



WP (MD) No.21284 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21284 of 2023

Fatima

... Petitioner

Vs

- 1.The Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai.
- 2.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
- 3.The Inspector of Police,
Thoothukudi SIPCOT Police Station,
Thoothukudi District.
- 4.The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi District.
- 5.The Inspector of Police,
Veeravanallur Police Station,
Tirunelveli District.

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the 1st respondent to re-issue passport to the petitioner based on her application dated 15.04.2021 pending in File Number MD01C5015907321 within a stipulated time that may be fixed by this Court.

For petitioner : Mr.Henry Patrick Tiphange

For Respondent : Mr.M.Karthikeya Venkitachalapathy,
No.1 Senior Panel Counsel for Central Govt

For Respondent : Mr.P.Kottaichamay,
Nos.2 to 5 Government Advocate (Crl Side)

ORDER

The petitioner is a retired professor. She is having a passport with No.J6223226 and it got expired on 04.04.2021. Therefore, the petitioner has submitted an application for re-issuance of passport on 15.04.2021. The 1st respondent, based on the police verification report issued notice to the petitioner on 22.10.2021 calling upon her explanation on the criminal cases, which are pending against her. At this stage, the petitioner with a grievance that her application for re-issuance of passport has not been considered, has filed this writ petition.



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2.The learned Counsel for the petitioner submits that the petitioner's daughter is working in the USA and she is now intending to marry an American citizen. The petitioner's husband is a heart patient and he cannot travel abroad. The petitioner in order to perform her daughter's marriage in the USA, has applied for re-issuance of passport. Though the application was submitted on 15.04.2021, it has not been considered by the 1st respondent so far, by referring the criminal cases, which are registered against this petitioner. All these cases, according to the learned Counsel for the petitioner, are registered for her participation in the peaceful protest. Some of the cases were withdrawn by the government itself. As against the remaining cases, the petitioner has filed petitions before this Court and this Court has entertained the same and granted interim order of stay.

3.The learned Counsel has relied on the orders of this Court with regard to the some of the criminal cases, which have been quashed by this Court. The learned Counsel by relying on the notification issued by the certain GSR No.570(E) dated 25.08.1993 submits that the government has already issued the guidelines and following these guidelines several directions were also issued by this Court.



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4.The learned Standing Counsel appearing for the 1st respondent by referring the criminal cases, which are pending as against this petitioner submits that in view of the police verification report, the petitioner's application was not processed.

5.The learned Government Advocate appearing for the 2nd respondent submits that the case in Crime No.195 of 2018 registered on the file of the South Police Station, Thoothukudi, is pending trial before the Judicial Magistrate concerned in CC.No.156 of 2018 for the offence under Sections 153(A)(2), 506(i) and 109 IPC. He also submits that with regard to the other criminal cases, they were either disposed, action dropped, or quashed. With regard to the case in Crime No.195 of 2018, which is now pending in CC.No.156 of 2018, the learned Government Advocate admits that the application filed by the petitioner in CrI.O.P(MD)No.2956 of 2022 to quash the proceedings in CC.No.156 of 2018 has been entertained by this Court and an order of interim stay was granted on 11.02.2022.

6.The learned Counsel for the petitioner has also relied on the judgment of this Court in WP(MD)No.7056 of 2027, dated 21.04.2017 in support of his contention.



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7.This Court considered the rival submissions.

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8.The 1st respondent can refuse to issue the passport as per Section 6 (F) of the Passports Act, if any criminal proceedings are pending. In this case, it is reported that the case in Crime No.195 of 2018, which was registered on the file of the South Police Station, Thoothukudi is now pending in CC.No.156 of 2018, on the file of the Judicial Magistrate No.1, Thoothukudi. The Government of India vide its notification No.GSR.No.570(E), dated 25.08.1993 has issued the following guidelines:

“(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 of 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;

(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;



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(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 in force of the passport so issued.”

9. In similar circumstances, this Court by considering the aforesaid notification has held that the 'concerned Court' shall mean, before whom the person is facing the prosecution. Though the criminal case is pending before the trial Court, this Court in exercise of power under Section 482 of CrPC has admitted the CrI.O.P(MD)No.2956 of 2022 filed by this petitioner and granted an interim stay of all further proceedings in CC.No.156 of 2018. Therefore, 'concerned court' is this Court. The relevant portion of the order dated 21.04.2017 in WP(MD)No.7056 of 2017 is extracted hereunder:



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“5.From a reading of the aforesaid notification, in the opinion of this Court, the expression, 'concerned Court' will mean the Court before whom the person is facing the prosecution. In this case, had there not been a quash petition pending, the 'concerned court' would be the learned Judicial Magistrate No.V, Trichy before whom the petitioner is facing trial in CC.No.21 of 2015. However, this Court, in exercise of its power under Section 482 of CrPC, has admitted Crl.OP(MD)NO.3533 of 2017 and has granted an order of stay of all further proceedings in CC.No.21 of 2015 on the file of the Judicial Magistrate No.V, Trichy. Under such circumstances, the expression 'concerned Court' in the context of the present case will mean the High Court and not the Judicial Magistrate No.V, Trichy.

7.The Passport authorities are directed to exempt the petitioner from the operation of the provision of Clause (F) of Sub Section (2) of Section 6 of the Passports Act. The petitioner shall give an undertaking as contemplated by Clause (d) of the Notification dated 25.08.1993. The petitioner will be entitled to keep the passport with him, in view of the fact that this Court has granted stay of all further proceedings in CC.No.21 of 2015 and it may not be necessary for the petitioner to come every time to this Court seeking permission to go abroad. Accordingly, this writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.”



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10. In this case the petitioner is facing charges for having participated in some protests. Some criminal cases, which were registered against this petitioner, were either withdrawn, quashed or action dropped. The criminal case which was charge sheeted, has been taken cognizance of this Court in CrI.O.P(MD)No.2956 of 2022 and interim order of stay has been granted by this Court.

11. In view of the above, this writ petition is allowed in the light of the orders passed in WP(MD)No.7056 of 2017, directing the 1st respondent to re-issue the passport by exempting the petitioner from Clause (f) of Sub-Section 2 of Section (6) of the Passports Act, after obtaining an undertaking from her as contemplated in Clause (d) of the notification in GSR.570(E) dated 25.08.1993. No costs.

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B.PUGALENDHI, J.

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