

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.20351 OF 2017

ORDER:

Heard Mr.M.Laxmi Prasad for petitioner, the learned Assistant Solicitor General for respondent Nos. 1, 7 and 8 and Mr.N.Ashwani Kumar for respondent No.9

The petitioner and respondent No.9 are locked in matrimonial disputes. The 9th respondent filed Crime No.477/2015 against petitioner and the same has later on been registered as C.C.No.440 of 2017 pending on the file of XIX Metropolitan Magistrate, Kukatpally at Miyapur. The petitioner and the 9th respondent have made the present writ petition bulky by filing both relevant and not very relevant papers. The petitioner (husband) challenges impounding of Passport vide reference No.30/111/POL/PIC/2017 dated 02.06.2017 and the operative portion reads thus:

"To
Mr.Tabati Sri Aswin Kalyan Kumar,
#610, HSR Amrut Akash Apartments,
Saroornagar,
Hyderabad,
Telangana.

Sir,

This is to intimate that your passport bearing no.G8892151 has been impounded by Consulate General of India, Chicago vide our policy reference no.30/111/POL/PIC/2017 in compliance with the Court direction issued in Lr.Dis.No.654/2017 dated 13.04..2017 by the Hon'ble XIX Metropolitan Magistrate Court,

Kukatpally at Miyapur, Hyderabad. This is for your kind information.

Please acknowledge the receipt.”

The dates relevant for disposing of the writ petition are stated thus:

Through letter No.654/2017 dated 13.04.2017, the learned XIX Metropolitan Magistrate instructed respondent No.7 to impound the Passports of petitioner, his mother, father and brother. Respondent No.8 issued show cause notice No.CHIC/CONS/415/2/17 dated 24.05.2017 calling upon the petitioner to submit explanation as to why Passport No.G8892151 dated 18.06.2008 be not impounded. Admittedly, the petitioner for reasons stated through first reply dated 02.06.2017 could not appear before 8th respondent or submitted explanation within the time stipulated by respondent No.8. However, through e-mail dated 02.06.2017 the petitioner requested one more week to respond to show-cause notice dated 24.05.2017. On 12.06.2012, detailed reply running into five pages was sent by the petitioner to 8th respondent against show-cause notice dated 24.05.2017. The petitioner receives the communication impugned in the writ petition to the address given by him in Hyderabad. Communication dated 02.06.2017 refers to impounding of Passport No. G8892151 by Consulate General of India, Chicago/ 8th respondent in reference No.30/111/POL/PIC/2017. Hence, the writ petition.

Mr.Laxmi Prasad challenges the order impounding dated 02.06.2017 on several grounds including the violation of principles of natural justice or respondents failed to follow procedure under Section 10 of the Passports Act.

The respondents received notice and are also represented by the Assistant Solicitor General. The respondents have not filed counter affidavit and produced record. Respondent No.9 filed counter affidavit and also a few annexures supporting the order of 7th respondent impounding the passport of petitioner.

The question for consideration from the dates and events referred to above is whether the impounding of passport either through communication dated 02.06.2017 or through policy reference No. 30/111/POL/PIC/2017 is valid, tenable and at least conforms to principles of natural justice?

The case of petitioner is that the notice dated 24.05.2017 is issued by 8th respondent and on 02.06.2017 the petitioner requested time to submit reply. On 12.06.2017, the reply has been submitted by petitioner. The communication impugned in the writ petition refers to a completed act of impounding of Passport by 8th respondent vide policy reference No. 30/111/POL/PIC/2017. From the documents filed by petitioner, this Court has no difficulty in appreciating the first contention namely, that the impounding of Passport is in violation of principles of natural justice and procedure prescribed under Section 10 of the Passports Act. The reasons for the conclusion, are that there is no dispute of receipt of show cause

notice dated 24.05.2017, for the petitioner has made himself available on e-mail by communicating with 8th respondent. The reply is also sent through e-mail and if at all the policy decision No.30/111/POL/PIC/2017 was already taken to impound the Passport of petitioner, the 8th respondent ought to have communicated the impounding decision and that receiving the explanation on 12.06.2017 is in futility. If at all, the passport is already impounded the same has to be treated as a completed act of impounding under Section 10 of the Passports Act. There is no record to satisfy this Court that at least policy decision impounding passport is communicated to petitioner. Now curiously 7th respondent communicates the impounding of passport through letter impugned in the writ petition. If at all the impounding is treated as effected through letter dated 02.06.2017, the 8th respondent has not issued show cause notice to petitioner or afforded opportunity before impounding the passport. Assuming without expressing a view on the jurisdiction of 7th respondent to take up the power of impounding the passport, then the burden is on respondent Nos. 7 and 8 to satisfy the Court that the 7th respondent not only impounded the passport of petitioner through policy No. 30/111/POL/PIC/2017, but the decision was communicated to petitioner. The procedure now followed cannot be treated as conforming to requirements of law. In the case on hand, respondent Nos. 7 and 8 are taking steps for impounding the passport of petitioner pursuant to the letter addressed by XIX

Metropolitan Magistrate. As long as, the respondents are under obligation to comply with the directions issued by the Court of competent jurisdiction, this Court while considering the legality of communication impugned in the writ petition has to suitably mould the relief. For the above reasons and having regard to the facts and circumstances of the case, the writ petition is ordered. Reference No.30/111/POL/PIC/2017 dated 02.06.2017 is set aside. The Counsel consent to setting aside the policy reference No. 30/111/POL/PIC/2017 as well. The matter is remitted to respondents 7 and 8 for consideration and disposal in accordance with law, pursuant to the letter of the XIX Metropolitan Magistrate, preferably within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 14.12.2017
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