

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD) No.17515 of 2017 and
W.M.P.(MD) Nos.14043 & 14044 of 2017

Suresh Rajan

... Petitioner

Vs.

The Passport Officer,
Regional Passport Officer,
Madurai, Bharathi Ula Veethi,
Race Course Road,
Madurai-625 002.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Lr.Ref.No.IMP/305049957/17 dated 02.02.2017 issued by the respondent and quash the same as illegal and consequently direct the respondent to reissue the passport to the petitioner bearing Passport No.P3810672 pertaining to File No. MD2079639372316.

For Petitioner : Mr.G.Prabhu Rajadurai

For Mr.S.Sukukmar

For Respondent : Mr.C.Nandagopal

ORDER

This writ petition has been filed, seeking to quash the impugned order of the respondent dated 02.02.2017 passed in Lr.Ref.No.IMP/305049957/17, in and by which, the passport of the petitioner was impounded. The petitioner also sought a direction to the respondent to reissue the passport bearing Passport No.P3810672 pertaining to File No. MD2079639372316 to the petitioner.

2. It is the case of the petitioner that on account of political rivalry, several cases were foisted against him, on account of which, the respondent has impounded his Passport under Section 10(3)(b) of the Passport Act, 1967. Though some of the cases were closed on the same day as action dropped or referred to as mistake of fact, as all the cases were related to the agitations made in the public platform against the action of the State Government, the respondent has high-handedly impounded his passport without assigning any valid reasons. Hence, aggrieved by the overall act of the respondents, the petitioner is before this Court with the above prayer.

3. The learned Counsel appearing for the respondent has filed a detailed counter affidavit contending that on a reference to the Superintendent of Police, it was disclosed that there were criminal cases against him and thus, a show cause notice dated 08.11.2016 was issued to the petitioner seeking his explanation regarding the circumstances under which he had obtained the passport by suppressing the pendency of criminal cases and the petitioner, without responding to the said notice, has come before this Court. Pursuant to the receipt of adverse report from the Superintendent of Police, Kanyakumari District, the present order came to be passed, thereby impounding the passport of the petitioner, which does not warrant any interference by this Court.

4. The learned Counsel appearing for the petitioner placed reliance upon the order of this Court in the case of *N.Chandrababu Vs. The Sub Inspector of Police in W.P.(MD)No.7056 of 2017* in support of his submission, wherein, this Court has held as follows:

“7. On a conspectus of the facts obtaining in this case, this Court is of the view that this is a fit case for which permission should be granted to the petitioner to go abroad. Under such circumstances, this Court permits the petitioner to depart from India and return on 30th May 2017. In view of the permission granted by this Court, the Passport authorities are directed to exempt the petitioner from the operation of the provisions of Clause (f) of sub-Section (2) of Section 6 of the Passports Act. The petitioner shall give an undertaking as contemplated by Clause (d) of the Notification dated 25.08.1993. The petitioner will be entitled to keep the passport with him, in view of the fact that this Court has granted stay of all further proceedings in C.C. No.21 of 2015 and it may not be necessary for the petitioner to come every time to this Court seeking permission to go abroad. Accordingly, this writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.”

4.1. The learned counsel appearing for the petitioner, in support of his submission that opportunity of personal hearing is a must in such type of cases, relied upon the judgment of the Hon'ble Delhi High Court in the case of *Anand Tewari vs. Union of India and others [W.P.(C)No.3885 of 2013 etc. batch]* decided on 18.09.2013, wherein, the Hon'ble Delhi High Court has held as follows:

“11. Admittedly, no opportunity of personal hearing was given to the petitioners before this Court despite their having duly replied to the show cause notice. In my view, the show cause notices issued to the petitioners should have been followed by an opportunity of personal hearing to them. No such hearing, however, was given to them either before or after passing the order impounding their passports. This is yet another reason why the impugned order dated 14.9.2012 cannot be sustained.

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13.As held by this Court in Manish Kumar Mittal (supra) even if a criminal case is pending against a person that by itself does not necessitate impounding / revocation of passport in every case, though the power of Regional Passport Office to impound / revoke passport, in appropriate cases, on account of pendency of a criminal case against the passport holder cannot be disputed....”

5. Heard the learned Counsel for the parties.

6. The Hon'ble Supreme Court in the case of Menaka Gandhi vs. Union of India, reported in 1978 (1) SCC 248 has taken a view that sub-section 5 of Section 10 of the Passports Act, 1967 requires the Passport Authority impounding the passport to record reasons of making such order and the necessity of giving reasons has obviously been introduced in the sub-section 29 that it may act as a healthy check against abuse or misuse of power.

7. In yet another case, the Hon'ble Supreme Court in the case of Suresh Nanda vs. CBI, reported in 2008 (3) SCC 674 has held that impounding of passport entails civil consequences and in view of this, the Authorities are duty bound to give opportunity of hearing to the person concerned.

8. A careful scrutiny of the order *dated 21.04.2017* passed by this Court in *N.Chandrababu Vs. The Sub Inspector of Police in W.P.(MD)No.7056 of 2017* would reveal that in the said case, this Court has clearly observed that though the concerned Trial Court had taken cognizance of the offence, pursuant to the subsequent stay granted by this Court, which was in force at that point of time, nothing prevented the Passport authorities to issue Passport to the petitioner therein.

9. In the present case on hand, the respondent has simply impounded the passport of the petitioner without giving any cogent reasons, which runs contrary to the proposition set out by the Hon'ble Supreme Court. It is also not the case of the respondent that due opportunity of hearing was given to the petitioner before taking such a decision of impoundment. Though the respondent has cited pendency of several criminal cases against the petitioner to substantiate their case, it is pertinent to mention here that mere pendency of criminal cases cannot be a valid reason for impounding a Passport as held in several judgments.

10. In view of what is stated hereinabove, this petition is allowed and the impugned order is set aside. The matter is remanded back to the respondent for fresh consideration. The petitioner is directed to place all the relevant documents before the respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the same shall be

R.MAHADEVAN,J.,
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considered by the respondent and after affording an opportunity of hearing to the petitioner, suitable orders be passed on the matter on merits and in according with law, within a period of four weeks thereafter, bearing in mind the judgments cited supra. No costs. Consequently, connected miscellaneous petitions are closed.

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W.P.(MD)No.17515 of 2017
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