



W.P(MD)No.22069 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22069 of 2023

Murugesan

... Petitioner

Vs.

1.The Government of India,
Ministry of External Affairs,
New Delhi.

2.The Government of India,
Ministry of External Affairs,
Regional Passport Office,
Trichy District,
Trichy.

3.The Foreign Regional Registration Officer,
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Shastri Bhavan,
Haddows Road,
Nungambakkam,
Chennai.

4.The Indian Embassy at Singapore,
High Commission of India,
31, Grange Road,
Singapore - 239 702.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 4th respondent to renew the petitioner's passport No.Z2906811 for the period of four years by considering his application dated 15.07.2023 to enabling him to renew his Visa No.G7703966Q and S Pass No.033198930 to work in DYNA-MAC Engineering Services Pte Ltd at Singapore as Piping Supervisor as per their Communication dated 20.07.2023 in continuation of his permit by ensuring his fundamental rights of employment and live with liberty guaranteed Under Article 19(1)(g) and 21 of Constitution of India, pending disposal of Criminal Appeal (MD) No.391/2022 on the file of the High Court of Judicature at Madras Madurai bench, within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.G.Rajaraman,
Central Government Standing Counsel.

ORDER

Heard the learned counsel for the writ petitioner and the learned Central Government Standing Counsel for the respondents.

2.The writ petitioner is a holder of Indian passport. He is presently working in Singapore. The validity of the petitioner's passport is to



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expire in 2024. As per the norms laid down by the petitioner's employer, he must obtain renewal well in advance. Copy of the communication dated 20.07.2023 received from the employer is as follows:-

“PRIVATE & CONFIDENTIAL

20 July 2023

SOLAI ANDAVAR MURUGESAN(M631)
FIN NO.G7703966Q

Re: Renewal of Singapore Work Pass (S-Pass) Renewal

To Whom it may Concern,

This is to certify that from July 13, 2005, until the present, Mr. SolaiAndavar Murugesan, Fin No.G7703966Q, has been working for Dyna-Mac Engineering Services Pte Ltd as a Production Piping Supervisor.

The purpose of this letter is to let you know that Mr. SolaiAndavar Murugesan's existing Work Pass (S-pass) expires on January 13, 2024, and that a renewal application must be submitted by November 20, 2023.

We are happy to certify in this letter that we will renew his work permit for an additional three years. The work permit



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can only be renewed if the passport's validity period is at least Four years.

This Certification being issued for whatever purposes it may serve

Yours Sincerely

Wee Mui Lin (Ms)
HR/Admin Manager”

The passport authority is willing to renew the petitioner's passport but would restrict the validity period to one year. The reason for doing so is because the petitioner had suffered conviction and sentence as Accused No.4 in Spl.S.C.No.26 of 2018 on the file of Mahila Court, Pudukkottai. Of course, the petitioner has filed appeal before this Court in CrI.A.(MD)No.391 of 2022 and the sentence has been suspended on 14.07.2022 in CrI.M.P.(MD)No.6991 of 2022. As per the condition imposed by this Court, the petitioner is presently appearing before the Indian Embassy at Singapore on the first working day of every month.

3.The only question that calls for consideration is whether the petitioner's passport can be renewed for a further period of four years.



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4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

5.The learned Central Government Standing Counsel for the respondents contends that since the petitioner is facing conviction and sentence which has only been suspended by this Court and the criminal appeal is still pending, the relief as sought for cannot be granted. He relied on the decision of the Delhi High Court reported in **2019 173 DRJ 427 (Ashok Kumar Sharma Vs. The Regional Passport Officer)**.

6.I carefully considered the rival contentions and went through the materials on record. The relevant statutory provision is Section 6(2)(e) of the Passports Act, 1967. It reads as follows:-

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

(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



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section 5 on any one or more of the following grounds, and on no other ground, namely: -

(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;”

7.It is true that Section 22 of the Act empowers the Central Government to grant exemption from the operation of any of the provision of the Act or the Rules made thereunder. Pursuant to the said power, the Central Government had issued notification dated 25.08.1993 in G.S.R. 570(E). It reads as follows:-

“G.R.S. 570(E) – in exercise of the powers conferred by clause 9a) of Section 22 of the Passports Act 1967 (15 of 1967) and in suppression of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are



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pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely :-

(a) the passport to be issued to every such citizen shall be issued-

*(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued;
or*

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.



(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance is force of the passport so issued.”

8.The right to travel abroad has been judicially recognized as a fundamental right forming part of the right of personal liberty enshrined in Article 21 of the Constitution of India ***[(1978) 1 SCC 248)Maneka Gandhi Vs. Union of India*** and ***(2023) 4 SCC 1 (Kaushal Kishor Vs. State of Uttar Pradesh)]***.



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9. Therefore, any restriction on a fundamental right will have to be strictly construed. A reading of Section 6(2) of the Act would indicate that only on any one or more of the grounds set out in Section 6(2) and on no other ground, the passport authority shall refuse to issue a passport or travel document. The expression “on no other ground” is significant. In the case on hand, I am concerned only with Clause 2(e) alone. It means that the following conditions will have to be fulfilled:-

(1) The applicant should have suffered conviction at any time during the period of five years immediately preceding the date of application.

(2) The conviction should have been given by a Court in India.

(3) It is not enough if it is for any offence. It should be for an offence involving moral turpitude and the sentence must have been for a period not less than two years.

In this case, the offences no doubt involve moral turpitude. But then on a closer reading of the judgment, it can be noted that the offence had been primarily committed by the first accused who is none other than the petitioner's brother. The petitioner's brother had cheated the defacto



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complainant. During the relevant time, as can be seen from the materials on record, the petitioner was in China. The petitioner got married way back in the year 2011. He is a father of two children. He has been working abroad for more than 18 years. The petitioner has fundamental right under Article 19(1)(g) of the Constitution of India to engage in any avocation, trade or occupation. The petitioner's employer had made it clear that his work permit will be renewed only if the petitioner can secure renewal of his passport for a period of not less than four years. If the petitioner is unable to secure any renewal, his employment will be at stake. The petitioner is complying with the condition of appearing before the Indian Embassy at Singapore regularly. By granting the relief sought for, public interest will definitely not suffer. There is a larger object behind incorporation of Section 22 of the Passports Act which enshrines the power to exempt. It is true that this provision confers power only on the Central Government. But then, where circumstances and interest of justice require, the Constitutional Courts also can grant relief. Certainly, a Constitutional Court in order to protect the fundamental rights of an Indian citizen can grant such exemption from the operation of Section 6(2)(e) of the Act also.



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10.Considering the special facts and circumstances of this case, particularly the fact that the petitioner is figuring only as Accuse No.4 and that the primary allegations have been made only against his brother / Accused No.1 who is still in jail, I direct the fourth respondent to renew the passport for a further period of four years.

11.This writ petition is allowed accordingly. No costs.

17.11.2023

NCC : Yes/No
Index : Yes / No
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G.R.SWAMINATHAN, J.

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