



W.P(MD)No.8218 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.8218 of 2023

and

W.M.P(MD)No.7570 of 2023

M.Thiagarajan

... Petitioner

Vs.

The Passport Issuance Authority
Regional Passport Office,
Madurai.

... Respondent

PRAYER :-

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, direct the respondent herein to re-issue the passport No.Z6312156 of the petitioner for a period of 10 years.

For Petitioner : Mr.A.K.Sriram,
Senior Advocate
for M/r.V.Janakiramulu
Advocate.

For Respondent : Mr.M.Karunanithi
Senior Central Government Standing Counsel,



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W.P(MD)No.8218 of 2023

ORDER

The Writ Petition has been filed in the nature of a mandamus seeking a direction to the respondent to reissue passport No.Z6312156 which is in the name of the petitioner and seeking such reissue for a period of 10 years.

2. In the affidavit filed in support of the writ petition, the writ petitioner claimed that as a businessman he held passport No.Z2075205 which was issued around the year 2011. He had submitted an application for renewal on 08.12.2021 in reference No.21-1008814167. Re-issuance of the passport was not examined in favour of the petitioner but the respondent had sent a communication on 22.12.2021, seeking a status of a criminal case in C.C.No.7 of 2012 pending before the CBI Court at New Delhi and registered by the Economics Offences Unit, New Delhi. It had been stated in the affidavit that it was at the stage of framing of charges.

3. It is trite in law to point out that consequent to investigation of information relating to an offence, final report will have to be filed before the jurisdictional Magistrate Court, in this case, Special Court for CBI Cases. The



W.P(MD)No.8218 of 2023

learned Presiding Officer has a duty to examine the nature of the final report filed and take cognizance of the offence and also take a decision whether charge should be framed or whether the accused should be discharged. That option is always available. The trial technically commences only when the charges have been framed and the accused pleads not guilty of the charges and the prosecution is called upon to prove the charges by adducing oral and documentary evidence to substantiate the charges. In view of the pendency of the aforementioned calendar case, the respondents had taken a decision not to grant reissue of the passport. Questioning that particular decision taken, the present writ petition has been filed.

4. I have in my hands an order of the Hon'ble Supreme Court in CrI.A.No.1342 of 2017 (Vangala Kasturi Rangacharyulu Vs Central Bureau of Investigation) dated 27.09.2021. The applicant therein had been already convicted for offences punishable under Sections 120(b), 420, 468, 471, 477 A of the Indian Penal Code read with Section 13(2) r/w Section 13(1) of Prevention of Corruption Act, 1988. The Criminal Appeal filed, was pending before the Supreme Court. In the meanwhile, since his passport has expired on 12.11.2017, he had filed an application seeking renewal of his passport. That was not considered. Therefore, he had approached the Hon'ble Supreme Court



W.P(MD)No.8218 of 2023

seeking necessary directions. After extracting the relevant provision of law, Section 6(2) of the Passport Act, 1967 and more particularly, Sub Clause(e) and (f), the Hon'ble Supreme Court had finally held as follows:

" The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately proceeding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.

Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal court.

Admittedly, at present, the conviction of the appellant stands still the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.

The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court. Subject to the other conditions being fulfilled, the Interlocutory Application stands disposed of. "



W.P(MD)No.8218 of 2023

5. The dictum is binding. In the instant case, the learned Senior Counsel on behalf of the petitioner also drew attention to Section 7 quite apart from Section 6 of the said Act. Section 7 of the passport Act, 1967, is as follows:

"7.Duration of travel document

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."*

6. Reliance on this provision is insisted by the learned Senior Counsel who argued that the passport should normally be issued for the period for which it had been earlier issued and the period can be reduced only if Section 7 proviso (b) applies and that requires the passport authority to communicate in writing that the passport or travel document should be issued for a shorter period. This naturally indicates that there must be subjecting satisfaction, on the



W.P(MD)No.8218 of 2023

part of the passport issuing authority that the passport should be issued only for a shorter period. If subjective satisfaction, is to be arrived at by the said authority, then such satisfaction can be arrived at only after hearing the sides who have to be heard and more particularly, the owner of the passport. Opportunity will have to be given and opportunity of effective representation must be given. This is in-built in the nature of provision itself, since satisfaction will have to be recorded and reasons have to be given as to why the passport should be issued for a shorter period.

7. In view of these provisions, a direction is issued as sought for against the respondents to examine the application given by the petitioner in reference No.21-1008814167 dated 08.12.2021, by issuing notice to the petitioner herein and also obtaining necessary report from the prosecuting agency if required, and also examining the judgment as aforementioned and also provision under Section 7 of the Indian Passport Act, which stipulates that reasons must be given if the passport is to be issued for a shorter period.

8. The respondent may take an appropriate decision and may take such decision within a period of four weeks from the date on which the petitioner. actually appears before the respondents, to clarify the issue raised. The



W.P(MD)No.8218 of 2023

petitioner should also not avoid appearance before the Special Court for CBI Cases at New Delhi, at C.C.No.7 /2012 which is pending. If he wants to go abroad, he must get permission from that particular Court and then go abroad. This is a condition which is only expected to be abided with, since the petitioner has to appear before that particular court where the trial is ongoing.

9. This Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

20.06.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

The Passport Issuance Authority
Regional Passport Office,
Madurai.



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W.P(MD)No.8218 of 2023

C.V.KARTHIKEYAN, J.

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