



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2016

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THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P.(MD) No.7773 of 2016

and

WMP(MD) No.6433 of 2016

S.Joseph Nuson

.. Petitioner

vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai 625 002.

2.The Inspector of Police,
Koodankulam Police Station,
Tirunelveli District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned show cause Letter Ref.No.SCN/303682605/16, dated 04.03.2016, issued by the 1st Respondent and quash the same as illegal and further direct the 1st Respondent to allow the Petitioner to use his passport in view of his explanation letter, dated 21.03.2016, given to the 1st Respondent.

For Petitioner : Mr.V.Rajiv Rufus

For R1 : Mrs.S.Srimathy

For R2 : Mr.V.Muruganandam
Additional Government Pleader

ORDER

Heard the Learned counsel for the Petitioner; the Learned counsel for the First Respondent and the Learned Additional Government Pleader appearing for the Second Respondent.

2.By consent, the main writ petition itself is taken up for final disposal.

3.According to the Petitioner, he was working as Able Sea Man (Bosum) in an Iran Company and when he was on vacation in India, in May 2015, there was a quarrel among one Prabhu and Milton regarding Koodankulam Nuclear Plant issue and on 11.05.2015 at 9.30 p.m. the said Prabhu scolded the Milton in filthy words and hacked him with the help of sword. Many villagers including the Petitioner intervened and stopped the fight. The said Prabhu got annoyed and made cut injury on the Petitioner. The Petitioner and Milton were admitted in Government Hospital, Asaripallam, Kanniyakumari District.



4.The Second Respondent/Police got a statement from the said Milton and registered a case in Crime No.108 of 2015 on the file of Koodankulam Police Station as against the said Prabhu and in the said case, the Petitioner was shown as a witness. It appears that the said Prabhu got angry and gave a complaint against the Petitioner and the said Milton on the next day under Sections 294(b), 323, 324 and 506(ii) IPC.

5.The stand of the Petitioner is that he and the said Milton came out on Anticipatory Bail and the case filed against him and Milton was registered in Crime No.109 of 2015 on the file of Koodankulam Police Station.

6.The categorical plea of the Petitioner is that during June, 2015, he received one more opportunity to work in ship and hence, he went abroad and earned for his livelihood. During November, 2015, he returned to India and applied for renewal of passport on 18.01.2016 and got renewal of his passport on 19.01.2016 from the First Respondent.

7.Apart from that, the Second Respondent/Inspector of Police, Koodankulam Police Station, came to the house of the Petitioner and enquired him and further informed stating that the criminal case is pending against him and they will furnish report to that effect. At that point of time only, the Petitioner realised that the criminal case is pending against him. Also, he made a representation, dated 17.02.2016 before the District Collector, Superintendent of Police, Deputy Superintendent of Police, explaining his innocence. Moreover, the First Respondent/Regional Passport Officer, Madurai, issued a show cause notice, dated 04.03.2016 to the Petitioner seeking explanation for the details mentioned by the Petitioner in the application. In short, in the said letter/communication, the First Respondent had averred that the Petitioner had suppressed the fact of criminal case and sought for his explanation.

8.It is represented on behalf of the Petitioner that he submitted his explanation on 21.03.2016 with details of his case and that the First Respondent has not passed necessary final orders in the subject matter in issue. Thereafter, the Petitioner on 24.05.2016, was issued with show cause notice by the First Respondent requiring him to state as to why action should not be taken against him to impound the passport No.N6300789, dated 19.01.2016, under Section 10(3)(e), 'Criminal case is pending before the Court' of Passports Act, 1967 and Section 12(1)(b) of the Passports Act, 1967 should not be initiated against him.

9.Also, on the very same day on 24.05.2016, the First Respondent informed the Petitioner that it was decided to impound the passport bearing No. N6300789 of the Petitioner under Section 10(3)(e) 'Criminal case is pending before the Court' of Passports Act, 1967, and further directed him to submit the passport to his office with immediate effect, if not, already done.

10.The crystalline case of the Petitioner is that he submitted his explanation, dated 27.05.2016 before the First Respondent/Regional Passport Officer, Madurai, *inter alia* stating that a false case was filed against him in Crime No.109 of 2015 under various Sections of



Indian Penal Code and because of the false case filed against him, his passport should not be rejected and rejection of passport is in violation of one of the fundamental rights etc.

11. It is to be pertinently pointed out that there is no express Provision provided in the 'Passport Act, 1967', which specify that the 'Audi Alteram Partem' ought to be followed before impounding a Passport. In this connection, it is not out of place for this Court to make a significant mention that under 'Common Law', no one should be condemned without being heard, in which, the Rules of Natural Justice are manifested.

12. In the instant case on hand, it cannot be forgotten that for the show cause notice, dated 04.03.2016, issued by the First Respondent, the Petitioner had submitted his representation, dated 21.03.2016 before the First Respondent and admittedly no final orders have been passed by the First Respondent in the subject matter in issue. In the meanwhile, it transpires that the First Respondent had issued another show cause notice on 24.05.2016 to the Petitioner stating as to why action should not be taken to impound the passport of the Petitioner and on the very same day, on 24.05.2016, had decided to impound the passport of the Petitioner because of the pendency of the criminal case before the Court and directed the Petitioner to submit the passport with immediate effect, if not already done.

13. In this connection, this Court, very significantly points out that when the second show cause notice, dated 24.05.2016 was issued to the Petitioner by the First Respondent, the First Respondent on the very same day on 24.05.2016, had decided to impound the passport and directed the Petitioner to surrender his passport immediately to the First Respondent office, if not, already done. Such a procedure adopted by the First Respondent/Regional Transport Officer, Madurai, in the considered opinion of this Court is not a desirable/palatable one for the latent and patent reason that the ingredients of principles of natural justice have not been adhered to.

14. In this connection, this Court relevantly points out that it is settled law that the authority could not take steps for impounding the Passport without issuing notice to the petitioner and affording him an opportunity to offer his explanation as per decision in **HASSAN ALI KHAN v. REGIONAL TRANSPORT OFFICER**, reported in **AIR 1998 A.P.232**.

15. As far as the present writ petition is concerned, this Court is of the earnest opinion that the First Respondent ought to have passed a reasoned and speaking order on the show cause notice issued to the Petitioner, on 04.03.2016, especially when he had submitted his reply/representation, on 21.03.2016.

16. At this stage, the Learned counsel for the Petitioner brings it to the notice of this Court that the First Respondent has issued another show cause notice to the Petitioner, dated 24.05.2016, in regard to the impounding of Passport and on the very same day on 24.05.2016, had decided to impound the Passport and directed the Petitioner to surrender the Passport immediately to the office. In reality, the Petitioner had



submitted his explanations to the said show cause notice, dated 24.05.2016; on 27.05.2016 and 02.06.2016. In fact, the Petitioner should be appraised of the material which form the basis for passing of an order under Section 10(3)(e) of the Passports Act, 1967, as per decision in HUSSAM-UD-DIN-AHMAD v. UNION OF INDIA, reported in AIR 1999 J & K, 136.

17. It is true that the Passport authority is to decide whether or not to impound the Passport in a given case. Such impounding of Passport has Civil consequences and as such, the Passport authority ought to give an opportunity of hearing to the person concerned before impounding his Passport, as opined by this Court.

18. On a careful consideration of the contentions advanced on behalf of the Petitioner and also this Court taking note of the fact that a criminal case is pending against the Petitioner, yet, this Court is of the resultant view that the Petitioner should have been provided with necessary opportunity of consideration of his explanation, dated 21.03.2016, for the first show cause notice, dated 04.03.2016. For the second show cause notice, dated 24.05.2016 and to put it precisely, the explanations submitted for both the show cause notices, ought to have been considered by the First Respondent and then only, the First Respondent should have passed the impounding of passport order. In the present case, that procedure was not resorted to by the First Respondent, however, this Court, without delving deep into the matter, to prevent an aberration of justice and in furtherance of substantial justice, sets aside the show cause notice issued by the First Respondent dated 04.03.2016 and further, directs the First Respondent to take into account of the explanation of the Petitioner, dated 21.03.2016 and to pass a fresh reasoned speaking order on merits, within a period of three weeks from the date of receipt of a copy of this order. Likewise, it is for the First Respondent is to consider the explanations of the Petitioner, dated 27.05.2016 and 02.06.2016 for the Show Cause Notice, dated 24.05.2016 issued for impounding the Passport and to pass a fresh final order (ignoring the orders passed on impounding of Passport on 24.05.2016), in the subject matter in issue. The First Respondent shall pass a reasoned, speaking order on merits adverting to the factual aspects of the matter (by taking into account of the pendency of filing of charge sheet) and also by looking into the representations/explanations of the Petitioner in the subject matter in issue and give a quietus in the subject matter in issue by passing a fresh, complete and comprehensive order. Liberty is granted to the Petitioner to submit necessary copies of documents/records before the First Respondent and the First Respondent, on receipt of the same, shall take into account and to pass necessary orders, within the time prescribed.

19. With the aforesaid observations and directions, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(AS)



To:

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai 625 002.

2.The Inspector of Police,
Koodankulam Police Station,
Tirunelveli District.

+1cc to M/S.V.Rajiv Rufus, Advocate in SR.No.29640

+1cc to Mrs.S.Srimathy, Advocate in SR.No.29670

+1cc to Special Government Pleader in SR.No. 29763

W.P. (MD) No.7773 of 2016
and

WMP (MD) No.6433 of 2016
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PA/AAL-MPA/SAR II/16.06.2016/5P/6C (IT)