

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.11652 OF 2016

ORDER :

Petitioner is a single parent and she intends to visit United States along with her minor child to see her sister, who is a resident there. Petitioner has a passport and she applied for passport for her minor child to the 2nd respondent on 16.03.2016, which was also acknowledged by the 2nd respondent.

2. Petitioner contends that an affidavit as specified in Annexure 'C' to be signed by a First Class Judicial Magistrate or Notary Public was to be submitted by the petitioner and that she had submitted affidavit in Annexure 'C', which is signed by a Notary Public but not by a First Class Judicial Magistrate.

3. An official of the 2nd respondent in an endorsement dt.16.03.2016 stated that petitioner's application for issuance of passport to her minor child is put on hold and to call for Annexure- C".

4. Counsel for the petitioner submits that petitioner had submitted an affidavit in the manner stipulated in Annexure 'C' which is signed by a Notary Public and not by a First Class Judicial Magistrate, but the officials of the 2nd respondent are insisting that she should file an affidavit duly attested by a First Class Judicial Magistrate only.

5. Sri Namavarapu Rajeswara Rao, Standing Counsel for respondents states that petitioner should file a declaration in Annexure 'G' in the form of an affidavit before the First Class Judicial Magistrate on a non-judicial stamp paper and that the affidavit filed in Annexure 'C' is not relevant.

6. It is the specific case of the petitioner that she has been deserted by the father of the child. In para 2 of the form of affidavit prescribed in Annexure 'C', there is a requirement of a declaration that the father of the child has deserted the applicant after conception or delivery, but such a requirement is not specified in the form prescribed in Annexure 'G'.

7. Therefore, I am of the opinion that the petitioner had rightly made an application annexing an affidavit in Annexure 'C' and that she need not submit an affidavit or declaration in the manner prescribed in Annexure 'G'.

8. Further the Annexure 'C' as indicated in the Passport Rules, 1980 permits an applicant to file an affidavit sworn either before First Class Judicial Magistrate or before a Notary Public.

9. When the rule making authority has prescribed such a requirement in the above Rules and also indicated the person before whom affirmation is to be made, which includes a Notary Public, it is not open to the respondents to deviate from the same and insist the petitioner to submit an affidavit in the manner prescribed in Annexure 'C' attested by a First class Judicial Magistrate.

10. So, the impugned action of the respondents in not considering the petitioner's application for grant of passport to her minor child, on the ground that the affidavit in Annexure 'C' submitted by her along with her application is not attested or sworn before a First Class Judicial Magistrate and is only attested by a Notary Public, cannot be sustained.

11. Therefore, the Writ Petition is allowed and the respondents are

directed to consider the petitioner's application for issuance of passport to her minor child, without insisting the petitioner to submit an affidavit with the contents prescribed in Annexure 'C' duly attested by a First Class Judicial Magistrate only, within a period of two (02) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th April, 2016.
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