



W.P. (C) No. 45038/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 24TH DAY OF JANUARY 2025 / 4TH MAGHA, 1946

WP(C) NO. 45038 OF 2024

PETITIONER/S:

ABDUL AZEEZ K.P.,
AGED 70 YEARS
S/O. ABDULLA MUSALIYAR, HILAL MANZIL, SIDHIQUE NAGAR,
IRIKKUR P.O., KANNUR, PIN - 670593

BY ADVS.
MANAS P HAMEED
IPSITA OJAL
REBIN VINCENT GRALAN
AMALJITH

RESPONDENTS:

- 1 THE REGIONAL PASSPORT OFFICER, KOZHIKODE,
PASSPORT OFFICE, NEAR CO- OPERATIVE HOSPITAL,
ERANHIPPALAM P.O., PIN - 673006
 - 2 THE OFFICER IN CHARGE,
PASSPORT SEVA KENDRA, KANNUR, NEAR SAVITA THEATRE,
KANNUR, PIN - 670001
- SRI.T.C. KRISHNA SR.PANEL COUNSEL)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner is a senior citizen, aged 70 years. He has approached this Court praying *inter alia* for a direction to the respondents to consider Ext.P2 application for issuance of a passport under the provisions of the Passports Act, 1967 (hereinafter referred to as the 1967 Act). According to the petitioner, the application of the petitioner is not being processed on account of the fact that the petitioner was convicted in C.C.No.24/2005 on the file of the Court of Enquiry Commissioner and Special Judge, Kozhikode under Sections 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 409, 465, 477A and 120B of the Indian Penal Code and was sentenced to three years of imprisonment and a fine of Rs.50,000/-. The sentence imposed to the petitioner was suspended by this Court by order dated 11.01.2016 in Crl.M.A.No. 144/2016 in Crl.Appeal.No. 40/2016. The order of this Court is on record as Ext.P1. The short question that arises for consideration is whether Ext.P2 application of the petitioner can be processed in the light of the provisions contained in Section 6 (2)(e) of the 1967 Act.

2. Section 6 (2)(e) of the 1967 Act (to the extent relevant) reads thus:-

“(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) – (d).....



*(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
.....”*

Section 6(2) (e) contemplates that the passport authority shall refuse to issue a passport or travel document for visiting any foreign country on any one or more of the following grounds and on no other ground. It is thus clear that where the applicant for the passport has, at any time during the period of five years immediately preceding the date of application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to an imprisonment for not less than two years, he is not entitled to the issuance of a passport. Section 6(2)(f) of the 1967 Act reads thus:-

“(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;”

In order to deal with cases where the applicant for the passport has been merely accused of a criminal offence and has not been convicted, the Government of India issued GSR 570 (E) dated 25.08.1993 which lays down the conditions upon which the authority can consider issuance/re-issue of passport in respect of persons facing criminal proceedings. The notification namely, GSR 570 (E) dated 25.08.1993 has been issued in exercise of the



powers conferred on the Central Government under Section 22 of the 1967 Act. The body of the notification shows that the terms of the provisions of GSR 570(E) dated 25.08.1993 apply only in a case covered by Section 6(2)(f) of the 1967 Act and not in the case where the matter is covered by Section 6(2)(e) of the 1967 Act. In other words, there is no notification issued in respect of matters covered by Section 6(2)(e) of the 1967 Act and therefore, any application for issue of passport shall be refused if the applicant has been convicted within a period of five years prior to the date of application for any offence involving moral turpitude and has been convicted to imprisonment for a period not less than two years. Therefore, if the provisions of Section 6(2)(e) of the 1967 Act applies to the petitioner, he is not entitled to the issuance of a passport.

3. In the facts of the present case, the petitioner has been convicted for offences under the Prevention of Corruption Act and for certain offences under the Indian Penal Code. The conviction was on 31.12.2015. The Punjab and Haryana High Court in ***Mohan Lal v. Union of India and others; 2023 SCC OnLine P&H 1391*** has considered the provisions of the 1967 Act including Sections 6 and 22 and the provisions of the notification referred to above and has come to the following conclusions:

"23. *Conclusion of above cited judgments can be culled out as below:*

- i) Clause (f) is applicable to proceedings pending before trial court,*
- ii) Clause (f) is not applicable where trial has already concluded,*



iii) High Court in terms of Section 6 (2) (f) of 1967 Act is not a criminal court,

iv) Clause (e) comes into play as soon as trial is concluded.

v) Clause (e) can be invoked if conditions mentioned therein are present."

Thereafter, the Punjab and Haryana High Court has analysed the provisions of Section 6(2)(e) of the 1967 Act and has held as follows:-

"28. In the clause (e), the legislature, as per its wisdom has enjoined three pre-requisites namely:

(i) conviction should be within 5 years preceding the date of application,

(ii) conviction should be for any offence involving moral turpitude and

(iii) sentence awarded must be not less than 2 years.

29. There seems reason for all the three afore-contemplated conditions. It is well known fact that conclusion of trial in India takes quite long time. Passing of 5 years period post-conviction, primarily though not absolutely, makes possibility of the applicant to flee from justice abysmally low.

30. Sentence of less than 2 years indicates that accused is not involved in a serious offence. Similarly, the legislature has found offences not involving moral turpitude less serious and non-prejudicial to public at large.

Thus, it has been held that Section 6(2)(e) of the 1967 Act would be applicable to a case where the applicant has been convicted within five years preceding the date of application. The conviction should be for an offence involving moral turpitude and the sentence awarded must be not less than two years. The conditions are cumulative and not in the alternative. In the facts of the



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present case, the conviction was on 31.12.2015. The application for passport was filed on 07.12.2024. In the light of the above, I am of the view that the petitioner is entitled to succeed, as he has not been convicted during the period of 5 years preceding the date of the application.

Therefore, the writ petition is allowed. The first respondent is directed to process the application filed by the petitioner in accordance with the law, without in any manner being hindered by the fact that the petitioner was convicted in C.C.No. 24/2005 on the file of the Court of Enquiry Commissioner and Special Judge, Kozhikode.

Sd/-

**GOPINATH P.
JUDGE**

acd



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APPENDIX OF WP (C) 45038/2024

PETITIONER EXHIBITS

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| Exhibit P1 | A TRUE COPY OF THE ORDER PASSED BY HON'BLE
HIGH COURT OF KERALA DATED 11.01.2016 IN
CRL.M.A. NO. 144/2016 IN CRL.A. NO. 40/2016 |
| Exhibit P2 | A TRUE COPY OF THE APPLICATION ALONG WITH THE
ONLINE APPOINTMENT RECEIPT |
| Exhibit P3 | A TRUE COPY OF THE JUDGMENT DATED 31.12.2015
IN C.C.NO.24/2005 PASSED BY THE LEARNED COURT
OF THE ENQUIRY COMMISSIONER AND SPECIAL
JUDGE, KOZHIKODE |