
(2011) 08 MAD CK 0180

In the Madras High Court

Case No : Writ Petition (MD) No. 10080 of 2008 and M.P. (MD) No. 2 of 2008

Sasikumar @ Sasi

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Citizenship Act, 1955 — Section 3, 3(2)
Foreigners Act, 1946 — Section 3(2)

Citation : (2011) 08 MAD CK 0180

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S.M.A. Jinnah and Mr. T. Lajapathi Roy, for the Appellant; S. Bharathi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

The Honourable Mr. Justice Vinod K. Sharma, J.—The Petitioner has approached this Court with a prayer, for issuance of writ, in nature of certiorari, to quash the order, dated 4.9.2008, passed u/s 3(2)(e) of Foreigners Act, 1946.

2. The Petitioner, vide the impugned order was directed, not to leave the boundaries of the special camp for Sri Lankan Immigrants/Refugees, identified and located by the Collector, Kancheepuram District, at Chengalpattu, except with the permission of the Collector.

3. The Petitioner has challenged the impugned order, being without jurisdiction, by submitting that the Petitioner does not fall under the Foreigners Act, 1946, being a citizen of India.

4. The facts leading to the filing of the present writ petition are, that parents of the petitioner originally belonged to Besalai in Mannar District of Sri Lanka, and being an Indian Tamil, immigrated to India, during the genocide of Tamils in Sri Lanka. The father of the petitioner was allowed to stay in any part of Tamil Nadu.

5. The Petitioner was born, on 10.03.1987, at Trichy Government Hospital, thus,

claims to be citizen of India u/s 3 of the Citizenship Act 1955, which reads as under:

3. Citizenship by birth-(1) Except as provided in Sub-section(2), every person born in India

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amended) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth,

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth

(d) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

6. The Petitioner studied in the Government Higher Secondary School at Uchipuli and was issued Driving License, and Voter Identity Card, by the Election Commission of India.

7. The Petitioner was accused and convicted in two criminal cases, i.e., crime Nos. 239 of 2008 and 175 of 2008, under the Unlawful Activities Act, and was released on bail, in both the cases.

8. The case of the Petitioner is that on the report of the Superintendent of Police "Q" Branch, CID, Chennai-4, the impugned order was passed, without giving an opportunity of hearing to the Petitioner.

9. The Petitioner's family was also issued the Family Card, and Photo Identity Card, which were subsequently cancelled, by treating the father of the Petitioner to be citizen of Sri Lanka. The Photo Identity Card issued to the Petitioner was cancelled only after the filing of the writ petition.

10. The learned Government Advocate for the State has opposed this petition, by supporting the impugned order, by contending, that the writ petition is not competent, as no constitutional right of the Petitioner has been infringed, by passing of the impugned order. This contention is based on the fact, that by

sending the Petitioner to refugees camp for Sri Lankan's, no civil right of the Petitioner has been infringed, as it is not arrest or detention. The Petitioner being citizen of Sri Lanka, is governed by the Foreigners Act 1946, therefore, can be directed to be sent to refugees camp.

11. It is also contended by the learned Government Advocate that reliance on the Photo Identity Card and Family Card etc., by the Petitioner, to claim that he is the citizen of India is misconceived, as all these documents were cancelled, being wrongly issued.

12. On consideration, I find no force in the contentions raised by the learned Government Advocate for the State.

13. The letter dated 21.11.2007, on which the strong reliance placed by the learned Government Advocate for the State, does not relate, to the matter in issue, as it deals with the question of the grant of citizenship to Sri Lankan Refugees of Indian descent.

14. The Petitioner does not claim citizenship being Sri Lankan Refugee, but to be citizen of India by birth, u/s 3 of the Citizenship Act 1955. The Petitioner was admittedly born in India on 10.03.1987, and his case also does not fall u/s 3(2) of the Act, therefore, is a citizen of India, by birth.

15. The Learned Counsel for the Petitioner was right, in contending that the provisions of the Foreigners Act 1946, do not apply to the case of the Petitioner. Therefore, the impugned order is without jurisdiction, which cannot be sustained in law.