

---

**(2014) 10 MAD CK 0126**

**In the Madras High Court**

**Case No :** Writ Petition No. 6742 of 2014 and M.P. No.1 of 2014

Venkatesh Kandasamy

APPELLANT

Vs

Government of India

RESPONDENT

---

**Date of Decision :** 08-10-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 102, 104, 190  
Passports Act, 1967 — Section 10, 10(1), 10(2)(3), 10(2)(e), 10(3)

**Citation :** AIR 2015 Mad 3 : (2015) 4 RCR(Civil) 932

**Hon'ble Judges :** V. Ramasubramanian, J

**Bench :** Single Bench

---

**Judgement**

V. Ramasubramanian, J.—The petitioner has come up with the above writ petition, challenging the order passed by the Regional Passport Officer, refusing to re-issue the Passport for the petitioner, on the ground that there are several criminal complaints pending against him and that the petitioner suppressed information about the same.

2. I have heard Mr. AR.L. Sundaresan, learned Senior Counsel for the petitioner and Mr.K.Ravindranath, learned Central Government Standing Counsel, appearing for the Respondent.

3. The petitioner first applied for a fresh Passport under Tatkal Scheme on 01.08.2007. Therefore, his application was processed, on Post-Police Verification Report basis and a Passport was issued on 07.08.2007 with a period of validity till 06.08.2017. Subsequently, the Police Verification Report dated 01.08.2007 came and it disclosed that a criminal case was pending against the petitioner in Crime No. 61/2006 on the file of the Red Hills Police Station. Therefore, the Commissioner of Police did not recommend the issue of the Passport.

4. The petitioner applied for re-issue of Passport with a seal of "ECNR" (Emigration Check Not Required), on 08.05.2013. In the Police Verification Report dated 03.06.2013, the police pointed out that there were five more criminal cases pending against the petitioner on the file of M-4 Police

Station in Crime Nos. 585/2008, 588/2008, 125/2011, 61/2006, 120/2011.

5. Therefore, a show cause notice dated 18.07.2013 was issued to the petitioner, alleging suppression of material information. Challenging the said show cause notice, the petitioner filed a writ petition in W.P. No.2167 of 2013. In the said writ petition, this Court passed an interim order on 06.08.2013, giving time upto 19.08.2013 for the petitioner to submit his explanation to the show cause notice and also directing the Respondent to complete the enquiry within four weeks.

6. In pursuance of the said order, the petitioner submitted his explanation on 16.08.2013. After perusing the explanation, the Respondent passed the impugned order refusing to reissue the Passport to the petitioner in terms of Section 6(2)(f) of the Passports Act, 1967 and also imposing a penalty of Rs. 5,000/- under Section 12(1)(b) of the Passports Act, 1969.

7. The Respondent has filed a counter affidavit contending that the petitioner is guilty of suppression of material information in his application for the issue of Passport and that therefore he is liable to be proceeded under Section 6(2)(f) of the Act.

8. Section 6(2)(f) of the Act reads as follows:-

"6. Refusal of Passports, travel documents etc."

(1).....

(2) Subject to the other provisions of the Act, the Passport Authority shall refuse to issue a passport or travel document for visiting any foreign country under Clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds and of no other grounds:

(a).....

(b).....

(c).....

(d).....

(e).....

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the Criminal Court in India."

9. A careful look at Section 6 would show that it deals with two contingencies. The first is about an endorsement for visiting any foreign country. The second is about the issue of a passport. Both are to be traced only to two clauses namely Clause (b) or Clause (c) of sub-section (2) of Section 5. Clause (b) of sub-section (2) of Section 5 enables the Passport Authority, upon receipt of an application, to issue a passport or travel document with endorsement in respect of one or more of the foreign countries specified in the application and refuse to make an

endorsement in respect of other countries, after making such enquiry as it considers necessary. Clause (c) of sub-section (2) of Section 5 empowers the Passport Authority to refuse to issue passport or travel document. Sub-section (3) of Section 5 states that where the Passport Authority makes an order under Clause (b) or (c) of sub-section (2), it shall record in writing a brief statement of its reasons and furnish to the person concerned, a copy of the same.

10. Section 7 of the Passports Act, 1967 stipulates that a passport, unless revoked earlier, shall continue in force for such period as may be prescribed. Under Section 8, where a passport is issued for a shorter period than the prescribed period, such shorter period shall be extendable for a further period.

11. Section 10 deals with variation, impounding and revocation of passport. Under sub-section (1) of Section 10, the Passport Authority is empowered to vary or cancel the endorsement on a passport, having regard to the provisions of Section 6(1) or a notification under Section 19. It may also vary or cancel the conditions subject to which a passport or travel document has been issued with the previous approval of the Central Government. Sub-section (1) of Section 10 may be of relevance to the case on hand. Hence, it is extracted as follows:-

#### 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 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.

12. Section 10A deals with the power of the Central Government or any designated officer to suspend any passport, if the passport is likely to be impounded and it is also necessary in the public interest to do so. However, such suspension shall not be for a period exceeding four months. But the period may be extended further by virtue of the proviso to sub-section (1) of Section 10A.

13. A careful look at the entire scheme of the Act would show that the provisions of the Passport Act basically deal with three types of issues such as (1) issue or refusal to issue passports (2) Variation, impounding or revocation of passports and (3) suspension of passports. It is interesting to note that no provision in the Act deals with the renewal of passport. Even Section 8 which deals with extension of the period of passport, covers only cases where a passport is issued for a shorter period than the prescribed period under Section 7. Therefore once a passport expires, upon the expiry of the normal duration stipulated in terms of Section 7 of the Act, a person may have to apply for renewal or extension or re-issue, by whatever name it is called. But that application will be considered only

in terms of Section 5. In other words, the terms renewal, extension or re-issue, of a passport after the expiry of the normal period as originally prescribed, should be construed only the issue of passport.

14. As a corollary, once a passport is issued for a particular period, there are only three options open to the Passport Authority namely: (a) Variation of the endorsements made on the passport under Section 10(1) or (b) the impounding of the passport under Section 10(3) and (c) the suspension of the passport under Section 10A. 15. The suspension of a passport can be ordered under Section 10A only if two conditions are satisfied namely: (a) that the passport is likely to be impounded or revoked under Section 10(3) (c); and (b) that it is necessary in the public interest to suspend the passport for a period not exceeding four weeks, which can be extended later.

16. Similarly, the impounding or revocation of a passport is possible only if any one of the contingencies stipulated in Clauses (a) to (h) of sub-section (3) of Section 10 are satisfied. If the conditions stipulated in Section 10(3) are not satisfied, the passport cannot be impounded or revoked.

17. In so far as the variation of the endorsement on passport is concerned, Section 10(1) contemplates variation under two situations. The first is the variation of endorsements of a passport, either with reference to Section 6(1) or with reference to any notification under Section 19. Section 6(1) speaks about activities prejudicial to the sovereignty and integrity of India, detriment to the security of India, prejudice to the friendly relations of India with that country and prejudice to public interest. Section 19 speaks about the notifications issued by Central Government that a foreign country is committing or is suspected of the commission of external aggression against India or a country is engaged in armed hostilities. If the conditions stipulated in Section 6(1) are present or if a notification under Section 19 has been issued, the Passport Authority himself can order variation or cancellation of the endorsements of a passport.

18. The second situation in which the endorsements of a passport can be varied or cancelled is when the Central Government grants previous approval for the same.

19. Having taken note of the scheme of the Passports Act, if we now go back to Section 6(2)(f) of the Act, it is seen that after invoking the said provision the first requisite is that proceedings in respect of an offence should be pending before a Criminal Court in India. The question as to what tantamount to proceedings pending before the Criminal Court, had come up for consideration earlier.

20. In *Suresh Nanda Vs. C.B.I.* [Appeal (Crl.) No. 179 of 2008 dated 24.1.2008 by the Supreme Court], the passport of a non resident Indian settled in the United Kingdom, was seized by the Police, when they conducted a search. A first information report was registered on the basis of a sting operation carried out by a news portal. The passport seized during the search was retained by the Central Bureau of Investigation. The Special Judge of the CBI Court directed the release

of the passport. On a criminal revision filed by the Central Bureau of Investigation, the High Court reversed the order of the Special Court. Therefore, the individual filed a special leave petition before the Supreme Court.

21. After taking note of the provisions of Section 10(3)(e) of the Passports Act, 1967 and after taking note of the decisions of two Constitution Benches, one in *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, : *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, : *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , the Supreme Court held that the Passports Act, 1967 being a Special Act, the provisions therein would prevail over Section 104 of the Criminal Procedure Code, which confers general power upon the Court to impound any document. The Court also pointed out the distinction between the mere seizure of a passport and the impounding of the same. A seizure is made at a particular moment, when somebody takes into possession of some property. However, if the seized property is retained for some period of time, the retention amounts to impounding. Therefore, the Supreme Court pointed out that while the Police may have the power to seize a passport under Section 102 of the Code, if it is permissible within the authority given therein, it does not have the power to retain or impound the same. The Court also indicated that the moment the Police seizes a passport under Section 102 of the Criminal Procedure Code, they must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for want of reasons mentioned in Section 10(3). It is thereafter for the Passport Authority to decide what to do. Even while taking a decision, the Passport Authority is to give an opportunity of hearing. What is important in the aforesaid decision is that in paragraph 15, the Court indicated that even the Court cannot impound a passport despite the enabling provision in Section 104 of the Code.

22. In *Abhijit Sen Vs. Superintendent (Administration) Regional Passport Officer and Others*, , a Division Bench of the Calcutta High Court was concerned with a case where the Passport Authority impounded the passport under Section 10(2)(e), on the ground that a criminal case was pending against the passport holder. The Calcutta High Court held that there are two processes for initiation of a proceeding before a Criminal Court. While the first part is the investigation by the Police, the other part is the direction by the Court. Therefore, after pointing out the condition prescribed in Section 190 of the Criminal Procedure Code for initiation of proceedings, the Division Bench of the Calcutta High Court opined that the proceedings before a Magistrate is initiated when cognizance is taken. The Court held that no proceeding can be said to have been initiated under Clause (a) of Section 190 within the meaning of Section 10(2)(3) of the Passports Act.

23. In so far as the case on hand is concerned, all the criminal complaints as

against the petitioner are only at the stage of investigation. It is not a case of the Respondent that final reports have been filed in the criminal Courts in any of the criminal complaints, so as to make the case come within the four corners of Section 6(2)(f). Therefore, the impugned order is vitiated by non-application of mind and hence it is liable to be set aside.

24. Accordingly, the writ petition is allowed and the impugned order is set aside and the Respondent is directed to re-issue the Passport to the petitioner within four weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P. No.1 of 2014 is closed.