

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22737 of 2019
And
W.M.P.No.22266 of 2019

S.Sankar
On behalf of his elder brother
Mr.Alain Anandane

... Petitioner

Vs.

1.Union of India
Represented by its Secretary,
Ministry of Home Affairs,
New Delhi.

2.Bureau of Immigration
Ministry of Home Affairs,
Government of India,
Chennai - 600 027.

3.Union of India
Represented by its Secretary,
Ministry of External Affairs,
New Delhi.

4.The Director (Foreigners)
Foreigners Division,
Ministry of Home Affairs
Government of India
Central Secretariat
North Block,
New Delhi.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondents to allow the Petitioner's brother Mr.Alain Anandane to enter and live in India freely for any duration as he pleases without any ban or condition or prohibition whatsoever - existing or otherwise, as well as to travel from India to any other place and/or country without any sort of ban or condition or restriction whatsoever.

For Petitioner : Mr.V.Deenadayalan

For Respondents : Mr.G.Ilangovan
CGSC

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to allow the petitioner's brother Mr.Alain Anandane to enter and live in India freely for any duration as he pleases without any ban or condition or prohibition whatsoever - existing or otherwise, as well as to travel from India to any other place and/or country without any sort of ban or condition or restriction whatsoever.

2.The case of the petitioner is that the petitioner's brother Alain Anandane is an Indian by birth and became a French citizen from the year 1991 and has been living in Paris with his wife and children and all his relatives are living in Pondicherry, India. The petitioner's brother used to come to India regularly to meet his mother and other relatives and he is a well recognized Social Worker in France and remains as Counsellor of City of Paris continuously for 25 years. On 25.04.2008, when the petitioner's brother came to India to meet his ailing mother, he was informed at Chennai International Airport that he cannot be permitted to enter India in view of an order of Look Out Circular issued by the respondents and was immediately deported to Paris, France directly from Chennai International Airport.

3.The further case of the petitioner is that the petitioner's another brother S.Ravichandran/ recently deceased filed W.P.No.10845 of 2009 before this Court praying for a direction against the respondents and their men to refrain from restricting Alain Anandane to enter India and this Court vide order dated 17.11.2009 disposed of the said writ petition by directing the respondents to consider Alain Anandane's application for VISA for entering India under the ambit of Section 3(2)(3) of The Foreigners Act, 1946, however, his brother Alain Anandane was not permitted to enter India.

4.The further case of the petitioner is that the petitioner's mother approached this Court by filing W.P.No.9686 of 2010 seeking direction to the respondents to permit Alain Anandane to enter India and the respondents filed counter affidavit in the said writ petition stating that Alain Anandane was not permitted to enter India as there was Look Out Circular issued by the Government of India and that the request would be reviewed only after 10 years which is in the year 2018 and the said writ petition was dismissed and challenging the same, the

petitioner's mother filed appeal before the Hon'ble Division Bench of this Court and the said appeal was dismissed at the admission stage itself.

5.The further case of the petitioner is that aggrieved by the same, the petitioner's mother preferred SLP (Civil) No.30746 of 2013 before the Hon'ble Apex Court and the same was later converted as Civil Appeal No.4462 of 2014 and the Hon'ble Apex Court vide order dated 28.03.2014 temporarily allowed Alain Anandane to enter India and to meet his seriously ailing mother for a few days and thereafter he visited his dying mother merely for four days.

6.The further case of the petitioner is that the petitioner's brother Alain Anandane was not able to enter India even to conduct the rituals when his other brothers namely S.Ravichandran, who died on 09.10.2018 and S.Jayapal (a) Mannaathan who died on 14.04.2019. S.Ravichandran, prior to his demise made representation to the respondents dated 02.09.2016 seeking to provide a copy of the alleged blacklisting circular dated 21.04.2007 and since the same was not considered, the petitioner made another representation to the respondents on 14.05.2019 and since there is no response has filed this writ petition.

7.The learned counsel appearing for the petitioner submitted that during the pendency of this writ petition, the respondents sent reply dated 06.06.2021 stating that the matter has been examined and that if Alain Anandane intends to visit to India on humanitarian grounds, a fresh request may be made by him stating clearly the purpose of visit along with the undertaking that he will not violate the VISA conditions and will avoid meeting political elements.

8.The learned counsel appearing for the petitioner further submitted that thereafter, the petitioner's brother Alain Anandane made representations dated 21.06.2021, 27.09.2021 to the respondents seeking to permit him to enter India. Thereafter, Bureau of Immigration (MHA) Government of India, No.26, Haddows Road, Shastri Bhavan Annexe, Chennai vide communication dated 20.12.2021 addressed to the Central Government Standing Counsel has stated that if Alain Anandane intends to visit India on humanitarian grounds, he may make a request stating clearly the purpose of visit and that he may be allowed to visit India subject to the following conditions:-

"(i)Duration of stay in India to be limited for the particular visit.

(ii)He should not violate visa conditions and avoid meeting political/pro-LTTE/Tamil Chauvinist elements during his visit.

(iii)A written undertaking to this effect may be obtained from him before granting visa.

(iv)His activities may be closely monitored by Police/State CID to avoid his meeting visitors except close relatives."

9.The learned Central Government Standing Counsel appearing for the respondents did not dispute the communication of the second respondent dated 20.12.2021 and would submit that if the petitioner's brother Alain Anandane file an undertaking affidavit that he is ready to abide by the conditions imposed in the communication of the second respondent dated 20.12.2021, the respondents will permit him to enter India, for the particular period sought for by him and based on the undertaking affidavit filed by him.

10.Considering the consent view expressed by the learned Central Government Standing Counsel appearing for the respondents and since the second respondent vide communication dated 20.12.2021 addressed to the Central Government Standing Counsel has stated that if Alain Anandane intends to visit India on humanitarian grounds, he may make a request stating clearly the purpose of visit and that he may be allowed to visit India on the conditions that '(i)Duration of stay in India to be limited for the particular visit; (ii)He should not violate visa conditions and avoid meeting political/pro-LTTE/Tamil Chauvinist elements during his visit; (iii)A written undertaking to this effect may be obtained from him before granting

visa; (iv)His activities may be closely monitored by Police/State CID to avoid his meeting visitors except close relatives', this Court directs the petitioner to send undertaking affidavit to the respondents, within a period of two weeks from the date of receipt of a copy of this order. If any such undertaking affidavit is received from the petitioner, the second respondent shall consider the same and pass appropriate orders with regard to permitting the petitioner's brother namely, Alain Anandane, to visit India, within a period of four weeks from the date of receipt of the undertaking affidavit from the petitioner.

11.The writ petition is disposed of with the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.Represented by its Secretary,
Union of India
Ministry of Home Affairs,
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- 2.Bureau of Immigration
Ministry of Home Affairs,
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Chennai - 600 027.
- 3.Represented by its Secretary,
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Ministry of External Affairs,
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Foreigners Division,
Ministry of Home Affairs
Government of India
Central Secretariat
North Block,
New Delhi.

+1cc to Mr.G.Ilangovan, Advocate, S.R.No.387

+2cc to Mr.V.Deenadayalan, Advocate, S.R.No.558

W.P.No.22737 of 2019

And

W.M.P.No.22266 of 2019

SSU(CO)
SB(24/01/2022)