

**'She Is For All Practical Purposes A Stateless Person': Madras HC Directs Centre To Consider Issuing Indian Passport To Sri Lankan Refugees' Daughter**

**2023 LiveLaw (Mad) 37**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**G.R. SWAMINATHAN; J.**

**W.P(MD)No.27893 of 2022; 30.01.2023**

**Harina versus The Regional Passport Officer**

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in Letter Ref No.OBJ/313777239/22 dated 22.11.2022 on the file of the first respondent and quash the same and directing him to issue passport to the petitioner by considering the petitioner's representation dated 05.12.2022 within a prescribed time.

*For Petitioner: B. Santhanam Rajesh Kumar;*

*For Respondents: H. Lakshmi Shankar for R1 & R2 Senior panel counsel, B. Saravanan for R3 Additional Government Pleader*

**ORDER**

Heard the learned counsel on either side.

2. Harina has petitioned this Court for directing the Central Government to issue passport to her. Her parents are Srilankan citizens. They escaped to India to avoid persecution in the country of their birth. What happened and what is happening in Srilanka are matters of common knowledge. Frontline magazine in its Issue dated 13.01.2023 has carried an article titled "Srilankan Tamil Hindus seek India's support as Sinhala Government targets temples".

3. The petitioner's parents were housed in the refugee camp at Rayanoor, Thanthondrimalai, Karur District. Harina was born in Government Hospital, Kodankipet Village, Karur District on 24.02.2002. She did her schooling in the same District. She studied in Michael Job College of Arts and Science for Women affiliated to Bharathiyar University, Coimbatore. She now wants to go abroad for employment. Obviously, she requires passport. Her efforts to obtain an Indian passport have been in vain. Hence, she filed the present writ petition.

4. The learned Standing Counsel for the Central Government points out that since the petitioner was born after the cut-off date i.e., on 01.07.1987, she cannot claim Indian citizenship as a matter of right. Relying on the decision of the Hon'ble Supreme Court reported in **Sarbananda Sonowal v. UOI (2005) 5 SCC 665**, he submitted that a child born in India to an illegal immigrant after the cut-off date is also not eligible for citizenship. According to him, the petitioner can apply for citizenship by naturalization and that it would be considered on merits by the competent authority.

5. I grant liberty to the petitioner to apply for Indian citizenship by naturalization under Section 6 of the Citizenship Act. But I know that it is a long journey and may not afford immediate relief to her.

6. I was wondering if there was a way out. Advocate Shri.Arun Balaji, who was present in the court drew my attention to Section 20 of the Passports Act, 1967. 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 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.

7. The writ petitioner was born and brought up in India. Her parents have lost their roots in the country of their origin. The petitioner is not in a position to go to Srilanka and take a Srilankan passport. This is because, under Section 5 (2) of the Citizenship Act of Srilanka, a person born outside Ceylon on or after the appointed date shall have the status of a citizen of Ceylon by descent, if at a time of his birth, his father is a citizen of Ceylon and if, within one year from the date of birth or within such further period as the Minister may for good cause allow, the birth is registered in the prescribed manner. The materials on record do not indicate that the petitioner is a Srilankan citizen. Prima facie it appears that her birth was not registered and therefore, she is not a Srilankan citizen. She is not an Indian citizen either. She is for all practical purposes a stateless person. Now, she wants passport only to explore overseas employment opportunities. Right to earn one's livelihood and right to travel abroad are enshrined in Article 21 of the Constitution of India which applies to all persons, citizens and non-citizens alike. In these circumstances, granting passport to the petitioner under Section 20 of the Passports Act, 1967 is not going to prejudice the interest of the country. On the other hand, it would serve public interest. Attending to the needs of the refugees, asylum seekers and stateless persons is certainly a matter of public interest.

8. I came across an article by Anashwara Ashok titled “Religious Response to Refugees”. The relevant para reads as under :

“Hinduism promotes the concepts of ‘dharma’ and ‘vasudhaiva kutumbakam.’ According to the Hindu epic The Mahabharata, dharma requires that ‘one should never do that to another which one regards as injurious to oneself.’ It also refers to the duties every person is enjoined to follow regarding other human beings. Hence ‘dharma’ compels Hindus to respect and fulfil the needs of refugees. Similarly, ‘vasudhaiva kutumbakam,’ meaning ‘the world is one family,’ rejects the boundaries embedded in the world in the form of nationality, ethnicity, and religion, prompting Hindus to help refugees fleeing persecution and seeking asylum, irrespective of their differences from oneself.”

9. The Passports Act, 1967 opens with the following Preamble:

“An Act to provide for the issue of passports and travel documents, to regulate the departure from India of citizens of India and for other persons and for matters incidental or ancillary thereto.”

Any Preamble is the key to understanding the mind of the law makers. The Preamble extracted above is self-explanatory. It is meant to cover the cases of non-citizens also.

**10.** Let me refer to two International Conventions dealing with statelessness. The 1954 Convention on Status of Stateless Persons is designed to ensure that stateless people enjoy a minimum set of human rights. It establishes the legal definition of a stateless person as someone who is “not recognized as a national by any state under the operation of its law.” Simply put, this means that a stateless person is someone who does not have the nationality of any country. The 1954 Convention also establishes minimum standards of treatment for stateless people in respect to a number of rights. These include, but are not limited to, the right to education, employment and housing. Importantly, the 1954 Convention also guarantees stateless people **a right to identity, travel documents and administrative assistance**. The 1961 Convention on Reduction of Statelessness aims to prevent statelessness and reduce it over time. It establishes an international framework to ensure the right of every person to a nationality. It requires that states establish safeguards in their nationality laws to prevent statelessness at birth and later in life. Perhaps the most important provision of the convention establishes that **children are to acquire the nationality of the country in which they are born if they do not acquire any other nationality**. It also sets out important safeguards to prevent statelessness due to loss or renunciation of nationality and state succession [extracted from UNHCR website]. I am conscious that India is not a signatory to the said conventions. However, one can definitely seek guidance from them.

**11.** Universal Declaration of Human Rights, 1948 has been ratified by India. Article 2 reads as follows:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-selfgoverning or under any other limitation of sovereignty.”

Article 13 reads as follows :

“(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.”

**12.** In **Satwant Singh Sawhney v. D. Ramarathnam Assistant Passport (AIR 1967 SC 1836)**, the Hon'ble Apex Court held that the expression "personal liberty" which occurs in Article 21 of the Constitution includes the right to travel abroad and that no person can be deprived of that right except according to procedure established by law. The same was reiterated in **Maneka Gandhi vs. UOI (1978) 1 SCC 248**.

**13.** The petitioner has made out a case for relief. She is permitted to submit an application under Section 20 of the Passports Act. The second respondent is directed to consider her application and pass order thereon in the light of the observations made above as expeditiously as possible.

**14.** The Writ Petition is disposed of on these terms. No costs.