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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD)Nos.10065 to 10067 of 2017

W.P.(MD)No.10065 of 2017:

P.K.S.Suryaprakash ...Petitioner

Vs.

The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Bharathi Ula Veethi, Race Course Road,
Madurai-625 002. ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to grant renewal/re-issuance of passport to the petitioner by considering the representation dated 22.05.2017.

W.P.(MD)No.10066 of 2017:

P.K.Selvaraj ...Petitioner

Vs.

The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Bharathi Ula Veethi, Race Course Road,
Madurai-625 002. ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to grant renewal/re-issuance of passport to the petitioner by considering the representation dated 22.05.2017.

W.P.(MD)No.10067 of 2017:

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Shanthi Selvaraj ...Petitioner

Vs.

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The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Bharathi Ula Veethi, Race Course Road,
Madurai-625 002. ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to grant renewal/re-issuance of passport to the petitioner by considering the representation dated 22.05.2017.

For Petitioner : Mr.V.S.Kishok Kumar
in all petitions

For Respondent : Mr.R.Murugappan
Senior Panel Counsel
in all petitions

C O M M O N O R D E R

These Writ Petitions are filed seeking for the issuance of a Writ of Mandamus directing the respondents to grant Renewal/Re-issuance of Passport to the respective petitioner by considering their representations dated 22.05.2017.

2. The case of the petitioners is that the petitioner in W.P.(MD).No.10065 of 2017 was issued with a Passport bearing No.F1188265 on 01.11.2004, the petitioner in W.P.(MD).No.10666 of 2017 was issued with passport bearing No.H1648563 on 31.10.2008 & the petitioner in W.P.(MD).No.10667 of 2017 was issued with passport bearing No.F1188267 on 1.11.2004 by the Respondent. The petitioners herein belong to the same family and the stand of the Petitioners is that from the date of issuance of their respective Passport, there is no adverse remark against them, in violation of any of the provisions of the Passport Act, 1967. However, in the year 2012-2013, they were falsely implicated in criminal case in Crime No.162 of 2012 on the file of Keelavalavu Police Station. Thereupon the petitioners applied for Anticipatory bail before this court and this court, as a condition on anticipatory bail directed the petitioners to deposit their respective passport before the learned Judicial Magistrate, Melur. Accordingly, the petitioners deposited their passports. Subsequently, modifying the order of deposition of Passport this court directed the learned Judicial Magistrate to return their respective passport. In the meantime, since the 1st petitioner's passport expired, he applied

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for re-issuance of the same. However, a communication from the First Respondent stood issued to them, stating that the applications for reissuance of passport will be able to be processed, only after the completion of the Trial in criminal cases. Since then the other petitioners' passport stood expired, they also filed an application before the respondent herein for re-issuance of passport. The petitioners have duly mentioned in their application about the pendency of criminal cases registered against them. Although the said application was filed as early as in time, the respondent had not processed the same for quite a long time. Whereas, the Regional Passport Officer, Madurai has refused to process the Petitioners' application on the ground that he had received report on from the Superintendent of Police, Madurai confirming that a criminal case in Crime No.162 of 2012 against them is pending and further directed the petitioner to apply for reissuance of passport after the criminal case is over. Further, there was a direction issued by the respondent to surrender their passports immediately, since for the pendency of criminal cases. Aggrieved over the same the petitioners vide writ petitions in W.P.No 9956 of 2016, W.P.No 9954 of 2016 & W.P.No 9955 of 2016, they have challenged orders passed by the respondent. This Court has allowed the writ petition on 12.07.2016 in part by setting aside the order of impounding the petitioners' passport and further liberty was granted to the respondent to pass appropriate orders in respect of reissuance of the passport to the petitioners. Despite the order of this court the respondent neither processed the petitioners' application nor responded. Till date, the claim of the petitioners remains heedless on the ground of pendency of criminal case against them. Such inaction of the respondent is arbitrary, unlawful and irrational. Therefore, the petitioners have come up with the present Writ petition.

4.Heard Mr.V.S.Kishok Kumar, learned counsel for the respective petitioner and Mr.G.Murugappan, learned Standing counsel for the respondent.

5.The learned counsel appearing for the petitioners submitted that mere pendency of the First Information Report cannot be construed as pendency of criminal proceedings in respect of the offences purported to have been committed by the petitioner before a Criminal Court. Till the criminal case is taken cognizance by the Court, it cannot be construed as pendency of criminal cases to attract Section 10(3)(e) of the Passport Act, 1967. Further the petitioners ''Freedom of Movement'' cannot be curtailed by the respondent under the guise of alleged report of the Superintendent of Police which is in violation of Article 21 and Article 19(1)(a) of the Constitution of India. Further the learned counsel for the petitioners' contended that the notification in G.S.R.No.570(E), dated 25.08.1993 issued by the Government of India modifying certain conditions mentioned in the earlier notification, that the citizens against whom criminal cases are pending are exempted

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from the operation of Section 6(2)(f) of the Passport Act, if they produce the orders from the Court concerned permitting them to travel abroad. In effect, the clear-cut plea of the Petitioners is that the Passport Authority cannot reject his application mechanically on the ground of pendency of a criminal case.

6. In this regard the learned Counsel for the Petitioners relied upon the decision of the Bombay High Court in the matter of **Shyam Dwarkadas Chabria .vs. Regional Transport Officer and another** reported in **2000 CRL.LJ 2942** and an order made by this court in **W.P(MD)No.6623 of 2010** in the matter of **Rizalee v.s. The Passport Officer, Madurai Passport Office, Madurai,** wherein it was held that a passport may not be refused solely on the ground of pendency of the present criminal cases.

7. Per contra the Learned Standing Counsel appearing on behalf of the Respondent submitted that due to pendency of criminal cases there was a recommendation for impounding the passport issued to the Petitioners. It was further contended that the respondent had refused the Petitioners' application for reissuance of Passport and advised them to apply after completion of criminal cases pending against him before the Court of Law.

8. At this juncture it would be pertinent to refer to the decision of the Hon'ble Supreme Court in **Menaka Gandhi's case** reported in **1978(2) SCJ at Page 312,** wherein the validity of Section 10(3)(c) of The Passports Act was considered. Also this Court recollects the decision reported in **AIR 1997 Bombay 181 (Deepak Dwarkasingh .vs. Union of India)** wherein, at Special Page 185 and 186 at Para 10, it is observed as under :

> "that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6 (2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of 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".

9. It is needless to say that in the case on hand the petitioners' have applied only for reissuance of Passport and not applied to move abroad. In this regard a representation has also been sent by the petitioners on 22.05.2017 to the respondents to renew the passport. As the same remained heedless, the petitioner has approached this court seeking a direction by way of a Mandamus. Considering all the above circumstances, I am of the strong view that if the respondents are directed to conduct an enquiry once again then it would be nothing but a futile exercise. As per the judgments above referred to, the proposition that mere registration of criminal cases is not a bar for denying the passport and mere pendency of criminal cases would not operate as

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a bar or to process the Petitioner's application for renewal of passport. Hence I am of the view that a direction can be granted to the respondent to process and issue passport to the petitioners.

10.In the result:

These Writ petitions stand disposed of and the respondent is directed to process the petitioners' application for renewal and if the same is in order, shall issue the same within a period of two weeks from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar

To

The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Bharathi Ula Veethi, Race Course Road,
Madurai-625 002.

+2ccs to Mr.V.S.Kishok Kumar, Advocate in SR.Nos.57844, 57846
+1cc to Mr.R.Murugappan, Advocate in SR.No.57574

vsa/skn
AE/KP/SAR1/03.06.2017/5P/5C

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