

Nataraj Kumar Vs The Regional Passport Officer

Court: Madras High Court

Date of Decision: April 28, 2010

Acts Referred: Constitution of India, 1950 " Article 21

Passports Act, 1967 " Section 10, 10(3), 6(2), 7

Passports Rules, 1980 " Rule 12

Citation: (2011) 2 RCR(Civil) 3 : (2011) 2 RCR(Civil) 3 : (2011) 1 RCR(Criminal) 701 : (2011) 1 RCR(Criminal) 701

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: S. Ramachandran, for the Appellant; C. Kanagaraj, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

The prayer in the writ petition is to quash the proceedings of the respondent connected with petitioner's

passport No. Z1761262 and direct the respondent to renew the passport of the petitioner for the normal period of ten years instead of one year.

2. The case of the petitioner is that he has passed B.Tech course and presently employed as General Manager of B.P.O. Division of HTC Global

and his office is located at Madras Export Processing Zone (MEPZ), Tambaram, where 800 Computer Engineers are employed. The business of

the Company involves handling out-sourcing work relating to accounting and also digital publishing. The petitioner has to travel frequently outside

India, not only to canvass fresh business, but also to interact with the clients of the Company, outside India. When the petitioner went for renewal

of his passport, renewal was granted for the period of one year from 12.2.2008 to 11.2.2009 on the ground that the petitioner is implicated in a

criminal offence. Petitioner filed W.P. No. 17353 of 2008 and the said writ petition is pending. Again the petitioner submitted application for

renewal of passport, and renewal is granted from 12.10.2009 to 11.10.2010. As renewal was not granted for the normal period of ten years, this

writ petition is filed contending that pendency of C.B.I. case is not a ground to deny renewal of passport for a block period of ten years and the

action of the respondent in not renewing passport for ten years is in violation of Article 21 of the Constitution of India.

3. The respondent has filed counter affidavit stating that a criminal case is pending against the petitioner and the passport was originally impounded

and subsequently it was returned to the petitioner based on the order passed by this Court in Crl. O.P. No. 34926 of 2007 dated 4.1.2008 and as

per Sections 6(2)(f) and 10(3)(e) of the Passport Act, 1967, the petitioner cannot claim normal period of renewal for 10 years. It is also stated

therein that the Passport Manual 2001, issued by the Ministry of External Affairs, Consular, Passport and Visa Division, which has been updated

till date, clearly states that while granting passport facility to persons, certain guidelines are to be followed. Following the said guidelines passport of

the petitioner was renewed for a limited period and there is no illegality in the said order. It is further stated in the counter affidavit that as the

petitioner is facing criminal case, which is still pending before the competent Court, petitioner has to necessarily appear before the Criminal Court

periodically and if ten year enblock period is given, there is a chance that the petitioner may not appear before the Criminal Court. The order dated

14.10.2008 mentioning the period of extension upto 11.10.2018 was issued inadvertently and the said mistake cannot be taken advantage of by

the petitioner. Petitioner's passport is now renewed upto 11.10.2010 and there is no illegality in the said order.

4. Heard the learned Counsel appearing for the petitioner as well as respondent.

5. Admittedly the petitioner is facing a criminal case of forgery registered by the C.B.I., and charge sheet is pending before the C.B.I. Court.

Petitioner's passport was impounded and this Court in Crl.O.P. No. 34926 of 2007 by order dated 4.1.2008 directed to return the passport to

the petitioner. The relevant portions of the said order reads as follows:

6. There is no dispute to the fact that the petitioner has discharged the entire liability payable by M/s. Pan Clothing and Consolidated Co. Ltd., The

recovery proceedings initiated by the Punjab and Sind Bank as against the petitioner and others before the Debts Recovery Tribunal were also

withdrawn on account of the effective settlement and the consequent repayment made by the said Company to the Bank. Of course, the petitioner

is also facing a charge of conspiracy and also forgery of certain documents furnished as collateral security. The fact remains that the case has

originated way back in the year 2002. In spite of the fact that the case is ripe for framing charges even from the year 2005, it is found that charges

have not been so far framed by the trial Court. It is not the contention of the respondent that on account of the dilatory tactics adopted by the

petitioner, the charges cannot be framed by the trial Court. The petitioner cannot be found fault with for the absence of the other accused which

contributed for the delay in framing the charges.

7. There is no dispute to the fact that the passport of the petitioner which was seized by the respondent during the course of investigation has no

relevance to the case. The respondent has indirectly stalled the prospects of the petitioner going abroad by retaining his passport even after the

investigation was completed. It is made clear that a right of a person to travel abroad is a fundamental right guaranteed under Article 21 of the

Constitution of India. Unless a competent Court interdicts or prevents a person from traveling abroad by impounding the passport, no investigating

agency can simply retain the passport restraining the citizen from going abroad. Admittedly, the passport was not impounded as per the orders

passed by the competent court. When the passport has no nexus with the crime alleged to have been committed by the petitioner and no order has

also been passed by a competent Court to impound the passport, the respondent has no authority to retain the passport of the petitioner,

especially, after the investigation was completed.

8. It is brought to the notice of this Court that the petitioner has a very good academic record. He has taken up an attractive assignment. The

present job of the petitioner requires his presence in foreign countries also. The passport of the petitioner has been retained for about five long

years by the respondent police. The same cannot be retained any further crippling the business venture of the petitioner. The petitioner cannot be

forced to forego his business interest on account of the pendency of this case. Except the bald allegation that there is every possibility of the

petitioner to flee from justice, there is no material to show that there was any attempt made by the petitioner to give a slip to the dragnet of the

prosecuting agency. The Court finds that it will take some time for the termination of the trial. Therefore, this Court is inclined to accede to the plea

of the petitioner with certain conditions.

9. In view of the above, the respondent is directed to return the passport of the petitioner forthwith and the petitioner is directed to appear before

the trial Court as and when required by the trial Court for the purpose of trial of this Case. Accordingly the petition stands allowed.

From the above order it is evident that the petitioner's impounded passport is returned only on condition that he shall appear before the C.B.I.

Court as and when required.

6. Since the petitioner is facing criminal prosecution/trial, Section 6(2)(f) and 10(3)(e) of the Passport Act, 1967 are attracted, which read as

follows:

6(2)(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.

10(3)(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending

before a Criminal Court in India.

Section 7 of the Act deals with duration of the passports, which reads thus,

7. Duration of passports and travel documents.-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:

Provided that a passport or travel document may be issued for a shorter period than the prescribe 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.

Further, the guidelines issued in the passport Manual, 2001, which is updated till date, contains the following conditions,

(a) While granting passport facilities to such citizens, the Passport Authorities may observe the following guidelines.

(i) Where the court order referred to above gives such permission for a period not exceeding three months, the passport may be issued for a

period of three months and an observation may be made on the passport that the holder may travel abroad for a period not exceeding that

specified in such order.

(ii) If no period is specified in such order, the passport shall be issued for a period of six months and may be renewed for a further period of six

months if the order of the court is not cancelled or modified in the interim.

Or

(iii) In any other case, for the period for which such permission is given by such order.

(b) The said citizen shall give an undertaking in writing to the Passport Authority that he shall, if required by the Court concerned, appear before it

any time during the continuance in force of the passport so issued.

7. In Rule 12 of the Passports Rules, 1980, though it is stated that an ordinary passport for persons other than children below the age of 15 years

shall be in force for a period of 10 years or 20 years as the case may be, in this case, the petitioner's passport was admittedly impounded by the

authorities due to his involvement in the criminal case and the same was returned pursuant to the order of this Court. Section 10 empowers the

authority to vary the conditions as stated in Section 10(3)(e). The variation in the passport issued to the petitioner is perfectly valid.

8. From the above statutory provisions contained in the Act and the guidelines contained in the Passport Manual, 2001, it is evident that passport

can be given/renewed to a person, who is accused in a criminal case, only for a limited period, that too with an undertaking that the holder of the

passport shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued. It is not

the case of the petitioner that the criminal case is over and the petitioner is acquitted. In such circumstances, the petitioner has no right to claim

renewal of passport for the block period of ten years.

9. No case is made out to issue the direction as sought for and if the petitioner requires the passport to be further renewed, it is open to him to

apply for renewal and get it renewed in accordance with the rules and guidelines stated supra.

The writ petition is dismissed. No costs. Connected miscellaneous petitions are also dismissed.