

(1995) 12 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 18555 of 1995-H

Haridasan Mathilakath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-12-1995

Acts Referred:

Passports Act, 1967 — Section 5

Citation : AIR 1996 Ker 157 : (1996) 2 ILR (Ker) 195

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : John L. Akkara, C.S. Dias, Jose Kuriakose K. and Mini Dias, for the Appellant; M.V. Nampoothiry, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—The apex Court as early as in the year 1978 declared that the right to travel abroad is a fundamental right coming within the purview of Article 21 of the Constitution. (Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . Once it is recognised as a fundamental right, all the requirements prescribed for the preservation of that right shall be observed "stricto sensu". The procedure regulating the travel must be fair and reasonable. The passport is a document which regulates the right to travel abroad. At least one High Court in India has declared that the inordinate delay in issuing the passport tantamounts to refusal of passport. Ikhlq Mohamed and Another Vs. Union of India (UOI) and Another, Of course, it depends on the facts and circumstances of each case. Ordinarily, if there is inordinate delay in issuing the passport this Court will not approve it.

2. The petitioner in this case is the adoptive father of a minor child called "Sidharth Haridasan". By Ext. P1 order, the Bombay City Civil Court allowed the adoption of the child on 4-10-1993 under the provisions of Hindu Adoptions and Maintenance Act, 1956. Ext. P2 is the copy of the deed of adoption. Later, the

petitioner filed Ext. P4 application for passport in favour of his adopted child before the 2nd respondent, the Regional passport Officer, Cochin. Along with the said application the petitioner has submitted the order of the City Civil Court, Bombay and also the copy of the deed of adoption. Though the application was presented on 11-9-1995, timely action was not taken by the 2nd respondent. It was in that background the petitioner filed the present writ petition before this Court on 27-11-1995 praying for a direction to the 2nd respondent to issue passport in favour of his adopted minor child "Sidharth Haridasan".

3. Heard the learned counsel appearing for the petitioner and the Central Government Standing Counsel for the respondents 1 and 2.

4. A counter-affidavit has been filed on behalf of the 2nd respondent. Ext. R4 is the letter issued by the 2nd respondent pointing out certain defects in the application for passport filed by the petitioner. One of such defects is that photograph of the adopted child has not been certified by the Court. Secondly, it was pointed out that the petitioner has requested the 2nd respondent to describe him as father and his wife as mother in the passport to be issued in favour of the minor child. These two defects, according to the Standing Counsel are the reasons for delay in issuing the passport. As far as the first defect is concerned, the counsel for the petitioner brings to my notice the practice that was prevalent in the Bombay City Civil Court at the time when Ext. P1 order was passed. In order to augment this point, the counsel has invited my attention to the letter dated 19-10-1995 sent by Rakesh Kapoor & Co., Advocates, High Court of Bombay (Ext. P9). The said letter was produced along with the application for passport. It inter alia states that practice of affixing the photograph in the order of the Court was introduced only from July, 1994. In other words, at the time when Ext. P1 order was processed by the Bombay City Civil Court the practice of affixing the photograph was not insisted. That appears to be the reason for not affixing the photograph of the minor child in the order of the Court. In order to wipe off all doubts regarding the identity of the adopted child, the petitioner has produced Exts. P8, P9, P12, P13 and P14. All these documents would sufficiently establish the identity of the minor child for whom the application for passport was filed. That being the position, I do not think it proper to delay the process of issuing the passport any further. As far as the second reason is concerned, the request made by the petitioner to the 2nd respondent cannot be allowed. The father and mother of the adopted minor child shall be described as "adoptive father" and "adoptive mother" in the passport and all other documents if any, to be issued by the 2nd respondent.

5. Finally, the counsel for the petitioner submitted that the petitioner is a consultant of a multinational firm and he is in possession of a visa to visit Singapore and also Japan. The said visa will expire on 17-1-1996. The purpose of obtaining the passport is to take the adopted minor child also to Singapore during his proposed visit. The reason stated before this Court appears to be bona fide because the petitioner has his connections in Singapore and Japan by the

reason of he being a consultant of a multinational firm. If again delay is occurred in issuing the passport in the case of minor child, all his programme to visit Singapore and Japan would be jeopardized. In these circumstances, I feel, in the interest of justice that there should not be any further delay in issuing the passport in question. Accordingly, I direct the 2nd respondent to issue the passport in favour of the petitioner's adopted son "Sidharth Haridasan" within a period of 10 days from today. The name of the petitioner and his wife shall be endorsed in the passport as "adoptive father" and "adoptive mother" wherever necessary.

The Original Petition is allowed as above.