

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
Date: 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.19770 of 2011

Philip Mammen Koshy

...Petitioner

Vs.

1. Ministry of Home Affairs,  
Govt.of India,  
26, Jaisalmer House,  
New Delhi-110 011,  
rep. by its Secretary

2. Home (Citz.I) Department,  
Government of Tamil Nadu,  
Secretariat,  
Chennai-600 009.  
represented by its Secretary

3. Chief Immigration Officer,  
Shastri Bhawan,  
Haddows Road,  
Chennai-600 006.

.... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the 1<sup>st</sup> respondent to regularize the petitioner to stay in India and to further direct 3<sup>rd</sup> respondent to grant the petitioner the long Term Visa (L.T.V.)/Resident Permit (R.P.) pursuant to the communication and direction of the 1<sup>st</sup> respondent dated 13.07.2010 in No.26013/119/2007-IC.II within fixed time frame as may be decided by this Court.

For Petitioner : Mr.George Cheriyan

For Respondents : Mr.T.V.Krishnamachari,  
Senior Panel Counsel for R1 & R3  
Mr.J.Ramesh, AGP for R2

ORDER

This writ petition has been filed by the petitioner, seeking for issuance of Writ of Certiorarified Mandamus, to direct the first respondent to regularize the petitioner to stay in India and to further direct 3<sup>rd</sup> respondent to grant the petitioner the

long Term Visa (L.T.V.)/Resident Permit (R.P.) pursuant to the communication and direction of the 1<sup>st</sup> respondent dated 13.07.2010 in No.26013/119/2007-IC.II within fixed time frame as may be decided by this Court.

2. The facts and circumstances which led to the filing of the Writ Petition, are as follows:

The petitioner was born in Singapore on 15.10.1986 to his parents, of whom, father being an Indian citizen and mother being Singapore citizen. As he was born in Singapore, the petitioner was issued Singapore Passport on 4.12.1986. When the petitioner was three months old, he migrated to India along with his parents and ever since his migration, he has been living in India without any interruption as on date. The petitioner's father who is an Indian citizen, had initially applied for grant of Indian Citizenship for his son, the petitioner herein on 24.9.1996 to the Collector of Madras under Section 5(1)(d) of the Citizenship Act, 1955 with all required and relevant documents in support of his claim. As the application for grant of citizenship was pending before the Indian Authority, the Singapore Passport given to the petitioner expired on 15.10.1997 and it was briefly extended till 12.3.1998 and no further extension was granted. According to the petitioner, the Singapore Government directed the petitioner's father in 1998 to provide proof of Indian citizenship of the petitioner who was minor at that point of time and also informed the father of the petitioner that the petitioner could renounce his Singapore citizenship which he could do so only after attaining the age of 21 years. The petitioner's father was also directed to furnish two sureties guaranteeing 75,000/- Singapore Dollars. However, the said demand by the Singapore Government could not be complied with, as the father of the petitioner at that point of time was informed that the petitioner's application for Indian citizenship being considered by the Collector's Office of Madras. Since no action was forthcoming from the authorities concerned, a complaint was also made to the Hon'ble Chief Minister's Cell on behalf of the petitioner on 11.9.2000. In response to the same, the petitioner's father was informed that the papers pertaining to the application for grant of Indian citizenship had been misplaced and lost due to shifting of Collector's Office to new premises. In the said circumstances, on 09.10.2001, on behalf of the petitioner, a fresh application was submitted for Indian Citizenship on the basis of the advise given by the authority, under Section 4(1)(a) of the Citizenship Act, 1955. In the meanwhile, in 2003, it appears that the Singapore Government had also issued exit permit to the petitioner in view of the fact that the petitioner's Singapore Passport had already expired in 1997 itself. The petitioner's father was once again directed by the second respondent vide letter dated 16.7.2004 to apply for Indian citizenship once

again under Section 4(1)(a) of the Act. In response to the direction, the petitioner reapplied for Indian citizenship under Section 4(1)(a) of the Act on 12.4.2005. By then, the petitioner herein has crossed the age of 18 years and attained the age of majority. In the said circumstances, the first respondent addressed a communication dated 14.12.2005 to the second respondent, with a copy marked to the petitioner advising the petitioner to apply for Indian Citizenship under Section 5(1)(a) of the Act as the petitioner was no longer minor as he became major on 15.10.2004. The petitioner, thereafter, submitted a fresh application to the Collector of Chennai on 03.08.2006 under Section 5(1)(a) of the Act. Thereafter, the second respondent vide letter dated 16.5.2007, addressed to the first respondent, explaining the entire circumstances and predicament faced by the petitioner and requested the first respondent to grant Residential Permit to the petitioner by relaxing his stay in India beyond 05.01.1998 as a special case. In response to the detailed letter addressed by the second respondent, the first respondent also sent a communication on 29.06.2007 stating that the Ministry had no objection to the grant of extension of stay of the petitioner beyond 05.01.1998. Subsequently on 03.08.2007, the second respondent addressed a letter to the first respondent strongly recommending the petitioner's case for Indian Citizenship and in the meanwhile, for grant of Residential Permit. The petitioner has also addressed a letter to the Hon'ble Home Minister on 27.05.2010 seeking his intervention and regularizing his stay in India. On 13.07.2010, the first respondent addressed a communication to the second respondent with a copy marking to the petitioner, directing the petitioner to approach the third respondent for grant of Residential Permit and long term Visa. As per the direction, the petitioner submitted his representation to the third respondent on 29.07.2010 along with a copy of the communication of the first respondent dated 13.7.2010. Thereafter, the petitioner was directed to give a formal application and the formal application was also submitted to the third respondent by the petitioner on 13.09.2010. As the petitioner was awaiting a positive response from the third respondent, after considerable delay, the petitioner was informed that the third respondent was not in a position to grant either long term Visa or Residential Permit to the petitioner. In effect, the stay of the petitioner in India has not been regularized at all since his entry into the country on 23.1.1987 when he was three months old. The petitioner is now 32 years of old and has been still fighting for his right to get Indian Citizenship. Therefore, the petitioner is before this Court, seeking for the prayer as stated supra.

3. On behalf of the respondents 1 and 3, a counter affidavit has been filed. In the counter affidavit, the facts as stated above, have not been controverted or disputed. The only point on

which, the claim of the petitioner could not be considered for grant of citizenship is non-fulfillment of certain requirements, which are enumerated in para 8 as extracted hereunder:

"8. It is further, submitted that for Entry (X) visa registration/Extension of Indian Origin, the following details have to be submitted.

1. Valid Passport
2. Application form
3. 2 Photographs
4. Copy of Photo copy of Visa page and arrival stamp page of the Passport. Copy of the Residential Permit, if already registered.
5. Indian Origin Proof (A) Cancelled Indian Passport or Surrender Certificate of previous Indian Passport, or (b) Birth Certificate and Parent's Indian Passport, or © Marriage Certificate and spouse Indian Passport copy and other documents)
6. Address Proof - Form-'C'/Letter from House Owner or Lease Agreement Copy and a copy of any one of the following (Telephone Bill, Ration Card, EB Card with address, Property Tax Receipt or ID card issued by postal department)
7. Undertaking that he won't be taking up any employment or do business in India (on Non-judicial Stamp paper of value of Rs.100/-).
8. Prescribed fee in the Form of Demand Draft in favour of DDO, Bureau of Immigration, Chennai."

4. According to the counter affidavit, if the above requirements are fulfilled, the Office can consider the claim of the petitioner for extension of stay.

5. Mr.T.V.Krishnamachari, Senior Panel Counsel who appeared for respondents 1 and 3 would submit that unless a valid Passport is produced by the petitioner herein and unless the petitioner renounces his Singapore Citizenship, the respondents whom he represented cannot consider his claim for grant of Indian Citizenship. He would submit that apart from production of valid Passport, the petitioner has to fulfill other requirements as enumerated above. In the said circumstances, he would submit that the authorities have not considered the claim for grant of Indian Citizenship or Residential Permit to the petitioner, since the petitioner is unable produce a valid Passport and he has not renounced his Singapore Citizenship and has not informed the Government of India to that effect.

6. Mr.George Cheriyan, learned counsel who appeared for the petitioner would reiterate the facts as narrated above and would

submit that the requirements as spelt out in the counter affidavit, particularly, production of valid Passport by the petitioner cannot be fulfilled at all for the simple reason that the Singapore Passport which was issued to the petitioner had expired on 15.10.1997 itself and the same was briefly extended till 12.03.1998 and not beyond that date. Therefore, the question of production of valid Passport by the petitioner would not be possible at all. The learned counsel would further submit that when the petitioner was a minor, he ought to have been granted Indian Citizenship when the first application was made on 24.09.1996 itself and also on 09.10.2001 Under Section 4 (1)(a) of the Citizenship Act, 1955. The petitioner being an Indian descent as his father being Indian national and a citizen was at that point of time, is entitled to be granted Indian citizenship. Unfortunately, the application which was submitted to the Collector's office, Madras, was lost for which the petitioner could not be blamed at all. In any event, he would submit that there have been series of communications exchanged between first and second respondents on the issue of grant of citizenship to the petitioner. In fact, the second respondent has made strong recommendation for regularization of stay of the petitioner and also for grant of Indian citizenship to the petitioner by considering his claim as a special case in view of his uninterrupted stay in this country for over a period of 20 years and also being an Indian descent.

The learned counsel would submit that once the petitioner's claim comes within the ambit of Sections 4 and 5 of the Act as the case may be, he is entitled to be considered for grant of Indian Citizenship. Therefore, non-consideration of the claim of the petitioner by the first respondent cannot be either countenanced in law or on facts. He would therefore, submit that this is fit case where a writ of Mandamus is to be issued to the authorities to regularize the stay of the petitioner in India and also to confer Indian citizenship on him on the basis of his right guaranteed under the provisions of the Indian Citizenship Act, 1955.

7. Heard the learned counsel appearing for the petitioner and also the learned Senior Panel Counsel for the Central Government/respondents 1 and 3 and also learned Addl. Government Pleader for second respondent. Perused the entire materials available on record.

8. From the above narrative, it could be seen that the right of the petitioner to become a citizen of this country has not been resisted or rejected on any substantive basis, since the Government of India, the first respondent herein, has in fact, not taken any conscious decision in regard to the claim of the petitioner for grant of Indian Citizenship. In fact, at some level, the administration was considerate by recommending the

case of the petitioner particularly the second respondent herein and such recommendation was also appreciated by the first respondent while addressing a communication dated 13.7.2010 advising the petitioner to move the third respondent for grant of Residential Permit and long term Visa. In spite of such move by the administration, yet, ultimately nothing materialized in favour of the petitioner by regularizing his stay in India after 1998 till date. In fact, the petitioner's stay all along, after his Singapore Passport was not extended from 12.3.1998, has been entirely unauthorized, yet it was uninterrupted. The father of the petitioner had been moving heaven and earth for grant of citizenship to his son when he was a minor and the petitioner himself after he became major, but unfortunately, the claim of the petitioner has not been considered due to red tapism. In view of the long inaction on the part of the authorities concerned, the petitioner herein has been made to live sans any right for over a period of 30 years. It is singularly an unfortunate case where a person for all practical reasons, an Indian has to fight for conferment of Indian Citizenship for over three decades. The petitioner who is 32 years old now, has been living in India since he was 3 months old and despite his uninterrupted stay in the country for over 30 years, he remain stateless, denied of all rights that are enjoyed by the citizen of this country.

9. The above factual narrative would sadly reveal how bureaucratic apathy and callousness can push a person of a legitimate Indian descent into a pathetic predicament of being reduced to a stateless existence. The agonizing wait for all the years since 1986 is due to the fact that the issue of grant of citizenship got embroiled in procedural complexity and the bureaucratic web as it seems truly a Kafkaesque story being played out by the authorities concerned.

10. The right to get Indian citizenship is provided under the provisions of the Citizenship Act, 1955. As far as the present case on hand is concerned, two provisions would govern such claim as provided under Sections 4 and 5 of the Act. Section 4(1)(a) of the Act is relevant to extract, which reads as under:

"4. Citizenship by descent: (1) A person born outside India shall be a citizen of India by descent-

(a) on or after the 26<sup>th</sup> day of January, 1950, but before the 10<sup>th</sup> day of December, 1992 if his father is a citizen of India at the time of his birth."

11. As far as the above section is concerned, the petitioner who was born on 15.10.1986 and his father being Indian citizen, was fully covered by the above provision and in which event, the

petitioner ought to have been granted Indian Citizenship when he was a minor. Likewise, Section 5(1)(a) of the Act is relevant to extract, which reads as under:

"5. Citizenship by registration.-(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:-

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration."

12. The petitioner herein has been in India for more than 30 years now and his latest application was submitted on 13.09.2010 for regularization of his stay in this country. Unfortunately, despite the above provisions, the claim of the petitioner has not been considered by the respondents 1 and 3. In fact, the second respondent who appreciated the predicament of the petitioner, has written a detailed letter to the first respondent by recommending his case for grant of Indian citizenship. The letter of the second respondent dated 03.08.2007 addressed to the first respondent in this regard is necessary to be quoted in its entirety as herein under:

S.Malathy, Home (Citz.I) Department  
Secretary to Government, Chennai-9

"D.O.LETTER NO.63887/Citz.I/2007- 2, dated,3.8.2007"

Dear Thiru Gopinath,

Sub: Indian Citizenship Act 1955 -  
Application for Indian citizen under section 5  
(1) (a) of the Citizenship Act Thiru Philip  
Memmen Koshy, S/o Abikoshy, a Singapore National  
- Reply furnishing of - Regarding.

Ref: 1. From the Collector of Chennai, Lr.No.P2/  
579945/2001, DATED 31.12.2001. 2. Letter  
(Ms) No.1069, Home,dated 24.01.2005.

3. From the Ministry of Home affairs, New Delhi ,  
Letter.No.26012/39/2005-IC.II, dated 14.12.2005.

4. From the Collector of Chennai,  
Letter.No.P2/27353/2006 dated 29.11.2006.

5. Letter (Ms) No.686, Home dated 16.05.2007.

6. From the Government Of India, Ministry of

Home affairs, New Delhi ,  
Letter.No.18045/99/2007, F.IV dated 28.6.2007.  
7. From the applicant explanation letter dated  
NII.

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I am to invite kind attention to the references cited and to state that one Thiru Phillp Mammen Koshy, a Singapore National, now residing in Chennai has applied for Indian Citizenship under section 5 (1) (a) of the Citizenship Act 1955 during 1996.

2. The applicant was born on 15.10.1986 at Singapore and entered India when he was about three months old and has been staying in India even since his arrival except for holidays with his relatives,

3. In the certificated of Registration of Brith of the applicant the nationality of the father at the time of his birth is mentioned as India. It is very clear from the evidence produced that the domiclle of the father at the time of the child's brith was india.

4. Since the father holds an Indian Nationality and the child was born on 15.10.1986 i.e. the before the commencement of the Citizenship (Amendment) Act 1992 the applicant Master koshy, Phillp Mammen become Citizenship of India descent i.e. under section 4 (1) (a) of the Act which says that "a person born outside India on or after the 26<sup>th</sup> January 1950, but before the commencement of the Citizenship Amendment Act 1992" shall be a Citizen of India by descent if his father is a Citizen of India at the time of his brith.

5. The father of the applicant has requested for Indian Citizenship for his son since it is very clear that the child corneas under section 4 (1) (a) of the Indian Citizenship Act, 1955.

6. As advised by collector of Chennai the applicant Master phllp mammen koshy has applied for Indian Citizenship under section 4 (1) (a) of the

Citizenship Act. The applicant has since become a Major. (Date of Birth 15.10.1986). The Singaporean passport of Master Philip Mammen Koshy expired on 15.10.1997 and he has not renewed his Residential Permit also beyond 6.4.1998. In view of the above, he is now in a Stateless condition.

7. He came to India when he was Child and has been residing continuously in Chennai.

8. In the above circumstances the Collector of Chennai has recommended the case of the applicant for registering him as an Indian Citizen under section 4 (1) (a) of the Citizenship Act.

9. On the basis of the recommendation of the Collector of Chennai the application together with supporting documents has already been forwarded to Ministry of Home Affairs, Government of India, New Delhi by Letter (Ms) No.1069, Home, dated 24.11.2005.

10. The Government of India, Ministry of Home Affairs, New Delhi in their letter 3<sup>rd</sup> cited has stated that from the scrutiny of application, it was found that the applicant has attained the age of Major on 15.10.2004. As such the applicant may be advised to seek Indian Citizenship under Section 5(1)(a) of the Citizenship Act, 1955 by making an application according to the procedure prescribed in the Citizenship Act, 1956.

11. Now the applicant has resubmitted the application as desired by Ministry of Home Affairs, Government of India, New Delhi Indian Citizenship under Section 5(1)(a) of the Citizenship Act, 1956.

12. Both the Collector of Chennai and Superintendent of Police, SBCID have recommended the case of the applicant for registering him as an Indian Citizen under Section 5(1)(a) of Act. In the reference fifth cited, the proposal with supporting documents has been forwarded to Ministry of Home Affairs, New Delhi.

13. Besides the applicant is staying in India from childhood and now studying in college, the applicant's Singapore passport and residential permit have not been renewed. The period of validity of the Residential Permit was last extended upto 5.1.1998. He has not taken any extension beyond 5.1.1998. As per the renunciation of Singaporean Citizenship only at the age of 21.

14. In the reference sixth cited, the Director (I&C), Government of India, Ministry of Home Affairs (Foreigners IV) section has stated that Ministry of Home Affairs has no objection to grant extension of stay beyond 5.1.1998 to the applicant as a special case on request subject to the validity of his passport, nothing adverse, no local objection, not in black list, not wanted in court case etc. The matter was consulted with the Collector of Chennai and the petitioner.

15. The petitioner has stated that his father Mr. Abikoshy, is an Indian citizen by birth and his mother Sara Koshy, is a Singapore Citizen holding PIO card holder. His birth was not registered with Indian Consulate at Singapore because he was not aware of the requirements. He is living in India since 1987 (since 3 months after his birth) and completed entire schooling in India and now is a student of Catering and Hotel Management. His Singapore passport expired on 12.3.1998 and it is not possible to renew it further. His first application for Citizenship was unfortunately misplaced during shifting of Chennai Collectorate to a new office. In view of the fact that the individual should not be penalized for the loss of his application by the administration of the Government of Tamil Nadu for the grant of Indian Citizenship. But what the Government of India have permitted now is an No Objection Certificate for extension of stay in India. What is requested is Citizenship in India and No Objection Certificate for extension of stay even though he does not have valid papers. I would be grateful if the matter could be properly examined and a favourable decision taken in the case as it is a deserving case.

16. Once I request that considering the facts of the case, Residential Permit may be extended for the period beyond 5.1.1998 as a special case on humanitarian grounds and Indian Citizenship may be granted to Thiru Phillip Mammen Koshy."

13. In fact, in response to the above letter, the first respondent had issued communication dated 13.7.2010 duly appreciating the stand of the second respondent and also the peculiar circumstances in which, the petitioner was placed, now being reduced to a stateless position, has advised the petitioner to approach the third respondent. The said letter is also necessary to be quoted in its entirety as the same is useful for the action taken in response to the petitioner's claim by the competent authorities, which reads as under:

"The Secretary,  
Government of Tamil Nadu,  
Home (Citz.I) Department,  
Secretariat,  
Chennai-600 009.

Sub: Registration as an Indian Citizen u/s 5(1)  
(a) of the Citizenship Act, 1955 - Case of Thiru  
Philip Mammen Koshy, Singapore National.

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I am directed to refer to the representation dated 27.05.2010 received in this Ministry direct from the applicant and the State Govt.'s letter no.111011/Citz. 1/2008-8 dated 19.03.2010 and this Ministry's letter of even number dated 30.03.2010 on the above subject and to say that the applicant may be asked to apply afresh for extension of his L.T.V. By just showing this Ministry's letter with full facts of the case by which he has not been extended L.T.V./R.P.

2. The State Govt. is therefore requested that a copy of valid and upto date residential permit from the applicant and the following reports may be obtained from the Collector of Chennai and the same when received may be sent to this Ministry for further action in the matter.

i) A report from the Collector clearly stating as to whether the applicant has fulfilled all the conditions as mentioned in Citizenship Rules, 1956 or in Rule 12(1) of the Citizenship Rules, 2009.

ii) The details of visits abroad during the period of 12 months preceding the date of application duly certified by the Collector.

3. This Ministry's file number noted above may

invariably be cited in all future correspondence.

Yours faithfully,  
Sd/-  
(Jaidev Singh)  
Section Officer"

14. But in spite of all the action that was initiated at some level, unfortunately, the claim of the petitioner for citizenship has not been either rejected or considered favourably. Somewhere the procedure for grant of such citizenship has blocked the efforts of the administration to take the claim of the petitioner to its logical end. The petitioner who is living in this country for as many as 32 years as of now, cannot be made to suffer statelessness despite he being an Indian descent and his father being Indian national and citizen of this country. Unfortunately, it appears that the claim of the petitioner has been caught up in procedural wrangles and rigmarole resulting in abject negation of right of the petitioner to be a citizen of this country. If a person who is admittedly an Indian descent and whose Singapore Passport has already been revoked long ago in 1997/1998 itself, cannot be reduced to the level of refugee in his own country and cannot remain a stateless person having no right whatsoever at all for his life time. Despite his stay in India for over three decades, the petitioner's status has not been defined or regularized and if his stay is not regularized in India, where can he go without any Passport. The petitioner who has stayed in this country for over 30 years now, due to intervention of this Court for some time, cannot suffer ignominy of being stateless and denied Indian Citizenship due to procedural insistence.

15. When an extraordinary claim of this nature arise for consideration, the administration must rise up to address such claim with extraordinary answer and solution. The administration cannot be allowed to take refuge behind procedural formality and deny a person of all rights and reduce him to an existence without any life in it. In such situation, the administration has to take an extraordinary, appropriate and timely call and consider the claim of the petitioner by purposely overlooking avoidable procedural requirements in order to accommodate legitimate interest of the petitioner. The act of being fair, reasonable and equitable must reflect in the call of administration over coming procedural hurdles towards redressing justifiable grievance of the petitioner. In this case, it is constitutional duty of the competent authority to consider the claim of the petitioner for regularization of his stay in India for all these years and also for grant of Indian citizenship to him if necessary by relaxing the procedural requirements. This Court is of the view that fair play, good conscience and justice

demand that the petitioner's claim is to be considered favourably de hors any procedural challenge that may be put against the petitioner, as a special and extraordinary case.

16. For the foregoing reasons, the Writ Petition is allowed and a direction is issued to the first respondent to regularize the stay of the petitioner in India by granting necessary Resident Permit and also consider for grant of Indian Citizenship to the petitioner in terms of the provisions of the Citizenship Act, 1955 as a special case if necessary by relaxing any procedural requirements for such consideration. A decision in this regard is directed to be taken by the first respondent/competent authority within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Secretary  
Ministry of Home Affairs,  
Govt. of India,  
26, Jaisalmer House,  
New Delhi-110 011.

2. The Secretary  
Home (Citz.I) Department,  
Government of Tamil Nadu,  
Secretariat,  
Chennai-600 009.

3. Chief Immigration Officer,  
Shastri Bhawan,  
Haddows Road,  
Chennai-600 006.

+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No.37306  
+1cc to the Government Pleader, S.R.No.38163  
+1cc to Mr.George Cheriyan, Advocate, S.R.No.38723.

W.P.NO.19770 OF 2011

AK (CO)

RRS (17/06/2019)