

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.16089 of 2015
& M.P.No.1 of 2015

Dr.A.Arulnidhi

.. Petitioner

Vs

The Regional Passport Officer,
"Rayala Towers" Nos.2 & 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent to return the passport of the petitioner to enable the petitioner to apply for renewal of the passport of the petitioner bearing No.E9627445 and T633750.

For Petitioner : Mr.M.Sriram
For Respondent : Mr.D.Chandar, CGSC

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent to return the passport to enable the petitioner to apply for renewal of the passport of the petitioner bearing No.E9627445 and T633750.

2. It is averred by the petitioner in the affidavit filed in support of the Writ Petition that he was born on 11.09.1975 and his parents did not register his date of birth. He completed schooling in Velammal Matriculation Higher Secondary School, Chennai and +2 in the academic year 1992-1993. The 12th standard mark sheets issued by the authorities would show the petitioner's date of birth as 11.09.1975 and as per the entries in the school records, his date of birth has been recognised as 11.09.1975. He studied M.B.B.S. course in Sri Ramachandra Medical College and Research Institute, Chennai-116. In the Transfer Certificate issued by the said College, his date of birth is shown as 11.09.1975 and he studied post-graduate course in United Kingdom and USA. He had a passport bearing No.E9627455, in which also, his date of birth is shown as

11.09.1975, which is as per the entries in the school records. The petitioner travelled to various countries for the purpose of his education and touring using the said passport. While so, he received a letter dated 29.08.2013 from the respondent to call on them with all his passport and Birth Certificate within 15 days from the date of receipt of the said letter. Thereupon, the petitioner handed over all the required documents like passport, Transfer Certificate, etc. Though the petitioner's date of birth mentioned in his Transfer Certificate and the passport tallied, the respondent requested the petitioner to get a Birth Certificate from the Corporation of Chennai. Upon enquiry in the Corporation of Chennai, the petitioner came to know that his parents have not registered his date of birth at the time of his birth.

3. Thereafter, though the petitioner approached the respondent stating that his date of birth was not registered, the respondent insisted for Birth Certificate from the Corporation of Chennai. The petitioner was informed that his parents can get declaration from the Metropolitan Magistrate for a direction to the Corporation of Chennai to register the petitioner's date of birth. The petitioner's father died on 03.12.2012 and his mother filed Miscellaneous Petition before 19th Metropolitan Magistrate in M.P.No.1144 of 2013, under Section 13(3) of the Registration of Birth and Death Act, read with Rule 9(3) of the Registration of Birth and Death Rules, praying for a direction to the Commissioner of Corporation of Chennai to register the petitioner's date of birth. After enquiry, the learned 19th Metropolitan Magistrate, by order dated 25.11.2013, directed the Commissioner, Corporation of Chennai to register the birth particulars of the petitioner. Thereupon, the Corporation of Chennai registered the petitioner's date of birth and other particulars, after which, the petitioner approached the respondent and sought for return of the petitioner's passport.

4. It is also stated by the petitioner that there was family dispute in the petitioner's family and there were complaints against each other and the documents have been forged in the name of the petitioner's father as if there was a request to register the petitioner's date of birth as 11.09.1974. The documents alleged to have been sent by the petitioner's father are all with pre-determined mind to cause hardship and injustice to the petitioner. Based on such false and fabricated documents, the Commissioner of Corporation of Chennai registered the petitioner's date of birth as 11.09.1974 in the year 2012, but in the school records, his date of birth is recorded as 11.09.1975, which according to the petitioner is the correct date of birth. The alleged request said to have been made by the

petitioner's father is of the year 2012, when the petitioner was major. Hence, there is no truth in the claim that the petitioner's date of birth is 11.09.1974.

5. The petitioner further alleges that he has already sent complaints to the Corporation of Chennai and other authorities and gave criminal complaint to the Police. By letter dated 29.01.2014, the respondent declined to accept the petitioner's date of birth as 11.09.1975 and they sought for explanation from the petitioner stating that his date of birth was already registered by the Corporation of Chennai as 11.09.1974, which was informed to the respondent by a complainant. Thereafter, the petitioner approached the Corporation of Chennai and sought for the details of the petitioner's date of birth and inclusion of his name in the Birth Register. The Zonal Officer of the Corporation of Chennai sent a letter to the petitioner stating that the petitioner's name was included on 12.10.2012 on verification of the supporting documents, such as Transfer Certificate, family Ration Card and an affidavit. It is the grievance of the petitioner that there is no necessity to include the petitioner's date of birth during October 2012. When applied to the Corporation of Chennai, under the Right to Information Act on 05.07.2014, the Zonal Officer furnished the petitioner the copies of documents, viz., a Declaration Form, dated Nil, Ration Card, Transfer Certificate issued by Sri Ramachandra Medical College and Research Institute, Porur, Chennai and the affidavit of the petitioner's father. It is the further grievance of the petitioner that the Declaration Form signed by the petitioner's father and the affidavit dated 10.10.2012 said to have been signed by the petitioner's father, are forged documents. The petitioner's Transfer Certificate issued by the said College also was manipulated by altering the date of birth to 1974 instead of 1975.

6. It is further alleged by the petitioner that as his mother is 63 years old and suffering from various ailments, the petitioner wanted his passport to accompany his mother to Singapore for treatment. Based on a complaint given by a person who has no direct knowledge to give any complaint about the petitioner's date of birth, the respondent is not returning the passport of the petitioner. The petitioner lodged a complaint to the Additional Zonal Health Officer, Corporation of Chennai, to conduct enquiry into the matter, as the entire episode is based on forged and concocted documents. The petitioner also complained to the Police about the wrong entries made in changing the date of birth of the petitioner. By retaining the passport of the petitioner, the respondent is preventing him from travelling abroad. Hence, the petitioner has filed this Writ Petition for the above relief.

7. The respondent has filed counter affidavit inter-alia stating that the letters dated 24.07.2013 and 29.11.2013, respectively sent by D.Mathivanan and D.Ganesan, show that the petitioner has suppressed his correct date of birth and a copy of the Birth Certificate issued by the Corporation of Chennai, registered on 13.09.1974 was also produced before the respondent. On scrutiny of records, it is the stand of the respondent that the petitioner's date of birth is entered as 11.09.1975, which is different from the online Birth Certificate issued by the Corporation of Chennai. The petitioner knows that in the passport application, he has furnished an undertaking that the information given by him is correct and nothing has been concealed and he is aware that it is an offence under the Passports Act for furnishing false information or suppression of material information.

8. It is further alleged in the counter affidavit that a show cause notice was issued to the petitioner to surrender his passport and accordingly, he surrendered his passport. He suppressed material information regarding his registration of birth before the learned 19th Metropolitan Magistrate and obtained fresh Birth Certificate. A show cause notice was also issued to the petitioner as to how he is in possession of two Birth Certificates. The matter was referred to Commissioner of Police, Chennai to take necessary action against the petitioner. The complainant Ganesan filed Crl.O.P.Nos.553 and 554 of 2014 before this Court regarding suppression of information by the petitioner and his brother Ayyanathan Jeevagan, and by interim order, dated 10.01.2014, this Court directed the Commissioner of Police to peruse the complaint and register a case if cognizable offence is made out. Thereafter, the Commissioner of Police, Chennai, by letter dated 22.04.2014, informed the respondent that a case in CCB.Cr.No.175 of 2014 was registered against the petitioner, under Section 12 of the Passports Act read with Section 420, 468, 471 IPC and also against his brother Ayyanathan Jeevagan. Based on the letter dated 06.05.2014 received from the Assistant Commissioner of Police, CCB, C & K Passport, Vepery Chennai, seeking details of application form along with supporting documents furnished for obtaining the passport, the scanned image of the application relating to issuance of Passport No.E9627445 was forwarded to them. In spite of reminders dated 16.10.2014 and 25.09.2015, the Assistant Commissioner of Police, CCB, C & K . Passport, Vepery, Chennai, has not furnished the details of the present stage of the above said criminal case. It is the stand of the respondent in the counter affidavit that as and when the reply is received from the said Assistant Commissioner of Police, Chennai, appropriate action will be taken by the respondent in accordance with the Passports Act. The respondent prayed for dismissal of the Writ Petition.

9. Heard both sides.

10. Without going into the merits of the case, this Writ Petition is disposed of, with a direction to the respondent to conduct enquiry with regard to the return of the passport of the petitioner and after giving an opportunity of personal hearing to the petitioner and necessary parties, pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

Copy to

The Regional Passport Officer,
"Rayala Towers" Nos.2 & 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.

+1cc to Mr.Sriram, Advocate, S.R.No.11706
+1cc to Mr.Chandar, Advocate, S.R.No.11483

MG(CO)
EU(14/03/2016)

सत्यमेव जयते

W.P.No.16089 of 2015

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