



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition(MD)No.11122 of 2015

M.Mohamed Ali Jinnah

... Petitioner

Vs.

The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 2.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to issue passport.

For Petitioner

: Mr.S.M.A.Jinnah

For Respondent

: Mr.D.Saravanan

Central Govt. Standing Counsel

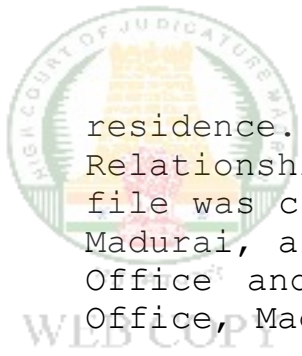
ORDER

This Writ Petition is filed seeking for issuance of a Writ of Mandamus, directing the respondent to issue passport to the petitioner.

2.The case of the petitioner in brief is as follows:-

2.1.The petitioner is a permanent resident of Panpozhi Village, Senkottai Taluk, Tirunelveli District and he is a post-graduate in Journalism and also serving as General Secretary of Popular Front India, a Social Welfare Organisation, registered under the Societies Registration Act. The petitioner is also married and blessed with two children. Both the children are studying at Courtallam and he is living with his family in Panpozhi Village.

2.2.Earlier on 08.03.2007, the petitioner applied for a passport to the Passport Officer, Tiruchirappalli and also paid fees for the same. After receipt of the application, the application was referred for police verification and the jurisdictional police station sent a communication as if the petitioner is not residing in the above address. Thereafter, he appeared before the Passport officer, Tiruchirappalli, with relevant documents to prove his nativity and place of his ordinary



residence. At that time, he was informed by the Public Relationship officer, attached to Trichy Passport Office that his file was closed, as the Government opened a new Passport office in Madurai, all the relevant papers were sent to the Madurai Passport Office and instructed him to apply afresh before the Passport Office, Madurai.

2.3.Hence, once again, he applied for the passport before the respondent on 02.01.2012. After receipt of his application, the respondent sent a communication, dated 12.06.2012 stating that he suppressed the earlier passport application and also there is an adverse police report with remarks that the applicant is residing at Chennai. On receipt of the same, he sent a detailed representation on 16.07.2012, explaining all the above facts and requested the respondent to provide a passport. Subsequently, on 02.01.2013, the respondent informed him that no explanation was received by him and by another communication, dated 18.04.2013, the respondent instructed the petitioner to submit suitable explanation for the adverse police verification report that he is not staying at Ponpozhi Village, but residing at Delhi and Chennai. Immediately, the petitioner obtained a resident certificate from the Village Administrative Officer of Ponpozhi Village and photocopy of the identity card, family card, driving license and bank pass-book along with a detailed explanation sent to the respondent on 23.12.2013 and the same was received by the respondent on 26.12.2013.

2.4.After receipt of the same, another communication was sent by the respondent on 21.04.2014 asking for another explanation. For that also, he had sent a detailed explanation on 12.07.2014. So far no action was taken on the petitioner's application by the respondent. Hence, he has filed the present Writ Petition.

3.The respondent filed a counter-affidavit stating that the petitioner was born on 06.05.1978 at Panpozhi Village, Tirunelveli District and he is a resident of 6/37A, Periya pallivasal street, Panpozhi Post, Shencottai, Tirunelveli District and he has applied for a passport before the Passport Officer, Madurai on 02.01.2012 and his case was referred to the Superintendent of Police, Tirunelveli under Section 5(2) of the Passports Act, 1967, for verification of his character and antecedents. In response to it, an adverse police verification report was received from the Superintendent of Police, Tirunelveli, dated 16.01.2012, stating that the petitioner is not residing in the given address and he is coming to the given address only once in a year. Hence, grant of passport was not recommended to the petitioner.



4. In the counter-affidavit, it is further stated that on scrutiny of records, it is seen that the petitioner already applied for a passport on 08.03.2007 in the Passport Office, Trichirappalli and in the above application, an adverse police verification report was received from the Superintendent of Police, Tirunelveli, stating that the petitioner was residing at Chennai for last two years and he was working as Journalist and residing in the above address for the past two years. Hence, grant of passport was not recommended to the petitioner. The petitioner has suppressed his previous application details and not mentioned his present address in the application, which is an offence under Section 12(1)(b) of the Passports Act, 1967.

5. In the above circumstances, a show-cause notice was issued to the petitioner and the petitioner has submitted his explanation stating that he is very much residing in the address mentioned in the application, and the same was sent for re-verification to the Superintendent of Police, Tirunelveli. Subsequently, a discreet enquiry was conducted by the Superintendent of Police, Tirunelveli for clarification of police verification status and he submitted a report that the applicant is residing in other State and working somewhere in a newspaper office run by a Muslim organisation and he visits his native place yearly once or twice. He did not furnish any information regarding remarks about his place of working. Therefore, the petitioner was not recommended for passport facilities by the police and as per Passport Rules, the petitioner should apply for passport at the place of residing with usual formalities after paying penalty for suppression of previous passport application and present address.

6. The learned counsel for the petitioner would submit that the petitioner is a permanent resident of Panpozhi Village; his entire family is residing there; his two children are studying at Courtallam; he is also having property in the above Village, so far no criminal case is pending against him and he has not been convicted for any criminal offence, so far as the earlier passport application filed by the petitioner, he was informed by the Regional Passport Office, Tiruchirappalli that since new passport office has been opened at Madurai, he can apply for a fresh passport at Madurai. Hence, there is no suppression in not mentioning about the earlier complaint.

7. On the other hand, the learned counsel for the respondent submitted that since the Superintendent of Police, Tirunelveli filed a adverse report, they are not in a position to issue a passport as the report clearly shows that the petitioner is not residing in the above Village, but he is residing somewhere else. Hence, the respondent is not in a position to issue passport to the petitioner.



8. I have considered the rival submissions made on either side and perused the records.

9. Section 5 of the Passports Act, 1967, deals with the filing applications for passports, travel documents etc. As per Section 5(2) of the said Act, on receipt of an application, the passport authority, after making inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing to issue passport or travel document, or refuse to issue on the passport after recording reasons for the same.

10. Section 6 of the Passports Act, 1967, deals with refusal of passports, travel documents etc. Under Section 6(2) of the Passports Act, 1967, Passport Officer can refuse to issue a passport or travel document for visiting any foreign country under clause (c) of Sub-Section (2) of Section 5, on any one or more of the following grounds.

11. Section 6(2) of the Passports Act, 1967 reads as follows:-

"6(2). Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-Section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two



(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court."

12.A plain reading of the above provision clearly shows that the passport officer can refuse to issue passport only on the ground that if the applicant at any time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years or a proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India or a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court.

13.In the instant case, as per the report submitted by the Superintendent of Police, Tirunelveli, no criminal case is pending against the petitioner and he was not convicted by any criminal Court or any warrant is pending. But as per the report, on his professional avocation, he is staying at Delhi and Chennai and used to visit his native place once or twice in a year, and in the jurisdictional police station no criminal case is pending against him, and the police only suspecting the conduct of the petitioner.

14.Admittedly, the petitioner is a resident of Panpozhi Village and he is staying for his professional avocation somewhere else and the fact that the entire family is now residing in Panpozhi Village and two of his children also studying at Courtallam near Panpozhi Village was not disputed by the respondent.

15.From the above narrated facts, the case of the petitioner will not fall under Section 6(2) of the Passports Act, 1967. Hence, the respondent cannot deny issuance of passport to the petitioner on mere suspicion, as the petitioner did not violate any one of the condition prescribed under Section 6(2) of the said Act. So far as the suppression of filing the earlier application filed by the petitioner, it may be offence under Section 12 of the Passports Act, 1967 and if the respondent wanted to take action against the petitioner, it is always open to the respondent to initiate proceedings against the petitioner and for that purpose, the respondent cannot deny passport to the petitioner.



16. In the above circumstances, the reasons stated by the respondent for refusing to issue passport to the petitioner is not valid in eye of law, hence, the respondent is directed to consider the petitioner's application for issuance of passport and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

17. With the above observations, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 2.

+One cc to Mr.S.M.A.Jinnah, Advocate, SR.No.55941
+One cc to Mr.D.Saravanan, Advocate, SR.No.56015
+One cc to Mr.M.Mohammed Abbas, Advocate, SR.No.56256

ps

RL/5C/6P/PV/SARI/1.12.2016

W.P (MD) No.11122 of 2015

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