



W.P(MD)No.5478 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5478 of 2024

Ramya

... Petitioner

Vs.

1.The Foreigners Regional Registration Officer,
FRRO-Chennai, Bureau of Immigration,
Ministry of Home Affairs,
Government of India, Shastri Bhavan,
Annexe Building, 26, Haddows Road,
Nungambakkam, Chennai-06.

2.C.Shanmugasundaram

... Respondents

(R2 *suo motu* impleaded vide order
dated 07.03.2024)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the first respondent to consider the application for grant of VISA Extension for the petitioner's daughters, namely, AARYASHINI SHANMUGASUNDRAM (Passport No. A53305210) without seeking for No Objection Certificate from the father of the minor child.

For Petitioner : Mr.M.Rajaraman

For Respondents : Mr.K.Govindarajan DSGI for R1



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ORDER

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The petitioner is an Indian. She married the second respondent, who is a Malaysian citizen on 20.05.2013 at Madurai as per Hindu rites and customs. A girl child (Aaryashini Shanmugasundram) was born through the wedlock on 28.02.2014 at Malaysia. The child is a Malaysian citizen. The matrimonial relationship between the petitioner and the second respondent had come under strain. The petitioner came down to India along with the child with the consent of her husband. At present, the child is studying in Mahatma Gandhi Matriculation School, Madurai. The child's visa had expired on 23.11.2023. Its passport would also expire on 02.07.2024.

2.The petitioner applied to the first respondent for extension of the child's visa. The first respondent informed the petitioner that she must get No Objection / consent from her husband. Since the petitioner had instituted divorce proceedings against her husband, this possibility appeared to be remote. In these circumstances, the present writ petition came to be filed.

3.I *suo motu* impleaded the husband. I directed service of notice on him through E.mail. He appeared before the Court by availing Video Conference facility. I had interaction with him on two occasions. The second respondent



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offered his objections orally as well as in writing. I endeavored to find an amicable solution by having a frank conversation. The second respondent did not appear to relish it. He clearly indicated that I was travelling beyond the scope of the writ petition. I felt that no purpose would be served in having conversation further conversation with him.

4.It is beyond dispute that the marriage between the petitioner and the second respondent took place at Madurai. The petitioner had filed H.M.O.P.No. 933 of 2023 on the file of the Family Court, Madurai. She seeks dissolution of the marriage. She had also filed IA seeking custody of the child. The second respondent is yet to enter appearance in the said H.M.O.P.

5.The learned DSGI reminded me that the child is a Malaysian citizen. I am conscious of this fact. But it is the child's interest that has to be the paramount factor in deciding the issue raised in this writ petition. The preamble and the introductory recitals of the Juvenile Justice (Care and Protection of Children) Act, 2015 are as follows :

“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the



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best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;”

Let me refer to some of the articles in the Convention on the Rights of the Child, 1989.

“**Article 5** - States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”



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“Article 9 - 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2.In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.”

The Hon'ble Supreme Court of India in the decision reported in **(2021) 14 SCC 341 (Union of India vs. Agricas LLP)** reiterated the settled position that the principles of International Law will be respected and enforced so long as there is no conflict with our laws. The leading decision is **Apparel Export Promotion Council vs. A.K.Chopra (1999) 1 SCC 759**. Article 9 of the Convention clearly mandates that the child should not be separated from the parent. If I allow the child's deportation without ascertaining the wishes of the child and what is in its best interests, that would be a clear breach of the aforesaid provision. At present, the Family Court is seized of the matter. The petitioner has also filed an I.A seeking custody. Till this issue is finally



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decided, it will not be in the best interest of the child to permit deportation. I cannot at the same time direct the authority to extend the child's Visa for the present. A balance has to be struck.

6.I am concerned in this case with the welfare of a girl child aged around ten years. It is presently with the mother. It is studying in the school at Madurai. The mother is not willing to return to Malaysia for the present. So long as the child's father has not obtained any custody of the child through court of law, the child is entitled to be with the mother. This is all the more so because the child is a girl. Even though the child is not an Indian citizen, even if its Visa period has expired, she cannot be deported. Such a right against deportation can be culled out from Article 21 of the Constitution of India in the light of the provisions of the UN Convention on the Rights of the Child, 1989.

7.In this view of the matter, I direct the first respondent to permit the child to continue to stay in India with the petitioner. If the Family Court directs that the custody should be given to the second respondent, the first respondent has to abide by the same. Till then, the child shall not be deported.



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8.The Writ Petition is allowed on these terms. No costs.

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G.R.SWAMINATHAN, J.

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