

(2011) 04 MAD CK 0297

In the Madras High Court

Case No : Writ Petition No's. 11913 and 11914 of 2010

Saroja P. Natesan

APPELLANT

Vs

Regional Passport Officer

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21
Dowry Prohibition Act, 1961 — Section 4
Passports Act, 1967 — Section 10(3), 22, 6, 6(2)
Penal Code, 1860 (IPC) — Section 109, 498A

Citation : (2011) 8 MLJ 194

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : S. Ramasamy for D. Anette Fassioms, for the Appellant; O.V. Krishnan, for the Respondent

Judgement

V. Dhanapalan, J.—Heard Mr. S. Ramasamy, learned Senior counsel for the Petitioners and Mr. O.V. Krishnan, learned Central Government Standing Counsel appearing for the Respondent.

2. Since the facts and issues are common in both the writ petitions, they are taken up together and disposed of by a common order.

3. In these writ petitions, the Petitioners, who are wife and husband seek for a direction to the Respondent herein to issue Passport to them on their applications dated 09.02.2009.

4. It is their case that they are senior citizens aged about 59 years and 70 years respectively, residing at Door No. 4/521 A, Banger's Colony, Andavar Nagar, Namakkal District. Both of them have applied for passport on 09.02.2009 before the District Passport Application Collection Centre, Namakkal and they have got their acknowledgement from the Centre. The file number given for Saroja is Z5 00443-09 and for P. Natesan the file number is Z5 00444 # 09. After giving the applications, they have waited for the police enquiry on the prescribed date given

by the Passport authorities. The said enquiry was completed in the month of July 2009. Subsequently, they have enquired personally in the District Passport Cell, Namakkal Collectorate about the status of their passport and the concerned Enquiry Officer, Namakkal Collectorate directed the Petitioners to approach the Passport Officer, Coimbatore. In the acknowledgement fee receipt the website www.passport.tn.nic.in was given to check out the status of the passport and accordingly they have attempted to find out the status of their passport, where they could not avail any information thereof. Therefore, they enquired the Passport Enquiry Officer, Coimbatore and it was orally informed to them that in the police verification report, it was stated that a criminal case is pending against them.

5. According to the Petitioners, a criminal case in C.C. No. 1 of 2005 has been filed against them u/s 498-A IPC and Section 4 of the Dowry Prohibition Act r/w Section 109 IPC before the learned Judicial Magistrate # I, Namakkal, by Tmt. Sasikala, who is their daughter in law, in which they have been arrayed as 3rd and 2nd accused respectively and the same is pending before the concerned Court and they have obtained anticipatory bail from the Principal Sessions Judge, Namakkal in Crl.M.P. No. 4406 of 2004.

6. It is their further case that the Petitioner P. Natesan, aged 70 years had underwent surgery for Duodenal Perforation with Peritonitis and even after the surgery, he is having problem in his health and therefore, he has been taking medical treatment periodically for his intestinal problem. Recently, he had undergone a master checkup for his health problems and he was advised by the Doctor to take further medical treatment for his Duodenal Perforation in Malaysia. Therefore, they are in urgent need for Passport to take medical treatment as both of them have to travel to Malaysia and unless the passport is issued to them, they will be put to severe hardship and physical strain. On the other hand, no prejudice would be caused to the Respondent. It is their further case that only for the purpose of taking medical treatment they wanted to travel to Malaysia and after the same is completed, they will come back to India. Already they are represented in the criminal case by their advocate who can represent them during their short stay at Malaysia and after their return, they undertake to co.operate for the early conclusion of the trial. Their brief absence from India will not at all hamper the progress of the said criminal case. Therefore, they prayed for a direction to the Respondent to issue a temporary passport on their applications to enable them to travel to Malaysia for taking medical treatment for Mr. Natesan (husband).

7. The Petitioners sought for a mandamus to direct the Respondent to issue Passport on the following grounds:

(i) their applications are not liable to be refused on the ground of pendency of a criminal case and the authorities cannot reject the same mechanically on that ground;

(ii) the authority has failed to consider the notification dated 25.08.1993 wherein exemption was granted to citizens against whom proceedings in respect of an alleged offence are pending before the criminal Court in India and they ought to have directed the Petitioners to produce necessary orders from the concerned Court;

(iii) Their fundamental right under Article 21 of the Constitution is violated as their applications are kept pending for such a long time without any intimation to the Petitioners.

8. The Petitioners also sought for the above mandamus as there is no provision in the Passport Act to reject their applications merely on the ground of pendency of a criminal case.

9. In addition to the above pleadings, the Petitioners have filed additional affidavits to the effect that they are citizens of India, a native of Namakkal District, Tamil Nadu.

10. The Respondent has filed separate counter affidavits in both the writ petitions.

(i) In W.P. No. 11913 of 2010, it is stated that the applicant has made an application for Passport to the District Passport Cell, Collectorate, Namakkal and her File No. is Z5-00443-09 dated 09.02.2009; it is the duty of the District Passport cell to collect the passport application and to forward the same to the passport Office at Coimbatore; the Petitioner has suppressed the fact in her application that a criminal case is pending against her; these facts were not mentioned in her application at the time of submission as well as in the letter dated 14.09.2009; the Petitioner is fully aware of the case and has been informed of the query vide this office letter dated 04.09.2009; the Petitioner's application for the passport has not been rejected and the passport can be issued only on a decision of this Court.

(ii) Similarly in W.P. No. 11914 of 2010, it is stated that the applicant has made an application for Passport to the District Passport Cell, Collectorate, Namakkal and his File No. is Z5-00444-09 dated 09.02.2009; it is the duty of the District Passport cell to collect the passport application and to forward the same to the passport Office at Coimbatore and they have no facility to inform the status of the application. According to them the Petitioner's application for passport is not rejected by the concerned office; the Petitioner has suppressed the fact in his application about the pendency of the criminal case; these facts were not mentioned in her application at the time of submission as well as in the letter dated 14.09.2009; the Petitioner is fully aware of the case and has been informed of the query vide this office letter dated 04.09.2009. It is the stand of the Respondent that the Petitioner's application for the passport has not been rejected and the passport can be issued only on a decision of this Court and therefore the Respondent pray for dismissal of the writ petitions.

11. Mr. S. Ramasamy, learned Senior Counsel appearing for the Petitioners in his submissions has strenuously contended that the Petitioners right for obtaining passport has to be considered by the authorities in accordance with law, otherwise their personal liberty will be deprived of. He would further contend that the authority has not taken note of the notification dated 25.08.1993 wherein exemption was granted to the citizens against whom proceedings in respect of an alleged offence are pending before the criminal Court in India and they ought to have directed the Petitioners to produce necessary order from the concerned court. On the contrary, the Respondent is keeping the matter pending without processing, which would violate the right guaranteed under Article 21 of the Constitution of India.

12. The learned Senior counsel for the Petitioners has relied on the following:

(a) a Division Bench decision of the Punjab and Haryana High Court reported in Balwinder Singh Vs. The Union of India (UOI) and Others, .

8. In the circumstances afore-noticed. We are of the considered view that Respondents must deal with and dispose of such matters expeditiously and not make futile attempts to shift their responsibility to the other wings of the State. The police should equally be responsible and act with urgency in such matters and not remain unresponsive or delay the matters for a considerable time, that too without any justification or cause. Reference can also be made to another judgment of this Court in the case of Manjit Singh v. Union of India and Ors. CWP No. 4073 of 2003, decided on 20.05.2004, wherein it was held as under:

One of the basic obligation of a welfare State is to prevent unnecessary litigations in courts. The administrative procedure should be mutable to the fact of the changing demands of the public so as to tackle the pervasive difficulties in effective implementation of its scheme and statutory duties. The circumstances afore noticed compel us to observe that all is not well in the affairs of the concerned departments and requires immediate attention of the higher authorities. The higher authorities are most competent to examine their procedures and issue such directions which would serve as linchpin to the proper administration and functioning of the departments concerned. Thus we direct the Secretary, Ministry of External Affairs, Govt. of India, New Delhi as well as the Director General of Police for such directions as they deem necessary to ensure that the applications submitted by the public at large for issuance of passport in accordance with the provisions of the Act are dealt with and disposed of finally expeditiously and preferably within a time bound programme. The authorities must advert themselves also to the fact that the police should apply its mind and make correct reports to the passport authority on the record available with the department. The applications should be processed properly and final orders granting the passport or declining the request for issuance of the passport upon due application of mind should be passed by the passport authorities. Orders so passed, essentially must be conveyed to the applicant. Such directions and or instructions must be issued by the concerned authorities at the earliest.

9. In view of the above reasoning, we allow this writ petition to the limited extent that Respondents shall consider the application of the Petitioner for issuance of passport and dispose of the same within a period of three months from the date a certified copy of this order is brought to their notice. We further make it clear that the Respondents shall issue passport to the Petitioner provided he places on record the permission from the Court of competent jurisdiction wherein the proceedings in relation to FIR No. 273 afore-referred are pending. The petition is, accordingly, disposed of in the above terms, leaving the parties to bear their own costs.

(b) a decision of the Andhra Pradesh High Court reported in CDJ 2010 APHC 571 in the case of Smt. Deepa Paresh Chedda v. The Secretary to Government, External Affairs, Government of India.

11. It is evident from the notification dated 25th August, 1993, an applicant against whom a criminal case is pending, is required to obtain necessary permission from the Criminal Court and then make an application to the passport authority. Indisputably, the Petitioner is an accused in Case No. Rc. No. 3/E/99 BS & FC/CB/New Delhi in which case, the Petitioner has to obtain necessary permission from the Criminal Court and thereafter, make an application to the 2nd Respondent.

As on this day, the Petitioner has not obtained any permission from the Criminal Court so as to enable her to get the passport renewed.

12. Accordingly, the Writ Petition is disposed of directing the Petitioner to obtain necessary permission from the Criminal Court as provided in the notification dated 25th August, 1993, and then make an application to the 2nd Respondent for renewal of her passport. In the event of submitting necessary application after obtaining necessary permission from the Criminal Court, the 2nd Respondent has to consider the same and pass appropriate orders within four weeks from the date of receipt of such an application. No costs.

13. Per contra, the learned Counsel for the Respondent would contend that the Petitioners applications for Passport have not been rejected and only because of the non mentioning of the pendency of the criminal case in the applications, they could not process the applications for issuance of the passport. If the Petitioners obtain necessary permission from the concerned Court and produce the same, the Respondent may process the applications for issuance of passport to the Petitioners.

14. On the above background pleadings and the submissions made, I have heard the learned Counsel for the parties and perused the material documents and the relevant provision of law.

15. Admittedly, the Petitioners are the senior citizens aged about 59 years and 70 years respectively and they are the citizens of India residing at Door No. 4/521 A, Banger's Colony, Andavar Nagar, Namakkal District. They have applied for the

passport on 09.02.2009 before the District Passport Application Collection Centre, Namakkal and their file numbers are Z5 00443-09 and Z5 00444 # 09 respectively and the same were forwarded to the Respondent Passport Officer at Coimbatore. It is seen that the Respondent, after receipt of the applications has issued acknowledgments to the Petitioners and thereafter they have conducted enquiry in the month of July 2009. However, the passports were not issued to them.

16. It is the case of the Respondent that the Petitioners are accused in the criminal case in C.C. No. 1 of 2005, which came to the notice of the authorities concerned during the enquiry. In fact the said case has been filed by their daughter-in-law Tmt. Sasikala, u/s 498-A IPC and Section 4 of the Dowry Prohibition Act r/w Section 109 IPC before the learned Judicial Magistrate # I, Namakkal, and the same is pending before the concerned Court. It is seen that the Petitioners have obtained anticipatory bail from the Principal Sessions Judge, Namakkal in CrI.M.P. No. 4406 of 2004. However, due to their ignorance, the Petitioners have not filled in their applications about the pendency of the criminal case while applying to the authorities. They pleaded that the purpose of the passport sought to be applied is only to go to Malaysia for medical treatment as per the advise of the Doctor. It is their case that the husband P. Natesan, aged 70 years had underwent surgery for Duodenal Perforation with Peritonitis and even after the surgery, he is having problem and therefore to take further medical treatment for his Duodenal Perforation in Malaysia, they have applied for the Passport and once the treatment is completed, they will come back to India. In the affidavits of the Petitioners, it is specifically averred that already they are represented in the criminal case by their advocate, who can represent on behalf of them during their short stay at Malaysia and after their return, they undertake to co.operate for the early conclusion of the trial and their brief absence from India will not at all hamper the progress of the said criminal case.

17. Clause (f) of Sub-section (2) of Section 6 of the Passports Act, 1967 (hereinafter referred to as Act) empowers the Passport authority to refuse to issue a passport or travel documents for going abroad in the event the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India.

18. At this juncture, it is worthwhile to refer to the notification relied on by the learned Senior Counsel for the Petitioners issued by the Ministry of External Affairs, New Delhi dated 25th August, 1993 in GSR 570(E). The relevant extract of the notification reads thus:

No, GSR 570(E) # In exercise of the powers conferred by Clause (1) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R.(E), dated the 14th April, 1970, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by

them are pending before a criminal Court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of Sub-section (2) of Section 6 of the said Act. Subject to the following conditions, namely;-(a) the passport to be issued to every such citizen shall be issued -(i) for the period specified in order of the court referred to above, if the court specified a period for which the passport has to be issued; or (ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or (iv) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a)(i) and (a)(n) can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the Laid citizen shall given an undertaking in writing to the passport issuing authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

19. From the above provision, it is made clear that the authority is having power to refuse to issue Passport to an applicant if there is any proceeding in respect of an offence alleged to have been committed by him are pending before a criminal Court in India. However, the above notification issued in furtherance of Clause (f) of Sub-section (2) of Section 6 of the Act clarified the position that the Central Government is of the opinion in public interest to exempt citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal Court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the above provisions.

20. This legal position as clarified by the Central Government would make it clear that when the applicant produces orders from the court concerned giving permission to depart from India, the authority competent to issue passport can consider the application in accordance with law.

21. The law is well settled after the decision of the Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . In the said case it

was held that the expression "personal liberty" in Article 21 must be so interpreted as to avoid overlapping between that Article and Article 19(1). The expression is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some such freedom has been raised to the level of fundamental right. Therefore, while holding that to travel abroad was a fundamental protection available to a person, the Supreme Court accepted the applicability of principle of reasonableness in placing certain restriction under the due process of law including Section 10(3)(c) of the Act. Of course, it was subjected to the basic rule of law of Audi Alteram Partem. The provision u/s Clause (f) of Sub-section (2) of Section 6 of the Act does not offend the constitutional mandate in any way. It also does not vest the authorities with arbitrary exercise of power. The Pendency of a case before the criminal Court, seen in the light of police report, would be a sufficient ground for the authorities to act and in its wisdom even decline issuance of the passport. Exercise of such jurisdiction would hardly be open to judicial review unless such decision was palpably erroneous or was offending the basic rule of law.

22. In the instant case, the stand taken by the Respondent is that the applications for passport have not been rejected, however, in view of pendency of criminal case, the applications of the Petitioners are kept pending and unless the applicants produce the necessary permission orders from the competent court to depart from India, it is not proper for the authority to consider the applications for issuance of passport.

23. The learned Senior Counsel appearing for the Petitioners would make a plea that the Petitioners are prepared to get necessary permission from the competent Judicial Magistrate Court, where the criminal case is pending against them and if such order permitting the Petitioners to depart from India is produced before the Respondent, the same may be acted upon by the Respondent in considering the applications for issuance of passport to the Petitioners without any further delay in the matter in order to enable them to travel abroad for treatment. Such a submission of the learned Senior Counsel for the Petitioners is not opposed by the learned Counsel appearing for the Respondent in view of the specific stand made in the counter affidavits stating that the Petitioners applications for the passport have not been rejected and the same can be issued only on the decision of this Court. He would also submit that the Petitioners will make appropriate applications before the competent Court of jurisdiction for getting necessary order of permission in order to submit the same before the Respondent Passport Office immediately.

24. In view of the above stated legal position and considering the circumstances, these writ petitions are disposed of with a direction to the Respondent to consider and pass appropriate orders on the Petitioners applications for issuance of passport, forthwith, taking into account the nature of urgency involved in this matter of taking treatment abroad, if necessary orders from the competent Court are produced by the Petitioners to the Respondent within a period of four weeks.

No costs.