

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32398 of 2015
and MP.No.1 of 2015

Anand Kumar Venu

... Petitioner

Vs

The Regional Passport Officer
Regional Passport Office
Rayala Towers 2 & 3, IV Floor
New No.158, Anna Salai,
Chennai-2.

2.The Superintendent of Police
Tiruvallur District
Tiruvallur.

3.The Inspector of Police
Kavarapettai Police station
Kavarapettai, Tiruvallur District.
Tiruvallur District.

4.The Inspector of Police
Arambakkam Police Station
Arambakkam,
Tiruvallur District.

... Respondents

Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the first respondent to issue fresh passport to the petitioner as per Application No.MA2068641717115 dated 01.07.2015 within a time frame as fixed by this Court.

For Petitioner : Mr.P.Solomon Francis.
For Respondent : Mr.Su.Srinivasan, ASG for R1.
Mr.R.A.S.Senthilvel for R2 to R4.
Additional Government Pleader

O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come forward with the present Writ Petition seeking for issuance of mandamus directing the first respondent to issue fresh passport to the petitioner as per Application No.MA2068641717115 dated 01.07.2015.

3.The petitioner has already applied to the first respondent for issuance of passport in Application No.MA2068641717115 dated 01.07.2015. The said application was filed and uploaded by an agent, due to preoccupation and commitments of the petitioner, he did not thoroughly go through the application. Due to lack of communication, the agent failed to mention about the pendency of criminal cases, pending against the petitioner, details of criminal cases are given hereunder :-

(i) Kavearapettai Police Station in Crime No.296 of 2012 (u/s.294(b), 279, 353, 506(4) of IPC).

(ii) Arambakkam Police station in Crime No.426/2001 (u/s.147, 148, 452, 336, 323, 324, 332, 307 of IPC).

(iii) Kavarapettai Police Station in Crime No.417/2001 (u/s.147, 148, 452, 341, 307, 323, 353, 354, 171-F IPC, 3(i)(Vii)(xi), 3(20(v)), SC/ST Act, 3 of T.N. Prevention of Destruction of Property Act 4(i)(a) T.N.P. Act r/w.149 IPC.

The failure to furnish information about the pending cases against the petitioner was out of inadvertence and ignorance and not out of any motive to suppress information.

4.The first respondent while processing the application has sought for verification from the second respondent. Thereafter, the petitioner came to know that the second respondent has given an adverse report for issuance of passport, resulting in the first respondent seeking certain clarifications regarding the pendency of the criminal cases by letter dated 28.08.2015. On 25.09.2015, the petitioner appeared personally before the first respondent and gave his explanation along with necessary documents relating to pendency of criminal cases and the first respondent also acknowledged the receipt of written explanation and documents on 28.09.2015. Thereafter, the first respondent has not processed the application of the petitioner and when the petitioner approached the office of the first respondent, it is informed that the passport will not be issued, unless he obtains an order from the Court. Hence, the petitioner filed the present writ petition.

5.The first respondent filed its counter, inter alia stating that the petitioner applied for fresh passport on 01.07.2015 in file No.MA2068641717115, in the application he had given an undertaking which is reproduced as follows :-

"I owe allegiance to the sovereignty, unity and integrity of India, and have not voluntarily acquired citizenship or travel document of any other country.

I have not lost, surrendered or been deprived of the citizenship of India and I affirm that the information given by me in this form

and the enclosures is true and I am solely responsible for its accuracy, and I am liable to be penalized or prosecuted if found otherwise. I am aware that under the Passports Act, 1967 it is a criminal offence to furnish any false information or to suppress any material information with a view to obtaining passport or travel document. Furthermore, I solemnly affirm that :"

The application of the petitioner's vide file No.MA2068641717115 was granted on the same day itself i.e, on 01.07.2015 on the basis of pre-verification mode. Hence, preliminary show cause notice vide reference No.SCN/303009157/15 dated 28.08.2015 was issued to the petitioner as to why passport facilities should not be refused to the petitioner. The petitioner responded to the office to show cause on 28.09.2015 in person. At that time, the petitioner admitted that three criminal cases are pending against him. The action of the petitioner attracts the provision of Section 6(2)(f) of Passports Act, 1967, in terms of instructions contained in GSR.No.570(E), the petitioner was advised to obtain permission/no objection certificate from the competent court and prayed for dismissal of the writ petition.

6.The learned counsel for the petitioner would submit that out of three cases levelled against the petitioner, in Crime No.417 of 2001 already charge sheet was filed and it was committed to the Sessions Court and assigned SC.No.116 of 2013 and after trial, the petitioner was acquitted by the learned Principal Sessions Judge, Tiruvallur. In another one case, the trial is in progress and the other case is still in FIR stage.

7.The learned counsel for the petitioner relied upon the Notification in GSR.570(E) issued by the Ministry of External affairs reads as follows :

In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in suppression of the notification of the Government of India in the Ministry of External Affairs No.GSR.298(E), dated the 14th April 1976, the Central Government, being of the opinion that it is necessary in public interest to do so hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause(f) of Sub Section (2) of Section 6 of the said Act.

8.Since, the petitioner has applied for passport for the first time, the first respondent itself can consider the application of the petitioner in the light of the above said

Notification in GSR.570(E) issued by the Ministry of External affairs.

9.The learned counsel for the petitioner has also relied on the order of this Court in WP.No.8948 of 2013 dated 12.06.2013, wherein the learned single judge observed as follows :

"8.The application submitted by the petitioner for issuance of fresh passport requires to be considered by the first respondent on merits and as per law. The registration of criminal case against the petitioner cannot be a reason to deny passport to him. In the matter of this, this Court has to strike the balance between the right of the citizen to travel and the need of prosecution to ensure the presence of the accused to stand trial."

10.Following the order of this Court in WP.No.8948 of 2013 dated 12.06.2013, this Court directs the petitioner to submit a fresh representation to the first respondent enclosing all the details of criminal cases and order copy, along with the copy of this order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the first respondent is directed to pass appropriate orders, with regard to issuance of passport to the petitioner in Application No.MA2068641717115 dated 01.07.2015, after affording opportunity of personal hearing to the petitioner as well as to the necessary parties, if any, within a period of six weeks, thereon.

11.The writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

tsh

To

The Regional Passport Officer
Regional Passport Office
Rayala Towers 2 & 3, IV Floor
New No.158, Anna Salai,
Chennai-2.

2.The Superintendent of Police
Tiruvallur District
Tiruvallur.

3.The Inspector of Police
Kavarapettai Police station
Kavarapettai, Tiruvallur District.
Tiruvallur District.

4.The Inspector of Police
Arambakkam Police Station
Arambakkam,
Tiruvallur District.

+1cc to Mr.P. Solomon Francis, Advocate, S.R.No.14333,
+1cc to Mr.Su.Srinivasan, Advocate, S.R.No.14361
+1cc to the Government Pleader, S.R.No.14959

JSV(CO)
EU(17/03/2016)

W.P.No.32398 of 2015

सत्यमेव जयते

WEB COPY