

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.30415 of 2018
and W.M.P.No.35483 of 2018

Ram Thilak Ramasamy

.. Petitioner

Vs.

The Regional Passport Officer,
Regional Passport Office,
Chennai Royala Towers,
No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 052.
Respondent

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the respondent to pass order on the petitioner's explanation dated 17.09.2018 for the notice dated 09.07.2018 submitted by the petitioner.

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For Petitioner : Mr.K.Thiruvengadam

For Respondent : Mr.J.Madhanagopal Rao,
Senior Panel Counsel

O R D E R

This writ petition has been filed seeking a direction to the respondent to pass order on the petitioner's explanation dated 17.09.2018 submitted for the notice dated 09.07.2018 served by the respondent.

2. Heard Mr.K.Thiruvengadam, learned counsel appearing on behalf of the petitioner and Mr.J.Madhanagopal Rao, learned Senior Panel Counsel appearing on behalf of the respondent.

3. The petitioner applied for renewal of passport, which was given with a validity till 21.06.2028. However, upon receipt of an adverse report from the police to the effect that there was a case pending against the petitioner

in Judicial Magistrate Court No.II, Hosur, the respondent served a notice dated 09.07.2018 seeking explanation for suppressing the said fact. He was orally directed to surrender the passport and accordingly, he surrendered the same. The petitioner claimed that since he suffered leg injury in an accident and underwent treatment in a private hospital as inpatient, his friend applied for renewal, to whom he inadvertently failed to inform the pending case. Accordingly, he submitted the explanation and surrendered the passport therewith, as directed by the respondent.

4. Since the petitioner wanted to travel abroad for business purpose, he presented a representation to the respondent on 17.10.2018 to reissue the passport. Since there is no response forthcoming from the respondent, the petitioner is before this Court with the above said prayer.

5. The learned counsel for the petitioner submitted that the act of the petitioner in not disclosing the pending criminal case is an inadvertent, and not deliberate one.

6. Admittedly, the petitioner suppressed the criminal case pending against him. According to him, it is not deliberate act, but inadvertently he failed to inform his friend about the registration of the criminal case. In the instant case, the passport issued to the petitioner is valid till 21.06.2028. The show cause notice dated 09.07.2018 was issued under Section 12(1)(b) of the Passport Act, 1967 and the petitioner also immediately submitted his reply on 17.09.2018, which is claimed to be pending for consideration as on date. Since the petitioner wants to travel abroad in connection with his business, he submitted a representation to the respondent on 17.10.2018 to re-issue the passport.

7. The notification in G.S.R.570(E), dated 25.08.1993 issued by the Ministry of External Affairs, Government of India, mandates certain conditions for permitting a citizen of the country, against whom proceedings are pending before a criminal court in India to fly abroad. At this juncture, 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."

8. In *Satwant Singh Sawhney V. D.Ramarathnam*, Assistant Passport Officer, 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.

9. In the case on hand, the petitioner intends to go abroad on a business tour. Hence, it is necessary for him to have a passport. In such circumstances, the writ petitions is allowed directing the respondent to consider the explanation submitted by the petitioner dated 17.09.2018 and the representation dated 17.10.2018 and pass appropriate order 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 four weeks from the date of receipt of a copy of this order. The petitioner is also directed to inform the Judicial Magistrate No.II, Hosur, 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 petition is closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Hosur

2.The Regional Passport Officer,
Regional Passport Office,
Chennai Royala Towers,
No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 052.

+1cc to Mr. K.Thiruvengadam, Advocate SR.No. 83926

+1cc to Mr.J.Madhanagopal Rao, , Advocate SR.No. 83833

W.P.No.30415 of 2018

ASK(10/12/2018)