner, NOC cannot be issued in terms of the above circular.

9. Mr. P.K. Parhi, learned DSGI submits that as per the requirement of the Passports Act, 1967, the petitioner being a Government employee is mandatorily required to obtain no objection from his employer to travel abroad, failing which his application for grant of passport cannot be considered or processed. As regards grant of no objection,

² 2024(III) ILR-CUT-777



Mr. Parhi submits that the Government of India has no role to play in the matter.

10. The facts of the case as laid are admitted. The petitioner's application for issue of NOC was rejected on 12.07.2022 and 21.03.2025 on the same ground i.e., unauthorized absence since 28.09.2013 and pendency of two disciplinary proceedings (three as per order dated 12.07.2022). No statutory Rules or guideline has been cited by the Government empowering it to refuse NOC on the ground of pendency of disciplinary proceeding. The only thing that has been cited is a communication dated 28.01.2014 issued by the Special Secretary to Government in Home Department, which is reproduced below:

**“GOVERNMENT OF ODISHA
HOME DEPARTMENT**

No. 3891/PPT Bhubaneswar Dated the 28.01.2014

From

Shri Lalit Das, IPS
Special Secretary to Government

To

All Departments of Government

Sub:-

Issue of NOC (No Objection Certificate) to Government Employee for Indian passport.

It is seen that many departments are referring No Objection Certificate (NOC) case to



Home Department for police verification and clearance.

In order to avoid delay it is therefore been decided that for Government employees of different department will apply to their concerned administrative department and the department will get the vigilance clearance and if there is no department proceeding is pending or contemplated may issue NOC in form M without referring the same to Home Department.

*Yours faithfully,
Sd/-
Secretary to Government"*

11. As can be seen from a reading of the quoted letter, there is no positive order to the effect that NOC shall not be issued if any disciplinary proceeding is pending. It has been negatively stated that NOC would be issued if there is no departmental proceeding. The question that now falls for consideration is, whether it is legally permissible for the Government to do so. To determine this, it would be proper to note the consequences of such condition. Thus, if a disciplinary proceeding is pending against a government employee, no objection would not be issued, which, in turn would imply that he cannot apply for grant of passport. This further implies that he cannot travel abroad. At this stage it would be apposite to observe that there is nothing in the Passport Act which even remotely



suggests that pendency of disciplinary proceeding (or vigilance case) would stand as an absolute bar for grant of passport. However, clause-4.23 to clause-4.25 of the Passport Manual, 2020 places certain conditions for an applicant, if he happens to be a government employee. The relevant clauses are reproduced hereinbelow.

“4.23. Government/PSU employees, et al., are required to submit Identity Certificate, No Objection Certificate (NOC) or Prior Intimation Certificate as per the prescribed pro-forma at Annexure 'A', 'G' & 'H' of Appendix-1 for both resh issue and re-issue of passports at the PIA which has jurisdiction of their residential address. While the first two documents have to be issued by the Controlling Authority, the last option requires prior intimation of the Controlling Authority by the employee about his/her applying for a passport. The application shall contain stamped receipt of the Personnel Department of the employer Spouse and children (up to 18 years of age) have the option to apply with IC for issue of a passport on "no-PV" basis or in the normal course on "post-PV" basis/"pre-PV basis".

4.24. The above requirement for IC/NOC/Prior Intimation Letter shall not be waived in respect of Government/PSU employees. Revised instructions on the subject were issued to all Ministries and State Governments on 5th October 2009 [Ref. Ministry's Circular No. VI/401/1/5/2008 dated 05/10/2009 and 23/03/2010]. In re-issue cases where Prior Intimation Letter is furnished, passport is issued on "pre-PV" basis in order to ensure that he/she is not facing any department enquiry/vigilance cases.

4.25. Government servants, who are not able to obtain the Identity Certificate (Annexure 'A')/ "No Objection" Certificate (Annexure-'G') from their concerned employer and intend to get the passport can now get the passport by submitting a self-declaration in Annexure-'H' that he/she has given prior Intimation Letter to his/her



employer informing that he/she was applying for an ordinary passport to a Passport issuing Authority.”

12. This requirement of obtaining NOC for submission along with the application for grant of Passport has not been specifically questioned by the petitioner in the present writ application and therefore, this Court does not deem it proper to consider the legality/justifiability of such condition.

13. On the facts and executive instructions as referred above, it would now be proper to refer to the settled position of law in this regard. This Court can, in the present context do no better than to refer to the oft-quoted and celebrated judgment of the Constitution Bench of the Supreme Court of India in the case of **Maneka Gandhi** (supra), wherein Article 21 received an extended meaning. The following observations of the Supreme Court in the said judgment are noteworthy.

“xxxxxxxxxxxxThe expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. Now, it has been held by this Court in Satwant Singh case [AIR 1967 SC 1836 : (1967) 3 SCR 525 : (1968) 1 SCJ 178] 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 case [AIR 1967 SC 1836 : (1967) 3 SCR 525 : (1968) 1 SCJ 178] 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 case [1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383]). 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.xxxxxxxxxxxxxx"

14. As already stated, the Passport Act does not place an absolute bar for travel abroad on the ground of pendency of disciplinary proceedings (or criminal proceedings). Letter dated 28.01.2014 cannot by any stretch of imagination be treated as enacted law. However, it serves to curb the right of a person to travel abroad albeit indirectly, for without NOC, the employee cannot even apply for passport leave alone being issued with one. Therefore, this Court has no hesitation in holding that letter dated 28.01.2014 serves to place an embargo on the



fundamental right of a citizen to travel abroad. It is needless to mention that this, in effect amounts to infringement of the right to liberty guaranteed under Article -21 of the Constitution of India.

15. Viewed from another angle, the restriction imposed by the State Government is unjustified also for the reason that mere pendency or contemplation of disciplinary proceeding cannot, under any circumstances, be treated as proven guilt of the employee concerned. It would militate against the fundamental tenet of criminal jurisprudence that every person is presumed innocent until proven guilty. This Court had the occasion of dealing with a similar matter in the case of **Ashok Kumar Sipani v. Union of India and another**³ wherein it was held as follows:

*11. On a plain reading of the provision quoted above, it would be clear that power has been conferred on the authority to impound the Passport of a person, inter alia, on the ground of pendency of a criminal case against him. The use of word 'may' in Sub-section (3) clearly signifies that the power so vested is discretionary and not to be construed as mandatory. In fact, in the judgment of the Allahabad High Court rendered in the case of **Mohammad Umar(supra)**, the very same interpretation was made in the following words:-*

"11. We find that the legislature under Section 10 (3) (e) of the Passports Act, 1967 had deliberately used word 'may' meaning thereby that in the eventualities enumerated

³ W.P.(C) No.30881 of 2022



under Section 3 of the Passports Act, 1967 of the passport officer by recording reasons can impound passport but it is not necessary that in every case falling under Section 3 the passport officer is mandatorily required to impound the passport. The legislature under Section 10 (3) (e) has given power/discretion to the passport authority that if he is satisfied then he can impound the passport of a person on the ground of pending proceedings in relation to an offence in the criminal court, therefore prior to passing the order of impounding passport, the passport officer after considering the facts and circumstances of each case has to record reasons to arrive at a conclusion that due to pending criminal proceedings in a criminal court, the passport holder may misuse the passport for avoiding his appearance before the court and can delay the conclusion of the proceedings.”

*The Allahabad High Court further relied upon observations made by the Supreme Court in the case of **Suresh Nanda v. CBI**⁴ in its judgment. The following observations are noteworthy:-*

“That impounding of passport entails civil consequences and in view of this, the Authorities are duty bound to give opportunity of hearing to the person concerned.

There is no doubt on this fact that discretion is vested with the Passport Authority in terms of section 10 of the Passports Act, 1967 but it is not at all mandatory on the passport authority to impound or cause to be impounded or revoke a passport or travel document if proceedings in respect of offence merely alleged to have been committed by the holder of the passport or travel document are pending before the Court in India.

Pendency of criminal case against the holder of passport would not automatically result in impounding of his passport and the mere fact that certain conditions specified in Section 10 (3) of the Act, on the basis of which a passport can be impounded, subsists in a given case cannot by itself result in impounding of passport automatically and once the Passport Authority, in his wisdom, chooses to exercise his discretion in the said direction as to whether on account of pendency of such criminal case, the passport in question should be impounded or not, then, at the said point of time, the Passport Officer should apply his mind looking into the nature of the criminal cases that have been lodged/initiated against the petitioner and further that if a passport is not impounded, then there are possibilities that

⁴ (2008) 3 SCC 674



the incumbent would not at all face the criminal cases. Even if criminal case is pending against a person that by itself does not require passport authority to impound/ revoke the passport in every given case. It is only in appropriate cases for adequate and cogent reasons such an order could be passed. While passing order of impounding/ revocation of passport, merely by quoting the requirement mentioned in the section is clearly indicative of circumstance that order has been passed without there being any objective consideration of the subject matter."

12. *The impugned order does not whisper a word as to why the passport of the petitioner was considered necessary to be impounded or what consequences would have ensued if such a course of action is not undertaken. It is evident that the decision to impound the Passport was taken simply by observing that a criminal case is pending and by referring to the statutory provision without citing as to how it was considered necessary or what consequences would have followed, if such order would not be passed. It is trite law that when discretionary power is vested on a quasi judicial authority, it is absolutely necessary that proper reasons are to be cited by it, while determining or adjudicating any matter. Tested in the backdrop of the above requirement, the impugned order falls short by a long margin and therefore, cannot be sustained.*

13. *As regards applicability or otherwise of the judgment of this Court in **Ashutosh Amrit (supra)**, no doubt, the said case involved refusal of the authorities to renew a Passport, on the ground of pendency of criminal case, by invoking the provision under Section 6(2)(f) of the Act. But then, the basic reason, i.e., pendency of the criminal case, is common to both the cases. It would be absurd to hold that pendency of criminal case, as referred to in Section-6, would have a different consequence than Section-10. Evidently, only the action to be taken would be different, as both the provisions operate at different stages. However, the spirit behind the two provisions remains the same, i.e., effect of pendency of a criminal case on renewal of passport and on an existing passport. That apart, there is no absolute bar in the Act for issuing and renewing the passport on the ground of pendency of criminal case. As already stated, the provision under Section-10(3) is not mandatory, but discretionary. So, if the provisions of the Act are read as a whole, it would imply that mere pendency of criminal case cannot, in all cases, lead to impounding of the Passport."*



16. In the case of **Nitin Kapoor** (supra) the following was observed.

*“7. In the case at hand, the petitioner is a businessman and has had previous travels to South Africa since 1998 till recently in 2022 and the same is supported by the visa documents submitted by him before the learned court below. No doubt, the prosecution against the petitioner relates to tax fraud but is a native of Gurgaon, Haryana and runs business. In the meantime, the letter of a client was received by the petitioner which reveals some services are to be offered to the said client. Mr. Kar, learned Senior Advocate submits that the purpose of the business as per the communication received by the petitioner still survives and merely for the reason that a prosecution has been launched, he cannot be denied to travel to South Africa and while advancing such an argument, the principle based on a maxim *omnis indemnatus pro innoxio legibus habetur*, which means, everyone who has not been found guilty is deemed innocent by the law is cited. In course of hearing of this case, a Gazette Notification of Government of India dated 20th June, 2007 is produced to claim existence of an extradition treaty between India and South Africa, hence, there is a remote possibility of not getting the petitioner back for the purpose of trial as apprehended by the learned court below and as according to Mr. Kar, learned Senior Advocate, any such apprehension, in the facts and circumstances of the case, is totally misplaced and misconceived. Having regard to the nature of the offences alleged, the delay in commencement of trial with the charge framed, attendance of the petitioner all along duly represented by a counsel without default with no any instance cited and the fact that the petitioner has a past travel history and unlikely to abscond having his roots in India, the Court reaches at a conclusion that the learned court below was not right in denying the permission for him to travel abroad which could have been ensured imposing suitable conditions.”*



17. Thus, non-issue of NOC on the ground cited cannot be sustained in the eye of law.

18. From a conspectus of the facts, contentions raised and the analysis made, this Court holds that the decision of the authorities to refuse NOC to the petitioner on the ground of pendency of disciplinary proceedings/ criminal cases against him indirectly amounts to infringement of his fundamental right to liberty as per Article 21 of the Constitution of India. The impugned order therefore, deserves interference.

19. In the result, the writ petition is allowed. The orders dated 12.07.2022 and 21.03.2025 are hereby quashed. The concerned authorities are directed to issue NOC in favour of the petitioner without any further delay and in any case, not later than six weeks from today.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 11th November, 2025/ A.K. Rana, P.A.