



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15829 of 2020

and

W.M.P.(MD)Nos.13260 & 13261 of 2020

Mohan C.Lazarus

... Petitioner

Vs.

The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

... Respondent

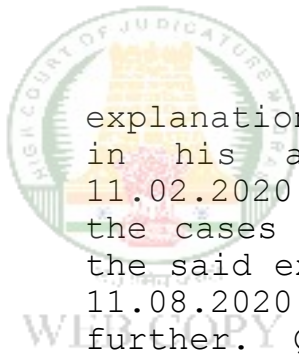
Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings bearing No.2000010_cpc_MDU dated 11.08.2020 issued by the respondent and quash the same and consequently direct the respondent to re-issue the passport of the petitioner bearing No.Z5253543 on File No.MD2072792315920 and to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for Mr.K.Samidurai

For Respondent : Ms.L.Victoria Gowri,
Assistant Solicitor General of India
for Madurai Bench

ORDER

The writ petitioner is the founder of Jesus Redeems Ministry and a well known evangelist. The petitioner applied for re-issuance of passport, because, his old one got damaged. The respondent called for police verification report. It then came to be known that the petitioner was involved in as many as four criminal cases. Therefore, the respondent vide notice dated 05.02.2020 issued upon the petitioner to provide suitable



explanation as to why the petitioner suppressed material information in his application. The petitioner vide explanation dated 11.02.2020 informed the respondent that further proceedings in all the cases have been stayed by the High Court. Not satisfied with the said explanation, the respondent passed the impugned order dated 11.08.2020 declining to process the petitioner's application further. Questioning the same, this writ petition came to be filed.

2.The learned Senior Counsel appearing for the petitioner submitted that the respondent erred in not properly considering the explanation furnished by the petitioner. Though four criminal cases have been registered against the petitioner, three are pending at the FIR stage and therefore, they cannot be a bar for considering the petitioner's application. Of course, one criminal case has been taken on file by the jurisdictional criminal court but further proceedings therein have been stayed. Therefore, pendency of one case against the petitioner in a criminal court cannot operate to his prejudice. He laid particular emphasis on the nature of the right to travel abroad. He therefore called upon this Court to set aside the impugned order and allow this writ petition.

3.Per contra, the learned Assistant Solicitor General of India for the Madurai Bench appearing for the respondent contended that the impugned order is well founded and that it does not call for any interference.

4.Before I consider the rival contentions, I must remark that since we are in the age of social media, certain events tend to come to our notice on their own. I myself have seen a video in which the writ petitioner is seen exhorting the members of the Christian community to conduct prayer meetings so that Shri.Narendra Modi will not be re-elected to power. He has also made highly derogatory remarks against Hinduism. He thinks that the State of Tamil nadu is in the grip of Satan and that it is high time it is redeemed. It is not for this Court to opine as to whether a true religious personage will utter such remarks. My role is to examine the correctness of the impugned order and to see if any relief can be granted to the petitioner.

5.It is not in dispute that cases were registered against the petitioner before various police stations. Crime No.223 of 2018 registered on the file of the Government Hospital Police Station, Erode, culminated in a final report. Cognizance was also taken in STC No.1493 of 2018 on the file of the Judicial Magistrate No.II, Erode. Therefore, it can be stated that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. Of course, the proceedings in STC No.1493 of 2018 on the file of the Judicial Magistrate No.II, Erode have been stayed in CrI OP No.2733 of 2019. But the fact remains that the quash petition is still pending and



6. Section 6(2) (f) of the Indian Passports Act, 1967 reads as follows :

"Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a).....

(b)....

(c)...

(d)...

(e)....

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India."

Section 6(2) employs the expression "shall refuse". Of course, in the overall context, it implies that refusal to issue passport or travel document must be predicated only on the grounds set out in Section 6(2) and not on any other ground. It can also mean that if the case of the applicant falls within grounds (a) to (i), the issuing authority is obliged to say "no" to the applicant. It appears that the hands of the passport authority is tied. This is because while dealing with the power of the passport authority to vary, impound or revoke passports and travel documents, Section 10 (3) (e) of the Act is couched in discretionary terms. Section 10 (3) (e) reads as follows :

"The passport authority may impound or cause to be impounded or revoke a passport or travel document,--

(a).....

(b)....

(c)...

(d)...

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India".

Since the mandatory character of Section 6(2) can cause hardship, the Central Government issued the following Notification dated 25.08.1993, for regulating the exercise of power by the Passport Authority under Section 6(2) (f):

"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



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(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

(iv) 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.

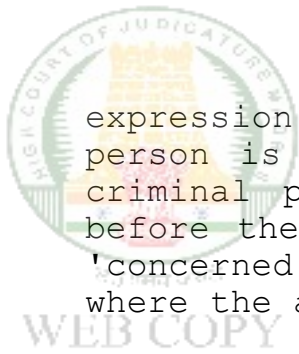
(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(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."

This notification was interpreted by a learned Judge of this Court (The Hon'ble Mr. Justice P.N. Prakash) vide order dated 21.04.2017 in WP(MD)No.7056 of 2017 (**N. Chandrababu vs. the Sub Inspector of Police**). The Hon'ble Judge in the said decision held that the

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expression 'concerned Court' will mean the Court before whom the person is facing the prosecution. If a petition for quashing the criminal proceedings has been filed under Section 482 of Cr.Pc before the High Court and interim stay has been granted, then the 'concerned Court' would be not the jurisdictional criminal court where the applicant is facing trial but the High Court.

7.This being the legal position, the petitioner cannot be heard to contend that merely because the criminal proceedings pending before the jurisdictional criminal court have been stayed in a quash petition, Section 6(2)(f) of the Act will cease to operate. In the light of the aforesaid decision in WP(MD)No.7056 of 2017, a specific order may have to be obtained from the High Court. The petitioner may have to file a miscellaneous petition in the pending quash petition. However, considering the special facts and circumstances, I deem it fit and appropriate to go into the issue in this writ petition itself.

8.An applicant is said to commit an offence under Section 12 of the Passports Act, 1967 if he suppresses any material information with a view to obtain a passport. He is not obliged to make any disclosure as regards those cases that are pending at the FIR stage. But, he is bound to give the details if the criminal case had been taken on file by the jurisdictional criminal court. In the case on hand, out of the four criminal cases, one case had already been taken on file by the Judicial Magistrate No.II, Erode in STC No.1493 of 2018. It was certainly a material information and its suppression *prima facie* attracts Section 12(1)(b) of the Passports Act, 1967. When the act of the applicant *prima facie* amounted to an offence, the respondent was justified in rejecting the petitioner's request for issuance of passport. Therefore, the order impugned in this writ petition cannot be faulted. I uphold its validity to the extent it rejected the petitioner's application.

9.But that cannot be the end of the matter. Right to travel abroad is implicit in Article 21 of the Constitution of India as held in **Satwant Singh Sawhney vs. D. Ramarathnam and Ors (AIR 1967 SC 1836)**. This proposition was affirmed with greater force in **Maneka Gandhi vs. Union of India (UOI) and Ors, (1978) 1 SCC 248**. The right to go abroad is in area falling within the right to privacy as held in Aadhar judgment. The Hon'ble Supreme Court in its recent decision reported in **(2020) 10 SCC 77 (Parvez Noordin Lokhandwalla vs. State of Maharashtra and Ors.)** observed that when a court is called upon to decide whether the applicant should be permitted to travel abroad, in evaluating the issue, the court must have regard to the nature of allegations, conduct of the applicant and above all, the need to ensure that he does not pose a risk of evading the prosecution.



10.Applying the aforesaid yardstick, I come to the conclusion that the petitioner does not represent flight-risk. He has visited foreign countries on innumerable occasions and he had never overstayed. He had not applied to any foreign country seeking residential permit. It is obvious that his roots are very much here. He is definitely not likely to leave India, though the complainants in the criminal cases would definitely wish he does. Therefore, denial of the right to travel abroad certainly infringes his fundamental right guaranteed under Article 21 of the Constitution of India. More than anything else, the petitioner did not ask for renewal of passport. His passport remains valid upto 02.04.2029. It was issued on 03.04.2019. Though interim order was obtained in Crl OP No.2733 of 2019 on 01.02.2019, the petitioner's original application also appears to be vitiated by suppression of material information. Yet, the passport authority on their own did not choose to invoke their power under Section 10 of the Act. It was only the petitioner who went to the authority seeking re-issuance of passport as the old one got damaged. Therefore, even while sustaining the impugned order, I permit the writ petitioner to submit a fresh application to the respondent seeking issuance of passport. Subject to the petitioner fulfilling other formalities and in the absence of any change in circumstance, the respondent shall re-issue passport to the petitioner within a period of three weeks from the date of submission of fresh application.

11.The writ petition is disposed of on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

+1 CC to M/s.K.SAMI DURAI, Advocate (SR-714[F] dated 08/01/2021)

W.P. (MD) No.15829 of 2020

08.01.2021

CK (CO)

NR (22/01/2020) 7P : 3C