

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 23.03.2016

Pronounced on : 18-04-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 4287 of 2016

B. Jithin Jacob

.. Petitioner

Versus

1. The Superintendent (CBI) Chennai
Anti-Corruption Branch
Sastri Bhavan
No.6, Haddows Road
Chennai - 600 006

2. The Regional Passport Officer
Passport Seva Kendra
No.25, AGT Business Park
Avinashi Road, Civil Aerodrome Post
Coimbatore - 641 014

3. C. Sasikumar
The Regional Passport Officer
Passport Seva Kendra
No.25, AGT Business Park
Avinashi Road, Civil Aerodrome Post
Coimbatore - 641 014

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the first respondent to consider the petitioner's representation dated 07.09.2015 made to the first respondent and consequently direct the first respondent to investigate actions of the second respondent and to initiate appropriate action against the third respondent with regard to the refusal of tatkal passport to the petitioner and others.

For Petitioner : Mr. N. Anand

For Respondents : Mr. N. Vijaya Baskar
Additional Central
Government Standing Counsel
for RR2 and 3

ORDER

The petitioner has come forward with this writ petition praying for issuing a Writ of Mandamus directing the first respondent to consider his representation dated 07.09.2015 made to the first respondent and consequently direct the first respondent to investigate the actions of the second respondent and to initiate appropriate action against the third respondent with regard to the refusal of tatkal passport to him and others.

2. It is contended by the petitioner in the affidavit filed in support of the writ petition that he studied B.Tech course at Karunya University, Coimbatore. During the course of his third year degree course, he got a project assignment at Sachnider Electric Company at France. Immediately, the petitioner submitted an application to the second respondent on 22.02.2014 and produced all required documents under the tatkal quota. On 17.03.2014, the petitioner was called upon to attend an interview and he attended the interview. Thereafter, the application submitted by the petitioner was rejected by the second respondent on the ground that the petitioner did not produce the original S.S.L.C. mark statement. Thereafter, petitioner met the third respondent in the office of the second respondent on 17.03.2014 and requested him to entertain his application for passport under the tatkal quota. However, the third respondent asked him to re-submit the application for consideration on 23.05.2014 in the normal category. On 18.03.2014, the father of the petitioner went to the office of the second respondent and met the third respondent with a request to consider the application submitted by the petitioner and to issue passport before 21.03.2014 so as to enable him to take up his new assignment at France. However, the third respondent did not consider such genuine request, instead, the third respondent abused the petitioner with filthy languages. In this context, the father of the petitioner had sent a complaint dated 20.03.2014 and 19.04.2014 to the first respondent highlighting the above irregularities on the part of the third respondent, but the same were not considered. Hence, the petitioner has come forward with this writ petition.

3. The learned counsel appearing for the petitioner reiterated his submissions on the basis of the averments made in the affidavit filed in support of the writ petition. According to the learned counsel for the petitioner, the third respondent failed to consider the genuine grievance expressed by the petitioner inter alia defeated the very object and purpose with which the Tatkal scheme was introduced by the Government. The learned counsel for the petitioner further would contend that the representation dated 07.09.2015 made by the petitioner is pending on the file of the first respondent and if a direction

is issued to the first respondent to consider such representation, no prejudice will be caused to any one.

4. The learned standing counsel appearing for the third respondent vehemently opposed the writ petition. According to the learned standing counsel, the petitioner applied for grant of passport on 22.02.2014. Such application was made on-line and he was given an appointment on-line with user-id and password. The third respondent has nothing to do with the question of granting appointment at an earlier date since the issue of giving appointments are electronically done. According to the learned standing counsel, as per the Passport Manual, 2010, only a person having educational qualification of matriculation pass and above is eligible for Non-ECR (Emigration Clearance Required) passport. Therefore, during interview, the third respondent insisted the petitioner to submit the SSLC mark sheet as per the Manual. The petitioner has to submit the original 10th mark sheet as per the prevailing Rules and the third respondent has no power or authority to waive such a requirement. The third respondent specifically denied the averment that the petitioner met him on 21.03.2014 along with his father. It was also denied that the third respondent abused the petitioner in filthy language. It is stated by the learned standing counsel for the third respondent that on 23.05.2014, the petitioner submitted a declaration stating that "his birth certificate was not issued 10 years from his birth and therefore his tatkal request was rejected". Thereafter, at his request, the application was accepted under the normal category. As regards the complaint dated 20.03.2014 and 19.04.2014 filed by the petitioner's father against the third respondent, a reply was given on 23.04.2014 but that was not mentioned by the petitioner in his affidavit. Further, the petitioner has submitted an application invoking Right to Information Act for which also, suitable information was furnished. As against the information furnished to the petitioner, the petitioner preferred an appeal and the same was also rejected by the appellate authority on 17.06.2014. Thereafter, yet another application dated 02.07.2015 was submitted by the petitioner under the Right to Information Act seeking certain queries for which a reply was sent to him on 03.08.2015. Not satisfied with the reply, the petitioner filed an appeal before the appellate Authority and the same was rejected on 16.10.2015. The learned counsel for the third respondent vehemently contend that there is no abuse of power or irregularity committed by the third respondent. It is not as though the representation of the petitioner has not been considered. As mentioned above, a suitable reply was given to the complaints given by the petitioner. While so, the learned counsel for the third respondent would pray for dismissal of the writ petition.

5. I heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents. I also perused the affidavit filed by the petitioner as well as the counter affidavit of the third respondent.

6. The grievance of the petitioner is that his application under tatkal quota has not been entertained by the third respondent by which the petitioner was deprived of an opportunity to undertake his project at France. It is seen from the records that admittedly, the petitioner did not produce the original S.S.L.C. mark sheet at the time of interview for issuance of passport. According to the third respondent, production of S.S.L.C. mark sheet is one of the conditions precedent for entertaining an application under Tatkal quota as per the Passport Manual 2010. When admittedly the petitioner did not produce the S.S.L.C. mark sheet, the third respondent cannot be expected to waive such a requirement and issue the passport to the petitioner. The third respondent is fully justified in not entertaining the application of the petitioner for issuance of passport under Tatkal quota in the absence of production of S.S.L.C. original mark sheet. When the Passport Manual requires the petitioner to produce the S.S.L.C. mark sheet, which is also clearly indicated in the official website of the respondents, it is his bounden duty to produce the same. The third respondent has properly discharged his duty and it is the petitioner who want the third respondent to shirk his duties and responsibilities to issue the passport to him purportedly to enable him to undertake an assignment abroad. It may be true that the petitioner has got an assignment overseas, but that is not a ground for the third respondent to act contrary to the Passport Manual.

7. A perusal of the representation dated 07.09.2015 of the petitioner, which is enclosed in page No.18 of the typed set of paper, addressed to the first respondent, would disclose that the petitioner referred to the applications submitted by him under Right to Information Act and the replies received by him thereunder. However, those averments are conspicuously absent in the affidavit filed in support of the writ petition. The petitioner ought to have disclosed the replies received from the respondents also in the affidavit filed in support of the writ petition but for the reasons best known, he failed to indicate the reply given to him.

8. As regards the relief sought for by the petitioner in this writ petition, it is innocuous. What could not be achieved by the petitioner directly is sought to be achieved by filing this writ petition. The direction sought for in this writ petition cannot be given as it would revive a stale or dead

claim. In my considered opinion, this is not a fit case where this Court will be justified in issuing a direction to the first respondent to consider the representation of the petitioner. 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."

9. 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 will be forced to discharge their statutory duty, which they are not bound to do at the instance of the petitioner. The writ petition has been filed only to harass the respondents for having discharged their statutory duty.

10. 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.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent (CBI) Chennai,
Anti-Corruption Branch,
Sastri Bhavan,
No.6, Haddows Road,
Chennai - 600 006.
2. The Regional Passport Officer,
Passport Seva Kendra,
No.25, AGT Business Park,
Avinashi Road, Civil Aerodrome Post,
Coimbatore - 641 014.

+1cc to Mr.N.Anand, Advocate sr.24068
+1cc to Mr.N.VijayaBaskar, Advocate Sr.24065

WP No. 4287 of 2016

gjii(CO)
srg(06/05/2016)

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