

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-02-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 47 of 2017

Khushboo Sundar

.. Petitioner

Versus

The Regional Passport Officer (Chennai)
Ministry of External Affairs
Government of India
Rayala Towers, 2 & 3, Fourth Floor
No.785, Anna Salai
Chennai - 600 002

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records comprised in the passport application of the petitioner in File No. MA 2079841516516, dated 28.12.2016 on the file of the respondent, quash the same and consequently direct the respondent to renew her passport bearing file reference No. MA 2079841516516 within the time stipulated by this Court.

For Petitioner : Mr. R. Karthikeyanm
For Respondent : Ms. G. Hema
Central Government Standing Counsel

ORDER

The petitioner calls in question the order dated 28.12.2016 of the respondent, in and by which, the application submitted by the petitioner for re-issue of her passport was returned by the respondent.

2. The petitioner, who is a cine actress and also anchoring many private television programmes, has come forward with this writ petition challenging order of return passed by the respondent without re-issuing her passport with fresh pages. According to the petiitioner, she was originally issued passport by the office of the respondent on 09.03.2012 bearing passport Number Z 2383432 and it is valid from 09.03.2012 to 08.03.2022. According to the petitioner, she is a frequent flyer to many foreign countries in connection with her profession and also with her family members for holidays. According to the petitioner, the pages in the passport issued to her has been exhausted and therefore, as per the new norms, she sought for re-issuance of passport with fresh pages in order to travel abroad.

3. It is contended by the petitioner that she joined a prominent political party in the year 2009 and she was a star campaigner in the run up to the assembly election. In the course of such campaign, during May 2011, criminal cases were registered against her in Crime No. 144 of 2011 on the file of Andipatti Police Station which culminated in to a criminal proceedings in C.C. No. 146 of 2011 and another case in C.C. No. 146 of 2011 both on the file of the learned District Munsif cum Judicial Magistrate, Andipatti. Upon registration of the case, the petitioner has filed CrI.O.P. (MD) No. 3770 of 2012 before the Madurai Bench of this Court and obtained an interim stay of the criminal proceedings and also an order to dispense with her personal appearance. Thereafter, yet another criminal case came to be registered against the petitioner in Crime No. 107 of 2011 in P.C. Patti Police Station in which she has obtained anticipatory bail before the Madurai Bench of this Court in CrI.OP (MD) No. 12576 of 2011 on 21.09.2011. Thereafter, the petitioner came to know that another case in Crime No. 185 of 2011 was also registered against her in Natham Police Station against which she filed CrI.O.P. No. 1807 of 2012 seeking to quash the proceedings in Crime No. 185 of 2011 in which also she obtained an interim stay.

4. According to the petitioner, after registration of the above criminal cases, the petitioner applied for passport and it was issued to her on 09.03.2012 after thorough enquiry. As the pages in her passport exhausted, she has submitted the present application seeking to re-issue the passport with fresh pages and it was returned by the respondent on the ground that the petitioner has suppressed the registration of the criminal cases against her at the time of availing the passport on 09.03.2012. According to the petitioner, she has intended to travel abroad along with her family, but in view of the order of rejection passed by the respondent refusing to re-issue the passport, she could not undertake her trip. In such circumstances, the petitioner has come up with the present writ petition for the relief stated above.

5. The learned counsel appearing for the petitioner would contend that the petitioner is a frequent flyer to various destinations in connection with her avocation. The petitioner cannot be said to be an absconder warranting the respondent to return her application for re-issue of her passport. The petitioner also obtained interim stay of the criminal proceedings foisted against her before the Madurai Bench of this Court besides that the petitioner is prepared to face the criminal cases foisted against her. In any event, the pendency of the Criminal case is not a bar for the respondent to refuse to re-issue the passport to the petitioner. In this context, the learned counsel for the petitioner relied on the decision of this Court in the case of (Ashok Muthana versus Regional Passport Officer, Chennai, the Government of India, Ministry of External Affairs, Regional Passport Office, Chennai - 600 002 and another) reported in (2014) 7 MLJ 422 wherein it was held that once a passport is issued for a particular period, the passport issuing authority has only three options open namely

(i) variation of the endorsements made on the passport under Section 10 (1) or (ii) the impounding of the passport under Section 10 (3) and (iii) the suspension of the passport under Section 10-A. It was further held that the denial of the benefit of the period of validity already stipulated in the passport, without taking recourse to the aforesaid options, cannot be legally sustained. It was therefore held by this Court that so long as there is no proceeding either under Section 10 (1) or 10 (3) of the Indian Passports Act, 1967, the passport issuing authority cannot deny the issue of additional book. Therefore, the learned counsel for the petitioner prayed this Court to allow the writ petition as prayed for.

6. Opposing the writ petition, the learned Central Government Standing Counsel appearing for the respondent, relying on the counter affidavit of the respondent, would contend that the petitioner has applied for re-issuing passport on 07.03.2012 under Tatkal Scheme in continuation of passport issued to her which is having validity till 09.07.2018. Based on the self-declaration made by the petitioner in her application for re-issuing the passport, the application was processed. The post verification process revealed that criminal cases are pending against the petitioner which were suppressed by the petitioner. Therefore, for having suppressed the pendency of criminal cases against her in the application submitted by the petitioner, a show cause notice dated 04.06.2012 was issued to her under Section 10 of the Indian Passports Act, 1967 calling upon her to show cause as to why action should not be taken to impound the passport issued to her. However, according to the learned counsel for the respondent, the petitioner did not care to submit a reply to the show cause notice issued by the respondent. Therefore, a reminder was sent to the petitioner on 17.04.2013 seeking an explanation as against the adverse report received against her from the office of the Commissioner of Police, Chennai. Even for the reminder notice dated 17.04.2013, the petitioner did not submit any explanation. While so, the petitioner submitted an application on 27.12.2016 to re-issue the passport but it was not processed as she has suppressed the material particulars relating to pendency of criminal cases against her in the competent Criminal Court at the time of applying for passport on 07.03.2012. In the application, she has given a solemn undertaking that if the particulars furnished by her or not correct or she has suppressed any material particulars knowing it to be true, she will be liable for prosecution. However, contrary to such undertaking, the petitioner has submitted the application dated 07.03.2012 without disclosing the pendency of the criminal cases registered against her.

7. According to the learned counsel for the respondent, the petitioner appeared before the respondent on 28.12.2016 and she was informed about the adverse report received against her. The petitioner was therefore advised to submit her explanation along with the documentary proof indicating the status of the criminal cases pending against her. During the course of such enquiry, the petitioner was also advised to obtain permission

from the competent trial court permitting her to depart India. The petitioner, without submitting her explanation to the adverse report received against her along with the documentary proof indicating the status of the criminal cases pending against her, has come up with this writ petition. The learned counsel for the respondent would submit that the act of the petitioner in not disclosing the correct particulars in her passport application and for not responding to the show cause notices sent by the respondent attracts the provisions contained in Section 6 (2) (f) of the Indian Passports Act, 1967 as well as the notification dated 25.08.1983 issued by the Ministry of External Affairs exempting citizens of India against whom criminal proceedings are pending trial before a criminal court from processing their applications for renewal or re-issuance of the passport. However, it is stated by the learned counsel for the respondent that if the petitioner obtains any order granting her permission to leave India from the competent Criminal Court, the respondent may not have any legal impediment for re-issuing the passport as sought by her.

8. I heard the learned counsel for both sides and perused the materials placed on record. Earlier, the petitioner was issued with a passport on 19.03.2012 on the basis of the application submitted by her under the Tatkal scheme. The Tatkal scheme contemplate carrying out post-verification against the applicant to whom passport was issued. In the application submitted by the petitioner, based on which she was issued with passport on 19.03.2012, she did not indicate the pendency of criminal cases against her. According to the petitioner, she was not aware of the registration of the criminal cases at the time of submitting the application and she came to know the same much after she submitted the application. Further, on coming to know about the registration of the criminal cases, she has obtained anticipatory bail in some cases and also filed Petitions seeking to quash the Criminal Proceedings in which this Court has also granted interim stay of the criminal cases and also dispensed with her personal appearance in those cases registered against her.

9. As far as the respondent is concerned, on coming to know about the criminal cases registered against the petitioner, originally, a show cause notice dated 04.06.2012 was issued followed by another notice dated 17.04.2013. Admittedly, the petitioner did not submit any reply to such show cause notices sent by the respondent. It is also to be mentioned that the respondent also did not take any further action pursuant to the show cause notices dated 04.06.2012 and 17.04.2013 for about three years. Thereafter, when the petitioner applied for re-issuing the passport, she appeared before the respondent on 28.12.2016 and at that time the respondent informed her about the adverse report received against her and called upon to submit her explanation along with documentary evidence to show the status of the criminal cases pending against her.

10. On appraisal of the above factual background, it is evident that the impugned order of returning the application submitted by the petitioner was made by the respondent only on the ground that criminal cases are pending against her. It is well settled that pendency of criminal cases is not a bar or embargo for the respondent to re-issue the passport issued to the petitioner with fresh pages in her passport. This is more so that there are three cases, according to the petitioner herself, registered against her and they are in various stages. Therefore, till the conclusion of the criminal proceedings, the petitioner cannot be denied the benefit of the passport which has validity till 08.03.2022. In this context, useful reference can be made to the relevant portion of the order passed by this Court, which was relied on by the learned counsel for the petitioner, mentioned supra, which reads as follows:-

16. A careful look at the entire scheme of the Act would show that the provisions of the Passport Act basically deal with three types of issues such as (1) issue or refusal to issue passports (2) Variation, impounding or revocation of passports and (3) suspension of passports. It is interesting to note that no provision in the Act deals with the renewal of passport. Even Section 8 which deals with extension of the period of passport, covers only cases where a passport is issued for a shorter period than the prescribed period under Section 7. Therefore once a passport expires, upon the expiry of the normal duration stipulated in terms of Section 7 of the Act, a person may have to apply for renewal or extension or re-issue, by whatever name it is called. But that application will be considered only in terms of Section 5. In other words, the terms renewal, extension or re-issue, of a passport after the expiry of the normal period as originally prescribed, should be construed only the issue of passport.

17. As a corollary, once a passport is issued for a particular period, there are only three options open to the Passport Authority namely: (a) Variation of the endorsements made on the passport under Section 10(1) or (b) the impounding of the passport under Section 10(3) and (c) the suspension of the passport under Section 10A.

18. The suspension of a passport can be ordered under Section 10-A only if two conditions are satisfied namely: (a) that the passport is likely to be impounded or revoked under Section 10 (3) (c); and (b) that it is necessary in the public interest to suspend the passport for a period not exceeding four weeks, which can be extended later.

19. Similarly, the impounding or revocation of a passport is possible only if any one of the contingencies stipulated in Clauses (a) to (h) of sub-section (3) of Section 10 are satisfied. If the

conditions stipulated in Section 10 (3) are not satisfied, the passport cannot be impounded or revoked.

20. In so far as the variation of the endorsement on passport is concerned, Section 10(1) contemplates variation under two situations. The first is the variation of endorsements of a passport, either with reference to Section 6(1) or with reference to any notification under Section 19. Section 6(1) speaks about activities prejudicial to the sovereignty and integrity of India, detriment to the security of India, prejudice to the friendly relations of India with that country and prejudice to public interest. Section 19 speaks about the notifications issued by Central Government that a foreign country is committing or is suspected of the commission of external aggression against India or a country is engaged in armed hostilities. If the conditions stipulated in Section 6(1) are present or if a notification under Section 19 has been issued, the Passport Authority himself can order variation or cancellation of the endorsements of a passport.

21. The second situation in which the endorsements of a passport can be varied or cancelled is when the Central Government grants previous approval for the same.

22. A careful look at the facts of the case would show that the duration of the passport issued to the petitioner is up to 16.02.2015. No steps have been taken for impounding or revoking the passport under Section 10(3). Since no step is taken for impounding or revoking the passport, the passport cannot even be suspended under Section 10-A. Therefore, if the Respondent wants to deny the petitioner of the benefit of the validity of the passport up to the period stated therein, namely 16.02.2015, the Respondents can only invoke the first limb of Section 10(1). The case of the petitioner is not referable to Section 6(2), since the case on hand is not one for issue of passport or for reissue of passport upon the expiry of the original duration. If the petitioner wants renewal after 16.02.2015, the same may come within the purview of reissue/issue, enabling the Respondents to take recourse to Section 6(2). So long as there is no proposal for impounding or revocation, the case will also not come under Section 10(3).

23. Therefore, I am of the view that the denial of the benefit of the period of validity already stipulated in the passport up to 16.02.2015, without taking recourse to Section 10(1), cannot be sustained. Once the period of validity of the passport is found to be 16.02.2015, such period can be altered only by taking recourse to the power of

variation under Section 10(1). Alternatively the first Respondent has to take recourse for impounding or revocation under Section 10(3).

24. Coming to the Criminal Cases faced by the petitioner, it is seen that those Criminal Cases already formed part of the records in the previous writ petition W.P.No.24158 of 2006. The first Respondent had made a mention about the Criminal Cases in that case. Yet, an order was passed by the learned Judge allowing the writ petition on 12.09.2006. The operative portion of the order of the learned Judge reads as follows:-

"10. This is a matter entirely for the first respondent to decide as to whether the Passport of the petitioner should be renewed or revoked on the grounds which are available under the provisions of the Act and the Rules made thereunder. It is needless to say that every citizen of this country is entitled to get Passport subject to the provisions of the Act and the Rules and the petitioner has already obtained a valid Passport. In the present case, the petitioner is seeking only for renewal of his Passport. Therefore, it is not open to the first respondent to say that it cannot be renewed.

11. Under these circumstances, the first respondent is directed to renew the petitioner's Passport and continue to keep it in the custody of the XI Metropolitan Magistrate, Saidapet, Chennai, and the writ petition is allowed to the extent indicated above. However, there will be no order as to costs.

11. In the present case, the passport issued to the petitioner is valid till 08.03.2022. As held by this Court in the above decision, when once the period of validity of the passport is found to be 08.03.2022, such period can be altered by the respondent only by taking recourse to the power of variation under Section 10 (1) of the Act or alternatively for impounding or revocation of the passport under Section 10 (3) of the Act. In this case, admittedly, the respondent has not taken recourse to the above provisions of law. As mentioned above, even though show cause notices were issued, further action has not been taken by the respondent.

12. It is seen from the counter affidavit of the respondent that they have informed the petitioner to get necessary permission from the Criminal Court before proceeding to travel abroad. In fact, in the Circular dated 25.08.1993 issued by the Government of India, Ministry of External Affairs, which was relied on by the respondent in the counter,

it has been stated that passport can be issued to those persons who are facing criminal trial subject to certain conditions stipulated in the notification. Thus, it could be evident that there is no specific objection raised by the respondent for re-issuing the passport to the petitioner. The respondent returned the application of the petitioner only by citing the pendency of the criminal cases against her, which cannot be said to be a bar or embargo for her to get the passport re-issued in her favour.

13. Having regard to the above, this Court is of the view that the order of return passed by the respondent, refusing to re-issue the passport to the petitioner on the ground that criminal cases are pending against her, cannot be legally sustained. The respondent is therefore directed to process the application of the petitioner and to re-issue or renew the passport in her favour if it is otherwise in order. Till the date of its expiry namely 08.03.2022. However, it is made clear that before departing India for the first time after getting the passport, the petitioner shall get necessary permission from the Madurai Bench of this Court where the Quash Petitions filed by her are pending by indicating the date of departure from India, date of return, contact address, place (s) of visit etc., and thereafter by intimating the concerned Court of her itinerary before leaving India.

14. Subject to the aforesaid observation, the Writ Petition is ordered. No costs.

(*) Sd/-
AR (CS-V)

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

(*) Para 13 Substituted as per the
order of this Court dt.27.03.2017 and
made WP.47/2017

To

The Regional Passport Officer (Chennai)
Ministry of External Affairs
Government of India
Rayala Towers, 2 & 3, Fourth Floor
No.785, Anna Salai
Chennai - 600 002

Substituted order
to be dispatched
for order already
dispatched on
20.03.2017

+2 cc to Mr.R.Karthikeyan, advocate, sr.12863.
+1 cc to M/s. G. Hema, Advocate Sr.No.18899

pvs(co)

krd 20/3

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md : 07/04/2017

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