

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.DURAISWAMY

W.P.No.6991 of 2017 &
W.M.P.No.7607 of 2017

Prof.N.Gunachandran

.. Petitioner

v.

- 1 Regional Passport Officer, Chennai
(Government of India)
Royala Towers
NoS.2 and 3, IV Floor, Old No.785
New No.158, Anna Salai
Chennai-600 002
 - 2 The Secretary to the Government of Tamil Nadu
Home Department
Fort St George
Chennai-600 009
 - 3 The Director
Forensic Sciences department
Kamaraja Salai
Chennai-600 004
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the First Respondent to consider the petitioner's letter dated 02.12.2016 and 16.12.2016 to re-issue the petitioner's passport as soon as possible to enable him to leave India atleast during June 2017 to visit his children and grand children at USA for a period of not exceeding six months and to this extent and also direct the respondents not to interfere in the rights of the petitioner in receiving his Passport and in his Travel plans to USA, pending disposal of the Writ Petition No.22470 of 2008.

For Petitioner : Mr.V.Raghupathi
for Ms.G.Devi

For Respondents : Mr.C.V.Ramachandramoorthy
Standing Counsel - for R1

Mr.A.N.Thambidurai
Spl. Govt. Pleader - for R2 & R3

O R D E R

The petitioner has filed the above writ petition to issue a Writ of Mandamus, directing the First Respondent to consider his letters dated 02.12.2016 and 16.12.2016 to re-issue his passport as soon as possible to enable him to leave India atleast during June 2017 to visit his children and grand children at USA for a period of not exceeding six months and direct the respondents not to interfere in the rights of the petitioner in receiving his Passport and in his Travel plans to USA, pending disposal of the Writ Petition No.22470 of 2008.

2. Heard Mr.V.Raghupathi, learned counsel appearing for the petitioner, Mr.C.V.Ramachandramoorthy, learned Standing Counsel appearing for the 1st respondent and Mr.A.N.Thambidurai, learned Special Government Pleader, appearing for the respondents 2 and 3.

3. The petitioner has filed the above writ petition to direct the first respondent to consider his application for re-issuance of the passport.

4. The first respondent filed their counter wherein, it has been stated that a criminal case in C.C.No. 32 of 2013 is pending before the Chief Judicial Magistrate Court, Tirupur and that the trial of the case is in progress. In paragraph No.7 of the counter, the 1st respondent has stated that in the case of the petitioner furnishing the permission of the competent trial court, the first respondent may not have any legal impediment in issuing the passport subject to usual formalities in accordance with law, as sought for by the petitioner.

5. It is settled position that mere pendency of the criminal case is not a bar for issuance of the passport. The citizens, against whom criminal cases are pending, are made exempt from the operation of Section 6(2) (f) of the Passport Act, provided they produce orders from the concerned court permitting them to travel abroad subject to the terms and conditions mentioned in Notification dated 25.08.1993, which reads as follows:-

(a) the passport to be issued to every such citizen shall be issued;

(i) for the period specified in order of the Court referred to above, if the Court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order;

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh, order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

In other words, an application for passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification.

6. Mr.V.Raghupathi, learned counsel appearing for the petitioner, submitted that the petitioner will get the appropriate orders from the Chief Judicial Magistrate, Tirupur for travelling abroad and shall produce the same before the first respondent for re-issuance of the passport.

7. Mr.C.V.Ramachandramoorthy, learned Standing Counsel appearing for the 1st respondent submitted that if the petitioner produce the order granting permission to travel abroad, the first respondent would process the petitioner's application and issue the passport.

8. In view of the submissions made by the learned counsel on either side, I give liberty to the petitioner to file appropriate application before the Chief Judicial Magistrate, Tirupur, in the pending case in C.C.No.32 of 2013, seeking permission for him to go abroad. If such an application is made, the Chief Judicial Magistrate, Tirupur, shall consider the same and pass orders, on merits and in accordance with law, within a period of three weeks from the date of filing of the application. In the event of the Trial Court granting permission to the petitioner, the same shall be produced before the 1st respondent and in the event of the petitioner producing the copy of the order, the first respondent shall consider the same and issue passport to the petitioner as stated in paragraph No. 7 of the counter affidavit.

With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1 The Chief Judicial Magistrate, Tiruppur.
- 2 Regional Passport Officer, Chennai
(Government of India)
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- 3 The Secretary to the Government of Tamil Nadu
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4 The Director
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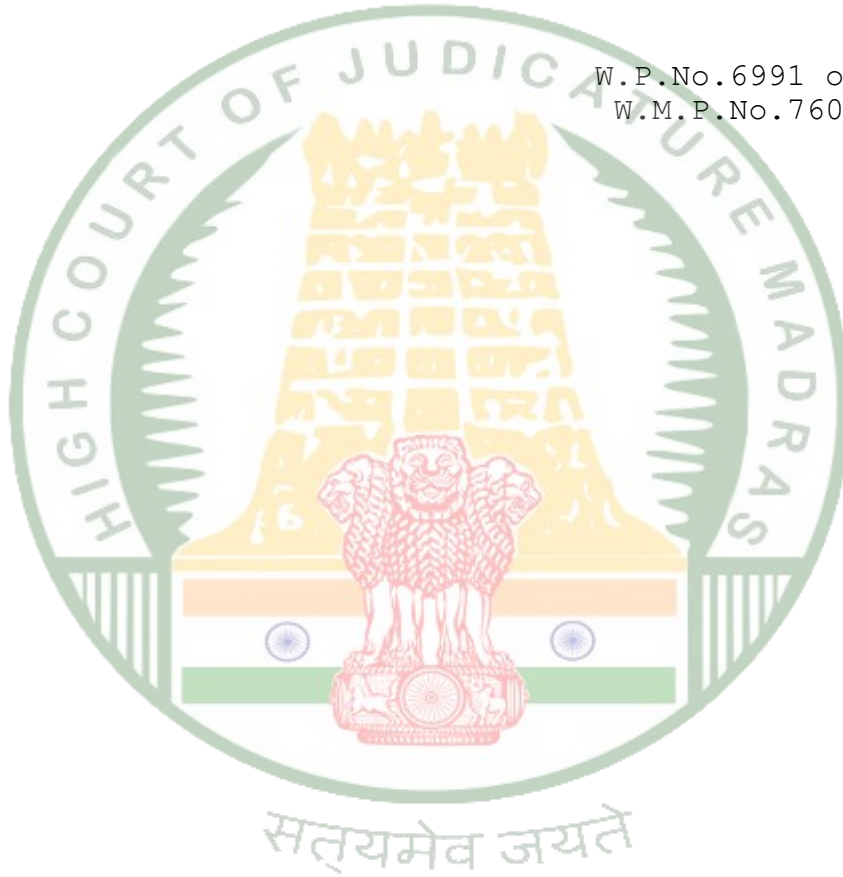
+1 cc to Govt.Pleader, sr.25023

+1 cc to Mr.C.V.Ramachandra Murthy, advocate, sr.24643

+2 cc's to M/s.G.Ravi, advocate, sr.24610

vsn(co)
krd 28/4

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