



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.05.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) Nos.9374 and 9375 of 2017

S.Sankaranarayanan

... Petitioner in
W.P (MD) No.9374 of 2017

P.K.M.Selvam

... Petitioner in
W.P (MD) No.9375 of 2017

Vs.

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

... Respondents in both petitions

PRAYER in both petitions : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to grant Renewal/Re-issuance of Passport to the petitioner by considering the Petitioners representation dated 17.05.2017 respectively.

In both petitions:

For Petitioner	: Mr.V.S.Kishok Kumar
For Respondent	: Mr.T.R.Janarthanan Additional Government Pleader

O R D E R

In both the writ petitions, the respective petitioner seeks for a Mandamus, directing the respondents to grant Renewal/Re-issuance of Passport to them by considering their representation dated 17.05.2017 respectively.

2. The case of the petitioners is that the petitioner in W.P. (MD) No.9374 of 2017 was issued with a passport bearing No.F2495417 on 05.03.2015 and the same was valid till 04.03.2015



and petitioner in W.P.(MD).No.9375 of 2017 was issued with passport bearing No.F2763632 on 14.03.2005 by the respondent. The petitioners herein are brothers and the stand of the petitioners in both the cases 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 following criminal cases in Crime No.187 of 2012 on the file of Keelavalavu Police Station, Madurai District, Crime No.196 of 2012 on the file of Keelavalavu Police station, Madurai District and Crime No.12 of 2015 on the file of the District Crime Branch, Madurai. Thereupon a communication from the first respondent stood issued to them, stating that their respective passports are sought to be impounded as per Section 10(3)(e) and (h) of the Passport Act. Challenging the said order dated 05.09.2013 issued by the first respondent they filed a Writ Petition before this Court in W.P(MD)No.15413 & 15414 of 2013 and this Court granted an order of interim stay on 18.09.2013. Since then the petitioners' passport stood expired, they filed an application before the Regional Passport Officer, Madurai the respondent herein for re-issuance of passport through their application, dated 20.07.2015 assigned with File Number as MD 1078706831315. The petitioners duly mentioned in the application about the pendency of criminal cases registered against them. Although the said application was filed as early as on 28.07.2015, the respondent had not processed the same for quite a long time. Whereas the Regional Passport Officer, Madurai vide a communication in No.1300050-CPC-MDU, dated 22.4.2016 has refused to process the Petitioners application on the ground that he had received report on 05.08.2015 from the Superintendent of Police, Madurai confirming that a criminal case in P.R.C.No.42 of 2013 against him is pending before the Learned Judicial Magistrate, Melur, Madurai District and further directed the petitioner to apply after the criminal cases are over. Aggrieved by the same the petitioners have challenged in W.P.(MD).No.9953 of 2016 before this Court. 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 respondents 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 petitioner's 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.

3. Heard the learned counsel for the petitioner and the learned Standing counsel for the respondent.

4. The learned counsel 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 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.

5. 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.

6. 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

7. 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".



8. 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 17.05.2017 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 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 petitioner.

9. In view of the above, both the writ petition 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 (CS-III)

/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.

+ 2 CC TO Mr.V.S.KISHOK KUMAR, ADVOCATE IN SR No. 57847, 57848

SKN

TE/MMS/SAR-III : 02/06/2017 : 4P/4C

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24.05.2017