



W.P.No.12136 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 06.12.2024

PRONOUNCED ON : 07.01.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.12136 of 2024

and

W.M.P.Nos.13236 and 22838 of 2024

Nedumaran Palaniappan

... Petitioner

VS.

1.Union of India

Rep. by the Secretary to Government
Ministry of External Affairs,
New Delhi – 110 001

2.The Regional Passport Officer,

Chennai Royala Towers,
No.2 and 3, IV Floor,
Old No. 785, New No. 158,
Anna Salai, Chennai - 600002

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 2nd Respondent, quash the order of the 2nd Respondent dated 15.02.2024 bearing Letter Ref. No. PRJ/317075873/24 as illegal, arbitrary and contrary to law and consequently direct the Respondents to reissue the passport to the Petitioner for another 10 years on



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the basis of the Application submitted by the Petitioner to the 2nd Respondent bearing file no. MA3075297518923 dated 25.04.2023 within the time frame stipulated by this Court.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.K.S.Jeyaganesan
Senior Panel Counsel

ORDER

The Writ Petition is filed challenging the order passed by the 2nd respondent in Letter Ref.No.PRJ/317075873/24, dated 15.02.2024 rejecting the application of the petitioner for reissue/renewal of the passport.

2. According to the petitioner, he is the President of World Tamil Confederation and former Member of the Tamil Nadu Legislative Assembly. The petitioner initially obtained a passport in the year 1981 and the same was renewed from time to time during the years 1991, 2002 and 2012. His passport got expired on 08.10.2022 and hence, he submitted an application for renewal of the same. The 2nd respondent sought for certain clarifications from the petitioner regarding adverse police report. In spite of the reply by the petitioner, there was a delay in renewing the passport and hence, the



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petitioner was constrained to file a writ petition before this Court in W.P.No.28448 of 2023 seeking a direction to the respondents therein to renew the passport of the petitioner within the time stipulated by this Court.

3. Initially, the 2nd respondent herein filed a counter affidavit opposing the prayer on the ground that a criminal investigation was pending against the petitioner. Subsequently, an additional counter affidavit was filed by the 2nd respondent herein stating that the 2nd respondent was entitled to reject the application of the petitioner under Section 6(2)(b) and (c) of the Passports Act, 1967.

4. During the hearing of the said writ petition, the 2nd respondent informed this Court that he had written to the Commissioner of Police seeking a discreet enquiry into the activities of the petitioner and also sent a communication to the Ministry of External Affairs at New Delhi soliciting their views in this regard.

5. This Court after recording the said submissions made by the 2nd respondent, proceeded to dispose of the writ petition by directing the 2nd



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respondent herein to put the petitioner on notice regarding findings of enquiry, afford him with reasonable opportunity and pass final orders on merits.

6. Thereafter, Show Cause Notices were issued to the petitioner on 08.12.2023 and 05.01.2024. The petitioner submitted his explanation on 12.01.2024 and 05.02.2024. Thereafter, the impugned rejection order was passed by the 2nd respondent by relying on the police enquiry report, after detailed enquiry. Aggrieved by the same, the petitioner has come before this Court by way of this writ petition.

7. Mr.Balan Haridas, learned counsel appearing for the petitioner submitted that though in earlier order passed by this Court in W.P.No.28448 of 2023, dated 24.11.2023, this Court directed the respondents to put the petitioner on notice regarding adverse police enquiry report. The same has not been furnished to the petitioner. However, in the impugned order the adverse police report had been relied on by the 2nd respondent and therefore, the impugned order is vitiated by violation of natural justice principles. The learned counsel further submitted that pendency of a criminal case against



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the petitioner under investigation is not a ground for rejection of the renewal of passport. He further submitted that though the 2nd respondent rejected his passport application on the ground that issuance of passport to the petitioner would be detrimental to the security of the India and it will affect the friendly relationship of India with Foreign Country. In the impugned order, the 2nd respondent has not assigned any reason as to how he came to the conclusion that the departure of petitioner from India would prejudicially affect the security of the Country.

8. Per contra, Mr.K.S.Jeyaganesan, learned Senior Panel Counsel appearing for the respondents by drawing the attention of this Court to Section 6(2)(b) and (c) of Passports Act, 1967, submitted that if Passport Officer is of the opinion that the departure of the applicant from India is likely to be detrimental to the security of India or his presence out of India is likely to prejudicially affect the friendly relationship of India with any Country, he can reject the application. The learned Senior Panel Counsel further submitted that the petitioner in his interview to Media dated 14.02.2023, which was published in newspapers claimed that the Leader of Banned Organisation of Liberation Tigers of Tamil Eelam (LTTE) was alive

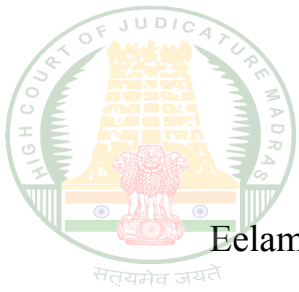


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and he would be back soon. It is also stated that the petitioner called upon the people of Tamil Eelam and Tamilians all over the world to extend their support to the Leader of Banned Organisation. Therefore, the respondents apprehended that rendering passport services to him could adversely affect the security of India and cause prejudice to the friendly relationship of India with neighbouring Country Sri Lanka. The learned counsel further submitted that even though this fact was specifically mentioned in the show cause notice, the petitioner has not submitted any explanation regarding his interview. The learned counsel also submitted that against the impugned order, the petitioner has got an alternative remedy of filing an appeal before the Appellate Authority namely Joint Secretary (PSP) and Chief Passport Officer, Ministry of External Affairs, New Delhi and the present writ petition, which has been filed without availing an alternative remedy of appeal is not maintainable.

9. By way of reply, the learned counsel appearing for the petitioner submitted that the petitioner was issued with passport in the year 1981 and the same has been periodically renewed thrice in the years 1991, 2002 and 2012, inspite of petitioner's explicit stand on support for the cause of Tamil



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Eelam. During the earlier occasions, the passport of the petitioner had been renewed regularly without any objection and therefore, the rejection of the petitioner's passport by impugned order is not sustainable in law. The learned counsel further submitted that the respondents filed counter affidavit expressing their opinion on the merits of the case and the Appellate Authority is only a Subordinate Official of 1st respondent, in such case, filing an appeal before the Subordinate of 1st respondent who filed counter affidavit can only be a formality and the same cannot be treated as expeditious one. In support of his contention, the learned counsel relied on the judgment of the Apex Court in *Maneka Gandhi vs. Union of India* reported in **(1978) 1 SCC 248**.

10. The submissions made by the learned counsel appearing for the petitioner and respondents would make it clear that when there was delay on the part of the 2nd respondent in processing the passport renewal application submitted by the petitioner, a writ petition was filed before this Court and the delay was explained by the 2nd respondent by referring to the pending police enquiry. After recording the same, this Court issued a positive direction to the 2nd respondent, which reads as follows:-



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“10.This has caused apprehensions in the mind of the respondents and, in fact, vide communication dated 31.10.2023, R1 has written to the Commissioner of Police seeking a discreet enquiry into the activities of the petitioner, such that, a decision may be taken on whether the Passport may be re-issued. R1 has also circulated e-mail dated 30.10.2023 forwarded to the Ministry of External Affairs at New Delhi soliciting their views in this regard.

11. At this juncture, learned counsel for the petitioner refers to the celebrated judgment in the case of Mahinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others in [1978 (SC) AIR 851] to state that the show cause notice must not be supplemented by reasons not set out in the notice itself. However, in this case, no decision has been taken by the authorities and it is open to them to probe the matter to the extent they think necessary, though putting the petitioner to notice in regard to the findings of their enquiry, for rebuttal.”

11. Therefore, it is clear in the earlier order, this Court directed the 2nd respondent herein to furnish the findings of enquiry to the petitioner and afford him with reasonable opportunity of rebuttal.



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12. A perusal of the show cause notice issued to the petitioner subsequent to the order passed by this Court in W.P.No.28448 of 2023 would indicate that though the police enquiry report was referred to, the copy of the same was not furnished to the petitioner. Infact, the petitioner in his explanation submitted before the 2nd respondent dated 12.01.2024 by referring to the order passed by this Court dated 24.11.2023 raised an objection that the police enquiry report had not been furnished to the petitioner. The relevant portion of petitioner's explanation reads as follows:-

“7. Now, your letter dated December 8, 2023, mentions that the Police in its report has not recommended the issuance of passport facilities to me on the grounds of national security. The Hon'ble Madras High Court in its order dated 24.11.2023 has observed in para 11 that the Petitioner should be notified regarding the findings of the police enquiry so that he can make his rebuttal. However, a copy of the said report has not been provided to me to explain further in this regard.”

13. Even in the present writ petition, a specific ground has been raised by the petitioner that non-furnishing of police enquiry report would result in violation of natural justice principle and hence, the impugned order



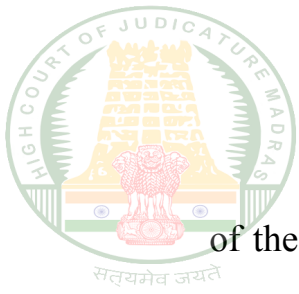
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is liable to be set aside.

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14. In the counter affidavit, the respondents have not stated anything regarding the furnishing of police enquiry report to the petitioner. However, the police enquiry report dated 16.11.2023 is included in the typed-set of papers filed by the respondents on 04.06.2024. Therefore, it is clear that before passing the impugned order, the 2nd respondent has not furnished the police enquiry report to the petitioner and afforded him an opportunity of rebuttal. The failure of the 2nd respondent in furnishing the police enquiry report to the petitioner is a clear violation of direction issued by this Court earlier in W.P.No.28448 of 2023. Therefore, I find there is a force in the argument made by the learned counsel appearing for the petitioner that the non-furnishing of police report by the 2nd respondent results in violation of natural justice principle. The non-furnishing of police report is not only a violation of natural justice principle and also a violation of earlier direction issued by this Court. Therefore, the impugned order passed by the 2nd respondent is liable to be set aside.

15. A perusal of the impugned order would suggest that the request



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of the petitioner for renewal of passport was rejected mainly on relying the police enquiry report. However, the same has not been furnished to the petitioner. Further, in the impugned order absolutely there is no discussion or reasoning as to how the 2nd respondent came to the conclusion that the departure of the petitioner from India would adversely affect the security of the Country. Merely because, the police authorities have not recommended for issue of passport to the petitioner, the 2nd respondent simply rejected the request without considering police report objectively. Therefore, this Court is inclined to set aside the impugned order passed by the 2nd respondent in Letter Ref.No.PRJ/317075873/24, dated 15.02.2024 and the matter is remanded back to the file of 2nd respondent with a direction to have a fresh look at the request of the petitioner for renewal of the passport, after furnishing him an opportunity of rebuttal as directed by this Court earlier.

16. The writ petition was also opposed by the respondents on the ground that an appeal remedy is available to the petitioner and the same has not been availed.



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17. The learned counsel appearing for the petitioner by referring to the counter affidavit filed by respondents, submitted that averment in the counter affidavit on the merits of the matter would make filing of appeal before the Subordinate Official of 1st respondent as a mere formality and the same cannot be treated as expeditious remedy. A close scrutiny of the counter affidavit filed by the respondents would suggest that the affidavit was sworn by Assistant Passport Officer at Regional Passport Office, Chennai, who is under the control of the 2nd respondent. Though it is stated that he was authorised to file counter affidavit on behalf of the respondents, it is clear that the counter affidavit has not been filed by the 1st respondent. Against the impugned order, an appeal remedy is available to the petitioner before the Joint Secretary (PSP) and Chief Passport Officer, Ministry of External Affairs, New Delhi, who is not a party to this writ petition.

18. As mentioned earlier, the 1st respondent has not filed any counter affidavit, though the counter affidavit sworn by an Officer in the 2nd respondent office, mentions the same was filed on behalf of 1st respondent. Therefore, it cannot be said that the Appellate Authority has already made



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up his mind and hence, filing an appeal will be a mere formality. In any event, this Court has already come to the conclusion that the impugned order passed by the 2nd respondent is vitiated by violation of natural justice principles, in his failure to furnish the copy of the police report to the petitioner and therefore, this Court feels it would be appropriate to set aside the impugned order and send the matter back to the file of 2nd respondent for fresh consideration, after affording the petitioner with an opportunity to offer his comments with regard to the adverse police report. Therefore, the objection on the ground of availability of alternative remedy need not be gone into.

19. As mentioned earlier, the police enquiry report dated 16.11.2023 is included in the typed-set of papers filed by the respondents dated 04.06.2024. Therefore, there is no necessity to issue a direction to the 2nd respondent to furnish the same to the petitioner again.

20. Therefore, impugned order is set aside and the matter is remanded back to the file of 2nd respondent. The petitioner is directed to submit his explanation regarding the adverse findings in the police report before the 2nd respondent, within a period of two weeks from the date of



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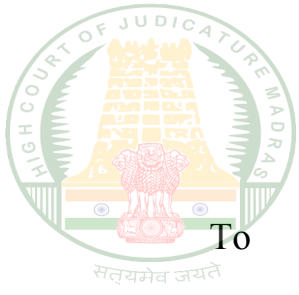
receipt of copy of this order. The 2nd respondent shall consider the same and pass final orders on its own merits and in accordance with law, within a further period of three weeks from the date of receipt of explanation by the petitioner.

21. With these directions, the Writ Petition stands allowed. No costs.

Consequently, the connected writ miscellaneous petitions are closed.

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Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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To

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Union of India
Ministry of External Affairs,
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2. The Regional Passport Officer,
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No.2 and 3, IV Floor,
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S.SOUNTHAR, J.

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Pre-delivery order made in
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