



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.18809 of 2021

Umadevi Sivalingam

.. Petitioner

Vs.

1.The Passport Officer,
Regional Passport Office,
Municipal Water Tank Building,
W.B.Road, Tiruchirapalli – 620 008.

2.The Assistant Foreigner's Regional Registration Officer (AFRRO),
Bureau of Immigration,
Chennai International Airport,
Chennai - 600 027.

.. 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 of the 1st respondent in File No.TR1071122501118 dated 27.07.2021 and quash the same and consequently direct the 1st respondent to return petitioner's passport No.S1560690 dated 24.04.2018 to the petitioner which was seized by the 2nd respondent at Chennai Airport on 23.11.2019.



For Petitioner .. Mr.V.Raghavachari, Senior Counsel

For Respondents .. Mr.Arvind Kumar, Standing Counsel

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with an order of the 1st respondent / the Passport Officer, Regional Passport Office, Tiruchirapalli dated 27.07.2021 in File No.TR1071122501118 and to consequently direct the said respondent to return the passport of the petitioner / Umadevi Sivalingam, bearing No.S1560690 dated 24.04.2018 which had been seized by the 2nd respondent, Assistant Foreigner's Regional Registration Officer (AFRRO), Bureau of Immigration, Chennai International Airport, Chennai on 23.11.2019.

2.The petitioner has been meandering around the Court by first filing a writ petition, which was disposed of and now, a second writ petition. Unfortunately, the relief sought has neither been categorically denied nor adjudicated nor granted to the petitioner.



3. Earlier the petitioner had filed W.P.No.20430 of 2020 seeking return of passport, immediately when the passport was impounded by the 2nd respondent or in other words as stated in the aforementioned narration, seized by the 2nd respondent at Chennai airport.

4. Questioning that particular aspect and seeking a mandamus for return of the passport, the petitioner had filed W.P.No.20430 of 2020. That writ petition came up for consideration before a learned Single Judge of this Court and an order was passed on 29.04.2021. By that order, the learned Single Judge had directed the 1st respondent herein who was also the 1st respondent therein namely, the Passport Officer, Regional Passport Office, Tiruchiapalli, to follow the principles of natural justice namely, to issue notice to the petitioner, hear the petitioner in person or through virtual mode and thereafter, consider all relevant documents and then pass an appropriate orders and a time period of four weeks had been given.

5. It was the hope of the learned Single Judge of this Court that the 1st respondent would adhere to the principles of natural justice. An administrative order can always be subjected to judicial review, if, on the



face of it, it is extremely irrational, and also if the procedure adopted to arrive at a particular decision is improper.

6.In the instant case, after that particular order of the learned Single, the petitioner had come back to file the present writ petition consequent to the fact that notice was not issued, the petitioner was not heard, but still, the passport of the petitioner was revoked by the 1st respondent. This was by the impugned order dated 27.07.2021, which is questioned in this writ petition.

7.Mr.V.Raghavachari, learned Senior Counsel on behalf of the petitioner, stated that the father of the petitioner was an Indian citizen and born in India. The petitioner had come to India on 17.02.1983. Even according to the 1st respondent, the petitioner had obtained an identity certificate which was normally issued to the Stateless persons, who do not possess nationality in the country.

8.This statement of the 1st respondent is very seriously disputed by the learned Senior Counsel, by stating that the Citizenship Act provides that if one of the parents were born in India then the individual should be



categorized as a citizen of India. It is stated that the petitioner qualifies on that ground, since her father is an Indian citizen. It is pointed out by the learned Senior Counsel that after examining the aforementioned facts, the petitioner was issued with a passport on 26.09.2008 and again after following due procedure, the passport was renewed in the year 2018.

9. In the impugned order, the 1st respondent unfortunately appears to have a doubt and had carried over the doubt in the impugned order also. Paragraph 3 of the impugned order is extracted below:

“3. On scrutiny of your father passport, it is observed that the Passport No.V859966 was issued on 18.04.1984 from Passport Office, Trichy wherein you have declared that in your representation dated 11.02.2020 stating that you and your parents returned to India via Chennai airport on 29.01.1984. However, the details of travel documents on which your parents returned to India is not available. Hence, this office unable to ascertain whether the father has obtained Sri Lankan Citizenship or not.”



10. It is seen that the 1st respondent had stated that he / she had observed that the passport was issued on 18.04.1984 from the Passport Office, Trichy and it had been stated that however, the parents had returned to India on 29.01.1984. It was also stated that the details of travel documents on which the parents of the petitioner returned to India are not available.

11. If in the process of passing an administrative order, an authority holds that, documents are not available, then a duty is cast on them, to call upon the particular individual to produce those documents. If in spite of such notice being issued to produce the documents, and documents are not produced, then very specifically, it should be stated that notice was issued for production of documents, but documents had not been produced.

12. Merely stating that documents are not available without expressing the steps taken to either obtain the documents or clarify whether documents were not available in the office of the 1st respondent or not available with the petitioner, leads the impugned order to be seriously examined by this Court.



13.The further statement in the impugned order is that, the 1st respondent was unable to ascertain whether the father of the petitioner had obtained Sri Lankan citizenship or not. That is a fact, which can be ascertained when notice is issued to the father and he is examine as to which country he belongs to. If he admits the citizenship of India, he should produce documents to substantiate that particular fact. Without ascertaining that particular fact, the authority should not question the citizenship of any individual. They cannot state that they were not able to ascertain without taking necessary steps to so ascertain any particular fact.

14.It is thus seen that the basic facts about the petitioner and about her father had not been ascertained by the 1st respondent. Naturally, the order suffers and the order has to be interfered with by this Court.

15.The learned Standing counsel for the respondents, however justified the order, by stating that necessary steps have been taken. The entire issue surrounds the mystery about the origin of the petitioner and her father. The proper method to resolve that particular fact, would be to issue notice to the petitioner to examine her documents and to the father of the petitioner, to examine his citizenship and then come to a definite finding.



16. It is also contended by the learned Standing counsel for the respondents that the petitioner has an opportunity of applying for citizenship certificate from the Ministry of Home Affairs, Government of India.

17. Unfortunately, when the original authority had passed a vague order and the order does not pass the judicial scrutiny of this Court, the petitioner cannot be made to run from pillar to post once again. Already the petitioner had approached this Court on an earlier occasion and now the petitioner has approached this Court for the second occasion. Therefore, the following directions are therefore issued,

(i) The 1st respondent is directed to issue notice to the petitioner for appearance in person.

(ii) When the petitioner appears in person, sufficient opportunity must be given to the petitioner herein to produce documents relating to arrival in India and sufficient opportunity must be given to the petitioner to produce documents relating to application of the passport in the year 2008 and renewal of the passport in the year 2018.



(iii). Notice must also be issued to the father of the petitioner and sufficient opportunity must also be given to produce his documents relating to his citizenship and place of birth.

(iv). After examining all these documents, the authority must come to a definite conclusion, whether the passport already issued to the petitioner should be revoked or should be returned back to the petitioner. That order should be based on facts and not on presumptions and assumptions.

18. The order under question is set aside. The aforementioned directions are given to the 1st respondent to be followed in letter and spirit. The said exercise must be completed on or before 10.03.2023.

19. With the above observations, this Writ Petition stands allowed. No costs.

06.02.2023

Index: Yes/No
Internet: Yes/No
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To

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C.V.KARTHIKEYAN,J.

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