
(2017) 2 ILRKerala 589 : (2017) 2 KLT 309

High Court Of Kerala

Case No: WP(C).No. 3004 of 2017

Mohamad Shafi

APPELLANT

Vs

Regional Passport
Officer

RESPONDENT

Date of Decision: March 27, 2017

Acts Referred:

- Constitution of India, 1950 - Article 226
- Passports Act, 1967 - Section 6, Section 7

Citation: (2017) 2 ILRKerala 589 : (2017) 2 KLT 309

Hon'ble Judges: Mr. Shaji P. Chaly, J.

Bench: Single Bench

Advocate: Sri. Rajit, Advocate, for the Petitioner; Sri. N. Nagaresh, Assistant Solicitor General, for the Respondent

Final Decision: Dismissed

Judgement

Shaji P. Chaly, J.—In this writ petition, petitioner seek, a direction to the respondent to take back the original of Ext.P3 Passport and issue a fresh Passport valid for a period of 10 years, and other consequential reliefs. Material facts for the disposal of the writ petition are as follows:

2. Grievance of the petitioner is that since the respondent has issued the Passport to the petitioner for a period of one year on account of pendency of a criminal case, visa cannot be stamped in the Passport of the petitioner. Petitioner is an accused in ST.No. 1394 of 2016 on the files of the Judicial First Class Magistrate Court, Chavakkad, arising from Crime No.35 of 2016 of the Guruvayur Police Station for the offences punishable under Sections 341 and 323, r/w Section 34 of IPC. Petitioner was released on bail and was regularly appearing before the trial court. Petitioner, after completing his education, wanted to go abroad for securing employment. Therefore, petitioner applied before the J.F.C.M Court, Chavakkad seeking permission to go abroad in terms of notification

No.G.S.R 570(E) dated 25.08.1993 issued by the Ministry of External Affairs, Government of India, in terms of Section 22 of the Passports Act, 1967. The learned Magistrate allowed the application, holding that the petitioner is already enlarged on bail and is now facing trial, and the presence of the petitioner on all posting dates is not necessary. Therefore, it is observed that there was no objection for issuing Passport to the petitioner and the Passport authority can issue the Passport to the petitioner ignoring the pendency of the case, evident from Ext.P2.

3. Thereupon, petitioner applied for a Passport after complying with all the formalities required for the purpose. Accordingly, respondent has issued a Passport bearing No. N9778258 dated 12.04.2016, which is valid only for a period of 1 year, and the date of expiry of the said Passport is 11.04.2017, evident from Ext.P3.

4. It is submitted, petitioner has managed to get a job in U.A.E for a period of two years and the petitioner is required to stamp a visa for the above said period of two years. Therefore, it is the contention of the petitioner that petitioner is seriously aggrieved by the renewal of the Passport for a period of only one year. The restriction of validity of the Passport for a period of one year makes it necessary for the petitioner to have his employer stamp Visa on the passport every year, which makes the job of the petitioner in the present company precarious. Petitioner therefore, approached the respondent requesting to issue a Passport to the petitioner valid for a period of 10 years, as is usually done. Respondent, however, is taking a stand that unless the petitioner obtains orders from this Court, the request of the petitioner cannot be considered. According to the petitioner, this Court had occasion to consider the issue in W.P.(C) Nos.26084 of 2013 and 649 of 2015, and has held therein that the Passport shall be renewed for a usual tenure of 10 years. Therefore, petitioner is also entitled to get similar treatment from this Court.

5. Respondent has filed a statement and among other contentions, it is stated that the J.F.C.M Court, Chavakkad has issued the order in question, by which the Passport Officer, Cochin was directed to consider the application of the petitioner ignoring the pendency of the case. Further, it was made clear that the accused shall not leave India without obtaining prior permission from the court based on the said passport. The validity of the Passport can be extended to the petitioner only on production of an order from the competent court.

6. It is also stated that the Government through notification GSR No.570(E) dated 25.08.1993, laid down provisions to enable people who have cases pending against them in various courts to obtain a passport. Petitioner is also entitled to get the Passport issued on account of the parameters and stipulations contained in the said notification. Based on the stipulations contained in the said notification, when the Magistrate Court has not fixed the tenure of the Passport, as per the stipulations contained in the notification, respondent can renew the Passport only for one year at a time. Therefore, it is the contention of the respondent that the refusal of the respondent to issue Passport to the

petitioner exceeding one year is in accordance with the provisions of law, and no manner of interference is warranted, especially when there is no illegality, arbitrariness or unfairness on the part of the respondent.

7. Heard learned counsel for the petitioner and the learned Assistant Solicitor General and perused the documents on record and the pleadings put forth by the respective parties.

8. The parameters for refusal to issue Passport is dealt with under Section 6(2) of the Passports Act. Clauses (f) and (g) are relevant to the context, which read thus:

"(2) Subject to the other provisions of this 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 on no other ground, namely:-

(a) x x x x x x x

(b) x x x x x x x

(c) x x x x x x x

(d) x x x x x x x

(e) x x x x x x x

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) x x x x x x x

(i) x x x x x x x."

9. Moreover, Section 7 deals with duration of passports and travel documents, by which, it is stipulated that a passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed, and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class. The proviso thereto makes it clear that a passport or travel document may be issued for a shorter period than the prescribed period--

(a) if the person by whom it is required so desires; or

(b) if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.

10. Section 22 of the Act enables the Central Government to exempt any person or class of persons from the operation of all or any of the provisions of the Act or the rules made thereunder in public interest, by notification in the Official Gazette and subject to such conditions; and as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions. It is invoking the power conferred thereunder, the Government of India has issued notification GSR No.570(E) dated 25.08.1993, exempting citizens of India against whom proceedings in respect of offences alleged to have been committed by them are pending before a criminal court in India and who produces 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 specifies 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 orders 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 exceeding one year, and does not specify the 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) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not traveled 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 said citizen shall give 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."

11. The provisions of the notification is self-explanatory. Now the question to be decided centres around Ext.P2 order issued by the J.F.C.M Court, Chavakkad as per Ext.P2, and paragraph 3 of the order read thus:

"3. In the present case the offence registered against the accused is under Section 341 and 323 r/w 34 of IPC and the accused was enlarged on bail and he is now facing the trial. By executing bond, the accused undertook to attend before the court on all posting dates. Hence the Passport Officer, Cochin can consider the validity application of the accused by ignoring the pendency of this case. Further it is made clear that the accused shall not leave India without obtaining prior permission from the court based on the said passport. Petition disposed accordingly."

12. Therefore, one thing is clear, the Magistrate has not specified any period for issuing the passport. The Magistrate has not fixed a period for the petitioner to travel abroad also. Therefore, as provided under clause (a)(ii) of the notification, if no period either for the issue of Passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year only. Therefore, it can be seen that the passport issued to the petitioner, evident from Ext.P3, for a period of one year from 12.04.2016 to 11.04.2017 is in accordance with clause (a)(ii) of the aforesaid notification. Clause (b) of the notification states that any passport issued in terms of (a)(ii) and (a)(iii) 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 canceled or modified.

13. In this case, the petitioner has not travelled abroad after issuance of the passport and therefore, if the order granted by the court is not canceled or modified, the petitioner is entitled to renew the passport for a further period of one year from the date of expiry. Therefore, in my considered opinion, the respondent acted in accordance with the imperative conditions contained in the order of the Government of India specified above.

14. However, learned counsel for the petitioner has heavily relied on the judgments of this Court in W.P.(C) No.26084 of 2013 dated 13.11.2013 and W.P.(C) No.649 of 2015 dated 15.01.2015. In W.P.(C) No.26084 of 2013, issuance of passport was sought for to visit his children and since a short duration passport was issued, he was not in a position to obtain the requisite visa from the concerned country. In that circumstances, this Court directed the Passport authority to issue passport for the normal term and in accordance with law, on condition to surrender the passport as and when demanded. In W.P.(C) No.649 of 2015, directions were issued since the petitioner had a contention therein that since short duration passport is issued, it is difficult to obtain or continue in employment. I also find from the facts of the case that the petitioner therein was permitted to go abroad by the Magistrate only for a period of six months from the date of the order.

15. Learned counsel for the petitioner also relied on the judgment of this Court in "**Ashok Kumar v. State of Kerala**" [2009 (2) KLT 712]. In that case, the very same notification was under consideration. However, the subject matter of the case was entirely different and the judgment was rendered by a learned Single Judge of this Court in the challenge made against the order passed by the Magistrate, declining permission to go abroad. I have also come across the judgment of this Court in "**Muhammed v. State of Kerala & another**" [2013 (1) KLJ 185], wherein also the same notification was taken into account in the context of challenge made against the dismissal of application filed seeking permission to go abroad. Therefore, on a reading of the judgments rendered by this Court above, the concerned judgments were basically rendered on peculiar facts involved in the said cases. Here, in this case, petitioner has not produced any document before this Court to establish that he has secured any employment abroad for a specified period to have a passport with a long duration. Moreover, the learned Magistrate has not specified any period to travel abroad, or issued any order restricting issuance of the passport for a specified period, and in that circumstances, as discussed above, clause (a)(ii) will come into play, whereby the respondent is statutorily restricted to issue a passport only for a period of one year.

16. However, the said notification makes it amply clear, as per clause (a)(i), the concerned court is vested with ample powers to issue direction for providing passport for a specific period, and in that event, clause a(iv) also will come into play and permit the authority to issue a passport for the period permitted to travel abroad. If the Magistrate is not specifying the period, the respondent has no other alternative than to issue the passport for one year as is provided under clause (a) (ii). When the Magistrate is considering any such application, it is always open to the Magistrate to specify a period enabling the petitioner to travel abroad or issue a direction to issue a passport for a specified period in accordance with the facts and circumstances of each and every case. The notification referred to above is issued by the Government of India with the intention of protecting the interest of the citizens as well as the interest of the country at large. The paramount importance of the said notification is that a citizen shall not lose his opportunity to go abroad and seek employment, or travel abroad otherwise or for leisure. However, the same shall not stand in the way of any proceeding being continued in a court of law in India by protracting the proceedings. The Magistrate always has the advantage to assimilate the issue and identify the period during which the presence of the accused in a case is required for continuing with the trial. The Magistrate will also be in a position to know the time required for the trial to start in view of the pendency of other cases before it. By issuing a direction permitting the accused to travel abroad for a specified period and issuing direction to confine the Passport to a particular period in accordance with the requirement of the accused and the requirement of the court, the presence of the accused can be secured before the court. Such imperative condition shall also be issued in the order requiring the accused to be present before court in order to participate in the trial.

17. For the foregoing discussion, I do not think that petitioner has made out a case warranting interference of this Court under Article 226 of the Constitution of India, there being no arbitrariness, unfairness or other legal infirmities.

18. Therefore, the writ petition fails, accordingly it is dismissed. However, I make it clear that if the petitioner files any fresh application before the Magistrate Court, the same shall be considered in accordance with the parameters provided under the notification specified above, and as observed, it is always better for the Magistrate to fix a period for the accused to travel abroad, and/or specifying the period for issuance of the Passport by the said authority, which, according to me, can avoid the present complexity and commotion in the issuance of Passport to persons who are accused in criminal cases.