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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 5322 of 2020
and
WMP No. 6270 of 2020

S. Vidhya

.. Petitioner

Versus

1. The Joint Secretary,
Foreigners Division
National Stadium
India Gate,
New Delhi, Delhi 110 001.

2. The Foreigners Regional Registration Officer (FRRO),
Shastri Bhavan Annexe,
26, Haddows Road, Nungambakkam,
Chennai - 600 006.

3. Dinesh Raj

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 2 to grant permission under Section 4 of the Citizenship Act, 1955 for acquisition of Indian Citizenship by Descent under Section 4 of the said Act in relation to the petitioner's minor daughter Maya (aged 5 years and 4 months).

For Petitioner : Ms. K, Subhashini
for Chennai Law Associates

For R1 & R2 : Mr. P. Ayya Samy
Central Government Standing Counsel

ORDER

The petitioner has filed this writ petition praying to issue a Writ of Mandamus directing the respondents 1 and 2 to grant permission under Section 4 of the Citizenship Act, 1955 for acquisition of Indian Citizenship by Descent under Section 4 of the said Act in relation to the petitioner's minor daughter Maya (aged 5 years and 4 months).



2. It is stated that the marriage between the petitioner and the third respondent was solemnised on 22.02.2013. Out of the said wedlock, a Female Child Maya was born on 03.10.2014 at Australia where the petitioner and the third respondent resided at the relevant point of time. Subsequently, due to simmering matrimonial dispute, the marriage solemnised between the petitioner and the third respondent was dissolved by a Decree of Divorce dated 30.05.2019 passed in FCOP No. 32 of 2019 on the file of Family Court, Erode by recording the Memorandum of Understanding entered into between the petitioner and the third respondent. As per the terms and conditions contained in the Memorandum of Understanding, the third respondent was given visitation right to see the minor child twice in a month. As the minor daughter's passport was to expire during December 2019, the petitioner submitted an application during July 2019 along with copies of the Decree of Divorce dated 30.05.2019, affidavit of two mediators. In the application, the third respondent refused to sign inspite of request made by the petitioner. However, the Delegate of the Minister, Australian Passport Office, by letter dated 19.12.2019 observed that the third respondent is considered as a person with parental responsibility under the Australian Passports Act, 2005. It was further stated that in such circumstances, only an Australian Court order permits the minor child to have an Australian Travel document.

3. According to the petitioner, due to resistance and non-cooperation portrayed by the third respondent, the passport of the minor child expired on 19.12.2019 and it could not be renewed. In the meanwhile, the third respondent got re-married on 03.11.2019 and therefore, he cannot be expected to show any inclination for renewal of passport of the minor daughter.

4. The grievance of the petitioner is that her daughter's birth ought to have been registered at an Indian Consulate within one year from the date of her birth but the same has not been done. Therefore, to apply under Section 4 of the Citizenship Act, 1955, the petitioner has to obtain permission from the Central Government since the prescribed one year expired. Accordingly, the petitioner sent representation dated 10.02.2020 to the respondents requesting to grant permission for according Indian Citizenship by descent under Section 4 of the Citizenship Act, 1955 to her minor daughters. The petitioner also, in her representation dated 10.02.2020, expressed her readiness to appear before the respondents for an enquiry as and when she is called for. However, the representation dated 10.02.2020 has not been considered by the respondents and therefore, left with no other alternative remedy, the petitioner is before this Court with this writ petition.



5. On notice, the counter affidavit has been filed on behalf of the respondents 1 & 2 on 30.06.2021. Paragraph No.2 of the counter reads as follows:

"It is submitted that the Australian passport No.PA1605320 of Ms.Maya expired on 13.12.2019 and accordingly, the OCI card No.A2068288 issued to Ms.Maya also became invalid. The OCI status of the child will be valid only when her Australian passport is renewed along with the OCI card. As per extant rules, the OCI card of the child should also be renewed once in 5 years as the features of the child keep changing. As sub, Ms.Maya is presently, a stateless person as she neither possesses a valid Australian Passport & Indian visa nor Indian nationality. As the applicat has sought Indian citizenship for her child Ms.Maya, she may be advised to approach 'appropriate authority' and apply for grant of Indian Citizenship."

6. In the light of the above statement made in the counter affidavit filed by the respondents 1 and 2, the petitioner is permitted to approach the appropriate authority invoking Section 4 of the Citizenship Act 1995. If any such application is submitted by the petitioner, the appropriate authority under Section 4 of the Citizenship Act shall consider the application and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrr/rsh

To

1. The Joint Secretary,
Foreigners Division,
National Stadium, India Gate,
New Delhi, Delhi 110 001.



2. The Foreigners Regional Registration Officer (FRRO),
Shastri Bhavan Annexe,
26, Haddows Road, Nungambakkam,
Chennai - 600 006.

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+1CC to M/s.Chennai Law Associates, Sr.No.37312

WP No.5322 of 2020

NRL (CO)
K.RK. (17.09.2021)