

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943

WP (C) NO. 6552 OF 2021

PETITIONER:

HARIS PADAVIDINGAL ABU
AGED 37 YEARS,
S/O.PADAVIDINGAL KUNJUMUHAMMED ABU,
PADAVIDINGAL HOUSE,
KALVATHY, FORT KOCHI P.O.,
ERNAKULAM DISTRICT, PIN - 682 001.

BY ADVS.

SRI.SAJU S.NAIR
SRI.A.V.SAJAN
SMT.NEELANJANA NAIR
SMT.POOGA SEBASTIAN

RESPONDENTS:

- 1 THE REGIONAL PASSPORT OFFICER
THE REGIONAL PASSPORT OFFICE,
PANAMPILLY NAGAR P.O., COCHIN,
ERNAKULAM DISTRICT, PIN - 682 036.
- 2 THE MINISTRY OF EXTERNAL AFFAIRS OF THE
GOVERNMENT OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
NEW DELHI - 110 001.

BY ADV SHRI.P.VIJAYAKUMAR, ASG OF INDIA
BY ADV.JAISANKAR V.NAIR, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28.09.2021, THE COURT ON 30.09.2021 DELIVERED
THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.6552 of 2021

Dated this the 30th day of September, 2021

JUDGMENT

Petitioner was the holder of an Indian passport bearing No.J1494880 which was valid till 22.12.2020. After the expiry of the said passport, he applied for renewal. However, by Ext.P7 letter, the passport issuing authority rejected the application, stating that the response of the petitioner to the objection letter sent by the passport office was not satisfactory. Petitioner has challenged Ext.P7 in this writ petition.

2. A statement has been filed on behalf of the respondents in which the Regional Passport Officer, Cochin has stated that the petitioner was the holder of a passport originally issued on 14.03.2005 with the number F2167178. However, on 27.03.2008 when the petitioner reached Cochin International Airport, the immigration authorities seized the said passport on noticing tampering with the date of birth. Thereafter, petitioner remitted Rs.5,000/- as penalty and he was issued with a duplicate passport on

23.12.2010 with the number J1494880, after cancelling the tampered passport. The respondents however stated that while the application for renewal of the duplicate passport was being processed, they came to know that the petitioner had obtained another passport dated 03.12.2005 from Chennai bearing passport No.F5647718, with a different date of birth, place of birth and even a different address. The statement also mentions that petitioner had suppressed his first passport F2167178 while obtaining another passport from Chennai and that he was thus holding two valid passports at the same point of time - one issued from Cochin and the other from Chennai. On realising that the petitioner was holding two passports, a show-cause notice was issued to the petitioner seeking his explanation, to which petitioner replied, blaming his father for the fault and stated that the application for the second passport was filed without his knowledge. It was also stated by the respondents that as per the Government's instructions, in cases of double passport, the officer has to initiate a discreet enquiry by the police authorities and register an FIR in the light of the Judgment of this Court in W.P.(C) No.2124 of 2021 dated 17.02.2021, since the passport issuing authority has no power to impose a penalty other than to either issue a fresh passport or

refuse/reject or impound/revoke or restrict the validity of the passport, as per Passports Act, 1967. It is in such circumstances that the passport issuing authority on finding that the explanation offered by the petitioner was not satisfactory, refused the passport.

3. I have heard learned counsel for the petitioner, Adv. Saju S.Nair learned Assistant Solicitor General of India Adv.P.Vijayakumar as well as learned Central Government Counsel Adv.Jaisankar V.Nair.

4. It is noticed from the statement filed before this Court by the respondents that petitioner was holding two different passports at the same time, both issued within a span of nine months. The first passport bearing No.F2167178 dated 14.03.2005 and the second passport bearing No.F5647718 dated 03.12.2005 issued from Chennai. These facts are not borne out from the order impugned but only from the statement filed before this Court.

5. It is the settled proposition of law that when reasons have not been stated in an order that is impugned, the reasons cannot be added or explained through an affidavit, much less through a statement. A perusal of Ext.P7 letter shows that it is a non-speaking order. The only reason stated is that the "*explanation is not*

satisfactory". Why was the explanation not satisfactory and what were the reasons due to which the authority came to the conclusion that the explanation offered by petitioner was not satisfactory, are not discernible from the order impugned. In such circumstances, Ext.P7 is liable to be set aside solely for the reason that it is a non-speaking order.

6. Another facet of Ext.P7 is that it is not an order but only a letter communicating that the petitioner's application has been refused. Every order refusing an application for issuance of a passport gives rise to a statutory right upon the applicant to challenge the same. Hence the order rejecting the application for issuance of a passport must have the trappings of an order and not merely as a letter. However since the intent, purport and intention behind Ext.P7 was as an order rejecting the application of the petitioner, I deem it appropriate to treat Ext.P7 as an order and set aside the same, so as to render justice to the parties.

7. In this context it is worthwhile to observe that pendency of a crime is not a ground to deny the fundamental right of a person to travel abroad. However, the right is not absolute even. A balance has been struck through the notification issued in GSR 570(E) dtd 25-08-

1993, which has been approved by this Court in **Asok Kumar v. State of Kerala** (2009) 2 KLT 712. Holding of two passports at the same even if it gives rise to a criminal proceeding, the same by itself may not manifest as a reason for outright denial for issuing a fresh passport, in the absence of other convincing reasons. Anyway these are matters for the passport issuing authority to decide.

8. Accordingly, while setting aside Ext.P7, I direct the first respondent to reconsider the application of the petitioner for issuance of a renewed passport, as expeditiously as possible, at any rate, within a period of four weeks from the date of receipt of a copy of this judgment. If the petitioner wishes to add any further explanation, he shall submit the same within 10 days from the date of receipt of a copy of this judgment. The decision so taken by the 1st respondent as directed above, shall be communicated to the petitioner without delay.

The writ petition is allowed as above.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF WP(C) 6552/2021

PETITIONER'S/S' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PASSPORT OF THE PETITIONER BEARING NO.J1494880 ISSUED ON 23/12/2010.

EXHIBIT P2 TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT IN RESPONSE TO THE PETITIONER'S APPLICATION DATED 17/12/2020.

EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OBTAINED BY THE PETITIONER FROM THE FORT KOCHI POLICE STATION DATED 26/12/2020.

EXHIBIT P4 TRUE COPY OF THE JUDGMENT PASSED IN WP(C) NO.2124/2021 DATED 17/02/2021.

EXHIBIT P5 TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENTS DATED 22/02/2021.

EXHIBIT P6 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 24/02/2021.

EXHIBIT P6(a) TRANSLATION OF EXT.P6

EXHIBIT P7 TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENTS TO THE PETITIONER DATED 25/02/2021.