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W.P.(Md) No.12361 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 22.08.2022

PRONOUNCING ORDERS ON : 11.10.2022

Coram:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition (MD) No.12361 of 2022

Abirami.S.

.... Petitioner

..Vs..

1.The Union of India
Represented by Secretary
Ministry of Home Affairs
NDCC-II Building, Jaisingh Road
New Delhi.

2.The State of Tamil Nadu
Represented by the Secretary to Government
Public (Foreigners-I) Department, Chennai-9.

3.The District Collector
Tiruchirapalli District.

.... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd respondent to forward my application dated 25.04.2022 to the 2nd respondent immediately.

For Petitioner : Mr.Srikanth for M/s.APN Law Associates

For Respondents 1&2 : Mrs.L.Victoria Gowri, Assistant Solicitor General
for RR 1 and 2

For Respondent No.3: Mr.M.Sarangan, Additional Government Pleader



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ORDER

Heard both sides. The parents of the petitioner are Srilankan Citizens. They came down to India as they could not be in Srilanka on account of the ethnic strife. The petitioner was born on 14.12.1993 at Shyamala Nursing Home, Trichy. The petitioner has been in India all these 29 years. She did her schooling only here. She has been issued with Aadhar Card also. However, her efforts to obtain citizenship have gone in vain. That led to the filing of this writ petition.

2. I had already dealt with the issue of citizenship for Srilankan refugees vide order dated 17.06.2019 made in W.P.(Md) No.5253 of 2009. After referring to the statutory scheme and other relevant aspects, I issued the following directions.

“(a) The writ petitioners are permitted to submit a fresh application seeking citizenship to the respective District Magistrates/District Collectors.

(b) The District Magistrates/District Collectors concerned are directed to forward the same without any delay to the Central Government.

(c) Once the Central Government receives the petitioners' applications, it shall pass appropriate orders thereon within a



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period of sixteen weeks thereafter. The Central Government shall bear in mind that it has the power to consider the applications favorably notwithstanding the technical status of the applications as that of illegal migrants. The Central Government shall take note of the unique situation in which the petitioners are placed. The undertaking given before the Madras High Court that the applicants will not be sent back will also be factored in the process of consideration."

3. I am conscious that the said order has been put to challenge before the Hon'ble Division Bench. The Division Bench is presently seized off the matter. That is why the Contempt Petition filed by the petitioners therein has been adjourned without specifying the next hearing date. The petitioner's case, in my view, is on a much higher footing. The petitioners in W.P.(Md) No.5253 of 2009 entered India without travel documents and that was the reason as to why the State Government declined to forward their application to the Union Government for grant of citizenship. The relevant paragraphs in the said order reads as follows,

" 12.But then, the petitioners can invoke Article 21 of the Constitution of India. It applies to all persons, citizens and non citizens alike. It would apply to refugees and asylum seekers. And most certainly to the petitioners who are genealogically rooted to this soil and who speak our language and who belong to our culture.



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13. The petitioners have amply demonstrated that they have formed the intention of making India their permanent home. The Government of India had given an undertaking that they will not be compulsorily sent back to Sri Lanka. Therefore, the case on hand presents a rather a unique situation. In mythology there is a region called "Thirisangu Sorgam". The petitioners are in a similar situation. They have come away from Sri Lanka but they have not been absorbed here. But, the camps in which they have been housed are far from being a Sorgam. The camp conditions are hellish. One must read Pathinathan who is associated with the literary magazine Kalachuvadu in this regard. Even if one's heart is made of stone, it would still melt under the searing heat of reality. When IPS officers are made in charge of Mandapam Camp, it is called as punishment posting. It is only a temporary phase for them. They manage their way and somehow slither towards rehabilitation. But for the inmates, there is no hope whatsoever. It is endlessly bleak. The petitioners have been in camps for close to 35 years. Keeping them under surveillance and severely restricted conditions and in a state of statelessness for such a long period certainly offends their right under Article 21 of the Constitution of India.

14. The Central Government need not feel helpless or take shelter behind Section 5 of the Citizenship Act, 1955. Notwithstanding the absence of an express power to relax the rigour set out in the opening clause of Section 5(1) of the Act, this Court must hold that the sovereign authority does have an implied power to do so. In fact, the existence of the implied power to grant relaxation in cases arising under the Indian Citizenship Act, 1955 was recognised by the Hon'ble Delhi High Court in *Felix Stefan Kaye vs Foreigners Regional Registration Office* in WP(C)No. 2862/2018 & CM Nos.11574- 576/2018 dated 23.03.2018.



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15. The Government of India must take note of the fact that the petitioners came to India when faced with a grave threat to their lives and limbs. They had to seek asylum in India. A person who is running for his life cannot obviously be expected to wait for a visa. Therefore, viewing the petitioners' case through the prism of the technical requirements of law, does not appear to be a humanitarian approach."

4. In the case in hand, though the petitioner is a descendant of migrant parents, she was born in India. She has never been a Srilankan citizen and therefore the question of renouncing the same does not arise. If the petitioner's request is not granted, that would lead to her statelessness. That is the situation which has to be avoided. The Parliament has recently amended the Citizenship Act. The persecuted minorities from the immediate neighbourhood such as Pakistan, Afghanistan and Bangladesh now have an opportunity of getting Indian Citizenship. Though Srilanka does not fall within the said amendment, the very same principle is equally applicable. One can take judicial notice of the fact that the Hindu Tamils of Srilanka were the primary victims of the racial strife. Though the Central Government has to take a call in the matter, there cannot be any impediment for considering the writ petitioner's request.

5. The respondents 2 and 3 ought not to have declined to forward the writ petitioner's application for eventual consideration by the Central Government. No exception can be taken to the writ petitioner's request. The third respondent is directed



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to forward the petitioner's application dated 25.04.2022 to the second respondent and the second respondent shall forward the same to the first respondent. The first respondent shall take a call in the matter within a period of sixteen (16) weeks thereafter. The writ petition is allowed on these terms. No costs.

11.10.2022

Index : Yes/No
Internet : Yes/No
KST

To

- 1.The Secretary
Ministry of Home Affairs
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G.R.SWAMINATHAN,J.

KST

Pre-Delivery Order in
W.P.(Md) No.12361 of 2022

11.10.2022