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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19 / 04 / 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NOS.12370 OF 2014 AND 25824 OF 2015
AND
CONNECTED MISCELLANEOUS PETITIONS

WP NO.12370 OF 2014

B.Bharathi

... Petitioner

Vs.

1. The Joint Secretary (PSP) cum
Chief Passport Officer
CPV Division
Representing Ministry of External Affairs
Government of India
Room No.8, Patiala House,
Ministry of External Affairs
Patiala House, Tilak Marg,
New Delhi - 110 001.
2. The Regional Passport Officer
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai.
Tamil Nadu - 600 002.
3. The Chief Secretary
(Representing Government of Puducherry)
Government of Puducherry
Chief Secretariat,
Puducherry - 605 001.
4. The Director
Kanchi Mammanivar Center for
Postgraduate Studies
Lawspet,
Puducherry - 605 008.

... Respondents



PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent / Chief Secretary, Government of Puducherry relating to the order No.C31011/12/2009/CVO, Government of Puducherry, Confidential and Cabinet Department, Chief Vigilance Office, Chief Secretariat, Government of Puducherry, dated 29.12.2009 and quash the same and direct the third respondent / Chief Secretary, Government of Puducherry to grant and pay a sum of Rupees Five Lakhs as compensation to the petitioner for the sufferings he underwent that too at the age of 61.

For Petitioner : Mr.B.Bharathi
Party - in - Person

For Respondents: Mr.J.Madhanagopal Rao
1 and 2

For Respondents Mr.R.Syed Mustafa
3 and 4 : Special Government Pleader (Pondy)

WP NO.25824 OF 2015

B.Bharathi

... Petitioner

Vs.

1. The Chief Secretary
(Representing Government of Puducherry)
Government of Puducherry
Chief Secretariat,
Puducherry - 605 001.
2. The Secretary for Education
(Mr.G.Rakesh Chandra)
Chief Secretariat (Education)
Government of Puducherry
Puducherry - 605 001.
3. The Director of Higher and Technical Education
cum Head of the Department
Government of Puducherry
PIPMATE Complex, Lawspet,
Puducherry - 605 008.

... Respondents



PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the first respondent / Chief Secretary representing the Government of Puducherry to release and pay immediately an amount of Rupees Five Crores to me, the petitioner as compensation for the mental agony and sufferings I and my family members underwent by the above mentioned insulting and defamatory comments passed against me by the respondent 2 and also for promoting press to publish defamatory news about me and thus subjecting me (senior citizens) and my family members to humiliation, criminal intimidation, disrespect to dignity and discrimination based on caste, status and religion, denial of all his rights as stated already.

For Petitioner : Mr.B.Bharathi
Party - in - Person

For Respondents : Mr.R.Syed Mustafa
1 to 3 : Special Government Pleader (Pondy)

COMMON ORDER

The petitioner in W.P.No.12370 of 2014 seeks to quash the I.D Note / Office Memorandum No.C.31011/12/2009-C.V.O, Government of Puducherry, Confidential and Cabinet Department, Chief Vigilance Office, Puducherry, dated 29.12.2009 issued by the third respondent direct the third respondent / Chief Secretary, Government of Puducherry and for a consequential direction to pay a sum of Rupees Five Lakhs as compensation for the sufferings underwent by him that too at the age of 61.

2.The petitioner in W.P.No.25824 of 2015 seeks for a direction to the first respondent / Chief Secretary representing the Government of Puducherry to release and pay immediately an amount of Rupees Five Crores as compensation for the mental agony and sufferings underwent by the petitioner as well as his family members and also for promoting press to publish defamatory news subjecting him (senior citizens) and his family members to humiliation, criminal intimidation, disrespect to dignity and discrimination based on caste, status and religion, denial of all his rights.

3.The petitioner in both the writ petitions is the same person. The third respondent by the impugned order has designated all the Heads of Departments as Authorised Officers. As per the latest instruction of the Central Government, Identity Certificate has to be issued by the Authorised Officers after satisfying that the provisions of Section 6(2) of the



Passports Act, 1967, are not attracted in the case of the applicant(s). Based on the Identity Certificate, the Passport Authorities will issue Passports without any Police verification. Therefore, it was further instructed that before issuing the said Identity Certificate, the Authorised Officers shall invariably obtain Vigilance Clearance from the Confidential and Cabinet Department. It was further observed that the Authorised Officer is reluctant to issue Identity Certificate to the Government servant in question. He may issue "No Objection Certificate" as prescribed in the Annexure-M of the Office Memorandum of the Government of India, Ministry of External Affairs, New Delhi, without reference to the Vigilance Department.

4.It is relevant to note that Section 6(2) of the Passports Act, 1967 (Shortly "the Act") deals with refusal of Passports and travel documents, etc. As per the powers conferred under Section 6(2) of the Act, the Passport Authority shall refuse to issue a Passport or travel document on certain grounds. Sub-clause (e) to (i) of sub-section 2 of Section 6 of the Act are relevant in respect of the Government servants. Under Sub-clause (e) to (g) of sub-section 2 of Section 6 of the Act deals with the pendency of criminal cases, conviction or commission of any offence involving in moral turpitude on the part of the Government servant is specified. Sub-clause (i) of sub-section 2 of Section 6 of the Act specify that in the opinion of the Central Government, the issue of a Passport or Travel Document to the applicant will not be in the public interest and it can be refused. Sub-clause (i) of sub-section 2 of Section 6 of the Act has a wide amplitude. The public interest specified in the said Section will be subject to the satisfaction of the authority who is issuing the Clearance certificate.

5.In order to comply with the requirements under Section 6(2) of the Act, Ministry of External Affairs introduced "No Objection Certificate" for the grant of Passports to the Central / State Government officials and employees of the statutory bodies and Public Sector Undertakings vide Office Memorandum No.VI/401/40/83, New Delhi, dated 09.07.2002, as per which, it was considered by the Government that the right to hold a Passport flows from the Fundamental Rights of a citizen, the insistence on an "No Objection Certificate" in the case of Government servants may not be strictly legal. The Committee, therefore, recommended that an intimation by an employee to the employer that he is applying for a Passport and a declaration, duly acknowledged by his Head of Office, to the effect that he has informed his employer of his intention to apply for a Passport, should be adequate for acceptance and processing of his case in normal course. However, in such cases, the Passport



should be issued on prior verification of the citizenship and character only. Also, the employer will always have an opportunity to issue directions to the employee not to proceed abroad and refuse leave should the circumstances warrant such an action that is pendency of a disciplinary proceedings on grave charges etc., apart from advising Regional Passport Officer concerned not to issue Passport on the grounds to be specified. Considering all the above circumstances, to avoid the considerable delay and harassment, Passport would be issued on prior verification basis, on submission of declaration. Therefore, on submitting the declaration, the verification will be done by the Police and Passport will be issued. In case, proper "No Objection Certificate" is submitted from the Department, then Passport will be issued without police verification.

6. From the above Office Memorandum, it can be inferred that for any citizen, verification of his citizenship and character is mandatory. He has to overcome the conditions stipulated under Section 6(2) of the Act. It will cause considerable delay and harassment to wait in the queue. In order to facilitate the State and Central Government employees, the Fast Track method of prior verification has been introduced, as per which, there are two options available to the officials, viz.,

(i) submission of an undertaking on prior verification basis with post police verification.

(ii) getting a "No Objection Certificate" from the Department without police verification.

7. Later, by Office Memorandum No.VI/401/01/05/2008, Ministry of External Affairs (CPV Division) dated 05.10.2009, a system of "Identity Certificate" (IC) in lieu of "No Objection Certificate" (NOC) was introduced, for expediting the issue of passport. By revising the procedures of an Office Memorandum issued in October 2006, introduced issuance of Identity Certificate in lieu of No Objection Certificate, by which, the spouses of such employees and dependent children upto the age of 21 years, had an option to submit Identity Certificate for expeditious issue of Passport. But however, it was found that several officers are reluctant to issue Identity Certificate to their staff in the prescribed format. The very purpose of introduction of Identity Certificate stood defeated. The Government servants were required to submit fresh Identity Certificate at the time of re-issue of Passport (on expiry of existing passport, on exhaustion of visa pages, etc.) if they were employed in a sensitive office. Military personnel too were



required to submit Identity Certificate for re-issue of Passport. Passport Offices were facing difficulty as there is no extensive definition as to the sensitive and non-sensitive Departments. Therefore, as per the revised Office Memorandum dated 05.10.2009, option was given to Government employees either submit the existing Identity Certificate with reference to Section 6(2) of the Act or "No Objection Certificate". If identity Certificate is submitted Passport will be issued without police verification and if "No Objection Certificate" is submitted, Passport will be issued on post police verification basis.

8. From this, it is very clear that the Government servants are given two options on submitting Identity Certificate for issue or re-issue of Passport or submission of No Objection Certificate from the Department for the same. In so far as the Identity Certificate is concerned that will be issued after verifying the conditions specified under Section 6(2) of the Act and if such verification is completed, there will not be any police verification thereafter. The Passport will be issued by the Passport Authorities without waiting for police verification. In the case of "No Objection Certificate", police verification is not required at the re-issue stage and the Passport will be issued on post police verification basis.

9. As per the extant Central Government's Memorandums, the third respondent issued the impugned inter-departmental note dated 29.12.2009 in conformity with Office Memorandum of the Central Government dated 05.10.2009, by which, the third respondent has given specific instructions, for the purpose of issuing Identity Certificate, satisfying the provisions of Section 6(2) of the Act to get Vigilance Clearance from the said Department. In case, the Authorised Officers are reluctant to issue Identity Certificate for the Government servant, he may issue "No Objection Certificate" in the prescribed form in Annexure-M issued by the Government of India. The instructions gives both the options as contemplated under the Office Memorandum dated 05.10.2009 of Ministry of External Affairs. The Identity Certificate conforms to verification and satisfaction of the requirements under Section 6(2) of the Act. This includes the satisfaction of the Head of the Department, with regard to pendency of disciplinary enquiry on grave charges which may restrict an employee not to proceed. If such Identity Certificate is issued, the Government employee will be in a position to get issue or re-issue of Passport without any hurdles. On the other hand, "No Objection Certificate" from the Head of the Department is only to pass on the information that the Government servants were Indian citizens and employed in his office during the relevant period. It will not certify as to



whether the Government employee is punished or convicted in a criminal case or some criminal case is pending against him or that he is undergoing departmental proceedings, etc. This will naturally lead to police verification and the Passport Authority, on his discretion, exercise his power to suspend or impound the Passport of the Government employee. Therefore, the impugned Office Memorandum dated 29.12.2009 is nothing but the implementation of Official Memorandum issued by the Ministry of External Affairs, dated 05.10.2009.

10.The petitioner has his own notion about the issuance of "No Objection Certificate", Vigilance Clearance and Police Verification. In Grounds (i) of the affidavit filed in support of the writ petition, it is stated as follows: -

"(i) I state that the No Objection Certificate, Vigilance Clearance and police certificate are unwarranted for the issue of passport since the possession of passport is the fundamental right of the Citizen of this country. A Government Employee is also a citizen entitled to enjoy all the rights and privileges like other citizens. He is not a slave. Moreover the above mentioned certificates were introduced during British Rule in order to monitor the Indians / Slaves of India by their rulers / British People. Moreover the British Rulers have British Passport because they are British Citizens. Only the Indians / Slaves were issued with Indian Passport when they visit United Kingdom. So, they introduced Section 6(2) of Passport Act in order to verify whether the Indian Citizen behave well during their visit to U.K. Today these sections and demand of Identification Certificate or NOC became irrelevant and unwarranted for issue of passport."

11.According to the petitioner, as per the judgment of the Andhra Pradesh High Court in P.SHIBU KUMAR S/O. PRABHAKARAN VS. THE DEPUTY INSPECTOR GENEERAL OF POLICE [W.P.No.13791 of 2010 dated 27.07.2010] it is not obligatory on the part of the Government servant to submit a "No Objection Certificate". Therefore, the Authority shall not compel the Government servant to submit "No Objection Certificate".

12.This Court also has no second opinion on that. Even the Office Memorandum of the Ministry of External Affairs dated 09.07.2002 considered the same and given options to the Government servants. The Government servants before applying for



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Passport had to submit a "No Objection Certificate" from the Department. By making that "No Objection Certificate" as an obligatory process, the Government servants are set at disadvantageous position than an ordinary citizen. Possessing of Passport being a Fundamental Right, it was considered that mere information or intimation of applying for Passport to the Head of the Department would suffice. But option was given by the Government to the Government employees to apply for Passport on prior verification basis. If prior verification is done by the Department and No Objection Certificate is issued, the Passport will be issued without police verification which was a cause for long delay. That system of issuing "No Objection Certificate" got modified into issuance of "Identity Certificate" in conformity with Section 6(2) of the Act without police verification and later, No Objection Certificate with post police verification.

13. In so far as applying for Passport with Identity Certificate is concerned, it is necessary for the Government to verify the antecedents of Government employee and pendency of disciplinary proceedings and thereafter, to give clearance. In that process, clearance from the Vigilance Department is very essential one. Therefore, if the Government servant chooses to apply for a Passport after getting Identity Certificate, clearance from the Vigilance Department is mandatory. If a Government servant chooses not to apply with Identity Certificate, it is enough that he communicates his intention to the Government that he is going to apply for Passport by submitting a declaration and getting a No Objection Certificate from the Department. But this declaration given by the Government servant shall be verified by the Police and an enquiry by Police with the Heads of the Department about his antecedents and the pendency of the disciplinary proceedings. Therefore, I do not find any discrepancy in the issuance of Office Memorandum dated 29.12.2009 by the third respondent, as it is in conformity with the provisions of Section 6(2) of the Act.

14. The petitioner may want to be an independent citizen in the democratic country, without subjecting himself to any regulations. But rule of law shall prevail over to maintain the law and order normally and the Fundamental Rights enshrined in the Constitution of India. It is not the question of being a slave, but it is a way of a disciplined life binding to a particular system, governed by Rule of Law. As such, the Office Memorandum issued by the respondents does not offend any of the Civil or Statutory rights of Government employees, much less the Fundamental rights. The writ petition is a figment born out of a wild imagination of the writ petitioner.



15.The petitioner, who appeared in person would rely on battery of judgments. In so far as the judgment of the Hon'ble Supreme Court in DR.RAM LAKHAN SINGH VS. STATE GOVERNMENT OF UTTAR PRADESH [WP (CIVIL) NO.933 OF 2014 DATED 17.11.2015] the petitioner therein was arrested and detained in prison for 11 days in contemplation of for certain vigilance enquiry. But during the arguments, it was submitted by the learned Additional Advocate General appearing on behalf of the state that no vigilance enquiry was ever initiated against the petitioner therein and that he was kept under custody for about 11 days and fought legal battle for about a period of ten years before various forums for getting the blemish clear. In that case, for the unlawful detention, a lump sum of Rs.10,00,000/- was awarded as compensation. The said case will have no application to the present case wherein the petitioner was never been put in unlawful detention or that he was unlawfully delayed of any of his statutory rights.

16.In the judgment relied on by the petitioner in ABC VS. COMMISSIONER OF POLICE AND OTHERS [WP (C.) NO.12730 OF 2005 DATED 05.02.2013] the Delhi High Court imposed compensation for breach of Fundamental Right of the petitioner in telecasting the programme about the sexual abuse suffered by a Girl. In that case, the victim girl lodged a police complaint with regard to the sexual abuse against her father in the police station. The newspaper published an article revealing the age, locality and the class in which she studies, the occupation of the father and other details extensively, not only clubbing the contents of the First Information Report, but also statement of police officers concerned with the complaint. Further, the television channel attempted to interview the daughter and her mother against their will in a deceptive manner and and telecasted the programme in their Television channel giving widest publicity revealing the name, designation and office of the accused father and showing imitation of the colony, in which the petitioner and her family residing. In such conditions, for the gross negligence, breach of Fundamental Rights and right to live with dignity and for causing severe mental agony, dis-reputation, costs were imposed on the wrong doers.

17.Here is not the case of violation of Fundamental Rights or decency or dignity of an individual citizen. The Office Memorandum issued by the third respondent impugned in the writ petition is only a regulatory measure to facilitate expediting the Passport. It does not deserve any compensation. In fact, the petitioner shall be imposed with severe compensatory compensation for wasting the precious time of this Court by way of futile litigations. Likewise, the petitioner had relied on several judgments which are not at all relevant to the issue on hand. Therefore, these judgments are not relevant and



cannot be applied to the present case on hand.

18. Therefore, the relief sought for by the writ petitioner in both the writ petitions is not sustainable and accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1. The Joint Secretary (PSP) cum Chief Passport Officer
CPV Division, Representing Ministry of External Affairs
Government of India
Room No.8, Patiala House,
Patiala House,
Tilak Marg, New Delhi - 110 001.
2. The Regional Passport Officer
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4. The Secretary for Education
(Mr.G.Rakesh Chandra)
Chief Secretariat (Education)
Government of Puducherry
Puducherry - 605 001.



5. The Director of Higher and Technical Education
cum Head of the Department
Government of Puducherry
PIPMATE Complex, Lawspet,
Puducherry - 605 008.

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+1cc to the Special Government Pleader, S.R.No.26721
+1cc to the Government Pleader(Puducherry), S.R.No.26720
(05/07/2022)

WP NOS.12370 OF 2014 & 25824 OF 2015

SKM(CO)
PM/24/05/2022