

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

W.P. No. 16828 of 2015

&

M.P. No. 1 of 2015

Ashok Muthana

..Petitioner

Vs.

The Regional Passport Officer, Chennai,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers - I and II,
New No. 158, Anna Salai,
Chennai - 600 002.

..Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondent herein to renew/reissue the petitioner's passport bearing No. M2742762 pursuant to the petitioner's application dated 28.04.2015 bearing application reference No. ARN151003416867 with file No.MA 1078479168515 for the normal full validity period as provided under the Passport Act.

For Petitioner :: Mr.AR.L. Sundaresan
Senior Counsel for
Mrs.A.L. Ganthimathi

For Respondent :: Mr.M. Sundar,
Central Govt. Standing Counsel
Mr.Nallasenapathi,
Official Assignee

O R D E R

This writ petition is filed for issue of a Writ of Mandamus directing the respondent herein to renew/reissue the petitioner's passport bearing No. M2742762 pursuant to the petitioner's application dated 28.04.2015 bearing application reference No. ARN151003416867 with file No.MA 1078479168515 for the normal full validity period as provided under the Passport Act.

2. The facts of the case are:

The petitioner is said to be involved in criminal cases registered by CBI and Economic Offences Wing, which are pending trial. In connection with Crime No. 1 of 2001, while granting bail to the petitioner by order dated 05.04.2022 in CrI.O.P. No. 6723 of 2002, this Court directed him to surrender his passport before the learned Additional Chief Judicial Magistrate, Kumbakonam and accordingly, the petitioner surrendered his passport. Thereafter, the petitioner approached this Court for return of passport by way of CrI.M.P. No. 11297 of 2004 in CrI.O.P. No. 3521 of 2002. This Court, on 20.12.2004, passed the following order:

"The learned Additional Chief Judicial Magistrate, Kumbakonam, Thanjavur District is directed to return the passport deposited in Court in Crime No. 1 of 2001 on the file of the respondent Police Station to the petitioner. The petitioner is permitted to travel to United States of America by the end of June, 2005 and return to India by the end of July, 2005. Return of passport to the petitioner is only for the limited purpose referred to above. The petitioner shall not leave India using the passport returned to him for any other travel without prior leave of the Court."

Pursuant to the said direction, on the petitioner submitting his expired passport, the Passport Authorities at Chennai issued a new passport to the petitioner valid for one year from 17.02.2005 to 16.02.2006. Thereafter, to get an extension of the validity period of his passport beyond 16.02.2006, the petitioner submitted an application to the Regional Passport Office, Chennai and by letter dated 28.06.2005, the petitioner was advised to obtain a fresh Court order for extension of validity of passport. Accordingly, the petitioner filed W.P. No. 24158 of 2006 praying for a direction to the Regional Passport Office, Chennai to extend the validity of his passport. This Court, by order dated 12.09.2006, disposed of the said writ petition observing as hereunder:

"10. This is a matter entirely for the first respondent to decide as to whether the passport of the petitioner should be renewed or revoked on the grounds which are available under the provisions of the Act and the Rules made thereunder. It is needless to say that every citizen of this country is entitled to get passport subject to the provisions of the Act and the Rules and the petitioner has already obtained a valid passport. In the present case, the petitioner is seeking only for renewal of his passport. Therefore, it is not open to the first respondent to say that it cannot be renewed.

11. Under these circumstances, the first respondent is directed to renew the petitioner's passport and continue to keep it in the custody of the XI Metropolitan Magistrate, Saidapet, Chennai and the writ petition is allowed to the extent indicated above. However, there will be no order as to costs.

12. With reference to the other request made by the learned Senior Counsel appearing for the petitioner regarding permission to the petitioner to travel abroad, it is for the petitioner to approach the concerned Court to seek permission to travel abroad and also for return of the passport for the period to which he is likely to travel abroad."

Pursuant to the direction of this Court, the petitioner's passport was renewed upto 16.02.2015 and the same was under the custody of the learned XI Metropolitan Magistrate, Saidapet, Chennai. Subsequently, the petitioner applied for return of passport before the said Magistrate in Crl.M.P. No. 4460 of 2006 and the same was dismissed on 22.01.2007. Challenging the same, the petitioner preferred a revision before this Court in Crl.R.C. No. 287 of 2007 and the operative portion of the order passed by this Court on 26.02.2007 is as hereunder:

"6. I have carefully considered the rival contentions put forward on either side and also perused the materials available on record including the impugned order passed by the learned XI Metropolitan Magistrate. It is also seen that the case is pending for investigation right from the year 2001. A perusal of the materials also revealed that the petitioner is a qualified engineer studied in Harvard University and he is getting number of employment opportunities in abroad. Therefore, this Court is of the considered view that the petitioner should not be deprived of the opportunities in his professional career. The learned XI Metropolitan Magistrate dismissed the application mainly on the ground that the petitioner has not specifically mentioned the period for which he requires the passport. The learned XI Metropolitan Magistrate also placed reliance of the order passed by this Court in W.P. NO. 24158 of 2006 dated 12.09.2006. Though the learned XI Metropolitan Magistrate mentioned in the order that N.B.W is pending against the petitioner, it is now submitted by the learned counsel for the petitioner that the said N.B.W has already been recalled on the appearance of the petitioner and the learned counsel has also produced the order copy.

7. This Court, in view of the above said sequence of events and in view of the fact that the petitioner had already complied the condition imposed by this Court for return of the passport inclined to pass an order directing the learned XI Metropolitan Magistrate for interim custody of the passport to the petitioner on the following conditions:

(i) The petitioner shall furnish the dates of departure and arrival to the respondent police as and when he undertakes to travel abroad.

(ii) The petitioner shall also appear before the trial court in the event of filing the chargesheet and he is entitled to file a petition under section 317 Cr.P.C. To dispense his personal appearance through his counsel as and when required.

(iii) The petitioner shall also produce the passport as and when required.

Accordingly, the Criminal Revision Case is ordered."

Accordingly, the passport was returned. Thereafter, the pages in the petitioner's passport got over and on the application of the petitioner for issue of additional sheets, the petitioner's passport was reissued only with a validity period of one year from 01.06.2012 to 31.05.2013. Therefore, when the petitioner applied again, the same was extended for one year upto 04.12.2013. On 17.09.2013, the petitioner applied for re-issue/renewal of his passport as the validity period was extended only upto 04.12.2013. In response to the same, the petitioner was issued with a show cause notice dated 04.10.2013 as to why action should not be initiated for suppression of information regarding 5 pending cases in the Economic Offences Wing. In spite of the petitioner's explanation furnished on 10.10.2013 and 18.10.2013 to the show cause notice, by communication dated 12.11.2013, the Regional Passport Officer, Chennai, rejected the petitioner's request for reissue of passport till the disposal of the criminal cases and called upon the petitioner to furnish suitable Court orders. Challenging the same, the petitioner filed W.P. No. 33546 of 2013 and the said writ petition was disposed of by order dated 24.09.2014 directing the Regional Passport Officer, Chennai, to issue additional booklet or additional sheets so that the validity of the passport already issued upto 16.02.2015 is not curtailed in any manner otherwise than by due process of law. The relevant portion of the order reads thus:

"22. A careful look at the facts of the case would show that the duration of the passport issued to the petitioner is upto 16.02.2015. No steps have been taken for impounding or revoking the passport under Section 10(3). Since no step is taken for impounding

or revoking the passport, the passport cannot even be suspended under Section 10-A. Therefore, if the respondent wants to deny the petitioner of the benefit of the validity of the passport upto the period stated therein, namely, 16.02.2015, the respondents can only invoke the first limb of Section 10(1). The case of the petitioner is not referable to Section 6(2), since the case on hand is not one for issue of passport or for reissue of passport upon the expiry of the original duration. If the petitioner wants renewal after 16.02.2015, the same may come within the purview of reissue/issue, enabling the respondents to take recourse to Section 6(2). So long as there is no proposal for impounding or revocation, the case will also not come under Section 10(3).

23. Therefore, I am of the view that the denial of the benefit of the period of validity already stipulated in the passport upto 16.02.2015, without taking recourse to Section 10(1), cannot be sustained. Once the period of validity of the passport is found to be 16.02.2015, such period can be altered only by taking recourse to the power of variation under Section 10(1). Alternatively the first respondent has to take recourse for impounding or revocation under Section 10(3).

24. Coming to the Criminal Cases faced by the petitioner, it is seen that those Criminal Cases already formed part of the records in the previous writ petition W.P. No. 24158 of 2006. The first respondent had made a mention about the Criminal Cases in that case. Yet, an order was passed by the learned Judge allowing the writ petition on 12.09.2006. The operative portion of the order of the learned Judge reads as follows:

"10. This is a matter entirely for the first respondent to decide as to whether the passport of the petitioner should be renewed or revoked on the grounds which are available under the provisions of the Act and the Rules made thereunder. It is needless to say that every citizen of this country is entitled to get passport subject to the provisions of the Act and the Rules and the petitioner has already obtained a valid passport. In the present case, the petitioner is seeking only for renewal of his passport. Therefore, it is not open to the first respondent to say that it cannot be renewed.

11. Under these circumstances, the first respondent is directed to renew the petitioner's passport and continue to keep it in the custody of the XI Metropolitan Magistrate, Saidapet, Chennai and the writ petition is allowed to the extent indicated above. However, there will be no order as to costs.

12. With reference to the other request made by the learned Senior Counsel appearing for the petitioner regarding permission to the petitioner to travel abroad, it is for the petitioner to approach the concerned Court to seek permission to travel abroad and also for return of the passport for the period to which he is likely to travel abroad.

25. Therefore, in view of the fact that the validity of the Passport now held by the petitioner is upto 16.02.2015, the impugned order taking recourse to Section 6(2) is not proper. So long as there is no proceeding either under Section 10(1) or under Section 10(3), the first respondent cannot deny the issue of additional book. What the petitioner now seeks is only the issue of additional book, till the period of validity of the existing passport.

26. Therefore, the writ petition is allowed, directing the respondents to issue additional book or additional sheets to the petitioner so that the validity of the passport already issued upto 16.02.2015 is not curtailed in any manner otherwise than by due process of law. No costs."

Following the directions passed by this Court, a fresh passport was issued to the petitioner with a validity period upto 15.04.2015. Subsequently, the petitioner made an application to the Regional Passport Officer, Chennai for renewal/reissue of passport to extend the validity of his current passport beyond 15.04.2015. The request of the petitioner was rejected by the impugned letter dated 22.05.2015 on the ground of pendency of cases against him and that the request of the petitioner can be entertained only if he furnishes fresh court order. Hence, the petitioner has come forward with the present writ petition.

3. Learned Senior Counsel appearing for the petitioner submitted that the petitioner has shown compliance. According to the learned Senior Counsel, the petitioner is not likely to abscond and he has been co-operating with the investigation over the years. What he wants to do is to extend his services as a

Consultant by travelling abroad and as he has been declared as an insolvent, he would pay one-third of his income to the Official Assignee. Therefore, the writ petition has to be allowed.

4. Learned Standing Counsel appearing for the respondent would submit that considering the facts and circumstances of the case, the request of the petitioner was rejected. When there is warrant or summons for appearance, the respondent has got power to prohibit the departure of the petitioner from the country and that appropriate orders can be passed only after hearing the Official Assignee.

5. Considering the submissions made by the learned Standing Counsel for the respondent, this Court directed the petitioner to serve papers on the Official Assignee.

6. Learned Official Assignee, who is present before this Court, submitted that except a sum of Rs.24000/- per month, the petitioner is not making any payment at all. Further, according to the learned Official Assignee, the petitioner has been declared as an insolvent and therefore, as per Section 60 of The Presidency Towns Insolvency Act, 1909, he has to pay one-third of his future income to the Official Assignee.

7. Heard the learned Senior Counsel for the petitioner, learned Standing Counsel for the respondent and the learned Official Assignee.

8. This Court is primarily concerned with the issue of renewal of passport. It is not in dispute that by the orders of this Court, the petitioner has managed to keep his passport in currency from the year 2001 till now. The same situation continues as of now. The reason for the petitioner to approach this Court now, is, in view of the expiry of his passport. What the petitioner seeks is only reissuance of passport and this has got no relevancy either to the pending investigation or to the proceedings before the Court. Further, the respondent has merely stated that the petitioner has to approach the Court and get appropriate orders. It is also brought to the notice of this Court that non-bailable warrants issued against the petitioner in C.C. Nos. 286/2000, 284/2000 and 376/2000 by the Court of Judicial Magistrate, First Class, Pune, have been recalled and therefore, the contention of the learned counsel for the respondent that the respondent has got power to prohibit the departure of the petitioner from the country in the event of issuance of warrant or summons for appearance cannot be sustained. Hence, the petitioner is entitled to the benefit of the orders passed by this Court on the earlier occasions. The respondent herein is directed to issue appropriate orders within a period of six weeks from the date of receipt of a copy of this

order for renewal/re-issuance of passport to the petitioner, subject to the following conditions:

(i) The petitioner shall give prior intimation to the Official Assignee before going abroad and furnish details of his employment to be undertaken there;

(ii) The petitioner shall file an undertaking before the Official Assignee within a period of two weeks from the date of receipt of a copy of this order stating that he would file a quarterly statement with regard to his income;

(iii) The petitioner shall also undertake to comply with Section 60 of The Presidency Towns Insolvency Act, 1909 by making payment of one-third of his income to the Official Assignee.

9. The writ petition is disposed of on the above terms. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Regional Passport Officer, Chennai,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers - I and II,
New No. 158, Anna Salai,
Chennai - 600 002.

Copy to: The Official Assignee,
High Court, Madras 104.

+6ccs to M/s. A.L. Ganthimathi, Advocate, S.R.No.62756
+1cc to M/s. M. Sundar, Advocate, S.R.No.62755

RSK(CO)
EU(09/12/2015

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