

W.P.No.5611 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.03.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHYW.P.No.5611 of 2025
and W.M.P.No.6191 of 2025

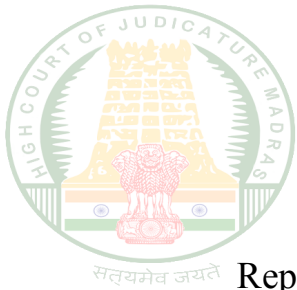
S.Ramya

.. Petitioner

Versus

1. The Union of India,
Rep. by its Secretary to the Government,
Ministry of Home Affairs,
North Block, New Delhi - 110 001.
2. The Government of India,
Rep. by its Secretary to Government,
Ministry of External Affairs,
South Block, New Delhi - 110 001.
3. The Regional Officer,
Foreigners Regional Registration Offices,
Chennai, No.26, Shastri Bhawan Annexe Building,
Haddows Road, Nungambakkam,
Chennai - 600 006.

4. The State of Tamil Nadu,



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Rep. by its Secretary to Government,
The Home Department,
Fort St. George, Chennai - 600 009.

5. The Commissioner,
Department of Rehabilitation,
Ezhilagam, Chepauk,
Chennai - 600 005.

6. The District Collector,
Coimbatore District,
Coimbatore - 641 018.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Mandamus to direct the respondents 1 to 3 to consider the representation of the petitioner, dated 10.02.2025 favourably in the light of Section 5, 6(1) & (2) of the Citizenship Act, 1955.

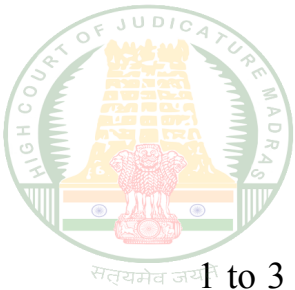
For Petitioner : Mr.S.Ilamuhil

For Respondents : Mr.Rabu Manohar, for RR-1 to 3

: Mr.V.Manoharan,
Additional Government Pleader,
for RR-4 to 6

ORDER

This Writ Petition is filed for a mandamus directing respondents Nos.



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1 to 3 to consider the petitioner's representation dated 10.02.2025 in light of Sections 5 and 6 of the Citizenship Act, 1955 (hereinafter 'the Act').

2. This case presents a unique circumstance. One *Saravanamuthu* and *Tamilselvi* travelled from Sri Lanka to India by air in 1984 and continued to reside here. *Saravanamuthu*'s father, *Palanivel*, was from Pudukottai, India; therefore, when the civil war erupted, the couple chose India as their destination to flee their country. After landing in India, they were granted refugee status. Their stay in India is governed by various permits and restrictions that are periodically issued by the authorities of the Foreigners Regional Registration Office in Chennai, and as on date they reside here in India.

3. After the couple arrived in India, this petitioner, *S.Ramya*, was born on 24.12.1987 in Coimbatore. Her birth is registered with the Coimbatore City Municipal Corporation and she has a birth certificate with Serial



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No.086594. Following her birth, she was treated as if she were an Indian citizen. She held all the identity cards typically granted to citizens of India, including a voter ID card. She was also issued a passport bearing No.H9608932 on 21.01.2011. The petitioner completed her education at Mani Higher Secondary School, Pappanaickenpalayam, Coimbatore, and earned her undergraduate degree at Sri Ramakrishna College of Arts and Science for Women in Coimbatore. She is currently working as an Accountant at a private concern called Visual Marketer in Coimbatore. The petitioner married an Indian citizen named *D.Purusothaman* on 12.02.2014, and she continues to live in India. From this marriage, she has a son named *P.R.Rudran*, who was born on 22.04.2016. He is currently a minor, 9 years old, studying at Suguna PIP School (CBSE), Coimbatore. This child is also a citizen of India.

4. While so, when the petitioner's father and mother approached the appropriate authorities for the renewal of their registration and for an

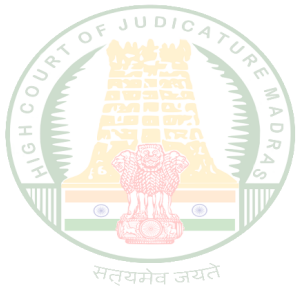


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extension of their stay in India, it came to light that the petitioner had always been treated as an Indian citizen. The authorities noticed that according to the Act, any person born in India after 01.07.1987 cannot claim Indian citizenship solely by virtue of birth; at least one of the parents must be a citizen of India at the time of the birth. Therefore, suddenly, realising the mistake, the authorities have now begun taking action.

5. Firstly, the passport was ordered to be surrendered and further steps were sought to be taken. Under these circumstances, the petitioner submitted an application, dated 10.02.2025 for citizenship under the Act, as the online portal did not accept her application due to the peculiar facts involved. The petitioner contends that although she is not considered a citizen of India by birth due to the amendment to the Act, since her birth occurred five months after the cut-off date, she is still eligible for citizenship under Section 5(i)(c) of the Act.



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6. According to Section 5(i)(c), if a person is married to a citizen of India and has ordinarily resided in India for seven years as of the date of application, she may submit an application, which can be considered. There is no dispute that the petitioner married a citizen of India in 2014 and that the seven-year period has now passed. However, the respondents/authorities have filed a status report. It is essential to quote paragraphs 2 to 4, which read as follows:-

"2. With regard to the citizenship issue raised by the Petitioner in the captioned Writ petition, relevant portion of the Section 3 of the Citizenship Act, 1955 is reproduced as below;

"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 (Amendment) Act, 2003 (6 of 2004) 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 (6 of 2004), 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 -

a) either his father or mother possesses such

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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."

3. Further, the Petitioner claims to have made an application dated 10.02.2025 (copy enclosed) to this Ministry, wherein she has inter-alia stated that;

"Though I am entitled to register as Indian Citizen by virtue of Section 5(1), 6(1) & (2) of the Citizenship (Amendment) Act, 2019. However, due to non-availability of provisions to apply through e-services of the official portal for registration of citizenship, I was unable to apply for the same as the online portal is insisting for the foreign passport which in my case could not able to provide with the same.

Therefore, in the said scenario, I request your good self to kindly consider the application for renewal of registration of my parents for stay in India without VISA and also my application seeking Indian Citizenship favourably."

4. It is humbly submitted that, applicant shall make an application in the prescribed format for applying for registration as an Indian citizen under relevant provision of Section 5 or, Section 6 of the Citizenship Act, 1955 and the applicant must not be an Illegal Migrant as defined in Section 2(I)(b) of the Citizenship Act, 1955, which states that, "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



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or under any law in that behalf but remains therein beyond the permitted period of time;"

Therefore, the requirement is that the petitioner must return to Sri Lanka and then come back to India as a legal entrant after obtaining an Indian visa. Only after that, the application for citizenship be considered.

7. This is due to Section 5 of the Act, and it is important to quote the relevant portion of Section 5 for easy reference:-

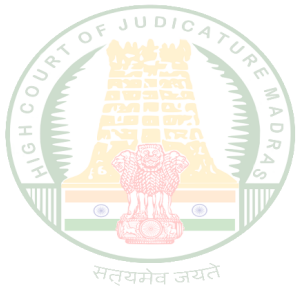
"5. Citizenship by registration.—(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already 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:—

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India; "



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8. It can be seen that the respondents are insisting on the above procedure because Section 5 states that 'any person not being an illegal migrant'. Though in common parlance, any person, who is not a citizen of India and not holding a visa or permit to stay in India, can be considered an illegal migrant, the Citizenship Act provides a definition for the term 'illegal migrant'. Section 2(1)(b) is provided below for reference:-

"2. Interpretation.—(1) In this Act, unless the context otherwise requires,—

...

(b) "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;

Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub- section (2) of section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920) or from the application of the provisions of the Foreigners Act, 1946 (31 of 1946) or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;"



WEB COPY Therefore, an illegal migrant refers to a foreigner who has entered India without a valid passport or travel documents.

9. Regarding the case of the petitioner, while she can be considered a foreigner (which is contested by the learned Counsel for the petitioner, arguing that no one can guarantee that Sri Lanka will accept her as a citizen, given that she has no connections, roots, or any documentation pertaining to Sri Lanka), it cannot be said that she entered India without valid documents. She was born in India. Therefore, given the unique facts and circumstances of the case, for the consideration of the petitioner's application on its own merits, while the authorities can take into account all other parameters required under the Citizenship Act for granting citizenship, the sole requirement for her to return to Sri Lanka and re-enter India as a legal migrant need not be considered, because the restriction applies only to illegal migrants. Furthermore, considering the definition of an 'illegal

migrant' under Section 2(1)(b), the petitioner cannot be classified as an

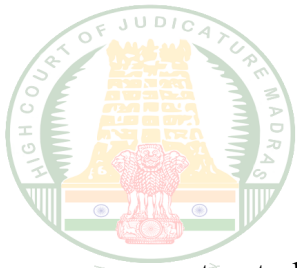
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illegal migrant, especially, since she is now 37 years old and has always been under the impression that she is an Indian citizen, holding an Indian passport and all relevant documents issued to her. As a matter of fact, the petitioner, under the peculiar fact that her grandparents were citizens of India, was born in India. She never held a Sri Lankan passport or any document indicating as a citizen of that Country. She held all documents so far upto the age of 37 years as an Indian Citizen. She has married to an Indian. She is the mother of an Indian child, who is a minor aged 9 years needing mother's affection and care. She is lawfully working in India. There are no other complaints or cases against the petitioner. These facts and circumstances make this case unique for consideration.

10. In light of this, considering the unique facts and circumstances of the case, I am inclined to dispose of the Writ Petition with the following directions:-

(i) The representation of the petitioner, dated 10.02.2025, shall be



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treated as an application made under Section 5(1)(c) of the Citizenship Act, 1955;

(ii) The first respondent will be entitled to insist on any other forms, documents or procedural formalities that must be complied with. Furthermore, as it is argued on behalf of the petitioner that the online portal will not accept applications from candidates of Sri Lankan background, the first respondent shall treat this as a special case to waive the requirement of applying through the online portal and consider the aforementioned representation as a valid application. Alternatively, the first respondent can enable the petitioner to apply through the online portal, if necessary and in any event accept the application;

(iii) By not insisting on the condition of returning to the foreign nation and then coming back to India with a visa, the petitioner's application for citizenship shall be considered on its own merits and in accordance with the law. Until such a decision is reached, the petitioner need not be ordered to leave India and all further proceedings can await this decision by the first



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respondent;

(iv) Based on the outcome, the petitioner's parents' request can also be considered.

(v) There shall be no order regarding costs. Consequently, the connected miscellaneous petition is closed.

20.03.2025

Neutral Citation : yes
grs

To

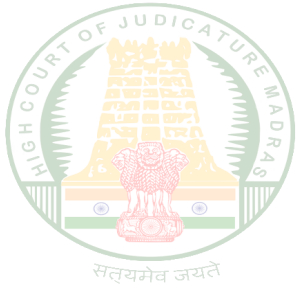
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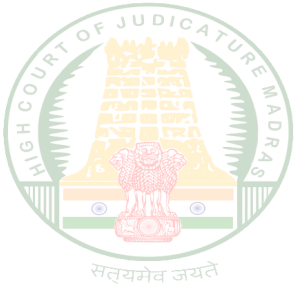


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D.BHARATHA CHAKRAVARTHY, J.

grs

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