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W.P.No.2905 of 2021

In the High Court of Judicature at Madras

Reserved on: 14.03.2024

Delivered on : 03 .06.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.2905 of 2021

and WMP.No.3259 of 2021

P.K.M.Shahul Hameed @U.Myint,

S/o.P.K.M.Mohammed Hussain

... Petitioner

-Vs-

1.Union of India

Ministry of Home Affairs,
rep.by its Secretary,
26, Jai Salmer House,
New Delhi 110 001.

2.The Government of Tamil Nadu,

Home Department,
Rep.by its Secretary,
Fort St.George, Chennai 600 009.

3.The Chief Immigration Officer,

Shastri Bhawan, Haddows Road,
Chennai 600 006.



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4.The Collector-Chennai,
Office of the Collectorate,
Rajaji Salai, Chennai 600 001.

... Respondents

PRAYER : Writ Petition filed under Article 227 of Constitution of India, to issue a writ of Mandamus directing the respondents to regularize the petitioner's stay in India and further direct the 3rd respondent to grant long term visa/residential permit in pursuance of the naturalization given by the Government of India in and through a letter dated 27.07.1987.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
assisted by Mr.Godson Swaminathan for
Mr.G.Veerapathiran

For Respondents : Mr.S.Muthusamy, ACGSC for R1 and R2
Mrs.Vijayadevi, Government Advocate for R3&4

ORDER

This Writ Petition is filed to direct the respondents to grant long term visa/residential permit in pursuance of the naturalization given by the Government of India in and through a letter dated 27.07.1987.

2. It is averred in the writ petition that the petitioner was born in 1926 at Burma and now he is aged about 95 years. The petitioner's father was born in Tirupalakudi and Kamuthi Village of Ramnad District, Tamil Nadu. They moved to Burma for their business activities. The petitioner's family



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stayed there continuously. The petitioner got married to a Burmese girl and children were born to him at Burma. Subsequently they moved India in 1971, where the petitioner's sons and daughter got married to a Indian Girl and Indian Boy who are citizens of India and they begotten their children in India.

3. It is further contended by the petitioner that every year, visa was extended in view of the fact that the petitioner's family are refugees. Hence, the petitioner along with his family applied to Indian Government to change the citizenship from Burma to Indian. After several efforts of the petitioner by writing various letters to the Government and after a lapse of 16 years, the Government of India accepted their request of citizenship by naturalization for petitioner, his wife, his children, through their letter dated 25.05.1987, whereby the petitioner was advised to renounce his nationality by applying to Burmese Embassy and produce the renunciation certificate.

4. The petitioner subsequently as per the advise of the Government of India, submitted his passport to Burmese Embassy at New Delhi on 27.07.1987 for renunciation. Meanwhile, on 25.04.1988, the Government of India sent a letter to the Secretary to Government of Tamil Nadu and copy to



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the petitioner calling him to furnish two sworn affidavits. The petitioner vide letter dated 27.07.1988, sent a reply and complied the same. The petitioner sent series of letters and various reminders by producing necessary documents to the Burmese Embassy to send the certificate of renunciation as early as possible, however, there has been absolutely no response to the said requests.

5. It is the grievance of the petitioner that all these years from 1987 to till date, every year the visa was periodically extended by the 3rd respondent. It was lastly extended by the 3rd respondent from 16.08.2019 to 15.08.2020 after police verification. Thereafter, due to COVID-19, the respondents now calling the petitioner to produce the renunciation certificate vide their mail dated 03.12.2020.

6. The learned counsel appearing for the petitioner submitted that the petitioner is aged about 95 years. He is facing difficulties for every year to go to the 3rd respondent for extending the visa for his family to continue the stay. Though the petitioner have surrendered all the documents to Burmese Embassy including the passport of his family members and affidavits to the Government of India and naturalization was also accepted by the Government of India, till



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date, he was not able to get renunciation certificate from the Burmese Embassy.

Hence, the petitioner left with no other option except to approach this Court seeking to grant a long term Visa of residential permit for the petitioner's family, in view of the naturalization sanctioned by the Government of India.

7. The learned counsel for the respondents would submit that the only point on which the claim of the petitioner could not be considered for grant of citizenship, is non-fulfillment of certain requirements as enumerated in letter dated 25.05.1987, whereby naturalization for the petitioner's family was granted. If the said requirements are fulfilled, the respondents can consider the claim of the petitioner for extension of stay.

8. From the perusal of the records, it could be seen that the right of the petitioner to become a citizen of this Country has not been resisted or rejected on any substantive basis, since the Government of India has not taken any conscious decision with regard to the claim of the petitioner for grant of Indian Citizenship. The petitioner had been moving heaven and earth for grant of citizenship; unfortunately the claim of the petitioner has not been considered. In view of the long inaction on the part of the authorities



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concerned of Burma Embassy, the petitioner herein has been made to live sans any right for over a period of 50 years. The petitioner who is 95 years old now, has been living in India since 1971 and despite his uninterrupted stay in the country for over 50 years, he remain stateless, denied of all rights that are enjoyed by the citizen of this Country.

9. The agonizing wait for all the years is due to the fact that the issue of grant of citizenship got embroiled in procedural complexity. The right to get Indian citizenship is provided under the provisions of the Citizenship Act, 1955. As far as the present case on hand is concerned, the provisions would govern such claim as provided under Section 4 of the Act. Section 4(1)(a) of the Act is relevant to extract, which reads as under:

'4. Citizenship by descent: (1) A person born outside India shall be a citizen of India by descent-

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992 if his father is a citizen of India at the time of his birth.'

10. As far as the above section is concerned, the petitioner who was born during 1926 and his father being Indian Citizen, was fully covered by the above provision.



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11. The petitioner herein has been in India for more than 50 years now and he was also granted naturalization by the Government of India, however for want of renunciation certificate from the Burma Embassy, the claim of the petitioner to regularize his stay in India was not considered. In spite of all the efforts that was taken by the petitioner to obtain renunciation certificate from the Burma Embassy, all ended in vain. Somewhere the procedure for grant of such citizenship has blocked the efforts of the administration to take the claim of the petitioner to its logical end.

12. The petitioner who is living in this Country for as many as 50 years, cannot be made to suffer statelessness, despite he being an Indian descent and his father being Indian national and citizen of this Country. When an extraordinary claim of this nature arise for consideration, the administration must rise up to address such claim with extraordinary answer and solution, The administration cannot be allowed to take refuge behind procedural formality and deny a person of all rights. In such situation, the administration has to take a extraordinary call and consider the claim of the petitioner by purposely



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overlooking avoidable procedural requirements in order to accommodate legitimate interest of the petitioner.

13. Therefore, this Court is of the view that in good conscience the petitioner's claim is to be considered favourably de hors any procedural challenge that may be put against the petitioner as a special and extraordinary case.

14. For the foregoing reasons, a direction is issued to the 1st respondent-Ministry of Home Affairs, to regularize the stay of the petitioner in India by granting necessary Resident permit and also consider for grant of Indian Citizenship to the petitioner in terms of the provisions of the Citizenship Act, 1955, as a special case if necessary by relaxing any procedural requirements for such consideration.

15. In the result, this Writ Petition is allowed with the above observations. No costs. Consequently connected miscellaneous petition is closed.

03.06.2024



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To

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New Delhi 110 001.
- 2.The Secretary,
The Government of Tamil Nadu,
Home Department,
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J.NISHA BANU, J.

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Pre-delivery Order
in **W.P.No.2905 of 2021**

03.06.2024



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**Pre-delivery order made in W.P.No.2905 of 2021
and WMP.No.3259 of 2021**

To

The Honourable Mrs.Justice J.NISHA BANU

Most respectfully submitted

sk/nvsri

P.A.