



W.P.(MD)No.25264 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.25264 of 2024

S.Syed Ali Safaa Alima Preeth,
D/o.K.Alima Preeth,
Petitioner being the minor represented through her
Natural guardian Mother
Alima Preeth,
D/o.K.Sithiki,
No.10, Karunya Illam,
West Ponnagaram 4th Street,
Madurai.

... Petitioner

Vs.

1.The Manager,
Regional Passport Officer,
Bharathi Ula Veethi,
Race Course Road,
Madurai.

2.P.Hakim

3.The Inspector of Police,
Sengottai Taluk,
Tenkasi District.
(R2 and R3 is suo motu impleaded vide
Court order dated 04.11.2024,
in W.P.(MD)No.25264 of 2024 by LVGJ)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in Letter Ref.



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No.Sen/318608699/24, dated 24.07.2024 and quash the same as illegal and consequently direct the respondent to issue passport in favour of the petitioner in File No.MD1066750376124.

For Petitioner : Mr.G.Thiruvartselvan
For 1st Respondent : Mr.A.Srinivasan
Standing Counsel
For Respondents 2 & 3 : Mr.Gnanasekaran,
Government Advocate (Crl.)

ORDER

The prayer in the Writ Petition reads as follows:-

"To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in Letter Ref. No.Sen/318608699/24, dated 24.07.2024 and quash the same as illegal and consequently direct the respondent to issue passport in favour of the petitioner in File No.MD1066750376124."

2.The petitioner is a minor child (F/14) represented through her natural guardian mother. The petitioner's parents marriage was held on 07.01.2007. After marriage, the petitioner's father one Hakkim went to Saudi Arabia for his employment in a Bank. On 23.08.2008, the petitioner namely, S.Syed Ali Safaa Alima Preeth was born at Madurai. The petitioner is an autism affected child. Post 01.04.2010, the petitioner's father had deserted her mother. Subsequently, during 2016, an unregistered contract of separation came to be executed between the parents of the petitioner and thereafter, they are permanently separated



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without any connection. The petitioner's mother is pursuing a job in Arab Countries for which, she will have to travel along with the petitioner. In view of the same, the petitioner's mother has applied for a passport for the petitioner in application No.MD1066750376124 dated 15.07.2024. While processing the said application, the impugned communication dated 24.07.2024, came to be issued by the first respondent, requiring the petitioner's mother to submit an Annexure C Form with remarks that there is on going Court case for divorce. Challenging the same, this Writ Petition is filed.

3.Heard the learned counsel appearing for the petitioner, the learned Standing Counsel for the 1st respondent, the learned Government Advocate (Crl.) for the 2nd respondent and carefully perused the entire materials available on record.

4.In the instant case, the parties married are Muslims and they already entered into a contract of divorce and triple talaq has been proposed by the petitioner's father as early as in the year 2016 itself. The Hon'ble Apex Court has held the procedure of triple talaq redundant only in the year 2017, in the case of ***Shayara Bano v. Union of India*** reported in ***AIR 2017 SC 4609***. In view of the same, I am satisfied that the petitioner's parents are separated permanently.



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5.The Karnataka High Court in the case of **Manha Faraz v. Union of India**, has dealt with a similar issue and the relevant portion of the same is extracted as follows:-

"In the event, a single parent is the applicant, without the consent of the other, the documents required are proof of present address, proof of date of birth, attested photocopy of passport of both or either parent and a declaration affirming the particulars furnished in the application about the minor as per Annexure-G.

The aforesaid are the documents required to be submitted by a single parent/applicant, when the other parent has not given consent. It is germane to notice what are Annexures-C and G, which are required in such a case. Annexure-C is the specimen declaration by applicant's parent or guardian for issuance of passport to a minor, when one parent has not given consent. Annexure-C reads as follows:

"ANNEXURE 'C'

Specimen Declaration by applicant's parent or guardian for Issue of Passport to Minor when one parent has not given consent

(On plain paper)

I/We (name of the parent/guardian applying for passport) resident of solemnly declare and affirm as under—

(I) That I/we am/are the mother/father/parents/guardians of(name of the minor child) who is minor and on whose



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behalf I/we have made an application for his/her passport.

(II) Signature/consent of Shri/Smt.....(name of the father/mother) who is the father/mother/parents of the child has not been obtained by me for the following one or more reasons—

(a) The father/mother of the minor applicant is travelling abroad/is on sea/travelling in India and unable to file consent; or/and

(b) The father/mother is separated and no court case is pending before the court regarding divorce/marital dispute/custody of the child; or/and

(c) The father/mother has deserted and the whereabouts are not known; or/and

(d) There is an ongoing court case for divorce/custody of the minor child and the court has not given any order prohibiting the issue of passport without the consent of father/mother; or/and

(e) There is a court order for the custody of the minor child with a parent who is applying for the passport and consent of other parent (who has visitation rights) is not available or he/she is refusing to give consent/the other parent is not availing the visitation rights and his/her whereabouts are not known; or/and

(f) The parents are judicially separated and custody of the minor child has not been defined in the court's decree; or/and

(g) The father/mother of..... (name of minor child) has deserted me after the conception/delivery. That..... (name of minor child) is exclusively under my care and custody since separation/delivery.”

Annexure-G reads as follows:



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"ANNEXURE 'G'

Ministry/Department/Office of

No..... dated..... Applicant's Photo

(No Objection Certificate issuing officer should attest the photograph of the applicant with his/her signature and rubber stamp in such a way that half the signature and stamp appear on the photograph and half on the certificate.)

No-Objection Certificate

Shri/Smt/Miss.....s/o....., who is an Indian national, is employed in this office as.....from.....till date. This Ministry/Department/Office has no objection to his/her obtaining a passport.

(Signature of Controlling/Administrative authority)

Telephone/Fax/email.....

Note—

(a) The officer authorized to issue NOC should sign with name and stamp and must provide contact details for verification by Passport Authority.

(b) NOC will be valid for six months from date of issue."



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The above are the requirements under the schedules appended to the Rules. Apart from these schedules appended to the Rules, the 1st respondent appears to have notified a Passport Manual. The Passport Manual further depicts certain situations where issuance of passport to a minor comes about. Chapter-9 of the Passport Manual, 2020 ('Manual' for short) reads as follows:

"Chapter-9 in 3.4 (b) that "both the parents should sign in Annexure-D in fresh or re-issue cases. (Both parents shall be present at the PSK while applying or passport for their minor children on one parent with passports of both the parents may be present".

3.4(c). "If Annexure-D is not signed by both the parents, a single parent must submit a declaration in the form in Annexure-C stating the reasons, except, in cases where the single parent has got full custody of the child without visitation rights for the spouse. In case divorce proceedings are pending, court permission is required for issue of passport to a minor child."

4.6. Divorce pending cases: In case divorce is still pending before the Court, the PIA shall insist on consent of both the parents. Alternatively, the applicant's parent should furnish or obtain permission from the court to apply for a passport for the child without the consent of the other parent of the child. In pending divorce cases, where the single parent with child is already working/studying abroad, the child requires a passport for its continued stay abroad, in such a situation, the Mission/Post abroad may issue a two-year short validity passport to the child, at a time, pending court permission for issue of a regular passport or direction for custody of the child.

4.7. Single divorced parent with exclusive custody of child without visitation rights for the other parent: Where the custody of the child has been given exclusively to either parent, without any visitation rights to other parent, the question of obtaining consent of the other parent would normally not arise. A certified copy of the



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court order has to be submitted with the application and Annexure-C signed by the single parent.”

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6.In the instant case, the parents of the minor child are Muslims and are already divorced without visitation rights to the father. Since the custody of the petitioner is exclusively with her mother Ms.Alima Preeth, D/o.K.Sithiki, the question of obtaining consent from the second respondent father will not arise. Accepting Annexure – C from the mother without insisting consent for grant of passport to the petitioner from the second respondent, the first respondent is directed to issue passport to the petitioner in File No.MD1066750376124. The impugned letter in Ref. No.Sen/318608699/24, dated 24.07.2024, is set aside.

7.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs.

21.11.2024

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



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To

- 1.The Manager,
Regional Passport Officer,
Bharathi Ula Veethi,
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- 2.The Inspector of Police,
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L.VICTORIA GOWRI, J.

Mrn

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