

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 14846 of 2015 (E)

PETITIONER :

ABDUL LATHEEF MOULAVI KUNATHU VALAPPU, AGED 61 YEARS,
S/O. SAIDALIKUTTY MOULAVI, PANOLIPARMBA, K.V.MANZIL,
KUTHIRAVATTOM, KOZHIKODE DISTRICT.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.C.THEJUS PURUSHOTHAMAN

RESPONDENT(S):

1. THE REGIONAL PASSPORT OFFICER,
ERANHIPALAM P.O., KOZHIKODE-673 006.
2. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA,
NEW DELHI.

*ADDL.R3 IMPEADED

*ADDL.R3: SRI.MANAF.P., SENIOR ACCOUNTANT,
MAN POWER GROUP, OFFICE 201, 2ND FLOOR,
GATE VILLAGE 1, DUBAI INTERNATIONAL FINANCIAL
CENTRE(DIFC), P.O.BOX NO.293516, DUBAI, UNITED ARAB
EMIRATES.

*ADDL.R3 IS IMPEADED AS PER ORDER DATED 29/05/2015 IN IA.NO.6888/2015

R1 & R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

WP(C).No. 14846 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE ORDER IN OA NO.757/2012 DTD. 16.3.2015 PASSED BY THE FAMILY COURT, KOZHIKODE.
- P2 : COPY OF THE AFFIDAVIT SWORN TO BY THE DAUGHTER OF THE PETITIONER DTD. 26.4.2015.
- P3 : COPY OF THE ACKNOWLEDGMENT LETTER OF THE APPLICATION FOR RENEWAL OF PASSPORT DTD. 1.5.2015 ISSUED FROM THE PASSPORT SEVA KENDRA, KOZHIKODE.

RESPONDENT(S)' EXHIBITS AND ANNEXURES:

ANNEX R1(A): COPY OF THE RELEVANT PORTION FROM THE PASSPORT MANUAL.

/TRUE COPY/

P.A.TO JUDGE

sts

K. VINOD CHANDRAN, J.

W.P.(C) No. 14846 of 2015 (E)

Dated this the 29th day of May, 2015

J U D G M E N T

The petitioner is the grandfather of a minor child aged 10 years by name Jazim Abdulla. The minor child is the 2nd son of the daughter of the petitioner by name K.V. Sahla, who is working abroad. The daughter of the petitioner was married to one Manaf Parangot, in which wedlock they have three children - Naeem Abdulla, Jazim Abdulla and Ayisha Daniya. Admittedly, all the children had valid passports and they were residing with their mother at Abu Dhabi, where the mother is working. The petitioner's daughter - Sahla K.V. is said to be divorced from her husband Manaf Prangot, which is evidenced from Ext.P1 judgment of the Family Court, Kozhikode, in a case in which the father had sought for custody of minor children.

2. On requesting renewal of the passport issued to Jazim Abdulla, the same was not granted by the

respondents for reason of there being no consent from the father and hence the petitioner is before this Court seeking consideration of Ext.P3 application. I have heard the learned counsel appearing for the petitioner as well as the learned Assistant Solicitor General of India appearing for the respondents.

3. The respondents would specifically refer to the Passport Rules, 1980 and the three types of declaration Forms prescribed in the case of minors, being Annexure 'C', Annexure 'G' and Annexure 'H'. Annexure 'H' is the form to be submitted by both parents, Annexure 'C' by either parent when they are separated but not formally divorced and Annexure 'G' when consent cannot be obtained from one of the parents.

4. The petitioner, on behalf of his daughter, on the strength of a Power-of-Attorney, filed an application for renewal of the passport of the minor child Jazim Abdulla. The petitioner also swore an affidavit in Annexure 'G' and

produced it along with the passport. However, admittedly, the reason stated was merely that the minor child's father has divorced his mother and that no order of custody of the child is produced before the Passport Issuing Authority.

5. The learned counsel for the petitioner would submit that, if at all, there is any defect in the affidavit, the same could be rectified by filing a fresh affidavit filed and seeks for a direction in the same lines as in **Juvairiya v. Regional Passport Officer - 2014 (1) KLT 990**.

6. **Juvairiya v. Regional Passport Officer** was a case in which the mother of a minor, a divorcee, had filed an application on the ground that consent could not be obtained from the father since his whereabouts were not traceable. Annexure 'G' was also filed along with the application. This Court found that whatever be the disability of the person making an application for a passport of the minor child, if an affidavit is filed in accordance with the Passport Rules, 1980, then, definitely the requirement

in law is only the production of a sworn affidavit in the form prescribed in Annexure 'G', and in such circumstance, the Passport Issuing Authority would definitely have to consider the same and also grant renewal of passport in such cases.

7. The learned ASG would contend that the Passport Issuing Authority insists for a consent only to protect the interest of the father or mother who does not have the custody of the child and that in most cases they insist for a consent or at least a satisfaction that such consent could not be obtained from the other parent.

8. What is to be specifically noticed in the above case is that the fact that the petitioner's daughter is divorced, is evident from Ext.P1 order. Ext.P1 is the order of the Family Court, Kozhikode, in a petition in which the father of the minor children sought custody of the minor children. It is also evident that the petitioner and the respondent, being respectively the father and mother, are both employed abroad and the father had entered into a

subsequent marriage also. The Family Court interacted with the children also before the order was passed and considering the response of the children, as also the circumstances which were revealed on evidence, the Court categorically found that it was not proper to compel the children to stay with their father, as against their considered preference to continue with the mother. The petition for custody was dismissed and not even visitation rights were granted to the father of the children. A mere reservation was made that the father could have access to the children when he comes on leave by moving the Court sufficiently in advance. The Family Court has been cautious insofar as protecting the rights of the father and an application could be moved sufficiently in advance so that notice could also be issued to the mother to bring the children to India.

9. In the totality of the circumstances, it cannot be said that the father's right to custody of the children would

be prejudiced in any manner as the prayer for custody itself stands declined. Further, it is also to be noticed that the petitioner's daughter has three children in the wedlock and all of them had valid passports by virtue of which all of them were with the mother. Even now, two of the children have returned with the mother to her work place. The right of visitation of the father should concede to the welfare of the child. The child, of separated parents, is without the company of the parent who has valid custody as also his siblings. The minor child Jazim Abdulla, alone, could not travel abroad for reason only of renewal of the passport not being effected. It is only proper that respondents allow the application for renewal, since this court finds that the facts disclosed eminently commend the satisfaction required under the Rules. The petitioner however shall file a separate affidavit in Annexure 'G' explaining the circumstance, specifically pointing out Ext.P1 judgment and producing a copy of the judgment along with Annexure 'G'.

The petitioner shall do that immediately and the passport shall be renewed within a week of production of such affidavit.

The Writ Petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj