
(2014) 01 MAD CK 0127
In the Madras High Court
Case No : Writ Petition No. 22849 of 2007

S. Muralidharan

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citizenship Act, 1955 — Section 5(1)(c)

Citation : (2014) 01 MAD CK 0127

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Venkatesh Mahadevan, for the Appellant; N. Ramesh, Central Government Standing Counsel for R1, R2, R4 and R5 and Mr. S.V. Durai Solaimalai, Additional Government Pleader for R3, for the Respondent

Final Decision : Disposed Off

Judgement

T. Raja, J.—Mr. S. Muralidharan, who was born on 22.5.69 at Kandy, Sri Lanka and holding a Sri Lankan passport issued on 6.7.78, renewed subsequently upto 4.7.88, was forced to come to India in the year 1983, because of the eruption of violence in Sri Lanka due to ethnic clashes, and he completed his school education and graduation at Chennai. The learned counsel appearing for the petitioner submitted that when the petitioner was employed at New Delhi, in the year 1994, he made an application to the Regional Passport Office at New Delhi submitting his Sri Lankan passport and record of his birth at Kandy, Sri Lanka as required by the said office. He was also issued with an Indian passport bearing No. P-548474 on 12.1.94, which expired on 11.1.2004. It was also stated that the Indian passport authorities at New Delhi made an endorsement in the newly issued Indian passport that they had cancelled the Sri Lankan passport. It was further pleaded that the petitioner was leading the life as a dutiful citizen of India by making suitable adjustments in his life. Adding further, the learned counsel stated that the petitioner also married one Ms. Neelam Bisht, an Indian, on 6.12.96. While he was staying in India, he had travelled to various countries like

Bangladesh and Singapore with his Indian passport. However, after securing employment at Chennai in the year 2003, he moved his residence to Chennai and applied for renewal of his Indian passport on 20.1.2004 with the Regional Passport Office at Chennai on filing an application bearing File No. V-000371 before the second respondent office. However, the Regional Passport Office at Chennai, the second respondent herein made a facsimile representation to the Regional Passport Office at New Delhi on 9.4.2004 to clarify the bona fides with which he made an application for the grant of passport initially. In turn, the Regional Passport Office at New Delhi replied by way of facsimile on 26.4.2004 stating that there was no objection for renewal of his Indian passport, which was issued to him after cancelling the Sri Lankan passport bearing No. E-230746 on 12.1.94. Therefore, on this basis, it was further pleaded that the petitioner has been treated as an Indian, as he was holding an Indian passport and also married an Indian girl by name Ms. Neelam Bisht on 6.12.96, as he is otherwise entitled u/s 5(1)(c) of the Citizenship Act, 1955. When he applied for renewal of his Indian passport, he was called for personal hearing by a notice dated 18.11.2004 bearing Letter No. 110359/Citz-I/2004-1 in the office of the third respondent herein. In response to the said notice, when the petitioner appeared and gave his detailed statement, the same were also recorded by the Personal Assistant to the third respondent and finally the third respondent also directed the petitioner to appear along with the supporting documents by letter dated 16.12.2004 bearing No. P2/72959/04, accordingly, the petitioner submitted all the relevant documents and a detailed statement thereon was also recorded. However, the first respondent issued a letter dated 29.7.2004 stating that the petitioner failed to produce the proof of obtaining Indian citizenship and thereupon he was advised to approach the I.C. Section, Ministry of Home Affairs, the fourth respondent for obtaining Indian nationality as required under the rules. However, the petitioner sent a letter dated 16.8.2004 to the Under Secretary, I.C. Section, Ministry of Home Affairs placing his predicament and the fact that the Chief Immigration Officer had refused to grant him the residential permit, as he was issued an Indian passport, since he was not a foreigner. However, by a letter dated 16.12.2004 issued by the Ministry of Home Affairs, the petitioner was directed to approach the Ministry of External Affairs, the first respondent to return his cancelled Sri Lankan passport and to register with the Under Secretary, Government of India, Ministry of Home Affairs, the fourth respondent herein impliedly to re-assume Sri Lankan nationality. Further, he was also directed to apply u/s 5(1)(c) of the Indian Citizenship Act, 1955 to the Government of Tamil Nadu for citizenship by registration. Subsequently, he was also directed to appear before the Personal Assistant (General), Collector of Chennai, the third respondent herein on 14.3.2005 and after considering the petitioner's documents, namely, S.S.L.C. certificate issued by the M.C. College Higher Secondary School at Chetpet, Chennai, Graduation certificate issued by Madras University, Driving licence from the Regional Transport Office, Chennai, Permanent Account Number (PAN) Card issued by the Income Tax Department of Government of India, Family Card issued by the Tamil Nadu Civil Supplies and

Consumer Protection Department, proof of parental and ancestral Indian origin viz., the property owned by the petitioner at Chennai and the ancestral property at Tanjore District, a statement was recorded.

2. At this juncture, the learned counsel for the petitioner submitted that since the petitioner all along has been residing in Chennai and the various documents mentioned above also would show that the petitioner has been residing in Chennai and also married one Ms. Neelam Bisht, an Indian, on 6.12.96, the case of the petitioner for registration of Indian citizenship cannot be delayed or denied. However, the learned counsel for the petitioner placed certain difficulties in approaching the respondents for moving appropriate application u/s 5(1)(c) of the Citizenship Act, namely, that the petitioner has to move an application along with a copy of the valid foreign passport and a copy of the valid residential permit, thirdly, he has to produce the relevant proof of his wife's Indian nationality viz., copy of the Indian passport or birth certificate, fourthly, a copy of the marriage certificate issued by the Registrar of Marriage and a copy of bank challan in original amounting to Rs. 500 towards declaration and oath of allegiance deposited in the State Bank of India. Since the petitioner is not having the valid foreign passport and valid residential permit, the learned counsel submitted that the application of the petitioner intended to be moved u/s 5(1)(c) of the Citizenship Act would face impediment for its positive consideration. Adding further, it was stated that when the petitioner had applied for Indian passport, his Sri Lankan passport was cancelled by the Indian passport authorities, when he was issued with the Indian passport bearing No. P-548474 on 12.1.94, by making an endorsement in the newly issued Indian passport that they had cancelled his Sri Lankan passport. Secondly, the second document viz., valid residential permit also cannot be produced by the petitioner, for the reason that the Chief Immigration Officer had stated that there was no provision in his office to condone his overstay or to issue the permit to an individual who has been legally treated as an Indian. In view of that, Mr. Venkatesh Mahadevan, learned counsel for the petitioner submitted that although the petitioner is liable to move an application, in terms of Section 5(1)(c) of the Citizenship Act, in Form III of Schedule I of the Citizenship Rules, a direction may be issued to the Chief Immigration Officer, Chennai, who has been impleaded as the fifth respondent in the present writ petition, to consider the peculiarity of the petitioner's case, as mentioned above, in order to process further the petitioner's application for grant of citizenship u/s 5(1)(c) of the Citizenship Act by keeping in mind that he had married an Indian Ms. Neelam Bisht on 6.12.96, copy of the marriage photograph enclosed in the typed-set of papers also proves such marriage, and the endorsement made by the passport authorities at New Delhi cancelling his Sri Lankan passport. Concluding his submission, it was stated that when the petitioner is admittedly staying in India from 1983, after completing his school education and graduation at Chennai and except for his period of employment at New Delhi from 1994 to 1995, he has been residing in Chennai from 1995 till now at No. 208, Sai Niketan, No. 6, Lock Street, Kottur

Gardens, Chennai-85. Since the stay of the petitioner in India cannot be construed as overstayal by a foreigner, for the reason that when the petitioner's valid foreign passport was cancelled by the Indian passport authorities, the necessity for issuance of citizenship to the petitioner by entertaining his application u/s 5(1)(c) of the Citizenship Act cannot be overlooked.

3. Mr. N. Ramesh, learned Central Government Standing Counsel appearing for the respondents 1, 2, 4 & 5 placed two objections. Firstly, it was contended that the petitioner, while obtaining the Indian passport on 12.1.94 by staying in New Delhi, has not disclosed some of the vital information, however, at the time of issuance of Indian passport, an endorsement was made by the passport authorities at New Delhi that they had cancelled his Sri Lankan passport. Therefore, the petitioner is not entitled to say that he has become an Indian citizen by staying in India for a long time. It was further contended that when the petitioner in his own affidavit has mentioned that he had shifted to Chennai in the year 1995, he has stayed only for two years, however, during his stay in Chennai, he had married Ms. Neelam Bisht, an Indian, on 6.12.96. Therefore, by marrying Ms. Neelam Bisht, an Indian, on 6.12.96, the petitioner cannot automatically claim to be an Indian citizen, unless he is registered as an Indian citizen by the competent authority. But, in the present case, till date, the petitioner has not moved any application along with the necessary documents as contemplated in Form III of Schedule I of the Citizenship Rules to enable the competent authority to register the petitioner as a citizen in terms of Section 5(1) (c) of the Citizenship Act. Therefore, when the petitioner has not till date moved any appropriate application as required under the Citizenship Rules, this Court cannot issue any direction.

4. Heard the submissions of the learned counsel on either side. Admittedly, the petitioner, who was born on 22.5.69 at Kandy, Sri Lanka, had come down to Thanjavur in the year 1983 due to ethnic clashes that erupted in Sri Lanka. Thereafter, he has moved to Chennai and completed his school and collegiate education and the documents issued by the school and university authorities also show that after passing SSLC, he has completed HSC in M.C. College Higher Secondary School at Chetpet, Chennai and completed Graduation from the Madras University. Moreover, the driving licence issued by the Regional Transport Office, Chennai, the Permanent Account Number (PAN) card issued by the Income Tax Department, the family card issued by the Tamil Nadu Civil Supplies and Consumer Protection Department as well as the proof of parental and ancestral Indian origin, namely, the ancestral property at Tanjore and the property at Chennai also show that the petitioner has been living here for quite a long time. Besides, at the time of issuance of the passport bearing No. P-548474 on 12.1.94, the passport authorities at New Delhi had made an endorsement in the petitioner's passport that they had cancelled his Sri Lankan passport. Further, the petitioner claims to have married Ms. Neelam Bisht, an Indian, on 6.12.96 and out of the wedlock, a male child-Master Shiv Om was born on 7.8.2012 in Chennai. However, the stand taken by the Chief Immigration Officer

for refusing to issue the valid residential permit was that there is no provision in his office to condone the overstay or issue residential permit to an individual who has been legally treated as an Indian by issuance of Indian passport No. P-548474. One another aspect of the matter is that when the petitioner had applied for renewal of his passport before the Regional Passport Office, Chennai, the second respondent herein on 20.1.2004, on the basis of facsimile representation made by the second respondent, the Regional Passport Office at New Delhi has categorically stated by facsimile representation on 26.4.2004 that there was no objection to renew the Indian passport which was issued by them to the petitioner. For better understanding, the said facsimile verbatim reads as under:- Refer your Telex/Fax Message No. MAS/POL/165/2004 dated 9.3.2004 regarding issue of fresh/duplicate passport/renewal. Confirmed Passport No. P-548474 dated 11.1.1994 was issued to Shri. Sivalingam Muralidharan, S/o. Perumal Sivalingam, born on 22.5.1969 at Sri Lanka (Kandy) as per passport entry register No. R-169 computer. No objection to renew/issue of fresh/duplicate passport subject to completion of all formalities provided if you have none.

The above facsimile issued by the Regional Transport Office shows that the petitioner was holding a valid passport from 11.1.94 till 26.4.2004. Thereafter, the petitioner has been taking steps for obtaining Indian citizenship. As there was no progress, he filed the present writ petition in the year 2007. As mentioned above, the petitioner was issued with Indian passport on 12.1.94 bearing No. P-548474 and the same expired on 11.1.2004. In the meanwhile, while staying at Chennai, he married Ms. Neelam Bisht, an Indian, on 6.12.96, therefore, he is entitled to move an application in Form III of Schedule I of the Citizenship Rules in terms of Section 5(1)(c) of the Citizenship Act along with the copies of the following documents, viz., valid foreign passport, valid residential permit, relevant proof of his wife's Indian nationality i.e., copy of the Indian passport or birth certificate, marriage certificate issued by the Registrar of Marriage and the bank challan in original amounting to Rs. 500 towards declaration and oath of allegiance deposited in the State Bank of India. However, as highlighted above, when the petitioner's valid foreign Sri Lankan passport bearing No. E-230746 was cancelled at the time of issuance of new Indian passport, the petitioner may not be in a position to produce a copy of the valid foreign passport. Secondly, for the reason that the petitioner was issued with a valid Indian passport by the competent authority, the respondents cannot expect the petitioner to possess a copy of the valid residential permit also. Therefore, by keeping all these in mind, while processing the application of the petitioner, the fourth and fifth respondents are directed to consider the application of the petitioner for grant of citizenship u/s 5(1)(c) of the Citizenship Act as expeditiously as possible. The writ petition stands disposed of. Consequently, M.P. Nos. 1 & 2 of 2007 are closed. No costs.