

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .No. 10126 of 2012 (M)

PETITIONER(S) :

N.M.SIDHIC, AGED 46 YEARS,
S/O.MACKAR, RESIDING AT HOUSE NO.14/2008,
SHANTHI NAGAR, THOPPUMPADY P.O., KOCHI,
ERNAKULAM DISTRICT, NOW WORKING AS SENIOR ASSISTANT,
KERALA STATE FINANCIAL ENTERPRISES, KOLENCHERY.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S) :

1. THE DEPUTY GENERAL MANAGER (P & HR) ,
KERALA STATE FINANCIAL ENTERPRISES,
HEAD OFFICE, BHADRATHA, THRISSUR-680001.

2. THE MANAGING DIRECTOR
AND APPELLATE AUTHORITY,
KERALA STATE FINANCIAL ENTERPRISES, CHEMBUKAVU,
THRISSUR-680001.

R1&2 BY ADV. SRI.P.V.LONACHAN,SC,KSFE LTD.

R1,R2 BY ADV. SRI.JIMMY GEORGE THADATHIL, SC, KSFE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 10126 of 2012 (M)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1- TRUE COPY OF THE INVITATION ISSUED BY THE MANAGEMENT OF THEJAS DAILY TO THE PETITIONER INVITING THE PETITIONER TO ATTEND THE INAUGURAL CEREMONY.

EXT.P2- TRUE COPY OF THE APPLICATION DATED 28.5.2011 SUBMITTED BY THE PETITIONER BEFORE R1

EXT.P3- TRUE COPY OF THE COMMUNICATION DT.23.1.12 ISSUED BY R1 ON BEHALF OF R2

RESPONDENTS' EXHIBITS:

EXT.R1- TRUE COPY OF THE FORMAT AND THE NOTES ATTACHED TO THE SAME ISSUED BY THE PASSPORT AUTHORITY.

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.10126 of 2012

Dated this the 13th day of November, 2015.

JUDGMENT

The petitioner is working as a Senior Assistant in the Kerala State Financial Enterprises, Kolenchery Branch. He is a noted columnist and writer also. He is holder of an Indian Passport and the same was valid upto 8.4.2009. Thereafter he did not renew the passport. While so, he was invited by 'Thejus' daily to participate in the inaugural ceremony of the publication of Qatar edition to be held at Qatar in UAE.

2. According to the petitioner, he made Ext.P2 application before the 1st respondent praying for issuing a 'No Objection Certificate' so as to enable him to renew his passport. The 1st respondent, however, did not act on Ext.P2 application. Therefore, the petitioner filed another application under the Right to Information Act dated 01.11.2011 seeking

information on Ext.P2 application. However, the petitioner was informed by the 1st respondent that the information sought on Ext.P2 application cannot be issued. Being aggrieved by the said communication, the petitioner filed an appeal under Section 19 of the Right to Information Act and the appellate authority now informed the petitioner that No Objection Certificate cannot be issued under Section 6(2)(f) of the Passports Act, 1967. The reason stated for rejecting the application for issuing No Objection Certificate in Ext.P3 communication is arbitrary, unreasonable and unsustainable. This is the grievance projected in this writ petition. He filed the above writ petition, inter alia, praying for issuing a writ of certiorari or any other writ, order or direction calling for all the records leading to Ext.P3 communication and also to issue a writ of mandamus or other appropriate writ, order or direction commanding the 1st respondent to issue a 'No Objection Certificate' to him, at the earliest.

3. The respondents filed a counter statement

denying the allegations against them and contending that the denial of No Objection Certificate is not arbitrary or unreasonable. It is stated that the respondent establishment is a public undertaking under the State Government. So, the respondents have to follow the guidelines issued by the Passport Authority in the matter of issuing 'No Objection Certificate' and the Passport Authority will accept 'No Objection Certificate' only if the certificate is issued as per the format specifically prescribed by the authority. The said format categorically says that the authority which issued the same has to read the provisions of Section 6(2) of the Passports Act, 1967 and has to certify that the provisions of the said section are not attracted with respect to the applicant who has applied for passport.

4. In the instant case, the petitioner is an accused in Crime No.1989/2010 alleging commission of an offence punishable under Section 153(A) read with Section 68(A) of the Copyright Act. The offence alleged against him is against the secular interest of the

nation and the allegation against the petitioner is being investigated by the National Investigating Agency. In the aforesaid circumstance, the respondents cannot issue a No Objection Certificate in the format prescribed by the Passport Authority.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

6. The learned counsel for the petitioner submits that even if the petitioner is arrayed as an accused in a criminal case, the 'No Objection Certificate' cannot be denied to him on that reason and the respondents ought to have issued a certificate stating that he is an accused in a criminal case and in that event it will be a matter, which is left with the discretion of the Passport Authority. Instead of issuing a certificate stating the pendency of criminal case, the respondents have denied the certificate in violation of his right to get a certificate stating reason for denial also in that certificate.

7. The short points that arise for consideration are: (1) Whether the respondents are justified in

denying the No Objection Certificate on the ground that the petitioner is an accused in a criminal case pending trial. (2) Whether the respondents are liable to issue a certificate stating their objection, with reasons for the same.

8. In my view, the caption "No Objection Certificate" itself shows that such a certificate can be issued only if the issuing authority has no objection at all. It follows that, if the issuing Authority has objection, the Authority is not liable to issue a certificate stating the objection and reasons for the same. In the absence of 'No Objection Certificate', the receiving Authority can safely infer that the issuing Authority has objection. When it is well inferable, the issuing Authority is not liable to issue a certificate stating the objection and reasons for the same. Moreover, the receiving Authority cannot sit in appeal over the reasons for objection given by the issuing Authority. In the absence of 'No Objection Certificate', it is incumbent on the Passport Authority to arrive at a conclusion that the public undertaking in which the

applicant is working has objection in issuing the passport.

9. The Passport Authority will not accept the 'No Objection Certificate', unless the same is issued in Ext.R1 format prescribed and issued by the Passport Authority itself. Ext.R1 format is prepared in such a way that the certificate can be issued only if the public undertaking, in which the applicant has been working, has no objection against issuing passport and for that he has to certify that provisions of Section 6 (2) of the Passport Act, 1967 are not attracted in the case of applicant. According to Section 6(2)(f) of the Passport Act, the Authority shall refuse to issue a passport, if any criminal proceedings in respect of an offence alleged to have been committed by the applicant are pending before a court in India.

10. In the instant case, admittedly, the petitioner is an accused in Crime No.1989/2010 alleging commission of the offences referred above. So, the respondents cannot issue a No Objection Certificate in Ext.R1 format stating that the provisions of Section 6

(2) of the Passport Act, 1967 are not attracted in the case of the petitioner.

11. It is obligatory on the part of the respondents to follow the direction issued by the Passport Authority in issuing 'No Objection Certificate'. The denial of 'No Objection Certificate' in compliance with the directions issued by the Passport Authority is neither arbitrary nor unreasonable, particularly, when on failure to comply the direction, the respondents shall be liable to be prosecuted under Section 12(2) of the Passport Act, 1967. In the above view of the matter, I find that this writ petition is devoid of merits and is dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.