

Nisha vs the Union of India

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Court : Kerala

Decided On : Jan-31-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/357/2023

Appellant : NISHA

Respondent : The Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944 WP(C) NO. 357 OF 2023 PETITIONER: NISHA AGED 32 YEARS D/O LATHEEF MAPPILAYATHU THARAYIL HOUSE ELIPPAKULAM MAVELIKARA ALAPPUZHA DISTRICT - 690 503. BY ADVS. S.SHANAVAS KHAN S.INDU KALA G.NAMBIAR RESPONDENTS: 1 THE UNION OF INDIA MINISTRY OF EXTERNAL AFFAIRS REPRESENTED BY JOINT SECRETARY AND CHIEF PASSPORT OFFICER PSP DIVISION, ROOM NO. 27 PATIALA HOUSE, TILAK MARG NEW DELHI- 110 001. 2 THE REGIONAL PASSPORT OFFICER REGIONAL PASSPORT OFFICE SNSM

BUILDING, PETTA KARALKADA JUNCTION KAITHAMUKKU P.O. THIRUVANANTHAPURAM - 695 024 W.P.(C) No.357 of 2023 2 3 THE ASSISTANT PASSPORT OFFICER REGIONAL PASSPORT OFFICE SNSM BUILDING, PETTA KARALKADA JUNCTION KAITHAMUKKU P.O THIRUVANANTHAPURAM - 695 024 4 JASIM SULAIMAN AGED 35 YEARS S/O SULAIMAN SALEELA MANZIL KAMUKINKODU KOKKAD P.O KOTTARAKKARA KOLLAM DISTRICT - 691538 BY ADV MANU S. DSG OF INDIA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C) No.357 of 2023 3

JUDGMENT

The petitioner herein is the wife of the 4th respondent. They are the parents of a minor daughter by the name Isha and the holder of a passport bearing No.R9025356, which is valid from 31.01.2018 to 30.01.2023. The petitioner states that the relationship between the petitioner and her husband has become strained, and proceedings are pending before the Family Court, Mavelikkara. She asserts that by an

order dated 04.11.2022, the petitioner has been permitted to have

interim custody of the minor child. The petitioner asserts that suppressing the fact that the child has a valid passport, the 4th respondent submitted an application for the issuance of a fresh passport by contending that the original passport has been irrecoverably lost. Though the petitioner had sent an email controverting the assertion made by her husband, ignoring her representations, the 2nd respondent processed the application and issued a fresh passport. Being aggrieved, the petitioner is stated to have preferred Ext.P8 representation before the 2nd respondent, which W.P.(C) No.357 of 2023 4 is stated to be pending. It is in the afore circumstances that this writ petition is filed seeking the following reliefs:

- i) issue a writ of mandamus or any other writ, order or direction directing the 2nd respondent to initiate action against the 4th respondent as per

Section 10 of the Passports Act, 1967 by impounding the passport issued to petitioners daughter namely Isha pursuant to the application submitted by the 4th respondent under lost category. ii) issue a writ of mandamus or any other writ, order or direction directing the 2nd respondent to renew Ext.P1 passport of petitioners daughter. iii) issue a writ of mandamus or any other writ, order or direction directing the 2nd respondent to consider Ext.P8 within a time frame to be fixed by this Honble Court and to initiate appropriate action.

2. A counter affidavit has been filed by the 2nd respondent.

It is stated that an application was filed by the 4th respondent seeking re-issuance of the passport of the minor child by representing that the mother was traveling abroad and the earlier passport was lost. He also submitted a certificate issued by the Sub Inspector of Police, Adoor, to substantiate his contention. As the application was considered under the lost category, the same was processed, and a fresh passport vide No.W3981239 was issued to the child, and the same was dispatched W.P.(C) No.357 of 2023 5 on 22.09.2022. Later, the complaint lodged by the petitioner was considered, and a show cause notice was issued to the 4th respondent ordering his appearance and also to surrender the fresh passport. It is stated that the fresh passport was surrendered before the respondent on 14.11.2022.

3. Heard the learned counsel appearing for the petitioner, the

learned Government Pleader, and the learned DSGI. Though notice was issued to the 4th respondent and the same was served, he has not chosen to appear either in person or through counsel.

4. I find that the original passport issued by the authority is

in the custody of the petitioner. It is believing the assertion made by the party respondent that the original passport was lost that a fresh passport was reissued by the passport authorities by duly following the procedure. From the counter affidavit, it appears that the 4th respondent has already surrendered the fresh

passport. As the original passport expired on 30.01.2023, and as the reissued passport was secured on the basis of false assertions, necessary directions can be issued to the 2nd respondent to reconsider the entire matter and renew the original passport. W.P.(C) No.357 of 2023 6 Resultantly, this petition is ordered, and the following directions are issued. a) There will be a direction to the 2nd respondent to impound/cancel passport No W3981239 issued to minor Isha Jasim. b) The petitioner shall produce the original passport bearing No. R9025356 before the 2nd respondent within a period of three weeks from today, and on such production and filing the necessary request, the 2nd respondent shall initiate the process of renewing the same. This writ petition is disposed of. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE IAP W.P.(C) No.357 of 2023 7 APPENDIX OF WP(C) 357/2023 PETITIONERS EXHIBITS: Exhibit P1 TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT ISSUED BY THE 2ND RESPONDENT. Exhibit P2 TRUE COPY OF THE ORDER DATED 04/11/2022 IN I.A NO.1/2022 IN O.P (G&W) NO. 1599/2022 OF THE HON'BLE FAMILY COURT, MAVELIKARA. Exhibit P3 TRUE COPY OF THE ORDER DATED 21/10/2022 IN I.A. NO. 1/22 IN O.P NO. 1580/2022 OF THE HON'BLE FAMILY COURT, MAVELIKARA, Exhibit P4 TRUE COPY OF THE E-MAIL COMMUNICATION DATED RESPONDENT Exhibit P5 TRUE COPY OF THE MAIL DATED 23/09/2022 ISSUED BY THE 2ND RESPONDENT. Exhibit P6 TRUE COPY OF THE LEGAL NOTICE DATED Exhibit P7 TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD EVIDENCING THE ACCEPTANCE OF EXT. P6 . Exhibit P8 TRUE COPY OF THE LETTER DATED 16/11/2022 SUBMITTED BY PETITIONER BEFORE THE 2ND RESPONDENT. RESPONDENTS EXHIBITS: Exhibit R2(a) True copy of Annexure C dated 16.09.2022,

Annexure F dated 16.09.2022 and Loss Certificate dated 15.09.2022 submitted along with the application

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