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W.P.(MD)No.24592 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.24592 of 2024
and W.M.P.(MD)No.21725 of 2024

Gopal

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai District.

2.The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
(Crime No.223/2021)

3.The Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.
(R3 is suo motu impleaded by order of
this Court dated 21.11.2024 in
W.P.(MD)No.24592 of 2024 by LVGJ)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to issue Police Clearance Certificate (PCC) to the petitioner's passport in Passport No.S9937832, by disposing the petitioner's Application in MD1086911867724, dated 05.09.2024.

For Petitioner : Mr.R.Vinoth

For 1st Respondent : Mr.S.Karthik

Central Government Standing Counsel



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For 2nd Respondent : Mr.K.Gnanasekaran
Government Advocate (Criminal Side)
For 3rd Respondent : Mr.K.Govindrajan
Deputy Solicitor General of India

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, seeking direction to the 1st respondent to issue Police Clearance Certificate (PCC) to the petitioner's passport in Passport No.S9937832, by disposing the petitioner's Application in MD1086911867724, dated 05.09.2024.

2.Heard the learned counsel appearing for the petitioner, the learned Central Government Standing Counsel appearing for the first respondent, the learned Government Advocate (Criminal Side) appearing for the second respondent and carefully perused the entire materials available on record.

3.The petitioner is a holder of Passport No.S9937832, which is about to expire on 24.03.2029. In the meanwhile, the petitioner has applied for Police Clearance Certificate before the first respondent in File No.MD1086911567724, dated 05.09.2024. The first respondent forwarded the application before the second respondent for verification. After verification, the first respondent issued a show cause notice in Letter Ref.No.SCN/319686291/24, dated 08.10.2024, stating that an adverse



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report received from the second respondent in Crime No.222 of 2021 for the offences under Sections 379 of IPC r/w. 21(1) of Mines and Minerals (Development and Regulation) Act against the petitioner. Except the above case, there is no other previous criminal antecedent against the petitioner. He has been receiving job opportunities from abroad. Hence, the Writ Petition is filed to issue Police Clearance Certificate to the petitioner.

4. When the matter was taken up for hearing, the learned Government Advocate (Criminal Side) submitted that the matter is still pending in FIR stage and has not culminated in filing a final report.

5. The learned Central Government Standing Counsel for the 1st respondent categorically submitted that the grant of Police Clearance Certificate is an automated online service of the 1st respondent office and in the pendency of any FIR or pending criminal case as against the applicant, the rejection of the applicant's requisition for Police Clearance Certificate is automatic, in the system generated procedure.

6. It is needless to state that pendency of a FIR is no bar for issuance of passport and right to travel abroad is a fundamental right guaranteed to the citizens of this country, by the Constitution of India. For a passport holder, to travel abroad for work, obviously, a visa is mandatory.



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For obtaining visa, Police Clearance Certificate is a condition.

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7. Police Clearance Certificate is not strictly a passport service. An application for PCC shall be accepted only from applicants holding a valid Indian passport and not with reissue application. PCC / Character Certificate (CC) is required by many foreign Governments for considering applications for resident status, employment of long term visa or for immigration. Passport Issuing Authority may grant Character Certificate (CC) or Police Clearance Certificate (PCC) to Indian passport holders. For all applications for PCC submitted in India and in the Missions / Posts abroad, a fresh police report should be called for and PCC/CC should be issued only on receipt of CLEAR police report. Missions / Posts abroad that are integrated to the Passport Seva Programme System may generate police report through District Police Head Quarters and other Missions / Posts abroad may adopt the same route of getting a Police Verification Report through concerned Passport Office.

8. Normally Police Clearance Certificates are issued by the Passport Issuing Authorities under the Passports Act in the specimen contained in Appendix-32 and the said certificate cannot be issued by the authorities, in case of pendency of criminal case against the applicant concerned.



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9.The specimen Police Clearance Certificate contained in

Appendix-32 of the Passport Manual reads thus:

Appendix-32

(Ref. Para 2.1 Chapter-14)

Specimen PCC format for Indian Passport holders

(to be issued on official letter head)

“There is no adverse information against Mr./Mrs./Miss, holder of Indian Passport No. issued at on which would render him / her ineligible for the grant of travel facilities including visa for (name of the country).

Rubber Stamp of office of issue.

Signature of Passport Authority.

10.A careful perusal of the specimen PCC format for Indian passport holders in Appendix-32 would reveal that only those persons without any criminal antecedent are entitled to Police Clearance Certificate and any pending FIR or pending criminal trial would render him / her ineligible for grant of police clearance certificate facilitating their travel abroad.

11.The petitioner shall make an application in offline mode to the 1st respondent seeking police clearance certificates since the automated system-based database issuing police clearance certificates has no facility to issue police clearance certificates for those applicants against whom FIRs /



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criminal cases are pending. Considering the fact that the 1st respondent is not vested with the power to effect any modification in the specimen PCC format for Indian passport holders in Appendix-32 of the passport manual as provided by the External Affairs of Ministry, this Court hereby *suo-motu* impleads the Secretary, Ministry of External Affairs, Government of India, as the 3rd respondent. Mr.K.Govindarajan, the learned Deputy Solicitor General of India, takes notice for the 3rd respondent. It is a settled proposition of law that mere registration of a crime does not invoke either Section 6 or Section 10 of the Passports Act, and negating the petitioner's application for police clearance certificate exclusively for the purpose of obtaining a visa to travel abroad would amount to denial of fundamental rights available to him under Part III of the Constitution of India. This Court is duty bound to protect the fundamental rights of the citizens of India. A similar case has been dealt with by the ***Hon'ble High Court of Kerala in the case of EJO P.J., vs. Regional Passport Office, Ministry of External Affairs, Govt. Of India, in W.P.(C)No.9369 of 2023 and by an order dated 07.06.2023*** and a favourable order was passed to the petitioner therein by the learned High Court of Kerala and the relevant portion of the same is extracted as follows:

“6. The first respondent's stand is that PCCs' are issued from the system based on the Ministry of External Affairs database. The central database permits PCCs to be issued with barcodes and scanned photographs only if the applicant has no criminal antecedents; otherwise, only a manual certificate can be issued without the barcode and scanned photograph.



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7. This Court finds the stand of the first respondent to be cavil, naïve and unacceptable.

8. We are in the AI era and the 5G revolution. Our Nation is a front-runner in technology. We are striving to make India Digital with initiatives like Indiastack.global, to have a repository of open standards and interoperability principles of key projects implemented under the Digital India Mission like Aadhaar, UPI, Digilocker etc. The certificates issued by the government and statutory authorities have to be internationally accepted, especially when India is a signatory to international conventions and treaties.

12.Resultantly, in the exercise of the powers of this Court under Article 226 of the Constitution of India, I dispose of the writ petition as follows:

(i) The first respondent is directed to forward a copy of this judgment to the Ministry of External Affairs, Government of India.

(ii) The competent authority under the Ministry of External Affairs shall take immediate steps to upgrade the central database and issue the PCC certificate to the petitioner with the barcode, his scanned photograph and the criminal case details.

(iii) The first respondent is directed to complete the above exercise as expeditiously as possible, at any rate, within one month from receipt of a certified copy of this judgment.



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(iv) The learned DSGI is also directed to forward a copy of this judgment to the Ministry of External Affairs, Government of India, for information and compliance.”

12. Even in the instant case, it is brought to the notice of this Court that the 1st respondent is not vested with the power to issue any kind of police clearance certificate deviating from the proforma in Appendix-32 of the passport manual. The facts and circumstances discussed in the above extracted case dealt with by the Hon'ble High Court of Kerala would reveal that even if a manual certificate is issued the same would be bereft of a bar code and scanned photographs of the applicants. In the absence of the same, it has become clear from the facts and circumstances of the above extracted case that such a manually issued certificate would not be normally accepted by the foreign countries / employers of foreign nations for issuance of a visa much to the difficulty of the citizens of our country who are willing to travel abroad. In view of such a situation, it is necessary for the Ministry of External Affairs of India to comprehensively arrive at a solution by providing with an alternative proforma for a police clearance certificate for those applicants with criminal antecedents against whom (i) the First Information Report is registered and (ii) for those persons with criminal antecedents against whom criminal trials are pending, for whom the concerned Trial Courts have issued “No Objection Certificate” to travel abroad and have dispensed with their appearance for trial. Accordingly, in



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exercise of the powers of this Court under Article 226 of Constitution of India, I dispose of the writ petition with the following Directions:

“(i) The 3rd respondent shall take immediate steps to upgrade the central database and provide with two categories of a police clearance certificate to the applicants for visa. One under the existing proforma provided in Appendix-32 of the passport manual and another in a comprehensive new format incorporating the details of pending criminal cases, bar code and scanned photographs of the applicant.

(ii) The 3rd respondent is directed to complete the said exercise within a period of one month from the date of receipt of the certified copy of this judgment facilitating to undo the difficulties faced by the applicants for a visa with criminal antecedents living across the country, more particularly for applicants with pending F.I.R.s / pending criminal trials.

(iii) It is made clear that, with respect to the applicants against whom FIRs are pending, the proposed proforma to incorporate the details of crime numbers and with respect to the applicants against which criminal cases are pending before Trial Courts, proposed proforma to incorporate the details of criminal cases including the “No Objection Certificate” issued by the respective Trial Courts before which the criminal cases are pending.

(iv) The 1st respondent, on receipt of a new proforma from the 3rd respondent in this regard, is directed to issue a police clearance certificate in the new proforma with bar code, the petitioner's scanned photographs and criminal case details.”



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13.This Writ Petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Mrn

Note : Registry is directed to carry out necessary amendments in cause title.

To

- 1.The Regional Passport Officer,
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Madurai District.
- 2.The Inspector of Police,
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L.VICTORIA GOWRI, J.

Mrn

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