

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.15224 of 2016

Vimal Kumar

[Petitioner]

Vs

1 The Regional passport Officer
Chennai Loyola Towers 2 & 3 IV Floor
Old No.765 New No.158
Anna Salai Chennai 600 002

2 The Inspector of Police
Natrampalli Police Station
Vellore District

[Respondents]

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the First Respondent to renew the petitioners passport bearing No.F2885461 pursuant to the online application dated 01.04.2016 letter dated 18.04.2016.

For Petitioner : Ms.Dhana Madhiri for
M/s T.S.Gopalan & Co.

For Respondents : Mr.J.Madanagopal Rao, SCGSC(R1)

ORDER

The petitioner has filed the above Writ Petition to issue a writ of mandamus directing the 1st respondent to renew his passport bearing No.F2885461 pursuant to the online application dated 01.04.2016 and letter dated 18.04.2016.

2.1 It is the case of the petitioner that presently he is working as Software Engineer in HTC Holdings Private Limited, Chennai, as a Team Leader in the said Company. Further, the petitioner has stated in the affidavit that his Company is catering to a US based client and as an employment verification check, the US based client is insisting on his employer to direct all the employees to produce passport. Accordingly, the petitioner also produced his passport before the employer at the time of joining employment. The passport had expired on 10.05.2015. Pursuant to the same, his employer had directed him to renew his passport in the last week of March 2016 and submit a fresh passport before 05.05.2016 in order to enable them to place it before the US client for security purpose.

2.2 The petitioner has stated in the affidavit that he was convicted in a criminal case in S.C.No.301 of 2009 on the file of the Additional District and Sessions Court-III, Thiruvannamalai for the offences under Sections 306, 309 and 506(i) IPC and under Section 4 of the Tamil Nadu Prohibition and Harassment of Women Act, 1998 read with Section 109 of IPC. Further, the petitioner has stated that he was sentenced to undergo 10 years rigorous imprisonment.

2.3 As against the Judgment passed by the Sessions Court, the petitioner preferred a criminal appeal in Crl.A.No.578 of 2012 before this Court and this Court in M.P.No.1 of 2012, by order dated 24.09.2012 suspended the sentence on condition to appear before the trial Court on the first working day of every month. Subsequently, by order dated 15.02.2013, this Court had relaxed the condition to appear once in three months and that he is complying with the said condition till this date.

2.4 It is the further case of the petitioner that when he made an online application for renewal of passport on 01.04.2016, he was informed by the 1st respondent that his application has been put on hold as he was convicted by the Additional District and Sessions Court, Thiruvannamalai. Further, the petitioner has stated that by the communication dated 25.08.1993, the Government of India has mandated that unless an order of Court is obtained from the concerned Court, passport should not be renewed. Aggrieved over the same, the petitioner is before this Court.

3. In the counter affidavit filed by the 1st respondent, he has stated that in view of Section 6(2)(e) of the Passport Act, 1967, the passport cannot be renewed in favour of the petitioner for the reason

that he was convicted and sentenced to undergo 10 years rigorous imprisonment by Judgment dated 27.08.2012 passed in S.C.No.301 of 2009.

4. Heard the learned counsel for the petitioner and the learned Senior Central Government Standing Counsel for the 1st respondent and perused the materials available on record.

5. The learned counsel appearing for the petitioner submitted that the petitioner was not convicted for any offence involving moral turpitude and therefore, the provisions of Section 6(2)(e) of the Passport Act are not applicable.

6. In the affidavit filed in support of the writ petition, the petitioner has stated that he will not leave the country without the permission of the Court, even if the passport is renewed. To this effect, the petitioner also filed an affidavit dated 24.04.2017, wherein, in paragraphs Nos.2 and 3, he has stated as follows:-

"2. I state that I am working as Team Leader in HTC Global Services Private Limited, Chennai. My company is a Multi-National Company based in US. My Company caters only to US based clients and for the purpose of

employment verification, the overseas employer is insisting on renewed passport for all the employees working in the Company. Though I had a valid passport it got expired on 10.05.2015 and accordingly I had filed the Application for renewal of passport only to furnish the renewed passport to my employer. However, the 1st respondent refused to renew the passport as I was convicted in Criminal Case though the sentence has been suspended by this Hon'ble Court. I undertake that I will not travel abroad except with the permission of the concerned Court. I also undertake to surrender my passport before the Trial Court if directed to do so by this Hon'ble Court.

3. I reiterate that the renewal of passport is only for submitting to my employer and not for any other purpose. If the renewed passport is not submitted to my employer my employment would be in stake. Hence, to place the aforesaid facts, I am filing this Affidavit".

7. On the other hand, Mr.J.Madanagopal Rao, learned Senior Central Government Standing Counsel appearing for the 1st respondent submitted that in view of affidavit of undertaking dated 24.04.2017 given by the petitioner, the petitioner's application may be directed to

be considered and suitable directions may be issued to the petitioner to get prior permission from the Court for travelling abroad and that he should also be directed to surrender the passport before the Criminal Court in case of the Passport being renewed.

8. In view of the submissions made by the learned counsel on either side, taking into consideration the affidavit of undertaking filed by the petitioner dated 24.04.2017, I am of the view that since the petitioner had specifically stated in the affidavit of undertaking that he will not travel abroad without the permission of the criminal Court and also agreed to surrender the Passport before the Criminal Court and that the renewal of passport is sought only for the purpose of producing it before the employer, I direct the petitioner to give a fresh application for renewal of his passport to the 1st respondent within one week from the date of receipt of a copy of this order and on receipt of the same, the 1st respondent is directed to consider his application for renewal of passport and process the application and issue fresh passport, if the application is otherwise in order within a period of three weeks thereafter. After obtaining the fresh passport, the petitioner is directed to surrender the same before the Additional District and Sessions Court No.III, Tirupattur and in the event of the petitioner travelling abroad, the petitioner is directed to get prior

permission from this Court in Criminal Appeal No.578 of 2012, pending on the file of this Court. It is made clear that unless this Court grants permission to the petitioner to travel abroad, the Additional District and Sessions Court No.III, Tirupattur shall not return the passport to the petitioner. It is also made clear that the passport is being issued to the petitioner only for the purpose of producing the same before his employer, since his employer is insisting on renewed passport.

9.With these observations, the Writ Petition is disposed of. No costs.

26.04.2017

I

rg

Note: Issue order copy on 27.04.2017

To

- 1 The Regional passport Officer
Chennai Loyola Towers 2 & 3 IV Floor
Old No.765 New No.158
Anna Salai Chennai 600 002
- 2 The Inspector of Police
Natrampalli Police Station
Vellore District

M.DURAISWAMY, J.
rg

W.P.No.15224 of 2016

26.04.2017
<http://www.judis.nic.in>