



W.P(MD)No.12890 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.12890 of 2017 and
WMP(MD) No.9981 of 2017

Khadar Sahib

... Petitioner

Vs

The Regional Passport Officer,
Office of the Registered Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the respondent made in File No.MD 1079176702116, dated 16.11.2016 and quash the same and consequently direct the respondent herein to return the same and consequently direct the respondent herein to return the petitioner's passport bearing No.N8643536 within the time stipulated by this Court.



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For Petitioner : Mr.A.R.Kannappan
For Respondent : Mr.P.Paulpandi
Senior Panel Counsel

ORDER

The petitioner is a resident of Mudukulathur, Ramanathapuram. He has obtained a passport in the year 2005, which valids upto 10.05.2015. The petitioner has also applied for re-issuance of his passport and the same was granted on 17.03.2016. Along with his application for re-issuance of passport, the petitioner has enclosed a copy of the income tax return acknowledgment filed by him for the assessment year 2014-2015. As per the assessment, the petitioner has paid an income tax of Rs.310/- for the assessment year 2014-2015. The respondent has issued a show cause notice calling upon this petitioner to produce a document to prove his source of income and details of payment of Rs.310/- vide notice dated 01.08.2016. The petitioner has not responded to this notice, dated 01.08.2016. Therefore, the Regional Passport Authority by his order dated 17.03.2016 has impounded the petitioner's passport



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under Section 10(3) (g) of the Indian Passports Act, 1967 and has also intimated the same to the petitioner on 16.11.2016. The said order dated 16.11.2016, impounding the petitioner's passport is challenged in this writ petition.

2.The learned counsel appearing for the petitioner submits that he did not notice the show cause notice, dated 01.08.2016, which was not sent in a vernacular language and he is not aware of the contents of the notice. The learned counsel further submits that he has already produced the required documents along with his explanation on 13.06.2017 through a registered post. However, the same was not considered by the respondents. In the event, if the passport authorities are not satisfied with the documents produced by the petitioner, then, they can issue a non-ECR passport to the petitioner. Without doing so, the respondent has impounded the petitioner's passport.



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3.The learned senior Panel Counsel appearing for the respondent submits that in order to ensure Indian citizens are provided with a minimum salary and governed by minimum standard of employment, certain safety protections were implemented by the Protector General of Emigrants under Ministry of External Affairs, New Delhi. According to the learned counsel, several young and uneducated women, children and other uneducated men are exploited for labour by some of the Man Power Agencies. On the advice of such man power Agencies, to obtain non-ECR status, they voluntarily pay a meagre amount as token of income tax without any income. Therefore, in order to ascertain whether the petitioner is having any source of income from the salary or business, a show cause notice was issued to this petitioner on 01.08.2016 to furnish a document to prove his source of income to decide his eligibility for re-issuance of passport with non-ECR status. The petitioner has not responded to this show cause notice. Therefore, the impugned order was passed under Section 10 (3) (g) of the Indian Passports Act,1967. He further submits that the



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explanation, dated 30.06.2017 was sent by the petitioner without any supporting documents and also without any proof for source of income. More over, the explanation was sent after 10 months from the date of passing of this impugned order. Therefore, this writ petition is liable to be dismissed.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.ECR stands for Emigration Check Required and ECNR stands for Emigration Check not required. ECR Status will be printed in the passport of the applicants, who fall in the ECR category. For those falling in the Non- ECR category, there will be no specific mention in the passport.

6.The petitioner was already issued with a passport in the year 2005, which was valid upto the year 2015. Thereafter, the passport was re-issued in the year 2016. The petitioner has paid a



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sum of Rs.310/- for his income tax for the assessment year 2014-2015, in order to avail the status of non-ECR passport. Suspecting this payment made by the petitioner, the respondent has called upon him to produce the document for proving his source of income from India and whether it is through salary or business. However, the petitioner has failed to respond to this show cause notice. Therefore, the impugned order has been passed under Section 10(3)(g) of the Indian Passports Act, 1967. If the holder of the Passport or a travel document has failed to comply with the notice issued under Section 10(1) of the Indian Passport Act, then his/her passport can be impounded by the passport authorities. Section 10 of the Indian Passports Act, 1967 is extracted as under:

10. Variation, impounding and revocation of passports and travel documents :-

(1) The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel



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document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

[Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport]

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;



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(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, 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;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it



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shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.



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7.The petitioner expecting an employment in abroad has obtained a passport. It appears that on a wrong advice, he might have submitted an income tax return in order to obtain non-ECR status. In the event, if the petitioner has not produced a relevant document, then the passport shall be issued to the petitioner without non-ECR status. In view of the above, the impugned order dated 16.11.2016 is set aside and this writ petition is allowed with a liberty to the petitioner to submit a fresh application within a period of four weeks from the date of receipt of a copy of this order and on such receipt of application, the respondent shall consider the same in accordance with law within a period of eight weeks from thereon. No costs. Consequently, connected Miscellaneous Petition is closed.

05.01.2024

NCC: Yes/No
Index:Yes/No
Internet:Yes
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B.PUGALENDHI, J.

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