

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.3784 of 2022

John Kumar

...Petitioner

Vs.

1.Regional Passport Officer,
Government of India,
Ministry of External Affairs,
Regional Passport Office,
Rayala Towers, Towers 2 & 3,
4th Floor, Old No.785, New No.158,
Anna Salai, Chennai - 600 002.

2.The Passport Officer,
Passport Seva Kendra,
C/o. Animal Husbandry Complex,
Maraimalai Adigal Salai,
Puducherry - 605 003.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the respondents to reissue a passport to the petitioner based upon his Passport Application File No.MA4073927822722 within the time stipulated by this Court.

For Petitioner : M/s.Vrintha Mohan

For Respondents : Mr.Prasad Vijayakumar

O R D E R

This Writ Petition has been filed for a Mandamus seeking for a direction to the second respondent to reissue the passport in favour of the petitioner based on his application dated 01.02.2022.

2. The case of the petitioner is that his passport got damaged. The damaged passport was valid upto 24.01.2029. According to the petitioner, he applied for replacement of the damaged passport on 01.02.2022 and his application has not been processed till date, on the ground that a charge sheet has been filed against him and a case is pending in STC.No.1425 of 2021 before the Chief Judicial Magistrate, Puducherry.

3. A counter-affidavit has been filed by the respondents stating that since a charge sheet has already been filed and a case is pending before the concerned Criminal Court against the petitioner, the petitioner will have to seek permission from the said Court. They have also stated that the application submitted by the petitioner seeking for passport, will amount to an application seeking for a fresh passport. In paragraph 18 of the counter-affidavit, they have stated that whenever a person holding a passport applies for reissuance/renewal, a new passport is issued to him. According to the respondents, since May 2010, both reissuance and renewal involve issue of a new passport booklet. According to them, renewal is already done on an existing passport and the process of renewing the existing passport has been discontinued/stopped since 2010.

4. Heard M/s.Vrintha Mohan, learned counsel appearing for the petitioner and Mr.Prasad Vijayakumar, learned counsel for the respondents.

5. The learned counsel appearing for the petitioner would submit that a necessity to approach the Criminal Court will not arise in the facts and circumstances of the present case. According to him, since the petitioner was already issued with a passport which is valid up to 24.01.2029, the necessity to approach the Criminal Court where a criminal case is pending against the petitioner, will not arise. The learned counsel also relied on the decisions rendered by learned single Judges of this Court in the case of 'Ashok Muthana Vs. The Regional Passport Officer & another' dated 24.09.2014 and 'Karti P.Chidambaram Vs. The Regional Passport Officer' dated 28.02.2022, in support of his submission. He would also submit that without giving any reasons and without issuing any show cause notice to enable the petitioner to submit his explanation, the respondents have kept the passport application submitted by the petitioner, pending.

6. The learned standing counsel for the respondents would reiterate the contentions of the counter-affidavit filed by the respondents in this writ petition and would submit that the petitioner will have to necessarily approach the Criminal Court where a criminal case is pending against the petitioner as a charge sheet has already been filed. He would also rely upon paragraph 18 of the counter-affidavit which has been referred to supra and would submit that the petitioner will have to necessarily approach the Criminal Court where a criminal case is pending against him. Therefore, according to him, the present Writ Petition is not maintainable.

7. Admittedly, no final orders have been passed in the application dated 01.02.2022 seeking for replacement of the

petitioner's passport on the ground that the existing passport has got damaged. In the typed set of papers filed by the petitioner, an acknowledgment letter dated 02.02.2022 issued by the second respondent has been enclosed, under which, the petitioner's passport application has been rejected. However, as seen from the said letter, no reasons have been given for the cancellation of the petitioner's passport.

8. However, learned standing counsel for the respondents would submit that the cancellation of old passport is automatic if an applicant seeks for either renewal or for replacement.

9. Further, as seen from the letter dated 02.02.2022 under which the petitioner's application has been rejected, there is no reference to any show cause notice or the charge sheet filed against the petitioner which resulted in the Magistrate Court taking cognizance of a criminal case against him.

10. Before passing any adverse order against the petitioner, the second respondent ought to have issued a show cause notice, calling for explanation from the petitioner with regard to the charge sheet filed against him and with regard to the suppression of alleged material facts by the petitioner at the time of submitting his application. However, as on date, no show cause notice has been issued to the petitioner calling for explanation but instead the respondent has kept the application of the petitioner pending till date.

11. The petitioner claims to be a Member of Legislative Assembly. He has stated in the affidavit filed in support of the Writ Petition that the passport is urgently required.

12. Unless and until the petitioner is given an opportunity to give his explanation with regard to the criminal charges against him, this Court is of the considered view that he will be put to irreparable hardship.

13. The petitioner has contended before this Court that there is no necessity for the petitioner to approach the concerned Criminal Court seeking permission for issuance of the passport in his favour as he is the holder of an existing passport which expires only on 24.01.2029 and he has submitted an application only for replacement of the existing passport on account of its damage.

14. All these factors will have to be considered by the second respondent before deciding as to whether the petitioner is entitled for the issuance of the passport or not. Unless and until, a show cause notice is issued to the petitioner, he will also not be in a position to submit his explanation with regard

to the charges leveled against him by the second respondent. However, since the petitioner is a Member of Legislative Assembly and he has stated that the passport is urgently required, within a time frame, the second respondent will have to complete the process of issuing a show cause notice and receive explanation from the petitioner and pass final orders thereafter.

15. For the foregoing reasons, this Court directs the second respondent to pass final orders in the petitioner's passport Application No.MA4073927822722 dated 01.02.2022, after issuing a show cause notice to the petitioner within a period of one week from the date of receipt of a copy of this order, calling upon him to submit his explanation and on receiving the same, the petitioner shall submit an explanation within the time stipulated by the second respondent. On receipt of such explanation, the second respondent shall pass final orders within a period of four (4) weeks thereafter, after affording a fair hearing to the petitioner including, granting him the right of personal hearing.

16. With the aforesaid directions, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.Regional Passport Officer,
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Passport Seva Kendra,
C/o. Animal Husbandry Complex,
Maraimalai Adigal Salai,
Puducherry - 605 003.

+1cc to M/s.E.Raam Vijay, Advocate Sr.No.40839

+1cc to M/s.Prasad Vijayakumar, Advocate Sr.No.40578

W.P.No.3784 of 2022

SR-II(CO)

RVM(18/07/2022)