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W.P.No.4312 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM : **JUSTICE N.SESHASAYEE**

W.P.No.4312 of 2023

Mathuvanthi

... Petitioner

Vs.

1.The Regional Passport Officer
Royala Towers, No.2 and 3, IV Floor
Old No.785, New No.158
Anna Salai, Chennai - 600 002.

2.Union of India
Through its Secretary
Ministry of Home Affairs
Near Pragati Madien, New Delhi - 110 001.

3.The Director of Refugees and Rehabilitation
Ezhilagam, Chennai - 600 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the endorsement dated 18.01.2023 on the basis of the show cause notice in Letter Ref.No.SCN/313004887/22 dated 19.07.2022, passed by the first respondent in the Passport Application of the petitioner bearing No.MA1064353101922 and to quash the same and consequently direct the



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respondents to issue the passport to the petitioner by considering the representation dated 12.01.2023 within the time frame as may be fixed by this Court.

For Petitioner : Mr.K.K.N.Ganeshan

For Respondents : Mr.A.RL.Sundaresan
Additional Solicitor General
Assisted by Mr.A.Prakash [ACGSC]
for R1 & R2

Mr.S.J.Mohammed Sathik
Government Advocate for R3

ORDER

The petitioner herein is born to the parents who are the Srilankan nationals, and claims that she is born at Nilakottai in Dindugul District on 13.11.1995. She applied for Indian passport, and on 19.07.2022, the passport authority required the petitioner to furnish her birth certificate and her parent's passport, and accorded her 13 days time to provide the same.

2. The counter filed by the first respondent in paragraph 3 records that the petitioner indeed had appeared before the authority, and the following



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portion in paragraph No.3 is now required to be extracted :

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"3. In her request letter, it was also mentioned that she had already applied for Indian citizenship to the Ministry of Home Affairs and awaiting further results. After getting clarity from the higher officers regarding her ineligibility for an Indian passport for the time being and after receiving proper guidance regarding further procedures to be followed to obtain Indian Nationality, she had requested to close the present application for issuance of passport and on her request, her file was closed on 05.08.2022. Intimation regarding the closure of the file was also sent to the petitioner vide Letter reference number FCL/313094683/22 dated 05.08.2022."

Following this, the application was closed on 05.08.2022. This implies that the passport authority has closed her application only at her request. This is now under challenge.

3. The learned counsel for the petitioner submitted that inasmuch as the petitioner was born in India on 13.11.1995, she would fall within Section 3(1)(b), to be termed as 'citizenship by birth'. In other words, the fact that



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her parents are Srilankan citizens may not by itself would be a
disqualification for her claim as citizen of India by birth.

4. Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondents 1 and 2, submitted that :

(1) Under Section 3(1)(b) anyone who claims citizenship by birth should comply with two conditions :

(a) that they should have born in India between 01.07.1987 and 2003, when the Citizenship Amendment Act came into force;
and

(b) that any one of the parents of the child born in this period must be Indians.

And these two conditions must be simultaneously satisfied, whereas the petitioner has satisfied only one of the two conditions, since both of her parents admittedly are Srilankan citizens.

(2) So far as the petitioner is concerned, she is not only born in India, lived in India, but also have married an Indian citizen. Therefore, if



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she fits in a requisite qualification, she may be eligible for considering

WEB COPY as an Indian citizen under Section 5 of the Act.

Once this process is over and subject to other provisions of the passport Act, the petitioner will be eligible to apply for passport

5. After weighing the rival submissions, this Court considers that the submissions of the learned Additional Solicitor General is fair and balanced. Inasmuch as both the parents of the petitioner are Srilankan citizens, she could not claim eligibility under Section 3(1)(b) of the Act. But given the facts as stated before the Court, she may be eligible for seeking registration as a citizen of India under Section 5 of the Act. Therefore, the petitioner is now required to approach the appropriate authorities for her to get registered as an Indian Citizen under Section 5 at the first instance, and then to apply for the passport, if she is desirous.

6. The writ petition is disposed of accordingly. No costs.

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Index : Yes / No



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Speaking order / Non-speaking order
ds

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N.SESHASAYEE, J.

ds

To:

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