

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2018

DATE OF DECISION: 19.07.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16308 of 2018

P.Divya

...Petitioner

-vs-

1. The Chief Immigration Officer
Ministry of External Affairs
Sasthri Bhavan, No.26, Haddows Road
Chennai 600 006

2. The Regional Passport Officer
Rayala Towers 2 & 3 IV Floor
Old No.785, New No.158
Anna Salai, Chennai 600 002

3. Immigration Officer
Anna International Airport
Meenambakkam, Chennai, Tamil Nadu

...Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to relieve the petitioner's mother permanently from detention and further direct the respondents to permit the petitioner's mother to travel to Italy to join in her employment.

For Petitioner::Mr.A.Gouthaman

For Respondents::Mr.G.Rajagopalan

Additional Solicitor General

assisted by Mr.B.Rabu Manohar

Sr.Central Government Panel Counsel

ORDER

The petitioner is the daughter of Mrs.Jayanthi. Since the petitioner's mother being a Srilankan citizen by birth, due to the ethnic problem occurred in Srilanka, she migrated to Tamil Nadu in the year 1989 and since then, she is residing in Tamil Nadu.

2. Learned counsel for the petitioner submitted that the petitioner's mother appeared in the Secondary School Leaving Certificate examination in Tamil Nadu in the year 1991. She has also married one Mr.Premkumar, who is an Indian citizen, on 21.4.92. From the date of migration, the petitioner's mother is staying in India and her marriage was also a registered one and the certificate to that effect may be treated as part of the affidavit. Out of the above said wedlock, three children were born. They are Priyanka, the petitioner's elder sister, her brother Kisanth and the petitioner. They are also living as Indian citizens. Adding further, the learned counsel for the petitioner submitted that the petitioner's mother is having family card, aadhar card, marriage registration certificate, voter identity card issued by the Election Commission of India to prove her citizenship and the petitioner is presently pursuing her Law course at Government Law College, Tiruchirappalli. While so, her mother applied for passport in the year 2004 and due to family situation, she went to Italy as a housemaid in the year 2007. After two years, she returned to India and stayed one month in India and again went back to Italy to continue her work. Even in the year 2011, she again came to India and stayed in India for a month and then went back to Italy. Once again in the year 2013, she came to India and stayed two months in India and thereafter she returned to Italy to work as Waiter in a hotel. On all these occasions, when the petitioner's mother arrived in India, there was no problem from the immigration authorities. Even after her marriage with the petitioner's father, she stayed for almost three decades and she became an Indian citizen and her citizenship was also recognised by the Government of India by giving her voter right. Moreover, she is also having driving licence, voter identity card, aadhar card, family card to prove her citizenship. When all these documents are clearly showing that the petitioner is a citizen of this place, the respondents detained her when she landed at the Arignar Anna International Airport from Italy on 1.7.2018 in order to attend her daughter's marriage at Tiruchirappalli on a false claim that she is not an Indian citizen, but a Srilankan. Finding no option, the petitioner has moved the present writ petition seeking a mandamus directing the respondents to relieve the petitioner's mother permanently from detention with a further direction to permit her to travel to Italy to join her employment. The learned counsel also submitted that by virtue of Section 5(1)(c) of the Citizenship Act, 1955, the petitioner has to be construed as an Indian citizen for two reasons, (i) that she is married to a citizen of India Mr.Premkumar and (ii) that she lived in India for more than three decades from 1989 till she went to Italy in the year 2007. After noticing the illegal detention of the petitioner's mother, a representation was also given on 28.6.2018 to the respondents with a request to relieve her mother from detention. As the representation has

not been considered, the petitioner has been advised to come to this Court seeking the aforementioned prayer.

3. A detailed counter affidavit has been filed by the respondents. Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondents, urging this Court to dismiss the writ petition, as the petitioner, if at all aggrieved, has to file a petition for habeas corpus, further submitted that the averments made in the affidavit filed before this Court are devoid of merit, as they are full of falsehood. The petitioner's mother Mrs.Jayanthi Premkumar arrived from Milan by an Air India flight No.AI-142 on 22.6.2018 and approached the Chennai Airport immigration for arrival clearance. As she had fraudulently obtained an Indian passport in the aforementioned name, because the petitioner's mother is a Srilankan national by birth and her real name is Sayanthi Anandarajah, she is not entitled to claim that she is an Indian citizen. Moreover, the Srilankan passport No.J0696001 was issued on 12.10.89, which stood expired on 11.10.94 at Colombo in the name of Sayanthi Anandarajah. This was found in the enquiry. Since the petitioner had wantonly suppressed the above fact in the writ petition, the same is liable to be dismissed on the ground that she has not approached this Court with clean hands. Further, on verification of the above details, the petitioner's mother was sent to Srilanka along with her expired passport on 23.6.2018 on her entry to India. When she falsely claimed herself as an Indian national, the Srilankan immigration authority refused her entry in Srilanka and sent her back to India on the same day (23.6.2018). As she is a Srilankan national, she was again sent to Srilanka by Flight No.AI-274 on 24.6.2018. However, the Srilankan immigration authority did not grant arrival clearance to Sayanthi Anandarajah and requested the Indian immigration to send her back to Srilanka on the strength of a valid emergency travel document issued by the Srilankan Deputy High Commission. Accordingly, the Srilankan Deputy High Commission was informed to issue an emergency travel document to Sayanthi Anandarajah to facilitate her return to Srilanka. Thereafter, an order dated 24.6.2018 was issued by the Foreigners Regional Registration Officer, Chennai restricting her movement under Section 3(2)(e) of the Foreigners Act, 1946 read with paragraph 11(2) of the Foreigners Order, 1948. The learned Additional Solicitor General also placed before this Court a copy of the travel document issued to Mrs.Jayanthi by the Deputy High Commission of Srilanka, Chennai. A perusal of the same shows her status as a Srilankan, her place of birth as Jaffna and her date of birth as 7.12.73. The said passport also has been issued for a limited period from 16.7.2018 to 16.8.2018, based on which the learned Additional Solicitor General submitted that the petitioner's mother can very well go to Srilanka and after obtaining visa from Srilanka, can visit India. As the petitioner's mother is not an Indian citizen, she cannot be allowed outside the Anna International Airport.

4. I find full merits in the submissions made by the learned Additional Solicitor General for the respondents. A perusal of the original passport of Sayanthi, Wife of Premkumar, clearly shows that the Srilankan Government have issued the said passport mentioning that the petitioner's mother Mrs.Sayanthi was born at Jaffna on 7.12.73 and her national status as a Srilankan. Therefore, the claim of the petitioner that by virtue of Section 5(1)(c) of the Citizenship Act, the petitioner's mother has to be treated as an Indian, is far from acceptance. The reason being, although she has produced the aadhaar card, driving licence, voter identity card and the marriage registration certificate of her mother with Mr.Premkumar, her mother has not made any application before the competent authority seeking conferment of her status as an Indian citizen. Above all, since Srilankan Government have admitted the status of the petitioner's mother as Srilankan and also issued the passport, inviting her to return to the country (Srilanka), the writ petition fails. Hence, the writ petition is dismissed. Consequently, interim order stands vacated and the W.M.P.Nos.19433, 19660 of 2018 are also dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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Meenambakkam, Chennai

+2ccs to Mr.A.Gouthaman, Advocate, S.R.No.47788

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.47761

W.P.No.16308 of 2018

AR-V

BM 19/07/2018