

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.22378 OF 2022 (GM - PASS)

BETWEEN:

S. NANCY NITHYA
D/O. C. SUNDAR,
W/O.K. SHIVAKUMAR,
AGED ABOUT 40 YEARS,
E-303, DSR GREENFIELDS,
NAGONDANAHALLI,
WHITEFIELD,
BENGALURU - 560 066.

... PETITIONER

(BY SRI RAGHAVENDRA PRASAD M.S., ADVOCATE)

AND:

1. THE GOVERNMENT OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
74 B, SOUTH BLOCK,
NEW DELHI - 110 001.
2. THE REGIONAL PASSPORT OFFICER
8TH BLOCK, 80 FEET ROAD,
KORAMANGALA,
BENGALURU - 560 095.

... RESPONDENTS

(BY SRI ADITYA SINGH, CGC FOR RESPONDENTS)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT/DIRECTION/ORDER DIRECTING THE 2ND RESPONDENT TO RENEW THE PASSPORT BEARING NO. R 6042423 AS PER APPLICATION DATED 02.07.2022 BEARING APPLICATION REFERENCE NO. (ARN) AS 22/1007377104 PRODUCED AS ANNEXURE-D TO THE PETITION AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.12.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking issuance of a writ in the nature of *mandamus* directing the 2nd respondent/ Regional Passport Officer, Bangalore, to renew/re-issue passport in terms of her application dated 02-07-2022.

2. Heard Sri M.S. Raghavendra Prasad, learned counsel appearing for the petitioner and Sri Aditya Singh, learned Central Government Counsel appearing for the respondents.

3. Brief facts that leads the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner and one K.Shivakumar got married on 16.07.2009. From the wedlock a child is born and later, named as Sachin Anant, who was also issued a passport -- a minor's passport. It appears that after about 8 years, after the birth of the child, the relationship between the petitioner and her husband turned sore. The petitioner files a petition in M.C.No.174 of 2020, seeking a decree of divorce. It is submitted that the case is posted for its judgment on 25.11.2022. Earlier the petitioner had also filed a petition seeking custody of the minor son before the concerned Court in G & W.C. No.40 of 2019. The said case is pending consideration before the concerned Court.

4. The petitioner who claims to have the custody of the son, even as on date, seeks to visit Australia to celebrate Christmas along with her son and accordingly, applied for renewal/re-issuance of minor's passport on the website of the 2nd respondent. A number was generated pursuant to the application, so submitted. Since the petitioner had separated from her husband, she has not submitted the specimen signature of her husband for re-issuance of the passport in favour of her son. Despite passage of two months,

there was no communication from the hands of the 2nd respondent but was informed that the minor son's passport would not be re-issued as the minor son's father - K.Shivakumar's consent was mandatory for renewal/re-issuance of passport. The petitioner claims to have visited the office of the 2nd respondent several times, all of which went unheeded and, therefore, is knocking this Court seeking a direction to the 2nd respondent for re-issue of passport to the minor son, who is with the petitioner.

5. The learned counsel appearing for the petitioner would contend that in the event there is dispute with regard to the marriage between the husband and the wife, the signature of one of the parents of the minor child, who is admittedly with the petitioner would be sufficient as the proceedings for custody is still pending consideration. The learned counsel would submit that the petitioner would undertake to come back after the holidays, attend Court proceedings and would not evade proceedings before the Court.

6. On the other hand, the learned Central Government Counsel representing the respondents would vehemently refute the submissions to contend that in pending divorce cases, the signature

of other parent is mandatory as the other parent would become entitled to register proceedings against the 2nd respondent for having issued the passport without the consent of other parent. Therefore, no fault can be found with the denial of renewal/re-issuance of passport by the 2nd respondent.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

8. The afore-narrated facts are not in dispute. The issue in the case at hand is, ***'whether the 2nd respondent was right in denying issuance/re-issuance of passport to the minor'***.

9. To consider the issue, it is germane to notice the statutory frame work with regard to issuance of passport to a minor. Section 24 of the Passports Act, 1967 ('the Act' for short) empowers the Central Government to make Rules for carrying out the purposes of the Act. In terms of the said power, the Passports Rules, 1980 ('the Rules' for short) are made. The Rules have certain division amongst them with regard to issuance of passport. Certain

schedules are appended to the Rules with regard to necessary documents to be submitted, by an applicant seeking a passport under various schemes. Section IV of Schedule III of the Rules, deals with documents to be appended for issuance of fresh passports. Clause 3 of Section IV(A) of the Rules deals with application for a minor's passport and reads as follows:

"(3) When applying for a minor's passport attach:

- (a) A Declaration from the parents/single parent/applicant parent/legal guardians, as the case may be, affirming the particulars furnished in the application about the minor child as per Annexure-H (for all minor applicants). **Annexure "C" (Single parents who are separated but not formally divorced/Single parent of the child born out of wedlock), Annexure "G" (when passport is being applied for by single parent or legal guardian), Annexure "I" (when a minor between 15-18 years of age applies for a full validity 10 year passport or in case either parents who do not hold valid Indian passport while applying passport for their minor child), as the case may be. Single Parents applying for the passport for their child should fill up Annexure "C" and or Annexure "G", as the case may be.***
- (b) Attested photocopy of passport, if any, of both parents, if applicable.*
- (c) Original passports of parents should be presented for verification of particulars.*
- (d) If one parent is resident abroad, a Sworn affidavit by the parent resident abroad attested by the Indian*

Mission along with affidavit from parent residing in India as well be submitted."

(Emphasis supplied)

In case, the parents are applying for issuance of minor's passport, a declaration from the parents/single parent/applicant parent/ legal guardians as the case would be, should be furnished about the minor child in terms of Annexure-H for minor applicants. Annexure-C for single parents, who are separated but not formally divorced/single parent of the child, born from the wedlock. Single parents applying for passport for their child Annexures-C or G, as the case would be have to be filled up. Table-2 appended to the aforesaid schedule deals with list of applicant categories and documents to be submitted. Case No.B (9) therein deals with parents separated but not divorced. Clause (11) of Case No.B deals with application filed by one parent/guardian when consent of one or both parents is not possible. The said clause reads as follows:

Case No.	Fresh Passport	Document No. - Normal Application	Document No. - Tatkaal Application
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B Minor

Case No.	Fresh Passport	Document No. - Normal Application	Document No. - Tatkaal Application
9	Parents are separated but not divorced	1 (of the parent with whom the child is residing), 2, 27 (if any-with spouse name	

..	..	endorsed), 46	..
11	Applied by one parent/guardian when consent of one or both parents not possible	1 (of parent), 2, 27 (if any-with spouse name endorsed), 50	(i) 1 (of parent), 2, 27 (if any-with spouse name endorsed), 50, 52 (ii) 49 or 54

(Emphasis supplied)

In terms of Clause 11, one parent, when consent of the other is not possible can submit the documents in terms of Document Nos.1, 2, 27 and 50 of Table 3, which deals with overall list of documents. Document Nos.1, 2, 27 and 50 read as follows:

Document No.	List of Documents
1.	<p>Proof of Present Address. For Proof of Address attach one of the following documents:</p> <p>(a) Water/Telephone (landline or post paid mobile bill)/Electricity bill/Statement of running bank account (Scheduled Commercial bank excluding Regional Rural banks and local area banks)/Income Tax Assessment Order/Election Commission Photo ID card/Gas connection bill/Certificate from Employer of reputed and widely known companies on letter head</p> <p>(b) Spouse's passport copy (First and last page including family details), (provided the applicant's present address</p>

	<p><i>matches the address mentioned in the spouse's passport)</i></p> <p>(c) <i>Parent's passport copy, in case of minors (First and last page)</i></p> <p>(d) <i>Applicant's current and valid ration card</i></p> <p><i>Note.—If any applicant submits only ration card as proof of address, it should be accompanied by one more proof of address out of the given categories.</i></p> <p>⁶⁰(e) <i>Allotment letter of the Government accommodation issued by the Estate Office/Public Works Department of the Central/State Government in respect of their employees.</i></p> <p>(f) <i>Duly certified/attested extract of the service record/book of the Government employees (serving/retired) or the bona fide certificate issued by the employer in respect of serving Government employees</i></p> <p>(g) <i>Proof of Address (POA) issued by the India Post, Department of Posts.]</i></p>
<p>2.</p>	<p>Proof of Date of Birth. <i>For Proof of Date of Birth attach one of the following documents:</i></p> <p><i>For applicants born on or after 26-1-1989, only Birth Certificate issued by the Municipal Authority or any office authorized to issue Birth and Death Certificate by the Registrar of Births and Deaths is acceptable.</i></p> <p><i>The Birth Certificate should ordinarily contain the name of child, name of father and mother, date of birth, place of birth, sex, registration number and date of registration. If the Birth Certificate doesn't contain the name of child, a declaration on plain paper signed by parents, is required to be submitted specifying the name of the child.</i></p> <p>(a) <i>Birth Certificate issued by a Municipal Authority or any office authorized to issue Birth and Death Certificate by the</i></p>

	<p><i>Registrar of Births and Deaths</i></p> <p>(b) <i>School leaving certificate/Secondary School leaving certificate/Certificate of Recognized Boards from the school last attended by the applicant or any other recognized educational institution</i></p> <p>(c) <i>Affidavit sworn before a Magistrate/Notary stating date/place of birth as per the specimen in Annexure "A" by illiterate or semi-illiterate applicants (Less than 5th class)</i></p>
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... ..

27.	<i>Attested photocopy of Passport of both or either parent</i>
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... ..

50.	<i>A Declaration affirming the particulars furnished in the application about the minor as per Annexure "G" (one parent not given consent)</i>
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In the event, a single parent is the applicant, without the consent of the other, the documents required are proof of present address, proof of date of birth, attested photocopy of passport of both or either parent and a declaration affirming the particulars furnished in the application about the minor as per Annexure-G.

10. The aforesaid are the documents required to be submitted by a single parent/applicant, when the other parent has not given consent. It is germane to notice what are Annexures-C and G, which are required in such a case. Annexure-C is the specimen

declaration by applicant's parent or guardian for issuance of passport to a minor, when one parent has not given consent. Annexure-C reads as follows:

"ANNEXURE 'C'

Specimen Declaration by applicant's parent or guardian for Issue of Passport to Minor when one parent has not given consent
(On plain paper)

I/We (name of the parent/guardian applying for passport) resident of solemnly declare and affirm as under--

- (I) That I/we am/are the mother/father/parents/guardians of(name of the minor child) who is minor and on whose behalf I/we have made an application for his/her passport.
- (II) Signature/consent of Shri/Smt.....(name of the father/mother) who is the father/mother/parents of the child has not been obtained by me for the following one or more reasons—
- (a) The father/mother of the minor applicant is travelling abroad/is on sea/travelling in India and unable to file consent; or/and
- (b) The father/mother is separated and no court case is pending before the court regarding divorce/marital dispute/custody of the child; or/and
- (c) The father/mother has deserted and the whereabouts are not known; or/and
- (d) There is an ongoing court case for divorce/custody of the minor child **and the court has not given any order prohibiting the issue of passport without the consent of father/mother; or/and**
- (e) There is a court order for the custody of the minor child with a parent who is applying for the passport and consent of other parent (who has visitation rights) is not available or he/she is refusing to give consent/the other parent is not availing the visitation rights and his/her whereabouts are not known; or/and
- (f) The parents are judicially separated and custody of the minor child has not been defined in the court's decree; or/and

(g) The father/mother of..... (name of minor child) has deserted me after the conception/delivery. That..... (name of minor child) is exclusively under my care and custody since separation/delivery.

... .."

Annexure-G reads as follows:

**"ANNEXURE 'G'
Ministry/Department/Office of**

No..... dated.....	Applicant's Photo
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(No Objection Certificate issuing officer should attest the photograph of the applicant with his/her signature and rubber stamp in such a way that half the signature and stamp appear on the photograph and half on the certificate.)

No-Objection Certificate

Shri/Smt/Miss.....s/o....., who is an Indian national, is employed in this office as.....from.....till date. This Ministry/Department/Office has no objection to his/her obtaining a passport.

(Signature of Controlling/Administrative authority)
Telephone/Fax/email.....

Note—

- (a) The officer authorized to issue NOC should sign with name and stamp and must provide contact details for verification by Passport Authority.
- (b) NOC will be valid for six months from date of issue."

The above are the requirements under the schedules appended to the Rules. Apart from these schedules appended to the

Rules, the 1st respondent appears to have notified a Passport Manual. The Passport Manual further depicts certain situations where issuance of passport to a minor comes about. Chapter-9 of the Passport Manual, 2020 ('Manual' for short) reads as follows:

"Chapter-9 in 3.4 (b) that "both the parents should sign in Annexure-D in fresh or re-issue cases. (Both parents shall be present at the PSK while applying or passport for their minor children on one parent with passports of both the parents may be present".

3.4(c). "If Annexure-D is not signed by both the parents, a single parent must submit a declaration in the form in Annexure-C stating the reasons, except, in cases where the single parent has got full custody of the child without visitation rights for the spouse. In case divorce proceedings are pending, court permission is required for issue of passport to a minor child."

4.6. Divorce pending cases: In case divorce is still pending before the Court, the PIA shall insist on consent of both the parents. Alternatively, the applicant's parent should furnish or obtain permission from the court to apply for a passport for the child without the consent of the other parent of the child. In pending divorce cases, where the single parent with child is already working/studying abroad, the child requires a passport for its continued stay abroad, in such a situation, the Mission/Post abroad may issue a two-year short validity passport to the child, at a time, pending court permission for issue of a regular passport or direction for custody of the child.

4.7. Single divorced parent with exclusive custody of child without visitation rights for the other parent: Where the custody of the child has been given exclusively to either parent, without any visitation rights to other parent, the question of obtaining consent of the other parent would

normally not arise. A certified copy of the court order has to be submitted with the application and Annexure-C signed by the single parent."

(Emphasis supplied)

Chapter-9 of the Manual directs the Court before whom the cases either for divorce or G & W.C. are pending, those Courts should permit issuance of passport. This runs counter to what is permitted in the Schedules to the Rules. The petitioner gives an application for re-issuance/renewal of passport of the minor child. The application reads as follows:

"To

Date: 22nd Sept. 2022

*The Regional Passport Officer,
Koramangala, Bengaluru.*

Respected Sir/Madam,

I am hereto request the re-issue of passport for my son Sachin Anant as the passport is nearing expiry. Being a single mother, as I am separated from his father in the year 2018 (dv case is in progress – Judgment is pending), also my son's child custody case is still in progress in the City Civil Court, Bangalore, there is a delay in the case progress due to Covid from the last 2 years. Sachin's father Mr. Shivakumar do not visit my son nor contribute any money for his expenses/education and Sachin is under my custody for the last four years (from Feb.2018). As we are planning to visit Australia, my brother's place in the month of December, 2022 (attached the flight tickets), kindly re-issue the passport at least for a minimum period of 6 months, so that we can complete his visit to Australia. Meanwhile, I can produce the

Court order for child custody as the case is in the last stage (provided the certified copies of case details) attached.

Thanking you in advance.

*Sd/-
Nancy Nithya."*

The petitioner has not suppressed any fact. She indicates that the divorce case between herself and her husband is pending adjudication. A case for custody is also registered under G & W.C., which is also pending. It indicates that since four years, the son is in the custody of the mother and the father has not even bothered to see the child for four years, she desires to visit Australia with the child and come back after Christmas. This application is not considered by the 2nd respondent and, therefore, a direction by issuance of a writ in the nature of *mandamus* is sought. The objection of the 2nd respondent appears to be that only documents are produced, but no objection is not appended. The reliance placed on Chapter-9 of the Manual, runs counter to the Rules. If the Manual is in the nature of guidelines or certain administrative instructions for achieving the purposes of the Act, they cannot run counter to the Act or the Rules, schedule appended to the Rules.

11. This Court is aware of the fact that manifold circumstances arise before the Passport Authorities, when they are faced with the problem of granting passport. The Manual for smooth functioning is also an accepted norm but it cannot run counter to the Rules. The Schedules noticed hereinabove and the documents that are necessary to be produced are all borne out of the Rules, as they are schedules appended to the Rules.

12. The Rules are framed by the Central Government in terms of Section 24 of the Act. Therefore, they are part of the statute and are statutory. The Passport Manual are guidelines to issue a passport are a solution to answer circumstances that would emerge, but, cannot run counter to the statute, as they are not statutes. Therefore, the 2nd respondent will have to consider the application of the petitioner in terms of the Rules and seek any document or clarification from the parent in terms of the Rules and not in terms of the Passport Manual.

13. Therefore, it is necessary for the Central Government to bring in such amendment to the Rules, if it wants the situation emerged in the Manual to be tackled with, failing which, rejecting

passports relying on the Manual particularly, in the case of passport of minors, would be rendered unsustainable as they would suffer from want of tenability. Since the Rules themselves envisage situation of the kind that has emerged in the case at hand, the reliance being placed on the Manual which runs counter to the Rules *sans* countenance.

14. It is also germane to notice the judgment rendered by the High Court of Telangana in the case of **L.DEEPIKA v. UNION OF INDIA AND OTHERS¹**, wherein the High Court of Telangana has held as follows:

"3. Petitioner is the wife of 3rd respondent. They are blessed with a son namely, Master Gajula Reyansh. Thereafter, matrimonial disputes arose between them.

4. Respondent No. 3 had filed a petition, against the petitioner seeking dissolution of marriage on the ground of cruelty, vide F.C.O.P. No. 253 of 2020, the said O.P. is pending.

5. According to the petitioner, she is working in Tata Consultancy Services, I.T. Department and her office officials are insisting her to work at abroad for some time. She had a valid Passport, but her minor son is not having Passport. She applied Passport of her minor son on 22.12.2021. She has already submitted all the documents as sought by 2nd respondent.

¹ 2022 SCC OnLine TS 2481

6. *Vide letter dated 29.03.2022, 2nd respondent had informed the petitioner, that they cannot process the Passport application submitted by the petitioner without the consent of the other parent, since there is divorce application is pending. The 2nd respondent has also advised the petitioner alternatively to furnish permission from the Court to apply for Passport of her minor child without consent of other parent of the child. The 2nd respondent had also referred to the Passport Manual 2020.*

7. *Challenging the said proceedings, the petitioner herein filed present writ petition. Despite service of notice, there is no representation on behalf of 3rd respondent.*

8. *Learned counsel for the petitioner would submit that, it is practically impossible to obtain consent from deserted husband. The 3rd respondent had not filed any petition seeking custody of the minor. The 3rd respondent is not bothered to maintain the minor son. Even then the 2nd respondent is insisting the petitioner to submit the consent of 3rd respondent. According to her, the action of respondent No. 2 in insisting to submit consent of 3rd respondent or obtain permission from the court is illegal, contrary to the Passport Manual 2020 and also the procedure laid down under the Passports Act and Rules made there under. Learned counsel for the petitioner has also placed reliance on the judgments of High Court of Kerala and Madras High Courts.*

9. *Whereas, learned counsel appearing for respondent No. 2 would submit that, in view of the pendency of the aforesaid divorce petition and as per the Passport manual, the petitioner has to either submit consent of 3rd respondent or obtain permission from the Court where the said F.C.O.P. is pending. The same was informed to the petitioner vide letter dated 29.03.2022. There is no error in it.*

10. *Paragraph No. 4 (4.6), Chapter-9 of Passport Manual 2020, says that "Divorce Pending Cases:"In case of divorce is still pending before the Court, the PIA shall insist on consent of both the parents. Alternatively, the applicant's parent should furnish or obtain permission from the Court to apply for a Passport for the child without the consent of the other parent of the child. In pending divorce cases, where the*

single parent with child is already working/staying abroad, the child requires a Passport for its continued stay in abroad. In such a situation, the Mission/Post may issue a two year short validity Passport to the child, at a time, pending court permission for issue of a regular Passport or direction for custody of the child". In the written instructions dated 26.08.2022, the 2nd respondent has reiterated the aforesaid facts.

11. The aforesaid facts would reveal that, there are matrimonial disputes between the petitioner and 3rd respondent. She is having valid Passport. She wants to travel abroad on office duty, since her superiors asking her to go abroad on official purpose. Therefore, she has applied for issuance of Passport for her minor son on 22.12.2021. Admittedly there are no criminal cases pending against the petitioner herein. Respondent No. 3 had filed the aforesaid F.C.O.P. No. 253 of 2020 against the petitioner seeking dissolution of marriage on the ground of cruelty and the same is pending before Family Court. The 3rd respondent has not filed any petition, seeking custody of minor and the 3rd respondent has also not filed any petition seeking guardianship. The only proceeding that is pending is the aforesaid F.C.O.P. No. 253 of 2020.

12. It is also relevant to note that the petitioner has already submitted all the documents including Annexure-C specified declaration of applicant's parent or guardian for issue Passport to minor when one parent has not given consent.

13. In *Juvairiya v. Regional Passport Officer High Court of Kerela* considered the issuance of Passport on consent not being obtained from the other parent and held that if the affidavit as required under the Passport Rules, 1980 is submitted, then necessarily Passport officer would have to issue Passport in the name of the minor child.

14. Relying on the said principle High court of Kerela in *Rabeeha v. Ministry of External affairs, Regional Passport Officer* reiterated the said principle.

15. In another judgment in *Chaitnya S. Nair v. Union of India*, High Court of Kerela reiterated the said principle.

16. As stated supra, the petitioner herein had submitted the aforesaid undertaking in Annexure-C, disclosing about pending of the aforesaid case and she is also taking responsibility with regard to the aforesaid court cases.

17. It is relevant to note that in Schedule III of Passport Rules 1980, it is stipulated, where the applicant parent is not in a position to get consent of the other parent, for whatever reason, the parent applying for Passport of the minor may sign the form (application form) and submit a sworn affidavit as per Annexure-C.

18. In the Rules and also in the aforesaid Annexures, there is no mention that the petitioner has to obtain permission from the court on the ground that the other spouse is not giving consent. What is required is that the petitioner shall submit undertaking in Annexure-C which the petitioner herein had already submitted. As stated above there are matrimonial disputes between the petitioner and 3rd respondent. He had filed the aforesaid F.C.O.P. No. 253 of 2020 seeking dissolution of marriage on the ground of cruelty. Therefore, it is practically impossible for the petitioner to get the consent of the 3rd respondent, due to the aforesaid strained relations between them. However, she had submitted the aforesaid undertaking in Annexure-C. She has specifically stated that she will take responsibility with regard to the aforesaid case. Admittedly there is no crime pending against the petitioner and 3rd respondent has also not filed any custody petition or guardianship petition.

19. In view of the aforesaid discussion, the impugned proceedings dated 29.03.2022 are illegal and also contrary to the Passport Rules and the principle laid down by High Court of Kerala in the aforesaid judgments. Therefore, the same are set aside. The 2nd respondent is directed to consider the

application submitted by the petitioner dated 22.12.2021 and issue Passport to the minor son of the petitioner.”
(Emphasis supplied)

In the case before the High Court of Telangana, a minor was directed to be issued a passport. The only difference therein was that there was no G & W.C. case pending. The pendency of the case under G & W.C. in the facts of the case at hand, in the considered view of the Court, would not be an impediment to consider the application of the petitioner. The petitioner is thus entitled for a direction by issuance of a *mandamus* to the respondent to consider her application forthwith.

15. For the aforesaid reasons, I pass the following:

ORDER

- i. The writ petition is allowed.
- ii. A *mandamus* issues to the 2nd respondent to consider the application of the petitioner for issuance/re-issuance/renewal of passport to the minor son bearing in mind, the observations made in the course of the order, within 7 days from the date of receipt of a copy of this order, if not earlier.

This Court places its appreciation for the able assistance rendered by Mr.Angad.K., Law Clerk cum Research Assistant attached to this Court.

**Sd/-
JUDGE**

nvj
CT:MJ