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(2007) 09 AP CK 0004

Andhra Pradesh High Court

Case No: Writ Petition No. 19394 of 2006

Raghuram Kamisetty		APPELLANT
	Vs	
Regional Passport Officer and Another		RESPONDENT

Date of Decision: Sept. 5, 2007

Acts Referred:

- Passports Act, 1967 - Section 12, 12(1), 3

Citation: (2007) 6 ALD 466

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: K.V. Bhanu Prasad, for the Appellant; J. Ashok Kumar and Government Pleader for Home, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.
This Court ordered Notice Before Admission on 20.9.2006. This Court also made the following order:

In the meanwhile, there shall be stay of collection of penalty imposed under the proceedings of the respondent No. 1, dated 10.7.2006. Print the name of Mr. J. Ashok for respondents.

2. Counter-affidavit is filed on behalf of the 1st respondent.

3. Sri K.V. Bhanu Prasad, learned Counsel representing the petitioner had taken this Court through the averments made in the affidavit filed in support of the writ petition and would maintain that in the facts and circumstances of the case the imposition of penalty on the ground of alleged suppression of information cannot be sustained. The learned Counsel also had taken this Court through the relevant

statutory provisions in the Passport Act, 1967.

4. Per contra, Sri J. Ashok, learned Counsel representing the 1st respondent would maintain that in the facts and circumstances the order made is in accordance with law. The learned Counsel strongly relied upon Section 12(1)(b) of the Passport Act, 1967 in this regard.

5. Heard the Counsel.

6. The writ petition is filed for a writ of mandamus declaring the action of the 1st respondent not passing orders in file bearing No. HYDA0250306 for grant of passport in spite of recommendation by the 2nd respondent and further insisting to give explanation and pay a penalty of Rs. 6,000/- for the alleged suppression of information as illegal, arbitrary, mala fide, without application of mind and consequently direct the 1st respondent to issue passport to the petitioner and pass such other suitable orders.

7. It is stated by the writ petitioner that he had completed his Engineering from K.S.R.M. College of Engineering, Kadapa and after completing his Engineering, in order to prosecute his further studies at abroad, he applied for passport on 11.10.2005 through a local agent Nagi Reddy at Proddutur. It is also stated that while making an application, he wrongly gave his address and as a result, when the enquiry had taken up by the police, he did not find place. Then the police constable sent a report that the petitioner was not found at the place and further had reported that the petitioner is holding passport and the said report is without any basis. It is also stated that when the petitioner questioned the agent at Proddutur for giving such incorrect address, he replied that while filling up the other application forms, he was confused and gave the incorrect address by mistake. It is also stated that the petitioner applied for passport on 24.2.2006 giving all correct information for processing his application. Pursuant to his application, the petitioner received an intimation on 3.5.2006 asking him to furnish the desired information/documents within 15 days. In the said intimation, it was mentioned that the petitioner has to explain for suppression of material information about his previous passport and asked the petitioner to surrender the alleged passport obtained by him and also asked him to pay a penalty of Rs. 6,000/- for suppression of material. The 1st respondent repeatedly sent the same intimations on 7.3.2006 and 10.7.2006. It is also further stated that the petitioner brought to the notice of the 1st respondent through a representation dated 23.3.2006 that the petitioner had not been issued any passport earlier and as incorrect address was furnished in the earlier application, passport was not issued, but still 1st respondent asked him to give explanation for not furnishing the information about the alleged previous passport. The 1st respondent is not positively stating that the petitioner had been issued with the passport on such and such date, with such and such number. The allegation that the petitioner had suppressed about the earlier passport is baseless and this allegation is being made on the basis of the false report given by the police

constable. It is also further stated that as the report of the police constable caused so much of doubt and confusion in the mind of the 1st respondent for issuing passport, the petitioner made a representation to the 2nd respondent on 14.8.2006 to verify the report given by the constable in the earlier File No. A/99597/05 and also enclosed the intimation sent by the 1st respondent. The 2nd respondent having received the representation forwarded the same to the District Special Branch at Kadapa for enquiry and investigation. The Inspector of Police of Special Branch having examined the matter, gave a report on the same day as they had already sent a report stating that the passport application was enquired by SB HC 238 and the Police Enquiry Report had already been dispatched from this office on 19.3.2006 vide File No. A-025053, Police C. No. 3511, Secret No. 89, page No. 1, Serial No. 2, there are no adverse report against him". It is also stated that though favourable recommendations are sent in pursuance of the second application of the petitioner for grant of passport by the Police Department vide File No. A-02053, still the 1st respondent is insisting to pay fine and to give explanation for furnishing the alleged incorrect information in the first application about the suppression of previous passport. Specific stand is taken that except giving wrong address, there is no mistake committed by the petitioner and in the facts and circumstances there is no question of suppressing a prior passport since in fact he is not holding any such prior passport at all. Even though the police also clarified the position, still the authorities of the 1st respondent, without application of mind and without looking into the files, kept the matter pending and demanding the petitioner to pay a penalty of Rs. 6,000/- through their intimation dated 10.7.2006 and thereafter. In the light of the same, the writ petitioner is left with no other option except to approach this Court praying for appropriate reliefs.

8. In the counter-affidavit filed by the 1st respondent it is stated that the petitioner had applied for passport in the year 2005 by furnishing Proddatur of Kadapa District as present as well as permanent address and when the police had made field verification at the given address, they could not trace the applicant and subsequently gave a report informing the 1st respondent office not to render passport facilities to the petitioner. It is also stated that the petitioner again filed one more application in the year 2006 by furnishing Jammalamadugu of Kadapa District as present as well as permanent address. The petitioner never bothered to know the status of the earlier application and instead of waiting for the result of his application submitted in the year 2005, the petitioner filed one more application in 2006, which is against the Passport Rules. As the petitioner wilfully changed his address by circumventing police and passport authorities due to the said reason, the respondent office had imposed a penalty of Rs. 6,000/- which includes furnishing false personal particulars such as address and not disclosing the very fact of suppression of earlier (2005) passport application with the respondent office. Specific stand had been taken that the respondent can impose penalty u/s 12(1)(b) of Passport Act, 1967 for giving false information.

9. Section 12 of the Passport Act, 1967 deals with Offences and Penalties and Section 12(1)(b) specifies whoever knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document" shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

10. The Counsel representing the 1st respondent placed reliance on certain instructions said to have been circulated under the caption Penalty for Offences under Passport Act, 1967 and the same reads as hereunder:

Strong reliance was placed on clauses 4 and 15 specified above.

11. In Benedict Balanathan Mahendran alias Bala Mahendran and Anr. v. The State 1996 Crl.L.J. 2619 the learned judge of the Madras High Court at Paragraph 19 observed as hereunder:

To appreciate the case of the prosecution for the forth charge, it has become vital to advert to Section 12(1) of the Passports Act. It runs like this:

12. Offence and penalties--(1) Whoever-

(a) Contravenes the provisions of Section 3, or

(b) Knowingly furnishes any false information or suppresses any material information or suppresses any material information with a view to obtaining a passport of travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entire as made in a passport or travel document; or

(c) ...

(d) ...

(e) ...

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

If the above section of law is perused, then it is seen that the phraseology adopted in the above section requires that before a person could be mulcted with the criminal liability under the above section, it must be shown that he has furnished a false information or has suppressed any material information, with a view to obtain a passport or travel document or would have altered or caused to alter the entries in a passport or travel document without any lawful authority. Unless and until the above overt acts are spoken to and established before a Court of law, one would find it difficult to find a person to be guilty under the above section of law....

12. As can be seen from the language of Section 12(1)(b) of Passport Act, 1967, it is clear that the said provision can be attracted only when certain ingredients are satisfied and further the words ''knowingly furnishes any false information'' and the words ''suppresses any material information with a view to obtaining a passport or travel document under this Act'' and ''without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document'' would assume importance.

13. The petitioner had given an explanation under what circumstances the mistake had crept in. Though the police, on verification, made a favourable report on the ground that in the prior application some information relating to the address made is incorrect, the present penalty had been imposed. This Court is satisfied that in the light of the explanation given by the writ petitioner, at any stretch of imagination it cannot be said that the ingredients of Section 12(1)(b) of Passport Act, 1967 would be attracted. However, it is made clear that no hard and fast rule can be laid down in this regard and the concerned competent authority while imposing penalty may have to exercise the powers and the discretion in accordance with law with due application of mind. It is suffice to state that in the light of the explanation given by the petitioner and also on appreciation of the overall facts and circumstances, this Court is satisfied that the imposition of penalty is totally unjustified especially in the light of the clarificatory report of the police. In view of the same, the writ petitioner is bound to succeed.

14. In the result, the writ petition is allowed. There shall be no order as to costs.