



W.P(MD)No.28732 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28732 of 2022

and

W.M.P.(MD)No.22719 of 2022

Fathima Riyasa

... 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,
Pudukottai District,
Pudukottai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondent No. 3 to forward the petitioners application dated 06.12.2022



W.P(MD)No.28732 of 2022

WEB COPY

to Respondent Nos .1 and 2 and consequently directing the Respondent Nos. 1 and 2 to consider and provide Indian Citizenship to the petitioner within the time period stipulated by this Court.

For Petitioner : Mr.S.Rajasekar

***For Respondents : Mr.K.Govindarajan,
Deputy Solicitor General of India for R1.
Mr.M.Lingadurai,
Spl. Government Pleader for R2 & R3.***

ORDER

Heard both sides.

2.The writ petitioner is a Srilankan citizen. She fell in love with one Abdul Jabar, an Indian citizen, and eventually married him. The marriage was solemnized in Srilanka on 16.06.2018. The petitioner came to India on an Indian visa. The couple set up their matrimonial home in Pudukkottai District. Two children were born through the wedlock. In the meanwhile, the petitioner's Indian visa as well as Srilankan passport expired. She has sought renewal of both. She has also applied for Indian citizenship. Since it has not been forwarded by the District Collector,



W.P(MD)No.28732 of 2022

WEB COPY

Pudukkottai to the Central Government, this writ petition has been filed seeking grant of Indian citizenship.

3. The Central Government has filed counter affidavit. Their stand is that since the petitioner is an illegal immigrant, her case for grant of citizenship cannot be considered.

4. I carefully considered the rival contentions. This is a case of cross-border love. Love can transcend national boundaries too. There is no constitutional or statutory requirement that marriage can be only between two citizens. Section 5 of the Hindu Marriage Act, 1955 stipulates that a marriage can be solemnized between any two Hindus subject to fulfilment of certain conditions which are silent on citizenship. Section 4 of the Indian Christian Marriage Act talks of marriage between persons one or both of whom is (or are) a Christian or Christians. Likewise, no such restriction is found in Mohammedan Law relating to marriage. Therefore, the marriage between the petitioner and Abdul Jabar is certainly a valid marriage. Article 16(1) of the Universal Declaration of Human Rights, 1948 has recognized the right to marriage and the right



W.P(MD)No.28732 of 2022

to found a family to be a human right in the following terms:

“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.”

Right to privacy is a fundamental right and the Hon'ble Supreme Court in more than one case had held that one has a right to choose one's spouse and that this right cannot be interfered with. The right to marry a person of one's choice is integral to Article 21 of the Constitution of India(*vide AIR 2018 SC 1933 (Shafin Jahan Vs. Asokan KM)*).

5. Once this position is acknowledged, the logical corollary is that the petitioner is entitled to the conjugal company of her husband. When the marriage between such spouses is in subsistence and there is no strain in the matrimonial relationship, right to life guaranteed under Article 21 of the Constitution of India would include the right to live with one's spouse. Article 21 is applicable to persons ie., citizens and non-citizens alike. The petitioner did not enter India illegally. She is a Srilankan passport holder and she was granted with Indian Visa. Armed with these legal documents, she landed in India. Technically, she is an illegal



W.P(MD)No.28732 of 2022

immigrant because her travel document has expired. It is equally true that an illegal immigrant cannot apply for Indian citizenship.

6. When the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India is at stake, the writ Court has to strike a balance even if there are insurmountable barriers. I propose to effect such a balance by invoking Section 20 of the Passports Act, 1967.

It reads as follows:-

“Issue of passports and travel documents to persons who are not citizens of India.-Notwithstanding anything contained in the foregoing provisions relating to issue of a passport or travel document, the Central Government may issue, or cause to be issued, a passport or travel document to a person who is not a citizen of India if that Government is of the opinion that it is necessary so to do in the public interest.”

The reason for incorporating the aforesaid provision is set out in Clause 20 of Objects and Reasons in the following terms :

“Under this clause, a passport can be refused on the ground that the applicant is not a citizen of India. But, in special cases, having regard to international



W.P(MD)No.28732 of 2022

convention and usage, it may become necessary for the Government to issue a passport or travel document to a person who is not a citizen of India. This clause seeks to give necessary powers to the Central Government in this behalf.”

The above provision empowers the Central Government to issue passport or travel document even to a non-citizen. Any power is coupled with duty. Parliament in its supreme wisdom chose to incorporate such a provision to deal with situations such as the one on hand. Of course, one requirement must be satisfied. The Central Government must be of the opinion that it is necessary to do so in the public interest. The question is whether the said power deserves to be exercised in this case.

7. Though India is not a signatory, it is useful to refer to Article 12 of Convention Relating to The Status of Stateless Persons which reads as follows:-

“2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities



W.P(MD)No.28732 of 2022

required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.”

Article 51 of the Constitution mandates that the State shall endeavour to foster respect for International law. The Government would do well to respect the rights that have accrued to the petitioner following her marriage with an Indian citizen. The petitioner is ready to renounce Srilankan citizenship and abide by the requirements of Indian Laws. Section 5(1) (c) of the Indian Citizenship Act, 1955 states that a person not being an illegal migrant may be registered as an Indian citizen if he or she is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration. Of course, the petitioner is yet to meet that threshold as on date.

8. In these circumstances, interest of justice requires that the petitioner is allowed to stay in India. If she is deported, she will be separated from her husband and children. The issue can be viewed from the perspective of the children also. They are entitled to maternal love.



W.P(MD)No.28732 of 2022

WEB COPY

The petitioner's stay in India can be regularized by issuing travel document under Section 20 of the Passports Act. The petitioner appears to have been in India since 2019. She has been ordinarily resident ever since. Once she completes seven years of such stay, she can submit a formal application to the District Collector, Pudukkottai. The District Collector, Pudukkottai would then be obliged to forward it to the Central Government. The Central Government can very well favourably consider her case under Section 5(1)(c) of the Citizenship Act, 1955 thereafter.

9. The petitioner is permitted to submit an application in this regard to the Central Government seeking relief in the first instance under Section 20 of the Passports Act and the Central Government can favourably consider the same. Attending to the needs of even a solitary applicant to uphold her fundamental right is also a matter of public interest. In the alternative, the petitioner can obtain renewal of her Srilankan passport and thereafter, seek extension and validation of her Indian Visa. Thus, two courses of action are open to the petitioner and it is for her to choose the same. Her rights will be frustrated if in the meanwhile, she is deported. I am certain that the respondent authorities



W.P(MD)No.28732 of 2022

WEB COPY

will not be oblivious to the humanitarian angle present in this case. In any event, without giving sufficient notice and without passing a speaking order, the petitioner shall not be deported. The petitioner is at liberty to move this Court again for appropriate relief if any adverse order is passed.

10.This writ petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

05.11.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
IAS/PMU

To:

1.The Secretary to Government,
Public (Foreigners-I) Department,
Chennai - 9.

2.The District Collector,
Pudukottai District,
Pudukottai.



WEB COPY



W.P(MD)No.28732 of 2022

G.R.SWAMINATHAN, J.

IAS / PMU

W.P(MD)No.28732 of 2022

05.11.2025