

W.P(MD)No.2421 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 03.03.2023

Pronounced on : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2421 of 2023

Neyatitus

... Petitioner

Vs.

The Regional Passport Officer,
Regional Passport Office,
Madurai, Bharathi Ula Veethi,
Race Course Road,
Madurai – 625 002.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in Letter Ref.No.SCN/314050523/23 dated 06.01.2023 on the file of the respondent and quash the same and directing the respondent to issue passport for petitioner by considering his representation dated 17.01.2023 within a prescribed time.

For Petitioner : Mr.I.Romeo Roy Alfred

For Respondent : Mr.D.Saravanan,
Central Govt. Standing Counsel.



ORDER

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“அகதி, பெயர்ற்றவர், போலி ஊடக முகம், முகமற்ற காதல், வழியற்ற காமம்...” are the words employed by Srilankan Poet Cheran in his foreword to Tho.Pathinathan's novel “அந்தரம்”. The novelist narrates as to how the title was finalized :-

“குறுக்க மறுக்க சுத்திக்கொண்டு திரிவதைக் கவனித்த சுகுமாரன் தொடர்புக்கு வந்தார். “நாவலுக்கு என்ன தலைப்புங்க(அ)ண்ணா வச்சிருக்குறீங்க?”

“சார், தொங்கு சாரம்.”

“அப்படின்னா”

“அதான் சார் என்கிட்டும் போக வழி தெரியாமல் அந்தரத்தில் நிக்கிறோமே அதான்.”

“அதுக்கு ஏப்பா தொங்கு சாரத்துக்கு போறே? நீ இப்ப சொன்னதே நல்லா இருக்கே?”

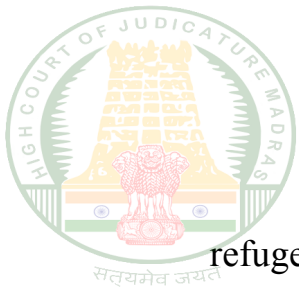
“என்ன சார் சொன்னேன்?”

“அதாப்பா இப்ப சொன்னியே?”

“அந்தரத்தில நிக்கிறோம்ன்னா?”

“ஆமா அதே நல்லாத்தானே இருக்குங்க(அ)ண்ணா...””

In the case of P.Ulaganathan and Others Vs. The Government of India and Others in W.P.(MD)No.5253 of 2009, I had also made a similar comparison. I referred to the mythological character “Thirisangu”. A



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refugee is neither here nor there. His fate hangs in the balance. He is at some point above ground level in the air in a supportless state (Kraivina tarkalat tamil akarati). That's the literal meaning of the title of the novel.

2.Let us come to the case facts. Sahayanathan is a Srilankan refugee. He came to India in the year 1990. He was put in Sennalakudi Refugee Camp, Nattarasankottai, Sivagangai Taluk. A refugee is also a human-being. He can fall in love. Sahayanathan came in contact with Patchaiammal. She is an Indian citizen. They got married. It was not an inter-religious marriage. Inter-faith love does not necessarily culminate in inter-religious civil marriage. “Patchiammal” got converted and became Mary Christina. Their marriage was solemnized by the parish priest, Alangara Annai Cathedral, Sivagangai on 23.05.2001. The petitioner was born on 18.01.2002. He studied in S RM Higher Secondary School, Nattarasankottai and passed out in March, 2017. He studied B.Com. in Raja Doraisingam Government Arts College, Sivagangai. All that he now wants is issuance of passport so that he can explore employment opportunities abroad. He submitted an application dated 28.10.2022 before the respondent. Since in the birth certificate, the



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petitioner was mentioned as Srilankan refugee, the impugned notice dated 06.01.2023 was issued calling upon the petitioner to furnish proper explanation. The petitioner submitted his explanation on 17.01.2023. Apprehending that his application may not be favourably considered, the present writ petition came to be filed.

3.The apprehension of the petitioner is well-founded. I have described the plight of Srilankan refugees in getting citizenship in Ulaganathan case. One Nalini was born to Srilankan refugees on 21.04.1986 at Mandapam Camp. As per the provisions of Indian Citizenship Act, she is an Indian by birth. She was entitled to passport as a matter of right. Yet she had to move this Court for relief. Vide order dated 12.08.2022 in W.P.(MD)No.3512 of 2022, I held as follows:-

*“6.In the case on hand, there is no scope for any doubt. The petitioner has enclosed the birth certificate issued by the competent authority. Its genuineness is not doubted. The learned counsel appearing for the petitioner drew my attention to the decision of the Hon’ble High Court of Delhi made in **W.P(C)12179 of 2009 (Namgyal Dolkar Vs Government of India) dated 22.12.2010.** In the said case, the petitioner was*



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born in India on 13.04.1986. The Hon'ble High Court of Delhi held that she is an Indian Citizen by birth in terms of Section 3(1)(a) of Citizenship Act, 1955 and that she cannot be denied passport. The case on hand is absolutely similar. Since the petitioner is an Indian citizen by birth, she need not apply for citizenship. It is not the case of the respondent that the petitioner had renounced her Indian citizenship."

4.Harina was not lucky to be born before the cut-off date. Yet invoking Section 20 of the Passport Act, 1967, I directed the passport authorities to issue passport in her favour. Vide order dated 30.01.2023 in W.P.(MD)No. 27893 of 2022, I had held as follows:-

"6.The said provision 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



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special cases, having regard to international 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 so to do in the public interest. The question is whether the said power deserves to be exercised in this case.”

5.Ulaganathan and others was the first writ petition dealt with by me regarding Srilankan refugees. Then came Nalini and Harina. This is the fourth writ petition. There are persons in public life, politics and even in parliament who wonder as to how particular kind of cases tend to land up before a particular Judge. They have to be educated on court practice. The Hon'ble Chief Justice of the High Court is the master of roster and His Lordship allocates a set of subjects to be dealt with by a particular Judge for given period. There is change of roster every three months. It so happened that during last six years, when I was holding



General Miscellaneous portfolio, such refugee related cases came to be listed before me. It is not as if a Judge has a choice or there is bench-hunting.

6.Parliament is yet to enact a law relating to refugees. In the leaflet issue dated 04.04.2023, I came across an article by Devanjali Banerjee on the recent UK Illegal Migration Bill 2022 – 2023. It is profitable to run through the following extracts from the said article:-

“Current international framework

The Refugee Convention defines a ‘refugee’ as one who may possess “...[a] well-founded fear of being persecuted for membership of a particular social group or political opinion, and is unwilling or unable to avail themselves of the protection of the country of habitual residence.” Refugees may face persecution in their home State and hence, as asylum-seekers, be ‘unwilling’ to refer to the protection of their original State. Hence, the de facto or effectively unprotected status of refugees is one of the key factors out of which arises their persecution. Thus, they may take recourse to low-income jobs, be the subject of various forms of discrimination, and be unable to enjoy even a subsistence-quality life.



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The current international framework for refugees may be subdivided into two categories:

(a) International refugee law

(b) International human rights law

International refugee law

*The primary instrument for refugee protection is the Refugee Convention and its associated **Protocol of 1967**. There are three important facets that emerge from these two foundational instruments: they define the term, 'refugee', as noted above; incorporate the principle of non-refoulement, and lay down uniform standards in terms of treatment of refugees by State agencies.*

*The United Nations High Commissioner for Refugees (UNHCR) serves as a **guardian** of the Refugee Convention and its Protocol. Today, there are 149 signatory States to either or both the Convention and its Protocol, resulting in the establishment of certain common minimum standards.*

International human rights law

*Apart from specialised instruments, several other treaties are also relevant to this discourse, and include the **Universal Declaration on Human Rights, 1948** and*



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the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In terms of protection of refugees at the time of armed conflict, the international humanitarian law regime applies. The Geneva Convention relative to the Protection of Civilian Persons in Time of War and its associated Protocol of 1977 also address issues pertaining to violation of international human rights standards.

Non-refoulement

The definition of 'refugee' under the Refugee Convention incorporates the meaning of 'non-refoulement'. The underlying principle upon which the structure of 'non-refoulement' rests is the norm that there is an obligation upon States to not return non-national asylum-seekers to territories where they may be subject to torture, inhumane treatment, and where their life and freedom may be at risk.

*It must be noted here that the regimes of the Refugee Convention as well as the Torture Convention are informed by the principle of non-refoulement. Given the efficacy of this principle in the protection of refugees facing human rights violations, over the years the principle of non-refoulement is seen as having attained the status of a peremptory rule (*jus cogens*) under international law. Consequently, it has attained universal acceptance and is thus applicable to all States, to some extent.*



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India's Refugee policy

According to the UNHCR, more than 46,000 refugees and asylum-seekers reside in India today.

India is not a party to the 1951 Refugee Convention nor its 1967 Protocol, on grounds of security and public order. In any case, Article 253 of the Constitution of India provides that the Parliament can only implement international treaties or conventions by making laws to that effect. However, no law on refugees exists in India at present.

All the same, India has assisted refugees within its territory, by way of State practice and communication with the UNHCR: often, refugees here are categorised as either mandated or non-mandated. Moreover, Articles 14 (equality before the law) and 21 (right to life and liberty) of the Constitution are available to non-citizens as well, and have been utilised by refugee groups in Indian courts for obtaining protections against deportation, expulsion and repatriation without consent.

For instance, in 1999, the Gujarat High Court prevented the deportation of Iraqi refugees certified by UNHCR. In another case in 2021, the Manipur High Court held that non-refoulement is part of the Indian Constitution and granted safe passage to seven Myanmar persons to Delhi. However, due to the lack of legislation, there is no settled position on refugees, with



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certain refugees receiving recognition and protection, and others not receiving similar protections. It can be argued, then, that this variance in standards of protection culminates into immigration policies that explicitly make distinctions between migrants based on religion or faith.”

7.UNHCR has brought out “Guide for issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons” in the year 2017. It is not necessary to fall back on international conventions or even judicial precedents for granting relief to the writ petitioner. The petitioner's date of birth is 18.01.2002. Section 3 (1)(b) of the Citizenship Act, 1955 states that every person born in India on or after first day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth shall be a citizen of India by birth. The Amendment Act came into force on 03.12.2004. The petitioner has been lucky in two ways. His mother is an Indian citizen. He was born before the cut-off date. Both the statutory requirements stand fulfilled in this case.



8.The Hon'ble Delhi High Court in the decision reported in 2018

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SCC Online Del 11650 (Prabhleen Kaur Vs. Union of India and Another)

held as follows:-

30. Once it is accepted that the petitioner's mother's citizenship cannot be questioned in the given facts, the doubt, if any, raised on the nationality of the petitioner does not survive.

33. Having stated the above, it is also relevant to consider the consequences of the stand now taken by the respondents. Clearly, the petitioner is not a national of any other country, she cannot claim to be a citizen of Afghanistan. She has no moorings in that country, she knows of no place in that country that could be remotely called her home. She has never visited that country or has been accepted in that culture. She is born of parents whose faith is in Sikhism and she is an integral part of her community. Questioning her nationality in these facts, at this stage, would render her stateless and this result must clearly be avoided insofar as possible.

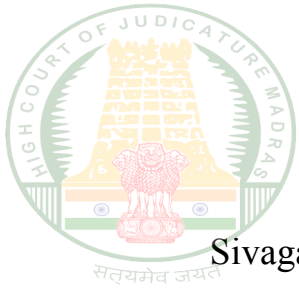
35. It is apparent from the above that one of the grounds considered by the Supreme Court was that accepting the appellant's contention would render the respondent therein stateless. And, insofar as possible, this should be avoided.



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36. India is also a signatory to the Universal Declaration of Human Rights, 1948. Article 15 of the said treaty expressly provides that everyone has a right to one nationality. In the facts of this case, the only nationality that the petitioner can have is Indian. Thus, denial of the same would also fall foul of the Universal Declaration of Human Rights, 1948.”

9. There is no need to quash the impugned notice. The respondent cannot be blamed. That is because in the birth certificate of the petitioner, he has been described as Srilankan refugee. Such a description made by the authority cannot bind the petitioner. In any event, it is erroneous. We are still stuck in patriarchal notions. The official must have thought that since the petitioner's father is a Srilankan refugee, the petitioner though born through an Indian citizen must also partake the father's nationality. The petitioner has offered his explanation before the respondent. Convincing and unimpeachable materials have been placed before this Court. It is seen that Patchiammal was born on 06.03.1974 and that she studied upto 10th standard. True copy of the entry in the register of marriages maintained by R.C. Diocese of



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Sivagangai and the birth certificate issued by the Executive Officer, Birth and Death Registrar, Nattarasankottai Town Panchayat have been enclosed in the typed set of papers. The case was taken up for admission on 07.02.2023 and for final disposal on 03.03.2023. No adverse material has been brought to my notice. The petitioner has made out a case for grant of relief. The respondent is directed to process the petition-mentioned application and issue passport to the petitioner within a period of three weeks from the date of receipt of a copy of this order. The petitioner will have to fulfill the other usual formalities, if any.

10.This writ petition is allowed accordingly. No costs.

05.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 06.04.2023.



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G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
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05.04.2023

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