



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.04.2017

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THE HONOURABLE MR. JUSTICE V. PARTHIBAN

WEB COPY

W.P(MD) No.4787 of 2017
and W.M.P. (MD) No.3828 of 2017

M.Thiagarajan

..Petitioner

Vs

- 1.The Passport Issuing Authority,
Regional Passport Office,
Madurai.
- 2.The Assistant Foreigner's Regional Registration Office,
Bureau of Immigration,
Chennai.
- 3.The Central Bureau of Investigation,
EOU-IV/EO - II,
New Delhi.
- 4.The Joint Deputy Director (SIC),
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
- 5.The Chief Passport Officer,
Ministry of External Affairs,
New Delhi.

..Respondents

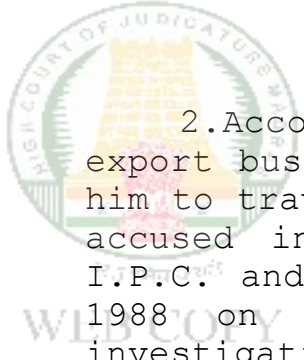
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the order of the 5th Respondent with regard to the order passed in File No: VIII/402/App-99/2016 dated 06.02.2017 and confirming the order passed by 1st Respondent in file No.1600553_POL_MDU dated 18.11.2016 and quash the same.

For Petitioner :Mr.N.R.Elango
Senior Counsel for M/s.P.Thilakkumar

For Respondents 1, 2
4 & 5 : Mrs.S.Srimathy

ORDER

The Petitioner has approached this Court seeking quashment of the order of the 5th Respondent passed in File No: VIII/402/App-99/2016 dated 06.02.2017, confirming the order passed by the 1st Respondent in file No.1600553_POL_MDU dated 18.11.2016.



2. According to the petitioner, he is involved in import and export business. According to him, his business requirements made him to travel abroad quite frequently. In 2011, he was named as an accused in FIR No. RC/220/2011/E/0007 ("FIR") u/s 120B r/w 420 I.P.C. and Section 13(1)(d) of the Prevention of Corruption Act, 1988 on the file of the 3rd respondent. On completion of investigation, charge sheet has been filed and the same was taken on file in C.C.No.07 of 2012 on 31.10.2012 by the learned Special Judge, CBI at Tis Hazari Court, New Delhi. Pending trial, the petitioner was also granted bail on 22.01.2013 on furnishing a personal bond for Rs.50,000/-. According to the petitioner, there was no condition imposed for grant of bail, particularly there was no travel restrictions imposed on him. The petitioner has been cooperative for the trial. However, the same was pending since 2012. In the mean while, the petitioner has been travelling abroad on multiple occasions and there were no complaint whatsoever against him regarding his cooperation for trial pending before the CBI Court, New Delhi.

3. While matter stood thus, the competent authority has issued a general show cause notice dated 20.09.2016, calling upon the petitioner to show cause as to why his passport should not be impounded under Section 10(3)(e) of the Passport Act, 1967. On receipt of the show cause notice, the petitioner replied vide his representation dated 05.10.2016, submitting that the CBI Court has already granted him bail without any condition and there was no order for surrendering the petitioner's passport or imposed any restriction restraining the petitioner from travelling outside India. In the reply, the petitioner has also stated that he had made numerous business trips around the globe in furtherance of his import and export business and the proposed action for impounding the passport would result in violation of his valuable rights guaranteed under Article 19(1)(g) and Article 21 of the Constitution of India.

4. The first respondent notwithstanding the legitimate reply from the petitioner had impounded the passport vide proceedings dated 18.11.2016, under Section 10(3)(e) of the Passport Act, 1967. Aggrieved by the order passed by the first respondent, the petitioner preferred a statutory appeal before the 5th respondent. The petitioner raised several points in the appeal. However, without considering all those points raised in the appeal in proper perspective, the appeal was rejected vide order dated 06.02.2017, with an observation that the petitioner may move before the concerned Court where the criminal case was pending for release of his passport. The said order passed by the 1st and 5th respondent impounding the passport and confirming of the same are impugned in the present proceedings.

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5. On notice, Mrs.S.Srimathy, the learned counsel appeared for respondents 1, 2, 4 and 5 and a counter affidavit has also been



filed.

6. Shri. N. R. Elango, the learned Senior Counsel appearing for the petitioner would submit that there has been no proper application of mind on the part of the 1st and 5th respondents in passing orders impounding the passport and confirming the same in appeal. The learned senior Counsel has drawn the attention of this court to the order passed by the 1st respondent dated 18.11.2016. It appears from the order passed by the 1st respondent that there was no proper consideration of the petitioner's representation and the 5th respondent merely guided by the fact that a criminal case was pending, de hors the fact that the petitioner was released on bail as early as on 2013 and thereafter he had made numerous trips abroad in respect of his business transactions. It is also not the case of the authorities concerned that the petitioner was attempting to escape from the clutches of law as there were no such complaints admittedly on record. Section 10(3)(e) of the Passport Act, 1967 was mechanically invoked only on the basis of the fact that there was a pending criminal case against the petitioner. The first respondent has not considered all other relevant factors while taking a decision towards impounding the passport of the petitioner which obviously curtails the right of the petitioner to carry on his profession and affecting his rights guaranteed under the Constitution of India.

7. Mr. N. R. Elango, the learned Senior Counsel appearing for the petitioner also would contend that the order passed in appeal by the 5th respondent is a non-speaking order as there was no proper consideration of the points raised by the petitioner in the appeal. The appellate authority has merely summarized the pendency of the prosecution against the petitioner and therefore, justified the order passed by the 1st respondent impounding the passport of the petitioner. According to the learned Senior Counsel for the petitioner, the 5th respondent has wrongly concluded that the petitioner may approach the Court concerned where the case is pending for getting necessary permission for travelling abroad. According to the learned Senior Counsel, such a contingency does not arise in view of the fact that the petitioner has been out on bail for several years and no conditions were imposed by the Criminal court, particularly restricting his travel plan or any order passed by the Criminal Court for surrendering of passport. In such view of the matter, the question of approaching the criminal Court does not arise. Moreover, the learned Senior Counsel drew the attention of this Court to the provisions of the Passport Act, 1967 particularly to sub-Section 7 of Section 7 and submitted that the contingency for approaching the Criminal Court arises only when there is conviction by the Courts and not in the present facts and circumstances of the case.

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8. The learned Senior Counsel also would submit that the appellate authority who is vested with power under a statute

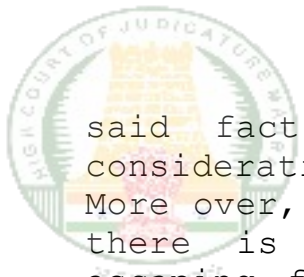


cannot abdicate his statutory duty and pass orders mechanically and in a routine fashion particularly when such orders resulted in negation of fundamental rights of the citizens of this Country.

9. Per contra, the learned counsel appearing for the respondents 1, 2, 4 and 5 would submit that the first respondent had initiated action only after receipt of adverse remarks from Central Bureau of Investigation Economic Offence Unit - IV/EO-II, New Delhi as there was a look out circular issued against the petitioner by the Central Bureau of Investigation. Since there was a lookout circular issued as against the petitioner, an action was initiated to impound the passport of the petitioner and such action is legally sustainable and the same is as per the Government of India's instruction and as per the provisions of the Passports Act, 1967. According to the learned counsel appearing for the respondents 1, 2, 4 and 5, petitioner's case falls squarely within the definition of Section 10(3)(e) of the Indian Passport Act, 1967 and therefore, the action impounding the passport of the petitioner was in order. According to the learned counsel, the appellate authority has rightly rejected the appeal and also observed that in case the petitioner wants to travel abroad it is always open to him to obtain necessary permission from the Court where the criminal case is pending. Therefore, there is nothing wrong in the orders passed by the first and fifth respondents and therefore, urged this Court to dismiss this writ petition as devoid of merits and substance.

10. I have considered the submissions made by the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for respondents 1, 2, 4 and 5 and perused the materials and pleadings available on record.

11. The orders passed by the 1st and 5th respondents prima-facie disclose improper consideration on their part as to the representation and the appeal submitted by the petitioners. It appears from the impugned order that the authorities have been merely guided by the instructions or the report by the Central Bureau of Investigation without independent application of mind in furtherance of discharge of their statutory duty cast upon them under the Indian Passports Act, 1967. As rightly contended by the learned Senior Counsel Mr. N. R. Elango that both the authorities have passed orders with little application of mind and without consideration of the relevant materials submitted by the petitioner. According to the learned Senior Counsel the authorities have also not appreciated the fact that the petitioner was out on bail since 2013 and has made numerous trips in respect of his business and has been actively cooperating with the pending trial before the CBI Court and that there were no other complaint against the petitioner. It is admitted that the petitioner was released on bail without any condition as averred in the affidavit and no travel restriction has been imposed by the CBI Court. The



said fact is very crucial, which has not been taken into consideration either by the first respondent or 5th respondent. More over, no reason has been spelt out in the impugned order that there is any possibility of petitioner fleeing the country escaping from the clutches of law. Such an apprehension on the part of the respondents has not been either explicitly or implicitly found in the order passed by the 1st and 5th respondent. Such being the case, the order passed by the 1st respondent impounding the passport without any legally acceptable reason and without any independent application of mind cannot be sustained. Further, the appellate authority who sit in appeal against the order passed by the original authority also seems to have not appreciated the independent responsibility in adjudicating the appeal and merely guided by the CBI instructions. In the said circumstances, I have no hesitation to hold that the impugned order passed by the 1st and 5th respondents cannot be legally sustained.

12. In view of the above conclusion, the impugned order passed by the 5th Respondent in File No: VIII/402/App-99/2016 dated 06.02.2017 and the order passed by 1st Respondent in file No.1600553_POL_MDU dated 18.11.2016 are set aside. The matter is remanded to the first respondent for fresh consideration of the petitioner's claim for restoration of the passport to the petitioner after due consideration of all relevant facts, legal position, other materials that has been placed on record by the petitioner and pass a reasoned order within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall be given an opportunity of hearing by the first respondent before any order to be passed. The first respondent is also directed to take into consideration the grounds raised in the writ petition and the averments raised in the affidavit filed in support of the writ petition.

13. In the circumstances, this Writ Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Passport Issuing Authority,
Regional Passport Office,
Madurai.

2. The Assistant Foreigner's Regional Registration Office,
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3.The Central Bureau of Investigation,
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4.The Joint Deputy Director (SIC),
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.

5.The Chief Passport Officer,
Ministry of External Affairs,
New Delhi.

+1cc to M/S.S.Srimathy, Advocate, SR.52453

+1cc to Mr.P.Thilakkumar, Advocate, SR.52477

W.P (MD) No.4787 of 2017
and W.M.P. (MD) No.3828 of 2017

SJ

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