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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.332 of 2022

Karti P.Chidambaram

...Petitioner

Vs.

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

...Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the Letters dated 08.04.2021 having Ref.No.File No.MA1072894834920 and 24.08.2021 having Ref.No.File.No. 2100012_CRM_MAS (MA1072894834920) issued by the respondent and quash the same and consequently direct the respondent to re-issue a passport with additional pages valid for a period of 10 years from the date of issuance.

For Petitioner : Mr.P.Wilson
Senior Counsel
for Mr.N.R.R.Arun Natarajan

For Respondent : Mr.R.P.Pragadish
Central Government
Panel Counsel

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the Letter dated 08.04.2021 having Ref.No.File No.MA1072894834920 and 24.08.2021 having Ref.No.File.No. 2100012_CRM_MAS (MA1072894834920) issued by the respondent and quash the same and consequently direct the respondent to re-issue a passport with additional pages valid for a period of 10 years from the date of issuance.



2.The petitioner has applied for an additional booklet since the pages in his passport got exhausted. According to the respondent, as per new Regulations of International Civil Aviation Organization, the validity of a passport cannot be manually extended. Reissue involves issue of a fresh booklet whereas renewal was earlier done on an existing passport. Since May, 2010, both reissue and renewal involve issue of a new passport booklet. There is no mechanism available by which additional pages can be added to existing booklet. In case of exhaustion of pages, new booklet with new passport number is issued. In such scenario, validity of new passport has to be determined independently without considering the validity of old passport.

3.The respondent would rely on Sec 6(2) (f) of Passports Act,1967 (hereinafter called The Act) read with Notification G.S.R.570 (E). dated 25.08.1993. According to them when a criminal case is pending, the notification will continue to apply and the authorities under the Act are empowered to shorten the validity of the Passport to one year. The judgment relied on by the petitioner in W.P.No. 361 of 2014 of Bombay High Court dated 29.04.2021 will not apply to his case and on the other hand the judgment of Division Bench of Delhi High Court in Prashant Bhushan Vs Union of India & others in W.P.(C) No.1524/2015 dated 07.01.2016 will only apply. As observed by the Delhi High Court "merely because such an order of the court is silent about the time limit, the applicant cannot claim a right for issuance of passport for full validity period"

4.I have considered the submissions.

5.Placing reliance on the power conferred on certain provisions of Passports Act, 1967, particularly Section 6 (2) (f) and the Notification issued in reference to the above provision, the respondent would contend that the action taken by him is justified. The notification was issued in exercise of power conferred under Section 22. The provisions of the statute shall be given harmonious and meaningful construction for the purpose for which the law makers have legislated by them. As per Section 22 of the Act, "Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do confer the power to exempt any person or class of persons from the operation of the provisions of the Act and Rules". As such, the power shall be exercised, when it is in the opinion of the Central Government, it is necessary and expedient in the public interest to do so. It may differ according to the facts and circumstances of each case. Therefore it is necessary for the authority exercising such power to record in writing that in the opinion of the Central Government, it is necessary in the public interest to exercise the power conferred under



this provision.

6. Section 6 of the Act deals with the grounds on which the Passport authority subject to other provisions of the Act, shall refuse to make an endorsement on a passport for visiting any foreign country under clause (b) or clause (c) of Subsection 2 of Section 5.

7. Sections 5 and 6 deal with issuance of passport and the grounds on which the passport authority refuse make endorsement. It does not deal with duration of the passport or Variation, Impounding, Revoking or suspension of passport. There are other provisions governing such exercises and the exercise of power by the authority shall not transgress or repugnant to the power conferred through such provisions of the Statute. A reading of Section 6 makes it very clear that the refusal make endorsement in the passport is subjected to the other provisions of the Act. It cannot transgress or bypass or prevail over the import of specific procedures and powers specified under other provisions of the Act.

8. Section 7 deals with duration of passport and the power of the passport authority to issue the passport for a shorter period. This provision mandates adherence of principles of natural justice. Section 7 of the Passport Act, 1967, reads as follows:-

"7. Duration of passports and travel documents.- A passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided that a passport or travel document may be issued for a shorter period than the prescribed period-

(a)if the person by whom it is required so desires;
or

(b)if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.

As per the above-Section, unless the passport is revoked, it shall continue to be in force for the period as prescribed. The normal duration of a Passport shall be in consonance with Rule 12 of the Passport Rules and for issuing the same for a shorter period it is mandatory to record reasons and communicate the same.

9. Likewise, Section 10 deals with Variation, Impounding and



Revocation of passports with reference to Sec 6(1) and Sec. 19 of the Act. Thus, for exercising the power conferred under these provisions viz Sec 7 and Section 10, adherence of principles of natural justice is mandatory and the authority shall record his reasons and furnish a copy to the holder of passport. The powers conferred under Sec 6 shall be read into Sec 10 and it shall be exercised in conformity with the procedures laid there under.

10. This Court, in a similar circumstance, in the judgment of Ashok Muthana Vs Regional Passport Officer Chennai and another in W.P.No.33546 of 2013 dated 24.09.2014, has held as under:-

11. By the impugned order dated 12.11.2013, the first Respondent rejected the request of the petitioner for the reissue of passport facilities till the disposal of the Criminal Cases, by relying upon Section 6(2)(f) of the Indian Passports Act, 1967. Section 6(2)(f) reads as follows:-

"6. Refusal of Passports, travel documents etc."

(1)

(2) Subject to the other provisions of the 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 of no other grounds:

(a)

(b)

(c)

(d)

(e)

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the Criminal Court in India.

12. A careful look at Section 6 would show that it deals with two contingencies. The first is about an endorsement for visiting any foreign country. The second is about the issue of a passport. Both are to be traced only to two clauses namely Clause (b) or Clause (c) of sub-section (2) of Section 5. Clause (b) of sub-section (2) of Section 5 enables the Passport Authority, upon receipt of an application, to issue a passport or travel document with endorsement in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of other



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countries, after making such enquiry as it considers necessary. Clause (c) of sub-section (2) of Section 5 empowers the Passport Authority to refuse to issue passport or travel document. Sub-section (3) of Section 5 states that where the Passport Authority makes an order under Clause (b) or (c) of sub-section (2), it shall record in writing a brief statement of its reasons and furnish to the person concerned, a copy of the same.

13. Section 7 of the Passports Act, 1967 stipulates that a passport, unless revoked earlier, shall continue in force for such period as may be prescribed. Under Section 8, where a passport is issued for a shorter period than the prescribed period, such shorter period shall be extendable for a further period.

14. Section 10 deals with variation, impounding and revocation of passport. Under sub-section (1) of Section 10, the Passport Authority is empowered to vary or cancel the endorsement on a passport, having regard to the provisions of Section 6(1) or a notification under Section 19. It may also vary or cancel the conditions subject to which a passport or travel document has been issued with the previous approval of the Central Government. Sub-section (1) of Section 10 may be of relevance to the case on hand. Hence, it is extracted as follows:-

10. Variation, impounding and revocation of passports and travel documents

(1) The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

15. Section 10A deals with the power of the Central Government or any designated officer to suspend any passport, if the passport is likely to be impounded and it is also necessary in the public interest to do so. However, such suspension shall not be for a period exceeding four months. But the period may be extended



further by virtue of the proviso to sub-section (1) of Section 10A.

16.A careful look at the entire scheme of the Act would show that the provisions of the Passport Act basically deal with three types of issues such as (1) issue or refusal to issue passports (2) Variation, impounding or revocation of passports and (3) suspension of passports. It is interesting to note that no provision in the Act deals with the renewal of passport. Even Section 8 which deals with extension of the period of passport, covers only cases where a passport is issued for a shorter period than the prescribed period under Section 7. Therefore once a passport expires, upon the expiry of the normal duration stipulated in terms of Section 7 of the Act, a person may have to apply for renewal or extension or re-issue, by whatever name it is called. But that application will be considered only in terms of Section 5. In other words, the terms renewal, extension or re-issue, of a passport after the expiry of the normal period as originally prescribed, should be construed only the issue of passport.

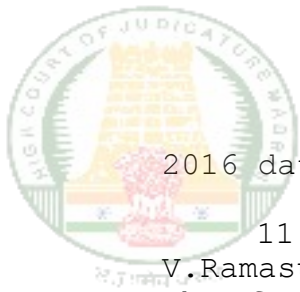
17. As a corollary, once a passport is issued for a particular period, there are only three options open to the Passport Authority namely: (a) Variation of the endorsements made on the passport under Section 10(1) or (b) the impounding of the passport under Section 10(3) and (c) the suspension of the passport under Section 10A.

18.The suspension of a passport can be ordered under Section 10-A only if two conditions are satisfied namely: (a) that the passport is likely to be impounded or revoked under Section 10 (3) (c); and (b) that it is necessary in the public interest to suspend the passport for a period not exceeding four weeks, which can be extended later.

19.Similarly, the impounding or revocation of a passport is possible only if any one of the contingencies stipulated in Clauses (a) to (h) of sub-section (3) of Section 10 are satisfied. If the conditions stipulated in Section 10 (3) are not satisfied, the passport cannot be impounded or revoked.

20.In so far as the variation of the endorsement on passport is concerned, Section 10(1) contemplates variation under two situations. The first is the variation of endorsements of a passport, either with reference to Section 6(1) or with reference to any notification under Section 19. Section 6(1) speaks about





2016 dated 26.04.2017 and so many other cases.

11.I respectfully follow the ratio held by Hon'ble Justice V.Ramasubramaniam in Ashok Muthana's case, which is more apt to the facts and circumstances of the above case rather than the other judgments, which were decided on a different context and on different set of facts. As held by His Lordships, the impugned action of the respondent without taking recourse to Section 10(1), cannot be sustained. In the present case, the holder of the Passport is a Member of Parliament and he has not breached any conditions imposed on him. The respondent has not produced any materials that he was compelled to take action against the petitioner that his conduct may affect Sovereignty and integrity or Security or friendly relations of India or in the public interest. In that event the exercise of power without taking recourse to Sec 7 or 10 of the Act cannot be sustained.

12.G.S.R. 570(E) applies to a situation where a passport holder against whom a criminal case is pending and who produces orders from the court concerned permitting him to depart from India, exempts the operation of Section 6 (2) (f) and lays down other conditions specified therein. As discussed in Ashok Muthana's judgment, it relates to issuance of passport or passport or travel document to be issued. Such a situation will not apply to the present case on hand. The petitioner has not produced any orders of court seeking permission to depart India. He sought issue of additional booklet or reissue of a passport which has validity till 2024. If at all the passport authority decides to take action, he shall, either, take the same under Section 7 or 10 of the Act, or as per the orders of the competent court. Merely because the court granted permission to the petitioner in the past without specifying any time limit, it will not confer power on the authority to invoke G.S.R.570(E) dated 25.08.1993 or Sec 6(2)(f) of the Act. The judgment of Prashant Bhushan's case, where the validity of section 6 itself was challenged as violative of fundamental rights, will not apply to the instant case. This court has no different opinion on the validity of the provision, but it is subjected to other provisions for invoking the same.

13.In W.P.No.3699 of 2017 dated 13.06.2017 following the judgment of the Division Bench of Bombay High Court in Narendra K.Ambwani Vs. Union of India, Aykar Bhavan, Maharshi Karve Road, New Marine Lines, Mumbai - 400 020 and others, [MANU/MH/0333/2014 : 2014(4)Bombay CR 281], ordered as under:-

"11.Accordingly, we issue the following directions:

(a) In all cases, where the Magistrate's Court directs renewal of the passports under the Rules, the Passport Rules, 1980, shall apply and passports other than for a child aged more than 15 years



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shall be renewed for a period of ten years or twenty years as the case may be from the date of its issue. All qualifying applicants are entitled to have passport renewed for at least ten years. The Regional Passport Office shall renew the passports of such qualifying applicants at least for ten years.

(b) In case where the passports are valid and the applicants hold valid visas on existing passport, the Regional Passport Officer shall issue the additional booklet to the same passport provided the applicant had obtained permission to travel abroad.

(c) If the learned Magistrate passes an order making the reference to the said Notification No.G.S.R.570 (E) dated 26th August, 1993, the passport shall be renewed only for such period that the Magistrate may specify in the order or as otherwise specified in the said Notification where the passport of the applicant is valid for less than one year, the additional booklet may be issued subject to the orders to be obtained in this behalf only of the Magistrate concerned."

"11. When the validity period itself is only for one year, if the Passport is not renewed for few months, it would definitely cause hardship to the petitioner. Further, in the affidavit, the petitioner has stated that he is working as Export Marketing Advisor in a Private Limited Company on a contract basis in a Senior Advisory position and that the nature of job requires frequent travel abroad. The criminal cases are pending against the petitioner from the year 2001 and his Passport has been renewed periodically from the year 2005 on the directions given by this Court for renewing the Passport. Though, initially the Passport was renewed from 30.09.2008 to 16.02.2015, subsequently, when the petitioner produced the Passport for attaching additional sheets, the validity period was restricted to one year from 01.06.2012 to 31.05.2013. Thereafter, by orders of this Court in W.P.No.33546 of 2013, the Passport was renewed upto 15.04.2015. It is not in dispute that the petitioner has been travelling abroad only after getting appropriate orders from the trial Court. It is also not the case of the respondent that the petitioner had violated any of the conditions imposed by this Court.

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13. Accordingly, I direct the respondent to renew the petitioner's Passport bearing No.W-3451425 for a

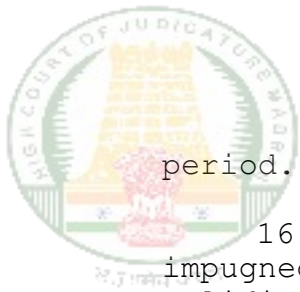


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period of ten years pursuant to the petitioner's application bearing No.16-1009674521 dated 19.11.2016 pending on the file of the respondent in File No.MA1079776896316 dated 22.11.2016 and return the Passport to the petitioner within two weeks from the date of receipt of a copy of this order. On renewal of the Passport, I direct the petitioner to surrender the same before the XI Metropolitan Magistrate, Saidapet, Chennai within one week from the date of renewal. In the event of the petitioner travelling abroad, the petitioner should file appropriate applications before the Criminal Courts where the criminal cases are pending against him for permission to travel abroad. The petitioner shall also file application before the XI Metropolitan Magistrate for return of the Passport for travelling abroad. In the event of such applications being filed by the petitioner before the concerned Criminal Courts, the trial Courts are directed to decide the same on merits and in accordance with law.

14. Mr.P.Wilson, the learned Senior Counsel appearing for the petitioner would draw the attention of this Court to the judgments of this Court in Suba.Veerapandian Vs. the Regional Passport Officer, Chennai and another (W.P.No.26823 of 2014) dated 15.06.2015 ; Bombay High Court of in Samip Nitin Ranjani Vs. Union of India (2016 SCC OnLine Bom 14539); Madras High Court in M.Ramachandar Singh Vs. State rep. by Inspector of Police & another (W.P.No.5846 of 2018) , dated 29.10.2018; Bombay High Court in Ashok Roopchand Jain Vs. the State of Maharashtra & Ors. in Criminal Application No.1 of 2019 in Criminal Appeal No.306 of 2019, dated 04.03.2020 and so on .

15.In all these cases, it is clearly stated that the authority cannot shorten the duration or validity of the passport without following the mandate of Sections 7 and 10 of the Act. Therein the courts, considering the facts and circumstances of the case, directed for renewal of passport for a period of 10 years. However, it was subject to the condition that the applicant shall approach the Magistrate concerned for getting appropriate direction to travel abroad. Therefore, it is clear that permission to travel abroad and renewal or reissue of passport are two different aspects to be dealt with by different provisions of the Act. In normal circumstances, on exhaustion pages, issue of additional booklet or reissue of Passport will not attract Section 6 (2) (f) or any Notification issued thereof, much less, without taking recourse to the relevant provisions intended by the lawmakers there for. It has to be made as per Rule 12 of the Passports Rules, 1980, and the passport authority shall issue a passport for the normal



period.

16. Therefore, in the considered opinion of the court, impugned action of the respondent shortening of the period of validity from 05.03.2024 to 04.03.2022 in violation of Section 7; without taking recourse to Section 10; without recording reasons there for and in Violation of Principles of Natural Justice is not sustainable in law and accordingly, the same is set aside. The respondent is directed to reissue a passport with the existing period of validity or for ten years as per Rule 12 of the Rules and Regulations of International Civil Aviation Organization in accordance with law forthwith, much less on or before 03.03.2022.

17. Mr. R.P. Pragadish, learned Central Government Panel Counsel, is directed to communicate this order to the passport authority without waiting for a certified copy of the order released by this Court.

In the result, the Writ Petition is disposed of with the above directions. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Regional Passport Officer,
Regional Passport Office,
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+1cc to M/s.C.Uma, Advocate, S.R.No.12922

W.P.No.332 of 2022

BR(CO)
RGA(03/03/2022)