

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	16.06.2021
DELIVERED ON	23.06.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MR. JUSTICE R. PONGIAPPAN

H.C.P. No.1456 of 2020 & Crl.M.P. No.5133 of 2020
and
W.P. No.11754 of 2021 and W.M.P. Nos.12516 & 12517 of 2021

Thamarai Petitioner in H.C.P. & W.P.

vs.

- 1 The Union of India
represented by its Principal Secretary
Ministry of Home Affairs
National Stadium India Gate
New Delhi - 1
 - 2 The State of Tamil Nadu
represented by its Secretary
Public (Foreigners-II) Department
Secretariat
Fort St. George
Chennai 600 009
 - 3 The District Collector
Trichy District
Trichy
- Respondents in H.C.P. & W.P.

Prayer in H.C.P. No.1456 of 2020:

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus to call for the records made in G.O. (ID) No.582, Public (Foreigners-II) Department dated 20.11.2019 on the file of the second respondent and quash the same as illegal and direct the respondents to confine the detenu Bhaskaran @ Mayuran, S/o Kumarasamy, aged 46 years, now at the Special Camp, Tiruchirappalli, on humanitarian grounds.

Prayer in W.P. No.11754 of 2021:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to consider the petitioner's representation dated 18.02.2021, permitting the detenu Bhaskaran & Mayuran, S/o Kumarasamy, aged 47 years, to seek interview before the Switzerland Embassy of New Delhi to get Humanitarian Visa to land as refugee in Switzerland.

For petitioner in Mr. R. Sankarasubbu
both cases

For R1 in Mr. V. Chandrasekaran
both cases SPC

For RR 2 & 3 in Mr. R. Muniyapparaj
both cases Govt. Advocate (Crl. Side)

COMMON ORDER

P.N. PRAKASH, J.

In view of commonality of the issue involved, these two petitions are considered and decided by this common order.

2 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner, Mr.V.Chandrasekaran, learned Senior Panel Counsel appearing for the first respondent and Mr. R. Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the respondents 2 and 3.

3 These two petitions have been filed by the petitioner, viz., Thamarai, more in the nature of public interest litigations, claiming himself to be a public spirited person. At this juncture, it may be apposite to extract paragraph 2 of the affidavit sworn to by the petitioner which is common in both the cases.

"2. I submit that I am public spirited citizens and evincing interest in SRILANKAN TAMILS and our organisation Periyar Unarvalargal Koottu Amaippu is fighting against eradication of racial discrimination and promoting social justice. I am very much disturbed due to the killing of Srilankan Tamils."

4 According to the petitioner, one Bhaskaran @ Mayuran, S/o Kumarasamy, is a Sri Lankan refugee and he is detained in the Special Camp for Sri Lankan immigrants in Trichy, vide G.O. No.SR.III/942-2/2016 Public (SC) Department dated 11.08.2016.

His grievance is that the Government of Tamil Nadu has, by order in G.O. (1D) No.582 Public (Foreigners-II) Department dated 20.11.2019, ordered the deportation of Bhaskaran from India with immediate effect, subject to usual conditions, which is illegal, as the deportation of Bhaskaran, will lead to his murder in Sri Lanka.

5 The petitioner initially filed H.C.P. No.1456 of 2020 and at the time of admission, a Division Bench of this Court, by order dated 26.08.2020, ordered that the deportation order be kept in abeyance until further orders. Thereafter, the petitioner has filed W.P. No.11754 of 2021 for a mandamus directing the respondents to consider his representation dated 18.02.2021 seeking permission for the detenu to appear for interview before the Switzerland Embassy of New Delhi to get Humanitarian Visa to land as a refugee in Switzerland.

6 Mr. Sankarasubbu, learned counsel for the petitioner, placed reliance on the photocopy of a letter dated 15.08.2020 purported to have been issued by one Sakthivel Sivakumar, Justice of the Peace (Whole Island), Vavuniya, Sri Lanka, wherein, it is stated that he knows Bhaskaran's family; Bhaskaran lost his father, elder brother, sister-in-law and one of his nieces during the final phase of Sri Lankan-LTTE war; the Intelligence Officers and Terrorists Prevention Unit Officers of the Sri Lankan police are looking out for Bhaskaran and that if he returns to Sri Lanka, he may face danger to his life. In the opinion of this Court, the aforesaid letter dated 15.08.2020 enclosed in the typed set of papers cannot be the basis for passing any orders, because, there is no way by which its authenticity and genuineness can be verified.

7 Mr. Sankarasubbu contended that countries like Switzerland are ready to accommodate people seeking asylum and therefore, Bhaskaran had sent a request to the Swiss Embassy in New Delhi for visa, for which, the Swiss Embassy has sent a reply dated 29.01.2021, wherein, they have stated that only if the applicant appears in person at the Embassy for personal interview, can the papers be processed. Therefore, Mr. Sankarasubbu contended that the mandamus prayed for in W.P. No.11754 of 2021 should be issued so that Bhaskaran can go to New Delhi with or without escort and appear for personal interview before the Swiss Embassy. He further submitted that Bhaskaran has a serious problem in his eyes and his vision is affected and therefore, he should not be deported. He also placed reliance on the order passed by a Division Bench of this Court in Gurunathan and others vs. The Government of India and others, wherein, it has been held as follows:

"1. These two writ petitions relate to Sri Lanka refugees and they have come to this Court on the

apprehension that they will be forced to go to their native place against their will.

2. In some cases, while passing interim orders, Srinivasan, J., after hearing counsel on both sides, recorded an undertaking given on behalf of the Government of India to the effect that Sri Lanka refugees will not be sent back to their native place against their will and there will be no force in that process. Recording that statement, the writ miscellaneous petitions were ordered.

3. Learned counsel for the petitioners states that in view of the above undertaking already given on behalf of the Government of India and that being followed till date, no further orders are necessary in these cases, except reiterating the same undertaking.

4. Accordingly, we reiterate the undertaking already given on behalf of the Government of India and apart from that, no further orders are necessary. The writ petitions are disposed of accordingly. There will be no order as to costs."

8 Relying upon the aforesaid undertaking given in 1994 by the Central Government, Mr. Sankarasubbu wants this Court to direct the Government not to deport Bhaskaran. This Court is unable to countenance this submission because the aforesaid undertaking was given in 1994 when the Sri Lankan problem was at its peak and much water has flown under the bridge thereafter, especially in view of the fact that the final war with the LTTE has ended there. Therefore, this Court cannot use the said undertaking perpetually to prevent the deportation of a Sri Lankan national out of India.

9 The question as to whether Bhaskaran is a Sri Lankan refugee or not, has been answered in the counter affidavit filed in this Court on 25.09.2020 by the Deputy Secretary to Government, Public (Foreigners) Department and Deputy Secretary to Government (Protocol), Public Department, on behalf of respondents 2 and 3, wherein, it has been stated as follows:

"8. With reference to the claim of the petitioner that Mr. Baskaran @ Mayuran is a refugee, it is respectfully submitted that the Superintendent of Police, "Q" Branch CID has reported that in the Joint Review Committee meeting held on 25.06.2019, it was recommended after due deliberations, to deport Mr. Baskaran to Sri Lanka, as he has not been enjoying the refugee status, reason being he left for Sri Lanka in

2014 by air and came back in 2015 and he is also indulging in human trafficking offences in India. Subsequently, the Government had issued deportation order in G.O. (1D) No.582, Public (Foreigners II) Department dated 20.11.2019.

9. The Superintendent of Police, "Q" Branch CID has further reported that Mr. Baskaran sent a petition dated 04.02.2020 to "Q" Branch CID claiming that he is still enjoying the refugee status, as he never left for Sri Lanka and he only sent his two minor daughters to Sri Lanka by air. In the petition, he requested not to deport him to Sri Lanka as there is a life threat to him. In connection with the above claim of Mr. Baskaran, the travel particulars of the said Mr. Baskaran has been obtained from the Foreign Regional Registration Officer (FRRO), Chennai. As per the travel particulars sent by FRRO, it is evident that Mr. Baskaran arrived India by air at Madurai Airport on 06.12.2014 by SG-004 (Colombo) flight, using Passport No.N5941779 and he again departed from Chennai Airport on 03.06.2015 by UL-124 (Colombo) flight. Hence, the claim of the petitioner that Mr. Baskaran is a refugee is false and that the claim of life threat is not substantiated.

10 The Director, Rehabilitation and Welfare of Non Resident Tamils has stated that the District Collector, Tirunelveli, has reported that on enquiry and as per records in Taluk Office, Radhapuram, Mr. Baskaran @ Mayuran had resided in Samugarengapuram Sri Lankan Tamil Refugee Camp in Radhapuram Taluk of Tirunelveli District in ID No.95 along with his wife and daughters. It was also reported that he had left the camp earlier to 2010 and that his wife had left India before he left the camp. He has further stated that on verification of the available records, it is learnt that he had been in a refugee camp, however, he has left camp on his own accord years back and at present, he is no longer registered as a Sri Lankan Tamil refugee in the records of the Commissionerate. Hence, the claim of the individual that he is still enjoying the refugee status is false."

10 A reading of the above clearly shows that Bhaskaran does not enjoy the status of a refugee from Sri Lanka and that he was indulging in human trafficking offences in India. That is why, perhaps, Bhaskaran himself has not filed any petition challenging his order of deportation, because, had he filed any petition, he would have been forced to speak the truth that he is

not a Sri Lankan refugee and that he was involved in criminal cases, in which event, he would not have got the relief.

11 The petitioner herein has sworn to an affidavit without disclosing any detail about the cases against Bhaskaran and has merely stated that Bhaskaran is a Sri Lankan refugee. No action can be taken against the petitioner for filing a false affidavit, because, he would simply wriggle out by saying that he acted on the information collected by him and that he did not know the true facts about Bhaskaran. Thus, we feel that the petitioner is playing truant with the legal system to gain unfair advantage by concealing facts.

12 Though in cases of illegal detention, a habeas corpus petition can be filed on behalf of a detenu by his next friend or any other person, in this case, the detention of Bhaskaran is not per se illegal. He is detained in the Special Camp in Trichy under G.O. No.SR.III/942-2/2016 Public (SC) Department dated 11.08.2016. The Special Camp is not a prison and the inmates enjoy sufficient freedom for taking recourse to legal remedies.

13 The most intriguing feature in this case is that the petitioner has not stated that he has filed the instant habeas corpus petition and writ petition as the next friend of Bhaskaran and he has not even averred in the affidavits that he has been instructed by Bhaskaran to file these two cases. It is not even known to this Court as to whether these two petitions have been filed by the petitioner with the knowledge of Bhaskaran. Therefore, on this short ground alone, these two petitions deserve to be dismissed.

14 Mr. Sankarasubbu placed reliance upon the judgment of the Supreme Court in *Maneka Gandhi vs. Union of India* and another and submitted that the order of deportation passed by the authorities without giving an opportunity to Bhaskaran is illegal. In our opinion, the law laid down in *Maneka Gandhi* (supra) cannot be stretched beyond a point. In this case, Bhaskaran is not an Indian national and it is alleged that he was involved in human trafficking. Whether he was acquitted or convicted is immaterial. He does not have a fundamental right to stay in India and get Indian citizenship. He knows that his stay in India cannot be eternal. He has to leave India one day or the other. Therefore, we find no infirmity in the order dated 20.11.2019 that has been passed by the authorities for deportation of Bhaskaran warranting interference.

15 As regards the prayer in the writ petition, the same cannot be countenanced, because, obtainment of visa of another country by an individual has to be by his own efforts and no

statutory provision has been placed before this Court by Mr.Sankarasubbu for issuance of a writ of mandamus as prayed for. Trite it is that a writ of mandamus can be issued only for enforcement of a legal duty in the event of the failure of the statutory authority to follow law vide Karnataka State Forest Industries Corporation vs. Indian Rocks, the relevant portion of which reads as follows:

"39. There cannot be any doubt whatsoever that a writ of mandamus can be issued only when there exists a legal right in the writ petition and a corresponding legal duty on the part of the State,"

In view of the foregoing discussion, we find no merit in the writ petition and habeas corpus petition and accordingly, both the petitions stand dismissed. However, we refrain from imposing heavy costs on the petitioner on the ground that we do not want to be harsh on him. We direct the District Collector, Trichy, to serve a copy of this order on Bhaskaran @ Mayuran, S/o Kumarasamy. All the interim orders granted earlier stand vacated and connected Miscellaneous Petitions stand closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad

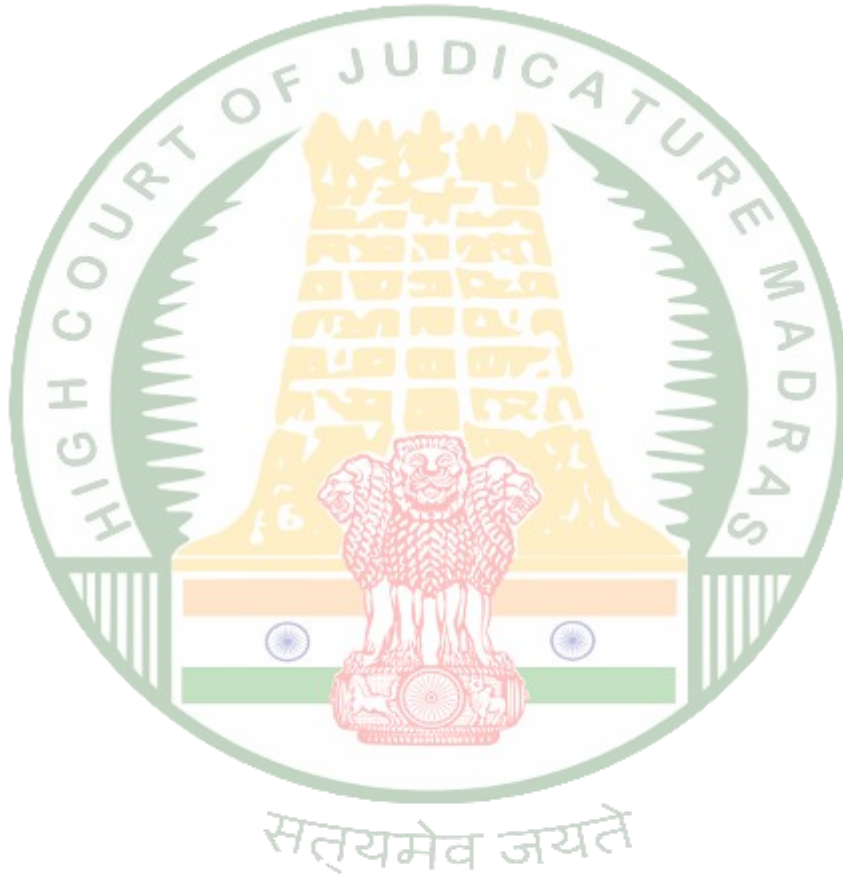
To

- 1 The Principal Secretary
Ministry of Home Affairs
National Stadium India Gate
New Delhi - 1
- 2 The Secretary
Public (Foreigners-II) Department
Secretariat
Fort St. George
Chennai 600 009
- 3 The District Collector
Trichy District
Trichy

4 Bhaskaran @ Mayuran
S/o Kumarasamy
Special Camp
Central Prison Campus
Trichy 620 020
- through the District Collector, Trichy

Common Order in
H.C.P. No.1456 of 2020 and W.P. No.11754 of 2021

MG (CO)
CB (25/06/2021)



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