

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018
CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.27227 and 27236 of 2018
and W.M.P.Nos.31663, 31670, 31677 and 31679 of 2018

Shabu Kottoli Parambil Adimaikutty Shabu

.. Petitioner in both WPs

Vs.

The Regional Passport Officer,
Regional Passport Office,
4th Floor, Chennai Rayala Towers
No.2 and 3, Old No.785, New No.158,
Anna Salai, Chennai-600 002.

.. Respondent in both WPs

* * *

Prayer in W.P.No.27227 of 2018:- Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent relating to the impugned order dated 05.10.2018 in Letter Ref.No.SCN/307683477/ 18, quash the same, and consequently direct the respondent to return passport bearing No.Z 4461563 and also permit him to travel abroad using the said passport bearing No.Z 4461563.

Prayer in W.P.No.27236 of 2018:- Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent relating to the impugned order dated 05.10.2018 in Letter Ref.No.IMP/307683599/ 18, quash the same, and consequently direct the respondent to return passport bearing No.Z 4461563 and also permit him to travel abroad using the said passport bearing No.Z 4461563.

* * *

For Petitioner in : Mr.S.Haja Mohideen Gisthi
both WPs

For Respondent : Mr.J.Madhanagopal Rao,
in both WPs Central Government Standing Counsel

C O M M O N O R D E R

Challenging two separate orders passed by the respondent dated 05.10.2018, the petitioner is before this Court with these writ petitions.

2. Heard Mr.S.Haja Mohideen Gisthi, learned counsel appearing on behalf of the petitioner and Mr.J.Madhanagopal Rao, learned Central Government Standing Counsel appearing on behalf of the respondent.

3. The petitioner, who claims to be a businessman, submitted online application for a new passport through a Travel Agent, as the entries were made in all the pages of his previous passport. The petitioner was given passport bearing No.A 4461563 on 16.03.2018. Subsequently, the petitioner received a letter dated 01.06.2018 from the respondent stating that there was an adverse police verification report and thus, he was called upon to give explanation for suppressing a criminal case, which was registered against him and pursuant to filing of charge sheet pending before the Judicial Magistrate, Alandur, in C.C.No.199 of 2017 and also to show cause as to why action should not be taken to impound the passport and the proceedings under Section 1(1)(b) of the Passport Act, 1967 should not be initiated. The petitioner submitted his explanation on 10.06.2018. At that time, he was asked by the officials of the respondent not to use the passport provided to him.

4. Since the petitioner wanted to travel abroad and his request yielded no response, he filed W.P.No.18580 of 2018 seeking a direction to the respondent to drop further proceedings and to permit him to travel abroad. It was represented by the respondent in that case that the right of the petitioner was not curtailed and he was only asked to give an explanation for non-disclosure of the pending criminal case. Hence, this Court on 14.8.2018 disposed of the writ petition with a direction to the petitioner to submit the information sought by the respondent, who was directed to consider and pass orders on his case.

5. The petitioner submitted another representation dated 26.08.2018 along with the copy of the order dated 14.08.2018. He was asked by the respondent to appear along with the original order and to produce the passport. Further, he was asked to obtain permission from the Judicial Magistrate Court concerned to go abroad in terms of GSR 570(E), dated 25.08.1993.

6. Challenging the said order, the petitioner filed another writ petition in W.P.No.23956 of 2018, which was also disposed of by this Court on 28.09.2018 with a direction to the respondent to conduct enquiry and complete it on 05.10.2018 and the petitioner was also directed to appear before the respondent. Accordingly, the petitioner along with the further representation dated 03.10.2018 appeared before the respondent on 05.10.2018. It is the grievance of the petitioner that without considering his explanation and representation and the

orders of this Court, the impugned orders came to be passed on the same day.

7. Refuting the allegations, a counter affidavit dated 23.10.2018 was filed by the respondent.

8. The learned counsel for the petitioner submitted that the act of the petitioner in not disclosing the pending criminal case is an inadvertent one, that too pertaining to a petty quarrel over the election of the Mosque, in which, he was the President. It is his submission that the petitioner has video graph to show that he has not committed any offence, as alleged in the criminal case and hence, the relief may be granted by this Court, instead of driving him to go to the Magistrate Court. Reliance was placed on the order of this Court dated 24.09.2014 passed in W.P.No.33546 of 2013 (Ashok Muthana V. The Regional Passport Officer and another, by him, which according to him, arose out of identical circumstances.

9. Admittedly, the petitioner suppressed the criminal case in C.C.No.199/2017 on the file of the Judicial Magistrate Court, Alandur, pending against him. According to him, it pertains to a quarrel within the premises of the Mosque and he has materials to prove that he has not committed any such offence and even this Court has granted the interim relief of stay of C.C.No.199 of 2017. Though it is claimed that it is not deliberate, but only inadvertently he failed to inform the Travel Agent about the registration of the criminal case, that will not absolve him from the liability of suppression. The veracity of the allegations in the criminal case cannot be decided by this Court and it is for the trial Court to appreciate the evidence available on record.

10. The learned counsel for the petitioner submitted that in identical circumstances, this Court directed the passport authorities to issue passport to the applicant in the order dated 24.09.2014 made in W.P.No.33546 of 2013 (Ashok Muthana V. The Regional Passport Officer and another) and similar relief may be granted to the petitioner. A perusal of the said order would go to show that the impugned order therein dated 12.11.2013 was passed under Section 6(2)(f) of the Passports Act, 1967, rejecting the request of the petitioner therein to reissue passport with additional pages, which has validity till 16.02.2015. Drawing a distinction between issue/reissue of passport with that of seeking additional pages in a valid passport, this Court held that without invoking the provision under Section 10(1) or 10(3) of the said Act, the passport authorities cannot take recourse to Section 6(2) of the Act. It was also observed therein that as there was no proceeding either under Section 10(1) or under Section 10(3), the issuance of

additional book cannot be denied by the respondents and the respondents were directed to issue additional book or additional sheets to the petitioner.

11. In the instant case, the passport issued to the petitioner is valid till 15.03.2028. The show cause notice dated 01.06.2018 was issued under Section 12(1)(b) of the Passport Act, 1967 and the said provision provides, inter alia, imposing fine and there is no provision for impounding the passport therein. The respondent invoked the provision under Section 12(1)(b) of the Act and chosen to omit the provision under Section 10(3) of the Act in the show cause notice and the respondent failed to afford an opportunity to the petitioner to furnish his explanation with respect to the impounding of the passport.

12. Further, if the respondent wants to deny the petitioner of the benefit of the validity of the passport upto the period stated therein, i.e., 15.03.2028, by impounding it, the respondent ought to have contemplated such intention in the show cause notice itself.

13. Moreover, it is seen that suppressing of pendency of the criminal case, according to the petitioner is not concerned with any heinous offences and therefore, impounding the passport is a harsh punishment. It is brought to the notice of this Court that in a catena of decisions, the respondent only imposed fine for such contravention.

14. It is also relevant to note that impounding of a passport has civil consequences and before passing such an order, an opportunity of personal hearing should be afforded to the petitioner. Though the petitioner gave his explanation and appeared in person, it is his grievance that he was not given personal hearing. At this juncture, it is relevant to note that the Hon'ble Apex Court in Suresh Nanda V. Central Bureau of Investigation, reported in (2008) 3 SCC 674 has observed as follows :

"..... 16. Since impounding of a person (sic - passport) has civil consequences, the Passport Authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party."

15. In Satwant Singh Sawhney Vs. D.Ramarathnam, Assistant Passport Officer and others, AIR 1967 SC 1836, it is specifically held that travelling to a foreign country is also a fundamental right and refusal to issue passport or withdrawal of

the same would certainly violate Articles 14 and 21 of the Constitution of India. In the light of the above facts, it is admitted by the petitioner that suppression of the pendency of the criminal case against him and as already pointed out this Court had granted stay on the ground that the petitioner had not assaulted either the defacto complainant or his party members.

16. In the considered opinion of this Court coupled with the legal position, the impugned order the first respondent warrants interference.

17. In the result, these writ petitions are allowed and the impugned orders are set aside. The respondent is directed to issue the passport in accordance with law, if otherwise the application is in order within a period of four weeks from the date of receipt of a copy of this order, in terms of GSR 570(E), dated 25.08.1993. The petitioner is also directed to inform the Judicial Magistrate, Alandur, where the criminal case is pending, about his itinerary well in advance and he should make himself available before the said Court on the effective dates of hearing without fail. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gg

To

1. The Judicial Magistrate,
Alandur.
2. The Regional Passport Officer,
Regional Passport Office,
4th Floor, Chennai Rayala Towers
No.2 and 3, Old No.785, New No.158,
Anna Salai, Chennai-600 002.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No.80177
+1cc to Mr.J.Madhanagopal Rao, Advocate, S.R.No.80734

W.P.Nos.27227 and 27236 of 2018

SVN(CO)
CS/24/12/2018