

Reserved on : 07.06.2017

Delivered on : 13.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.3699 of 2017 and

W.M.P.No.3747 of 2017

Ashok Muthana

... Petitioner

Vs.

Regional Passport Officer Chennai,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers - II & III,
New No.158, Anna Salai,
Chennai - 600 002.

... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent herein to renew/re-issue the Passport No.W-3451425 for a period of ten years pursuant to the petitioner's application bearing No.16-1009674521 dated 19.11.2016 pending in respondent's File No.MA1079776896316 dated 22.11.2016.

For Petitioner : Mr.K.Sridhar

For Respondents : Ms.G.Hema,
Standing Counsel

O R D E R

The petitioner has filed the Writ Petition to issue a writ of mandamus directing the respondent to renew/re-issue the Passport No.W-3451425 for a period of ten years pursuant to the petitioner's application bearing No.16-1009674521 dated 19.11.2016 pending on the file of the respondent.

2. The petitioner is the Ex-Chairman of M/s.Fidelity Finance Limited, a Non-Banking Finance Company, now under liquidation, pursuant to the order dated 13.03.2003 in C.P.No.65 of 2002

passed by this Court. The Company was incorporated in the year 1983 and was operating successfully until late 1990's. Due to financial crisis, the Company was forced into liquidation. Some complaints were filed against the Management of the Company on the file of the Inspector of Police, Economic Offences Wing, Thanjavur in Crime No.1 of 2001 and during the course of investigation, the petitioner filed Crl.O.P.No.6723 of 2002 for bail before this Court. While granting bail, this Court directed the petitioner to surrender his Passport before the Additional Chief Judicial Magistrate, Kumbakonam and subsequently, by order dated 20.12.2004, this Court in Crl.M.P.No.11297 of 2004 in Crl.M.P.No.3521 of 2002 directed the return of the Passport for renewal and permitted the petitioner to travel to the U.S.A., for the period from June 2005 to July 2005. Accordingly, on submitting the expired Passport, the Passport Authorities at Chennai issued a new Passport to him with one year validity commencing from 17.02.2005 to 16.02.2006. According to the petitioner, he has been co-operating with the investigation.

3. The petitioner took up an offer for appointment as Export Marketing Advisor in a Private Limited Company, Oval Impex on a contract basis in May 2007. According to the petitioner, the condition and nature of the job requires frequent travel to abroad and the offer was renewed periodically in July 2009 and June 2011 and the appointment by the said Company is till in operation and he is continuing to be the Export Marketing Advisor.

4. For the renewal of the Passport beyond 16.02.2006, the petitioner filed a Writ Petition in W.P.No.24158 of 2006 and this Court, by order dated 12.09.2006, directed the Assistant Passport Officer to renew the Passport and to keep it in the custody of the XI Metropolitan Magistrate, Saidapet, Chennai, who had impounded the earlier Passport in another case in Crime No.52 of 2001, which was under investigation by the Deputy Superintendent of Police, Economic Offences Wing-II, Chennai for offences under Sections 409, 420 read with 109 of the Indian Penal Code. On the direction of this Court in the Writ Petition in W.P.No.24158 of 2006, the petitioner's Passport bearing No.F-1759426 was renewed upto 16.02.2015 and the same was in the custody of the XI Metropolitan Magistrate, Saidapet, Chennai. Subsequently, he applied for the return of the Passport before the XI Metropolitan Magistrate Court in Crl.M.P.No.4460 of 2006, which was dismissed by the Magistrate Court on 22.01.2007. Against the said order, the petitioner preferred a revision in Crl.R.C.No.287 of 2007 before this Court and this Court, by order dated 26.02.2007 directed the XI Metropolitan Magistrate to return the Passport, permitting him to travel abroad subject to some conditions.

5. Pursuant to the directions given by this Court in the Writ Petition to renew his Passport, a fresh Passport bearing No.Z-1745778 was issued to him with validity period from 30.09.2008 to 16.02.2015. However, on the petitioner's application for issuance of additional sheets, his Passport was re-issued with a period restricted to one year from 01.06.2012 to 31.05.2013. Again, at the request of the petitioner, his Passport was renewed for a further period of one year from 05.12.2012 to 04.12.2013 citing Notification in GSR 570-E dated 25.08.1993 which provides for renewal of the Passport for one year only, where criminal cases are pending, unless otherwise, directed by the Court.

6. Subsequently, a show cause notice dated 04.10.2013 was issued by the Regional Passport Officer, Chennai calling upon the petitioner to show cause as to why action should not be initiated for the suppression of information regarding five criminal cases pending against him in the Economic Offences Wing, Chennai, Kumbakonam, Madurai and Tirunelveli. The petitioner, by reply dated 10.10.2013, explained about all the cases mentioned in the show cause notice informing him that he had not suppressed and that the details about the cases mentioned in the show cause notice already form part of the record in the order passed in the Writ Petition in W.P.No.24158 of 2006. The Regional Passport Officer, by his communication dated 12.11.2013, rejected the petitioner's request for issuance of Passport till the criminal cases are disposed of and called upon the petitioner to furnish suitable orders from the Court. Thereafter, the petitioner filed a Writ Petition in W.P.No.33546 of 2013 before this Court and this Court, by order dated 24.09.2014, directed the respondent to issue additional booklet or additional sheets so that the validity of the Passport already issued to him upto 16.02.2015 is not curtailed in any manner. Pursuant to the orders of this Court, the respondent issued a fresh Passport bearing No.M-2742762 with a validity period upto 15.04.2015.

7. Subsequently, the petitioner made an application to the respondent to renew his Passport to extend the validity beyond 15.04.2015. However, the respondent, by letter dated 22.05.2015, called upon the petitioner to produce fresh Court order for processing his application citing the pendency of criminal cases against him. The petitioner sent a reply dated 25.05.2015. The petitioner also challenged the communication dated 22.05.2015 in the Writ Petition in W.P.No.16828 of 2015 and this Court, by order dated 19.11.2015, directed the respondent to pass orders for renewal/re-issuance of the Passport to him. Thereafter, the petitioner made an application to the respondent for extension of the validity period beyond 21.12.2016 on 19.11.2016, which

was taken on the file of the respondent on 22.11.2016. By communication dated 09.12.2016, the respondent refused to process the petitioner's application calling upon the petitioner to furnish fresh Court order for processing his application for issuance of Passport citing the reason of pendency of cases against him. In these circumstances, the petitioner has filed the present Writ Petition.

8. The respondent in his counter has stated that if the petitioner furnishes the permission of the Competent Trial Court, the respondent may not have any legal impediment in issuing the Passport as sought for by the petitioner as per the provisions of the Passports Act, 1967 in accordance with law.

9. Mr.K.Sridhar, learned counsel appearing for the petitioner submitted that since the respondent is renewing the Passport only for a period of one year citing the pendency of the criminal cases, it causes hardship to the petitioner for the reason that for every renewal, he was called upon to approach the Court and get appropriate orders for renewing the Passport and that the petitioner has to travel abroad frequently for his professional obligations and duties. Further, the respondent should be directed to renew the Passport for a period of ten years and that any condition may also be imposed for such renewal. It is also taking months for getting orders from the Courts. In support of his contention, the learned counsel relied upon an un-reported judgment of a Division Bench of Bombay High Court [Narendra K.Ambwani vs. Union of India, Aykar Bhavan, Maharshi Karve Road, New Marine Lines, Mumbai-400 020 and others], wherein it has been held as follows:

"...

11.Accordingly, we issue the following directions:

(a) In all cases where the Magistrate's Court directs renewal of the passports under the Rules, the Passport Rules, 1980 shall apply and passports other than for a child aged more than 15 years shall be renewed for a period of ten years or twenty years as the case may be from the date of its issue. All qualifying applicants are entitled to have passport renewed for at least ten years. The Regional Passport Office shall renew the passports of such qualifying applicants at least for ten years.

(b) In case where the passports are valid and the applicants hold valid visas on existing passport, the Regional Passport Officer shall issue the additional booklet to the same passport provided the applicant had obtained permission to travel abroad.

(c) If the learned Magistrate passes an order making the reference to the said Notification No.G.S.R.570(E) dated 26th August, 1993, the passport shall be renewed only for such period that the Magistrate may specify in the order or as otherwise specified in the said Notification where the passport of the applicant is valid for less than one year, the additional booklet may be issued subject to the orders to be obtained in this behalf only of the Magistrate concerned."

10. The ratio laid down by the Division Bench of the Bombay High Court applies to the facts and circumstances of the present case.

11. When the validity period itself is only for one year, if the Passport is not renewed for few months, it would definitely cause hardship to the petitioner. Further, in the affidavit, the petitioner has stated that he is working as Export Marketing Advisor in a Private Limited Company on a contract basis in a Senior Advisory position and that the nature of job requires frequent travel abroad. The criminal cases are pending against the petitioner from the year 2001 and his Passport has been renewed periodically from the year 2005 on the directions given by this Court for renewing the Passport. Though, initially the Passport was renewed from 30.09.2008 to 16.02.2015, subsequently, when the petitioner produced the Passport for attaching additional sheets, the validity period was restricted to one year from 01.06.2012 to 31.05.2013. Thereafter, by orders of this Court in W.P.No.33546 of 2013, the Passport was renewed upto 15.04.2015. It is not in dispute that the petitioner has been travelling abroad only after getting appropriate orders from the trial Court. It is also not the case of the respondent that the petitioner had violated any of the conditions imposed by this Court.

12. When this Court had consistently directed the respondent to renew the Passport on several occasions, I am of the view that the respondent should renew the Passport of the petitioner now also. As rightly contended by the petitioner, since he is frequently travelling abroad, the renewal for a period of one year would definitely cause hardship to him. Every time, the petitioner was called upon to produce the Court order for renewal and he has been filing Writ Petitions seeking for direction for renewal of the Passport. In these circumstances, the Passport of the petitioner can be renewed for a period of ten years.

13. Accordingly, I direct the respondent to renew the petitioner's Passport bearing No.W-3451425 for a period of ten

years pursuant to the petitioner's application bearing No.16-1009674521 dated 19.11.2016 pending on the file of the respondent in File No.MA1079776896316 dated 22.11.2016 and return the Passport to the petitioner within two weeks from the date of receipt of a copy of this order. On renewal of the Passport, I direct the petitioner to surrender the same before the XI Metropolitan Magistrate, Saidapet, Chennai within one week from the date of renewal. In the event of the petitioner travelling abroad, the petitioner should file appropriate applications before the Criminal Courts where the criminal cases are pending against him for permission to travel abroad. The petitioner shall also file application before the XI Metropolitan Magistrate for return of the Passport for travelling abroad. In the event of such applications being filed by the petitioner before the concerned Criminal Courts, the trial Courts are directed to decide the same on merits and in accordance with law.

14. With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Regional Passport Officer Chennai,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers - II & III,
New No.158, Anna Salai,
Chennai - 600 002.
2. The XI Metropolitan,
Saidapet, Chennai.
3. The Deputy Superintendent of Police,
Economic Offences Wing-II,
Chennai.

4. The Deputy Superintendent of Police,
Economic Offences Wing,
Kumbakonam.

5. The Deputy Superintendent of Police,
Economic Offences Wing,
Madurai.

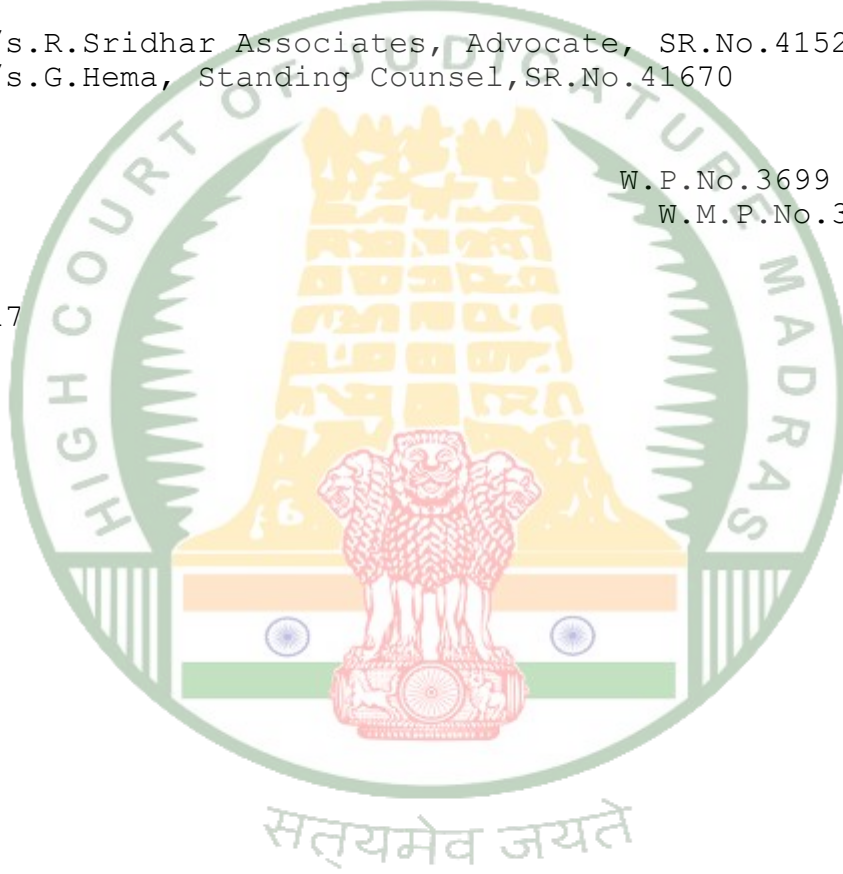
6. The Deputy Superintendent of Police,
Economic Offences Wing,
Tirunelveli.

+1cc to M/s.R.Sridhar Associates, Advocate, SR.No.41526

+1cc to M/s.G.Hema, Standing Counsel, SR.No.41670

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W.M.P.No.3747 of 2017

GMI (CO)
CS/21/06/17



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