



WP(MD)No.15155 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.15155 of 2023

and

WMP(MD)Nos.12764, 12766 of 2023

M.Mohamed Ismayil

.. Petitioner

v.

1.The Additional Secretary (PSP) cum Chief Passport Officer,
PSP Division,
Ministry of External Affairs,
Patiala House,
Thilak Mark,
New Delhi.

2.The Passport Issuing Authority,
Regional Passport Office,
Bharathi Ula Veethi,
K.Pudur,
Madurai.

3.The Commissioner of Police,
Tirunelveli City.

4.The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent dated 25.06.2021 in connection with the petitioner's passport application in File No.MD2073021337520, quash the same and consequently, directing the respondents to reissue passport to the petitioner.

For Petitioner : Mr.R.Anand

For Respondents : Mr.J.Alaguram Jothi,
Central Government Standing Counsel
for R.1, R.2

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)
for R.3, R.4

ORDER

The petitioner, claiming to be the President of a Jamath, intended to travel to Mecca and Madina with his family members as a Pilgrimage. He was already issued with a passport on 23.09.2008 and the same was expired. Therefore, the petitioner has filed an application for reissuance of passport. The application of this petitioner was rejected by referring Section 6(2) of the Passport Act and also the report of the third



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respondent / Commissioner of Police that the petitioner is having connection with prohibited organisation. Challenging the same, the petitioner has filed this writ petition.

2.Learned Counsel for the petitioner submitted that the petitioner is the President of a Jamath. A criminal case was registered as against him in the year 2001 on the issue between two different sections of the religion and this petitioner was convicted by the Trial Court. However, this Court, in Crl.A(MD)No.682 of 2003, dated 20.09.2005, has set aside the conviction and sentence imposed as against this petitioner. Yet another case was registered as against this petitioner in Crime No.480 of 2017. The case was tried before the Judicial Magistrate Court No.5, Tirunelveli, in C.C.No.213 of 2018 and the same was also ended in acquittal by judgment dated 14.07.2019. Therefore, as on date, there is no criminal case pending as against the petitioner.

3.Learned Central Government Standing Counsel for the Passport Authority submitted that the petitioner is having contacts with prohibited



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organization and therefore, he may indulge in activities prejudicial to the sovereignty and integrity of this Country.

4.Learned Government Advocate (Crl. Side) for the Police admitted the contention of the petitioner that the cases registered as against him ended in acquittal and that as on date, there is no case pending as against the petitioner.

5.This Court considered the rival submissions made on either side and perused the available materials.

6.The petitioner is the President of a Jamath and he was already issued with a passport in the year 2008. It was expired and the petitioner has applied for reissuance of passport for the purpose of a Pilgrimage to Mecca and Madina. Though the petitioner involved in two criminal cases, both the cases ended in acquittal. As on date, there is no criminal case pending as against the petitioner.



7. Section 6 of the Passport Act, 1967, prescribes certain restrictions

for issuing a Passport and the same is extracted as under:-

“6. Refusal of passports, travel documents. etc.

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) 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) that the applicant is not a citizen of India.,*
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,*
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;*
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;*
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;*
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;*
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;*



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(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) 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.”

8.By referring to Sections 6(2)(b) and 6(2)(d) of the Act, the Passport Authority has rejected the petitioner's application for reissuance of Passport under Section 5(2)(c) of the Act. Though the respondents claim that the petitioner would indulge in activities prejudicial to the sovereignty and integrity of this country, they have not produced any material to substantiate the same. The fact remains that there is no criminal case pending as against the petitioner, as on date.

9.A Division Bench of the High Court of Punjab and Haryana in ***Rajinder Kaur and Others v. Union of India and Others*** [***AIR 2004 P&H 347***], after discussing the provisions available u/s.6(2)(b) of the Act, has held as follows:-



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“9. We have already noticed that according to the contentions raised on behalf of the respondents before us, the passports cannot be issued to the petitioners In light of the provisions contained in [Section 6 \(2\)\(b\)](#) of the Act. Under [Section 6 \(2\)\(b\)](#) of the Act it is stated that the passport authority shall refuse to issue a passport on the grounds that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India. A person can be denied the right to travel abroad if the authorities are satisfied that ingredients of this provision are satisfied. The language of the section indicates the gravity of the involvement or likely involvement of an applicant in activities which would be prejudicial to the sovereignty and integrity of the country. These provisions, thus, must receive a strict construction as their consequences in law are not only serious but have the effect of taking away freedom granted to the petitioners in law. Before it could be stated that a person is involved in activities which are prejudicial to the sovereignty of the country, there must be some reasonable and cogent material in possession of the respondents to show involvement of the petitioners in such activities. The expression, "likely to" cannot be treated so lightly as to include every activity and relationship to be prejudicial to the sovereignty of the State.”



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10. Following the above ratio and in the absence of any concrete material, this Court is not inclined to deny the request of the petitioner.

Accordingly, this writ petition is allowed and the impugned order dated 25.06.2021 passed by the second respondent is set aside. The petitioner is directed to file an affidavit of undertaking that he will not indulge in any activities prejudicial to the interest and sovereignty of this country. On such filing of affidavit, the second respondent shall consider and reissue the Passport to the petitioner.

There shall be no order as to costs. Connected miscellaneous petitions are closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

29.09.2023

To

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B.PUGALENDHI, J.

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