

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.03.2016

Pronounced on : 07-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 7376 of 2015

K. Maiyyan

.. Petitioner

Versus

1. The Regional Passport Officer
Royala Towers
No.158, Anna Salai
Chennai - 600 002
2. The Immigration Officer
Bureau of Immigration
Shastri Bhavan Annexe
26, Haddows Road
Nungambakkam
Chennai - 600 006
3. The Visa Officer
Office of U.S. Consulate General
Anna Salai, Chennai - 600 006
4. Prasad Kailasam

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 3 to take appropriate action against the fourth respondent under the Passport Act and under the Immigration Law, so as to cancel the passport and visa granted to the 4th respondent under Passport No. F2367353 in File No.6004387/2005 dated 05.04.2005 by recalling the 4th respondent from the United States of America by passing suitable orders on the petitioner's representatiuon dated 15.02.2015.

For Petitioner:

Mr. R. Shanmugam

for M/s. Shanmugha Associates

For Respondent:

Mr. V.T. Balaji for RR1 and 2

ORDER

The petitioner has come forward with this writ petition to issue a Mandamus to the respondents 1 to 3 to take appropriate action against the fourth respondent under the Passport Act and under the Immigration Law by cancelling the passport and visa granted to him under Passport No. F2367353 in File No.6004387/2005 dated 05.04.2005 and to recall the 4th respondent from United States of America by passing suitable orders on the petitioner's representation dated 15.02.2015.

2. It is seen from the records that there are civil as well as criminal proceedings pending between the petitioner, fourth respondent herein and others. The grievance of the petitioner appears to be that in one of the criminal cases registered in Crime No. 1060 of 2012, the fourth respondent herein is arrayed as fourth accused. In the said case, the fourth respondent herein along with other accused has obtained an anticipatory bail before the learned Principal Sessions Judge, Chennai on 14.12.2012 in Crl.M.P. No. 12711 of 2012. Seeking to cancel the order of anticipatory bail, the defacto complainant has filed Crl.M.P. No. 1911 of 2013. The trial Court, by order dated 26.04.2013 dismissed Crl.M.P. No. 1911 of 2013 and refused to cancel the anticipatory bail granted to the accused. Challenging the order dated 26.04.2013, the defacto complainant in the said case namely Marimuthu has filed Crl.R.C. No. 712 of 2013 before this Court. This Court, by order dated 25.07.2013, refused to interfere with the order passed by the trial Court and dismissed the Criminal Revision Case. As against the same, the defacto complainant has filed Crl.Appeal No. 2187 of 2014 (SLP (Crl) No. 9309 of 2013) before the Honourable Supreme Court. The Honourable Supreme Court of India, by an order dated 13.10.2014 allowed the appeal thereby cancelled the anticipatory bail granted in favour of the fourth respondent herein and another accused. However, it was made clear that it will be open to the accused to seek for regular bail which may be considered, uninfluenced by the order passed by the High Court or the Honourable Supreme Court. According to the petitioner, inspite of cancellation of the anticipatory bail granted to the fourth respondent herein, the investigating agency has not secured the fourth respondent. Further, the fourth respondent has absconded and presently he is residing in United States of America. In such circumstances, the petitioner has given a representation dated 15.02.2015 to the respondents 1 to 3 seeking to cancel the passport and visa granted to the fourth respondent and to recall him from United States of America to subject him to the criminal proceedings pending against him.

3. The learned counsel appearing for the petitioner mainly contended that the fourth respondent has obtained the passport

and Visa by suppressing many material facts, including the pendency of the criminal proceedings against him. It is further stated that the fourth respondent has left India to United States of America only to escape from the clutches of the criminal proceedings pending against him in India. In such circumstances, the petitioner has given a representation dated 15.02.2015 to the respondents 1 to 3 seeking to cancel the passport and visa granted to the fourth respondent and to recall him from United States of America. According to the counsel for the petitioner, inspite of such a representation dated 15.02.2015 given by the petitioner, the respondents 1 to 3 did not pass any orders and therefore, he prayed this Court to issue appropriate direction to the respondents 1 to 3 to pass appropriate orders on his representation dated 15.02.2015.

4. Mr. V.T. Balaji, learned counsel accepts notice for the respondents 1 and 2.

5. The learned counsel for the petitioner vehemently contended that he is only seeking for a relief to issue a direction to the respondents 1 to 3 to pass orders on the representation of the petitioner dated 15.02.2015 and it is for the respondents 1 to 3 to consider his claim on merits. Even such a relief cannot be granted by this Court for more than one reason. First of all, there is no evidence to show that the representation dated 15.02.2015 has been served on the respondents. Unless it is proved that the representation said to have been given by the petitioner is pending on the file of the respondents 1 to 3, this Court cannot issue a Mandamus as sought for by the petitioner. Further, a Mandamus cannot be issued by this Court to compel the respondents 1 to 3 to do certain acts which they are not obliged to do either under the Passport Act or Immigration Laws.

6. Even according to the counsel for the petitioner, the anticipatory bail granted to the fourth respondent has been cancelled by the Honourable Supreme Court on 13.10.2014 in Crl.Appeal No. 2187 of 2014 (SLP (Crl) No. 9309 of 2013). While so, this Court, in exercise of the powers conferred under Article 226 of The Constitution of India, cannot issue any direction to secure the presence of the fourth respondent in the light of such order passed by the Honourable Supreme Court. Furthermore, it is not very clear as to what are the material suppressions made by the fourth respondent while obtaining passport and visa in his favour. A bald, vague and generic allegation has been made in the affidavit filed in support of the writ petition that the fourth respondent has suppressed many material particulars and obtained the passport and visa. Even assuming that the fourth respondent has obtained the passport and visa by suppression of material facts, it is for the respondents 1 to 3 to take appropriate action on the basis of

materials available and it is not for this Court to issue any direction to the respondents 1 to 3, as prayed for in this writ petition. Further, deportation of the fourth respondent from United States of America is a matter to be decided by the respondents 1 to 3 after following various procedures in that regard and this Court is not inclined to issue any direction to that effect.

7. In this context, it will be useful to refer to the decision of the Division Bench of this Court in the case of (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, wherein the Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or

understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

8. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no straight-jacket formula to be adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued. In this case also, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences whereby the respondents 1 to 3 will be forced to discharge their statutory duty, which they are not bound to do at the instance of the petitioner.

9. For all the above reasons, I am not inclined to grant the relief sought for in this writ petition. Accordingly, the writ petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Regional Passport Officer
Royala Towers
No.158, Anna Salai
Chennai - 600 002
2. The Immigration Officer
Bureau of Immigration
Shastri Bhavan Annexe
26, Haddows Road
Nungambakkam
Chennai - 600 006
3. The Visa Officer
Office of U.S. Consulate
Anna Salai, Chennai - 600 006

+1 cc to Mr.V.T.Balaji Advocate vide sr.14432
+1 cc to M/s.Shanmugha Associates vide sr.14401

WP No. 7376 of 2015

aa15/03/2016

सत्यमेव जयते

WEB COPY