

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.5253 of 2009

1.P.Ulaganathan

2.U.Jegatheeswaran

3.U.Atheeswaran

4.Yogeswaran

5.M.Sarvapoosanam

6.Thanikkodi

7.V.Nagalingam

8.S.Thanneri

9.M.Nagamuthu

10.S.Jeganathan

11.K.Selvaraj

12.S.Sasikala

13.N.Chandrakumar

14.N.Raja

15.J.Vijayakumar

16.Annamalai

- 17.M.Natarajan
- 18.N.Suseela
- 19.J.Thavamani
- 20.W.Selladurai
- 21.P.Chithan
- 22.C.Santhakumar
- 23.T.Sevanthiselvan
- 24.S.Kamaleswaran
- 25.M.P.Kulasekarapandian
- 26.M.Subramanian
- 27.V.Selvaraj
- 28.Mariyappan
- 29.Manickam
- 30.R.Krishnasamy
- 31.D.Kamaldevi
- 32.Gunaseelan
- 33.Gopalakrishnan
- 34.Ramachandran
- 35.S.Balusamy
- 36.K.Muniyandi

37.R.Subbiah

38.R.Sarojadevi

39.R.Murugaiah

40.K.Rathinam

41.N.Ranjitham

42.M.Muthulingam

43.R.Selvaraj

44.M.Theivanai

45.Kasthuri

46.K.Naguleswaran

47.S.Prabakaran

48.P.Parvathy

49.Kayambu

50.Rengammal

51.Annalatchimi

52.R.Perumal

53.R.Sarasu

54.M.Balasubramanian

55.M.Mugundan

56.K.Muthukrishnan

57.T.Annamalai

58.R.Ravindrakumar

59.V.Pamiladevi

60.S.Mayilvaganam

61.M.Manoharan

62.M.Yogarasa

63.Sivakumar

64.Sukumar

65.Illamaran

... Petitioners

Vs.

1.The Government of India,
rep.by its Secretary to Government,
Ministry of External Affairs,
Government of India, South Block,
New Delhi – 1.

2.The Government of India,
rep.by its Secretary to the Government,
Ministry of Home Affairs,
Government of India, North Block, New Delhi – 1.

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 State of Tamil Nadu,
Rep.by its Secretary to the Government,
Public Department, Government of Tamil Nadu,
Fort St.George, Chennai – 600 009.

- 5.The Commissioner,
Department of Rehabilitation,
Ezhilagam, Chepauk, Chennai – 600 005.
- 6.The District Collector, Tiruchirappalli District.
- 7.The Special Deputy Collector,
Refugee Camp, Kottapattu,
Tiruchirappalli District.
- 8.The Hon'ble Chairperson,
Tamilnadu State Human Rights
Commission, Thiruvarangam Maligai,
P.S.Kumarasamy Raja Salai,
Raja Annamalaipuram, Chennai – 600 028.
- 9.The Assistant High Commissioner of India,
31, Raja Pillai Street, Mawatta P.Box-47,
Kandy, Srilanka. ... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to provide citizenship to these repatriates and their family members who repatriated into India after the intermittent settlement in tea estates of hill areas in Sri Lanka under the Indian Citizenship Act.

For Petitioners : Mr.A.John Vincent

For Respondents: Mr.V.Kathirvelu,
Assistant Solicitor General of India,
assisted by Mr.C.Nandagopal for R1, R2
and R9

Mr.Aayiram K.Selvakumar for R3 to R8

ORDER

The case of the writ petitioners is that they are descendants of indentured labour who settled down in the tea estates of Sri Lanka during the colonial times. There is no doubt that they are tamil speaking people. Their forefathers hailed from what is the present day State of Tamil Nadu. They faced severe discrimination at the hands of the Sri Lankan Government after it gained independence in the year 1948. The writ petitioners contend that they should not be considered as part of those tamilians from northern and eastern Srilanka who though Tamil-speaking are yet natives of Sri Lanka in every sense of the term. Sri Lanka witnessed a genocidal and brutal ethnic strife. 1983 was one of the worst moments in history. There was a virtual exodus of the tamil people from Sri Lanka to India. They reached India by whatever mode that was available. The petitioners would claim that while those from northern and eastern Sri Lanka would have to be treated as refugees, persons like the petitioners will have to be treated more as Indians repatriates. After their entry into India, most of them were kept in Kottapottu camp in Trichy. Since they apprehended forcible deportation back to Sri Lanka, writ petitions were filed before the Madras High Court. Interim injunction was

granted and the case was finally disposed of by recording the undertaking given by the Government that the writ petitioners will not be compulsorily sent back to Sri Lanka (vide order dated 21.03.1994 made in WP Nos.1448 to 1450, 1802, 5643, 15507 of 1988, 7533 and 16892 of 1991 and 6804, 6820, 7613, 8206, 12298 and 12343 of 1992). The writ petitioners had been periodically submitting representations seeking conferment of Indian citizenship. There was exchange of correspondence among the various authorities.

2. But then, there was no fruitful result forthcoming all these years. The writ petitioners plead that they are genealogical Indians. Their native places are in Tamilnadu. They have blood relatives only here. Only because their forefathers had gone to Sri Lanka to work as labour in tea estates of Sri Lanka, they had to suffer this condition of statelessness. They had to escape from Sri Lanka to save their lives and limbs. They cannot go back to Sri Lanka. They have nothing there. It is not as if Sri Lanka is ready to welcome the petitioners' back. Since the authorities have not been positive in their approach, the petitioners have moved this Court seeking conferment of citizenship.

3.The Government of Tamilnadu had filed a counter affidavit. It is admitted therein that most of the writ petitioners are staying in Kottapottu Transit Camp, Trichy as Sri Lankan refugees. Others are staying in various refugees camps which are located in Madurai, Perambalur, Karur, Mandapam Camp etc., It is further admitted that they arrived in India during 1983 to 1985. The writ petitioners are given monthly cash doles, ration essential commodities, accommodation, dress materials, utensils and free education etc., But, citizenship cannot be conferred on them as it is a policy matter to be decided by the Government of India. The Government of Tamilnadu contests the petitioners' claim that they can be treated as repatriates. The Government of Tamilnadu recognizes them only as refugees.

4.The specific stand of the Government of Tamilnadu is that an illegal migrant is not eligible for grant of Indian citizenship under the provisions of Indian Citizenship Act, Act 1955 and the rules framed thereunder. The writ petitioners are not having valid and upto date residential permit/long term VISA. They did not arrive in India through an appropriate passport. They came here through an illegal route. Therefore, they are illegal migrants and hence, the request of the

petitioners cannot be complied with. The Government of Tamil Nadu therefore prays for dismissal of the writ petition.

5.The stand of the Government of India is no different. The policy of the Government of India is that Tamil Refugees/migrants who had entered into India after 1983 and posses a valid travel documents can apply for Indian Citizenship under Section 5(1)(c) of the Indian Citizenship Act, 1955. Other refugees/migrants who do not have valid passport/VISA/residential permit are treated as illegal migrants and therefore they are not eligible for registration under Section 5 or for naturalisation under Section 6 of the Indian Citizenship At, 1955. It is further submitted by the Government of India that no application has been received in Foreigners' Division of Ministry of Home Affairs for grant of Indian Citizenship or with the concerned District Collector. It is further stated that even if the writ petitioners fulfil all the eligibility criteria, they cannot demand citizenship as a matter of right. This is because the Central Government always have the discretion to grant or refuse an application for grant of Indian citizenship. It is not required to assign any reason for grant or refusal.

6.The learned counsel appearing for the writ petitioners has filed

detailed written arguments where there are copious references to international instruments such as Universal Declaration of Human Rights and Conventions relating to status of stateless persons and resolutions passed in various conventions. It is admitted by the learned counsel for the petitioners that India was not a party to any of these conventions. He would, however, invoke Article 51(c) of the Constitution of India which mandates the Government to foster respect for international law and treaty obligations in dealings of the organised people with one another.

7.The learned counsel for the petitioners would refer to the various decisions of the Hon'ble Supreme Court particularly Apparel Export Promotion Council vs. A.K.Chopra (AIR 1999 SC 625). The writ petitioners' counsel also would refer to an order dated 10.12.2018 passed by the High Court of Meghalaya in WP(C)No.448 of 2018 (Amon Rana vs. State of Meghalaya). This Judgement passed by Hon'ble Mr.Justice S.R.Sen has since been reversed by the Hon'ble Division Bench and therefore, the said judgment cannot be looked into. Likewise, the reference to the international instruments is again of no avail. This is because Indian Parliament pursuant to the

constitutional mandate laid down in Article 11 has framed the Indian Citizenship Act, 1955. Therefore, when a comprehensive law governing citizenship has been put in place, it is futile to look to international law, more so, when India is not a party to those conventions.

8.This Court cannot also lose sight of the stirring observations made by the Hon'ble Supreme Court in the decision reported in (2005) 5 SCC 665 (Sarbananda Sonowal vs. Union of India). It was observed that the duty of the State is to protect the nation from "external aggression and internal disturbance" on account of large scale illegal migration from neighboring countries which is also a form of aggression.

9.There is one other aspect. A writ petition in the nature of a public interest litigation was filed by a Srilankan Tamil Refugee for directing the Government of Tamil Nadu as well as the Government of India to ensure that they have driving licenses, bank accounts, movable articles, immovable properties and educational rights and the right to freedom of movement. The Hon'ble First Bench in the decision reported in AIR 2015 Mad 65 (Gnanaprakasam vs.

Government of Tamil Nadu held as follows :

“9.We have given a thought to the matter. We are of the view that the very maintainability of the P.I.L. filed on behalf of Sri Lankan citizens is in question. Not only that, the petitioner seems to be confusing the issue by claiming equality of rights with citizens of the country, something which is not permissible. There cannot be an absolute constitutional protection for a non-citizen by extending all the provisions of the Constitution of India to him.

10.The aspect urged qua issuance of licence has already been dealt with in the aforesaid affidavits to show that the matter concerns security of the State and there also, on proper verification, licences have been permitted. As regards higher education, there is no separate reservation nor can a parity be claimed in view of the judicial pronouncement referred to supra.

11.The judgments referred to by the learned counsel for the petitioner do not apply in the facts of the case. National Human Rights Commission vs. State of Arunachal Pradesh's case, (supra), dealt with certain protections provided under Section 6A of

the Citizenship Act itself. It is in that context that certain observations are made, where a cut-off date was provided, giving them the entitlement to apply for citizenship. In *Chairman, Railway Board vs. Chandrima Das* (supra), the matter was of a Bangladesh refugee, who was raped and the grant of compensation on account of violation of the right to live with human dignity guaranteed under Article 21 of the Constitution of India. The aspect of security of State being important has been emphasized in that judgment, as even Part III of the Constitution of India does not contain absolute rights.

12. In our view, the stand of the respondents shows that assistance is being provided to the Tamil refugees from Sri Lanka, but they want more, as urged by the petitioner. There is no intrinsic right much less any constitutional right in this behalf, as their basic needs are being looked after, despite being refugees, in view of Article 21 of the Constitution of India. It is for the concerned Governments to decide whether any modified or further facilities are to be provided or not.

13. For all the aforesaid reasons, we are not inclined to entertain this writ petition.

14. Writ Petition stands dismissed.”

10. The aforesaid decision rendered in WP No.18373 of 2008

may not come in the way of granting some relief in this writ petition. This is because, in the case on hand, citizenship is sought. That was not so in Gnanaprakasam's case.

11.The Government of India is not right in contending that it has not received any application for citizenship from the petitioners herein. In the typed set of papers, a number of representations have been enclosed urging the authorities to grant citizenship to the petitioners. The District Magistrate/District Collector, Trichirappalli has however not chosen to forward the petitioners' applications to the Government of India for the simple reason that the writ petitioners herein are illegal migrants.

12.Section 5(1) of the Citizenship Act, 1955 opens as follows :

“Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely”

Therefore, the first condition that must be fulfilled is that the applicant is not an illegal migrant. This expression has been defined in Section

2(1)(b) of the Act which reads as follows :

“illegal migrant” means a foreigner who has entered into India-

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.”

Applying the aforesaid statutory definition, the petitioners are obviously illegal migrants. Once that is declared to be their status, they are not eligible for citizenship by registration under Section 5 of the Act. It is a futile exercise to forward their applications or to consider the same. That is what the State Government and the Central Government in unison say.

12. But then, the petitioners can invoke Article 21 of the Constitution of India. It applies to all persons, citizens and non citizens alike. It would apply to refugees and asylum seekers. And most certainly to the petitioners who are genealogically rooted to this soil and who speak our language and who belong to our culture.

13. The petitioners have amply demonstrated that they have formed the intention of making India their permanent home. The Government of India had given an undertaking that they will not be compulsorily sent back to Sri Lanka. Therefore, the case on hand presents a rather a unique situation. In mythology there is a region called "Thirisangu Sorgam". The petitioners are in a similar situation. They have come away from Sri Lanka but they have not been absorbed here. But, the camps in which they have been housed are far from being a Sorgam. The camp conditions are hellish. One must read Pathinathan who is associated with the literary magazine Kalachuvadu in this regard. Even if one's heart is made of stone, it would still melt under the searing heat of reality. When IPS officers are made in charge of Mandapam Camp, it is called as punishment posting. It is only a temporary phase for them. They manage their way and somehow slither towards rehabilitation. But for the inmates, there is no hope whatsoever. It is endlessly bleak. The petitioners have been in camps for close to 35 years. Keeping them under surveillance and severely restricted conditions and in a state of statelessness for such a long period certainly offends their right under Article 21 of the Constitution of India.

14.The Central Government need not feel helpless or take shelter behind Section 5 of the Citizenship Act, 1955. Notwithstanding the absence of an express power to relax the rigour set out in the opening clause of Section 5(1) of the Act, this Court must hold that the sovereign authority does have an implied power to do so. In fact, the existence of the implied power to grant relaxation in cases arising under the Indian Citizenship Act, 1955 was recognised by the Hon'ble Delhi High Court in ***Felix Stefan Kaye vs Foreigners Regional Registration Office*** in WP(C)No.2862/2018 & CM Nos.11574-576/2018 dated 23.03.2018.

15.The Government of India must take note of the fact that the petitioners came to India when faced with a grave threat to their lives and limbs. They had to seek asylum in India. A person who is running for his life cannot obviously be expected to wait for a visa. Therefore, viewing the petitioners' case through the prism of the technical requirements of law, does not appear to be a humanitarian approach.

16.An illegal migrant cannot claim such a relaxation if he had merged with society surreptitiously. That is not the case here. The

writ petitioners have been housed in camps set up by the Government.

17.Hence, I issue the following directions :

a.The writ petitioners are permitted to submit a fresh application seeking citizenship to the respective District Magistrates/District Collectors.

b.The District Magistrates/District Collectors concerned are directed to forward the same without any delay to the Central Government.

c.Once the Central Government receives the petitioners' applications, it shall pass appropriate orders thereon within a period of sixteen weeks thereafter. The Central Government shall bear in mind that it has the power to consider the applications favorably notwithstanding the technical status of the applications as that of illegal migrants. The Central Government shall take note of the unique situation in which the petitioners are placed. The undertaking given before the Madras High Court that the applicants will not be sent back will also be factored in the process of consideration.

18.I consciously refrain from issuing any positive mandamus directing the Central Government to provide citizenship to the writ

petitioners herein. This is because citizenship falls within the exclusive executive domain of the Central Government. My heart may bleed for the petitioners but I have to be mindful of the Lakshman Rekha that limits the bounds of judicial power. Going beyond will be encroachment. Any form of encroachment is bad. Encroachment by judiciary into the executive realm can be no exception. Some may say it is exceptionally bad.

19.The writ petition is disposed of accordingly. No costs.

17.06.2019

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To

- 1.The Secretary to Government, Government of India,
Ministry of External Affairs, Government of India, South Block,
New Delhi – 1.
- 2.The Secretary to the Government, Government of India,
Ministry of Home Affairs, Government of India, North Block,
New Delhi – 1.
- 3.The Secretary to Government,
The Home Department, Government of Tamil Nadu,
Fort St.George, Chennai – 600 009.
- 4.The Secretary to the Government,

Public Department, Government of Tamil Nadu,
Fort St.George, Chennai – 600 009.

- 5.The Commissioner, Department of Rehabilitation,
Ezhilagam, Chepauk, Chennai – 600 005.
- 6.The District Collector, Tiruchirappalli District.
- 7.The Special Deputy Collector, Refugee Camp, Kottapattu,
Tiruchirappalli District.
- 8.The Hon'ble Chairperson, Tamilnadu State Human Rights
Commission,
P.S.Kumarasamy Raja Salai,
Raja Annamalaipuram, Chennai – 600 028.
- 9.The Assistant High Commissioner of India,
31, Raja Pillai Street, Mawatta P.Box-47,
Kandy, Srilanka.

G.R.SWAMINATHAN, J.

Skm

Pre Delivery order made in

WP(MD)No.5253 of 2009

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