

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.24683 of 2018

Vimal Kumar

.. Petitioner

Vs.

The Regional Passport Officer,
Chennai, Loyola Towers,
No.2 and 3, IV Floor,
Old No.765, New No.158,
Anna Salai, Chennai-600 002.

.. Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the Additional District and Sessions Judge No.III, Tiruppathur, in S.C.No.301 of 2009 to return the petitioners passport bearing No.R0259121, surrendered on 01.06.2017 pursuant to the order in W.P.No.15224 of 2016 dated 26.04.2017 and consequently direct the respondent to renew the passport bearing No.R0259121 on submitting necessary application.

* * *

For Petitioner : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.K.Raju
Central Govt. Standing Counsel

सत्यमेव जयते
O R D E R

This writ petition has been filed seeking a direction to the Additional District and Sessions Judge No.III, Tiruppathur, in S.C.No.301 of 2009 to return the petitioner's passport bearing No.R0259121, surrendered on 01.06.2017 pursuant to the order in W.P.No.15224 of 2016 dated 26.04.2017 and consequently direct the respondent to renew the same based on his application.

2. Heard Mr.P.Raghunathan, learned counsel appearing on behalf of the petitioner and Mr.K.Raju, learned Central Government Standing Counsel appearing on behalf of the respondent.

3. Earlier the petitioner filed W.P.No.15224 of 2016 seeking a direction to the respondent to process his application and renew passport enabling him to submit the same to his employer for verification. The reason being that his renewal application dated 13.04.2016 was not processed on the ground that he declared in the application that he was convicted in a criminal case vide judgment dated 27.08.2012 made in S.C.No.301 of 2009 on the file of the Additional District and Sessions Court-III, Tiruppathur. This Court passed an order dated 26.04.2017 directing him to give a fresh application, which would be considered by the respondent and a fresh passport will be issued. The petitioner was directed to surrender his passport before the trial Court, after verification being done by his employer. The Trial Court was directed not to return his passport, unless the petitioner was permitted to travel abroad by this Court. This Court observed in categorical terms that such order was passed only for the purpose of producing the passport before the employer of the petitioner.

4. Based on the directions of this Court, the petitioner was issued with a passport for a period of one year, which got expired on 15.05.2018. The petitioner, being an employee in a software company, in terms of service conditions, was asked by his employer to produce the renewed passport for verification. When he filed a petition before the trial Court seeking return of passport, it was dismissed on 07.09.2018 stating that it has got no power to return the passport. Hence, this petition.

5. Admittedly, the petitioner is a Software Engineer and the company, in which he serves has a U.S. Clientele and wants his employees to have a valid passport and produce it for verification for security purpose. Since the validity of his passport got expired, he was directed by his employer to produce a valid passport for verification. Further, the petitioner himself disclosed in his passport application, the conviction suffered by him before the trial court. It is not out of place to state that on appeal, this Court granted the interim relief of suspension of sentence. This Court while disposing of the writ petition filed by the petitioner in W.P.No.15224 of 2016 directed the respondent to issue a fresh passport, which was directed to be surrendered before the trial Court, after verification being done by the employer of the petitioner. The Trial Court was directed not to return his passport, unless the petitioner was permitted to travel abroad by this Court and rightly the trial Court dismissed his plea to return the passport. While passing the said order, this Court took note of the fact that the petitioner filed an affidavit of undertaking that he will not travel abroad without the permission of the criminal court and also agreed to surrender the passport before the criminal court and the renewal was sought only for the

purpose of producing the passport before the employer.

6. At this juncture, it is to be stated that the Ministry of External Affairs, Government of India, issued a notification in G.S.R.570(E), dated 25.08.1993, which stipulated certain conditions for permitting a citizen of the country, against whom proceedings are pending before a criminal court in India to fly abroad. It is relevant to usefully extract notification issued by the Ministry of External Affairs, Government of India, in this regard :

"MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION

New Delhi, the 25th August, 1993

G.S.R.570(E) - In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298 (E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely :-

(a) the passport to be issued to every such citizen shall be issued -

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued ; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year ;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year ; or

(v) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled

abroad for the period sanctioned by the court ; and provided further that, in the meantime, the order of the court is not cancelled or modified ;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad ;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued."

7. In *Satwant Singh Sawhney V. D.Ramarathnam*, Assistant Passport Officer, AIR 1967 SC 1836, it is specifically held by the Apex Court that travelling to a foreign country is also a fundamental right and refusal to issue passport or withdrawal of the same would certainly violate Article 14 and 21 of the Constitution of India.

8. In the case on hand, to fulfill his obligations to his employer, the petitioner needs to have a valid passport. In such factual matrix of the case coupled with the legal position, the writ petition is disposed of with the following directions :

(i) The petitioner is permitted to file a fresh application before the learned Additional District and Sessions Judge No.III, Tiruppathur, seeking return of passport within a period of one week from the date of receipt of a copy of this order and on such application, the passport bearing No.R0259121 surrendered by the petitioner in S.C.No.301 of 2009 on 01.06.2017 pursuant to the order in W.P.No.15224 of 2016 dated 26.04.2017, shall be returned by the trial court within a period of one week thereafter.

(ii) Upon receiving the passport from the trial Court, the petitioner is directed to make an application before the respondent within a period of two weeks. The respondent shall consider the same and pass orders re-issuing the passport to the petitioner in terms of GSR 570(E), dated 25.08.1993. The said exercise shall be completed within a period of two weeks from the date of receipt of the application.

(iii) After obtaining the passport, the petitioner shall produce the same before his employer for verification and he is directed to surrender the same before the trial Court. This exercise shall be completed within a period of four weeks from the date of receipt of the passport.

(iv) In the event, the petitioner is travelling abroad for official purpose, he shall seek leave of the trial Court by producing his itinerary well in advance and such request shall be considered by the trial Court favourably, by imposing

suitable conditions. Immediately after his arrival, he is directed to surrender the passport before the trial Court.

(v) After the expiry of the renewed passport, till the conclusion of the appeal that is pending before this Court, the petitioner is given liberty to approach the trial Court for renewal of the passport, which shall be considered in the manner prescribed above and the petitioner need not be directed to approach this Court again for the said purpose.

However, there will be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Regional Passport Officer,
Chennai, Loyola Towers,
No.2 and 3, IV Floor,
Old No.765, New No.158,
Anna Salai, Chennai-600 002.
2. The Additional District and Sessions Judge No.III,
Tiruppathur.

+1cc to Mr.K.Raju, Advocate SR.No.89361

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.89236

AK(CO)
GMY(07/01/2019)

सत्यमेव जयते

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