

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2023

PRESENT

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

**WP(MD) No.12782 of 2022
and
WMP(MD)No.9072 of 2022**

T.Ganesan

... Petitioner

VS.

- 1.The Government of India,
rep.by its Secretary to the Government,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi – 110 001.
- 2.The Government of India,
rep.by its Secretary to Government,
Ministry of External Affairs,
Government of India, South Block,
New Delhi – 110 001.
- 3.The State of Tamil Nadu,
rep.by its Secretary to Government,
The Home Department,
Government of Tamil Nadu,
Fort St.George, Chennai – 600 009.
- 4.The Commissioner,
Department of Rehabilitation,
Ezhilagam, Chepauk,
Chennai – 600 005.
- 5.The District Collector,
Karur District – 639 007.



6.The Special Tahsildar (Refugee),
Refugee Camp, Irumboothipatty,
Karur District – 639 007.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned order dated 11.02.2022 passed by the first respondent in F.No.26030/10/21-IC-I and quash the same and thus direct the respondents to confer Indian Citizenship on the petitioner and his family with the relief package applicable for the repatriates.

For Petitioner : Mr.Romeo Roy Alfred.I

For Respondents : Mr.B.Rajesh Saravanan
Central Government Standing Counsel
for R1 and R2

Mr.K.Balasubramanian,
Special Government Pleader for R3 to R6

Mr.S.Manuraj, Amicus Curiae

ORDER

The petitioner is living at Irumboothipatty Sri Lankan Refugee Camp in Karur District. He reached India in the year 1990 following the intensification of hostilities between the Sri Lankan Army and LTTE. The petitioner's case is that he is an Indian Citizen and sought confirmation of the same from the Government. Since the authorities treated the petitioner only as a Sri Lankan refugee, he filed WP No.11790 of 2021 for appropriate relief. The writ



petition was disposed of on 16.08.2021 with a direction to the Government of India to consider his representation. Pursuant thereto, the impugned order came to be passed stating that the material placed by the petitioner is not sufficient to come to any conclusion that he is an Indian Citizen. The petitioner was directed to submit conclusive evidence of his acquiring Indian citizenship. Challenging the said order dated 11.02.2022 passed by the first respondent, the present writ petition came to be filed.

2.The learned counsel for the petitioner and the learned Amicus Curiae took me through the materials enclosed in the typed set of papers. They filed written submissions and called upon this Court to set aside the impugned order and grant relief as prayed for.

3.The learned Central Government Standing Counsel reiterated the stand set out in the impugned order and called upon this Court to dismiss the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. It is true that the prayer in the writ petition is for directing the Government of India to confer Indian Citizenship on the petitioner and his family. However, the arguments of the learned Amicus as well as the petitioner's counsel were anchored on the premise that the



petitioner had already been registered as a citizen. What is now sought is only acknowledgment of the same. Though there is a distinct shift in the petitioner's stand, that need not come in the way of granting relief. Order VII Rule 7 of CPC states that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. The Writ Court exercising jurisdiction under Article 226 of the Constitution of India is certainly competent to mould or grant lesser relief.

5. The demographic profile of Sri Lanka comprises the majority Sinhalese and the minority Tamils. Tamils however are not a single homogenous group. A substantial part of them are natives of Sri Lanka in every sense of the term. They hail from the northern and eastern parts of the country. A section of the Tamil speaking population residing in Sri Lanka are the descendants of workers who migrated from Tamil Nadu to toil in the tea estates of Sri Lanka during the 19th century. When Sri Lanka became independent, they were rendered stateless. The status and future of persons of Indian origin in Sri Lanka was the subject matter of more than one agreement between the Government of India and Government of Sri Lanka. The first agreement was entered into between the two Governments on 30th October 1964. The



Government of India declared that they will accept repatriation to India of 5,25,000 of such persons together with the natural increase in that number and confer citizenship on them. The Government of Sri Lanka was to grant citizenship on 3 lakhs of such persons. The fate of the remaining 1,50,000 persons was to be decided later. Two Registers were to be prepared ; one containing the names of persons who will be granted Sri Lankan Citizenship, the other containing the names of persons to be repatriated to India. The completion of these Registers was not to be a condition precedent to the commencement of the process of repatriation.

6. On 27.01.1974, another agreement was entered into between the two governments. In the said agreement, it was agreed that of the remaining 1,50,000 persons, Sri Lankan Government was to grant citizenship to 50% of them and the remaining 75,000 together with the natural increase in that number were to be repatriated to India and citizenship conferred on them.

7. The specific stand of the petitioner is that he submitted an application in the year 1970 when he was 16 years of age. However, the Attache/Assistant High Commission of India, Kandy issued passport to the petitioner only on 22.08.1982. The sheet anchor of the petitioner's case is this document. The original passport was produced for my perusal. The



Government of India does not question the issuance of the said passport.

Their stand is that they are not sure that it was issued to the petitioner. In other words, the question is whether "Ganeshan" in whose favour Passport No.Y045726 was issued is the writ petitioner before this Court. Identity alone is in issue. That is why, the first respondent has directed the petitioner to furnish conclusive evidence.

8.I need not go into the issue if passport is a public document or private document. In ***Mohd.Akram Siddiqui v. State of Bihar (2019) 13 SCC 350***, criminal prosecution was quashed after the Supreme Court looked into the passport papers and the immigration records. The only reason for doubting the passport produced by the petitioner is that the photograph affixed therein seems to be that of a far younger person. I am of the view that putting forth such a reason for rejection is unsustainable. The petitioner states that his date of birth is 03.04.1954 and that he submitted application for registering himself as Indian Citizen in the year 1970 and that the passport came to be issued only on 22.08.1982 and that the available photo was affixed. The photograph has been crossed by the Attache/issuing authority. We are in an age when it is so easy to find out the identity of a person from a photograph irrespective of the age when it was taken. Issuance of passport is a sovereign act. When the genuineness of the passport is not in doubt, the



exercise of matching the photograph found therein with the claimant has to be undertaken only by the authority concerned. This burden cannot be shifted to the applicant.

9.As rightly pointed out by the learned Amicus Curiae and the learned counsel for the petitioner, consideration of the historical context and the relevant constitutional and legal provisions clearly probabalizes the case projected by the petitioner. Article 8 of the Constitution of India is as follows :

“8.Rights of citizenship of certain persons of Indian origin residing outside India.—Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.”

Section 5(1)(b) of the Citizenship Act, 1955 empowered the Central Government to register a person of Indian origin who was ordinarily resident



in any country or place outside undivided India as citizen. The statutory

scheme set out in the Passports Act, 1967 will have to be taken note of. One

of the classes of passport mentioned in Section 4 of the Act is ordinary

passport. As per Part I Schedule II, ordinary passport is issuable to citizens of

India. Rule 5 sets out the application for the issue of passport. Form

EA(P)-12 contains the Form of Application for India/Sri Lanka passport for

repatriates-1964 and 1974 agreement. The passport produced before me

certifies that the person whose particulars are given in the passport has been

registered by the 3rd Secretary/Attache/competent authority as a citizen of

India under the provisions of Section 5(1)(b) of the Citizenship Act, 1955.

This statutory registration and declaration is very much binding on the first

respondent unless it is their case that the passport has been obtained by

misrepresentation. That is not their defence. Their only contention is that

identity is in dispute. I have already held that when a duly crossed

photograph is found affixed in the passport, it is not open to the first

respondent to lob the burden of proof at the petitioner.

10.The undertaking of the Government of India is to take back 6,00,000

of the persons of Indian origin and confer citizenship on them. This is not to

include the natural increase of this number. Admittedly, as on date, citizenship

has been conferred only on 4,61,639 IOTs (Indian Origin Tamils). It still



leaves a considerable shortfall. It is true that the last date for submitting application for Indian citizenship was 30.10.1981. The specific stand of the petitioner is that he submitted application in the year 1970 itself.

11.The petitioner came to India 33 years ago. He has grandchildren too. Article 51 of the Indian Constitution mandates that the State shall endeavour to foster respect for treaty obligations in the dealings of organised people with one another. Between India and Sri Lanka, there have been as many as three agreements on this issue. Their object was to resolve the status of the Indian origin Tamils in Sri Lanka. A figure was broadly agreed upon. India was obliged to repatriate not less than six lakhs of such persons from Sri Lanka and grant them citizenship. This was the figure envisaged in the year 1974. Half a century has elapsed since then. India will have to confer citizenship on not less than 1,37,000 Indian Origin Tamils. The figures presently available indicate that there are around 5,130 individual applicants belonging to IOT category seeking Indian citizenship. Even if all of them are granted Indian citizenship, India would still not have fulfilled its treaty obligations.

12.I am not directing the Government of India to confer citizenship on the petitioner. I am only mandating them to acknowledge an existing fact. It



is high time the petitioner's status as Indian citizen is recognized. But mere recognition is not sufficient. He is also entitled to the rehabilitatory measures announced by the Government for Sri Lankan repatriates. Only if such assistance is extended to the petitioner and his family, he can seamlessly integrate into the mainstream.

13. In this view of the matter, the impugned order is set aside. This writ petition is allowed with the following directions :

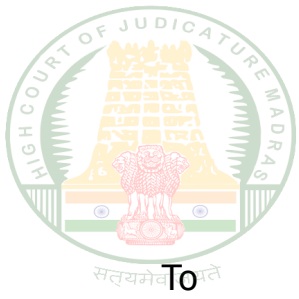
a) The respondents shall treat the petitioner and his family members as Indian citizens.

b) The petitioner is entitled to avail the relief measures announced by the Government of Tamil Nadu for Sri Lankan repatriates.

I place on record my appreciation for the excellent assistance rendered by Shri.S.Manuraj, learned Amicus Curiae. Shri.I.Romeo Roy Alfred, the learned counsel also argued the case with ability and thoroughness. No costs. Connected miscellaneous petition is closed.

30.11.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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