

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.4.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P. No.12017 OF 2015

Dr.Ordetta Hanna Mendoza ... petitioner

versus

1.Govt. Of Tamil Nadu,
rep. By the Director of Collegiate Education,
DPI Compound, College Road,
Chennai 600 006.

2.The University of Madras,
rep. By its Registrar,
Chepauk, Chennai 5.

3.Stella Maris College (Autonomous)
rep. By its Secretary,
No.17, Cathedral Road,
Chennai 600 086.

4.Dr.Fatima Vasanth ... respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records relating to the order bearing Ref.No.Nil dated 30.3.2015 passed by the 3rd respondent in rejecting petitioner's request to go abroad during summer vacation and to quash the same as illegal, arbitrary and violative of Article 21 of the Constitution of India and for a consequential mandamus to the 1st respondent to permit the petitioner to go abroad as per letter dated 18.2.2015 and 26.3.2015.

For petitioner : Mr.N.G.R.Prasad for M/s.Row & Reddy
For respondents : Mr.V.Jayaprakash Narayanan, Spl.G.P.,
for R-1
Mr.Godson Swaminath, for R-3
Mrs.G.Thilakavathi, for R-2

O R D E R

The petitioner is aggrieved over the rejection of her letters seeking permission to go abroad, by the third respondent institution, on the ground that disciplinary proceedings is pending and on

administrative reasons.

2. Facts of the case are as follows :

(a) The petitioner joined the third respondent college as Assistant Professor in Botany Department in the year 1984. She was confirmed in the said post in the year 1987. During the year 2006, she was promoted as Associate Professor. The various details of her service particulars for the past 30 years is not necessary for deciding the issue involved in this Writ Petition.

(b) The third respondent college is an aided minority institution. It is also an autonomous college. The college is governed by Tamil Nadu Private Colleges (Regulation) Act, 1976.

(c) The petitioner submitted an application dated 18.2.2015 to the first respondent through the third respondent college, seeking permission to travel to the U.S. during summer vacation, for consultation and medical treatment of cervical spondilitis and muscle wasting in her right hand. She wished to travel to the U.S. between 25.4.2015 and 6.6.2015. The petitioner would be staying at her sister's house at Boston in U.S.A. Thereafter, the petitioner made another representation dated 26.3.2015 to the third respondent, requesting it to forward her earlier application dated 18.2.2015 to the first respondent. However, the third respondent passed the impugned order dated 30.3.2015, rejecting the request of the petitioner to forward her application to the first respondent stating that it is not feasible to permit her to travel abroad in view of pending disciplinary proceeding against the petitioner and also for administrative reasons. Aggrieved over the action of the third respondent in not forwarding her application and in denying permission to go abroad, which according to her is violative of her fundamental right guaranteed under Article 21 of the Constitution of India, the petitioner is before this Court.

3. The third respondent has filed counter affidavit contending as follows :-

(a) Already two disciplinary proceedings are pending against the petitioner and after enquiry, final orders are to be passed thereon. It is also stated that the petitioner was issued another charge memo dated 31.1.2015, making certain allegations. According to the 3rd respondent, it is the college which could grant permission to the petitioner to go abroad and a mere information to the first respondent would suffice, as it is a minority aided institution. Even that mere information is only for the purpose of getting grant.

(b) It is also averred that during summer vacation, administrative work relating to admission of students would be undertaken by the college and the faculty of the Department would conduct interview for the new students. This process would go on for

two weeks, commencing from 16.5.2015. Teachers are also requested to complete question bank before 10.6.2015.

(c) The third respondent has also averred that the petitioner has merely requested the college to forward her application to the first respondent and has not sought permission from the college to go abroad. According to the 3rd respondent, they are not a forwarding authority and the Director has no authority to give permission to travel abroad.

4. Heard both sides.

5. The learned counsel for the petitioner has submitted that the right to travel abroad is a fundamental right guaranteed under Article 21 of the Constitution of India. He placed heavy reliance on the judgment in *Menaka Gandhi vs. Union of India*, 1978 (1) SCC 248 and other judgments. According to the learned counsel, fundamental rights cannot be deprived by the third respondent institution. Since the institution is a Government aided one, the first respondent is the appropriate authority to grant permission to a staff to travel abroad. The learned counsel also relied on the relevant circular of the Government issued in this regard.

6. The learned Special Government Pleader has placed reliance on the circular issued by the first respondent in this regard. He has submitted that teachers in all the colleges, including minority institutions, shall seek permission from the educational authorities to travel abroad.

7. The learned counsel for the third respondent has submitted that since the third respondent is a minority college, the petitioner shall seek permission only from the college to go abroad. The college is the sole authority to permit or refuse the petitioner to travel abroad. He has further submitted that the petitioner failed to make any application seeking permission from the college and she did not make an application for leave from 15.5.2015 to 6.6.2015. According to him, summer vacation is only up to 15.5.2015 for the teachers and thereafter, the petitioner should apply for leave, if she could not attend duties.

8. In reply, the learned counsel for the petitioner submitted that the summer vacation is up to 6.6.2015. In any event, there is no objection for petitioner to make an application for leave from 16.5.2015 to 6.6.2015.

9. I have considered the submission made by either side.

10. The third respondent is a minority institution. There is no dispute over it. They are rendering service in the field of education for a very long period. The institution gets aid from the Government for paying salary to the teaching as well as non teaching staff. In

short, salary of the petitioner is made pursuant to the grant given by the Government. In any event, I am not going to decide as to whether the application to the third respondent minority institution is sufficient or the teacher should get permission from the first respondent also. As far as the petitioner is concerned, she made a representation on 18.2.2015, to the third respondent, seeking permission to go to the U.S.A. The third respondent cannot take a technical plea that the application was made seeking permission from the first respondent and therefore, they could not take note of the contents therein. The application dated 18.2.2015 is enclosed in the typed set of papers. This application was submitted only to the third respondent college.

11. Further more, the petitioner gave another letter dated 26.3.2015 to the third respondent college wherein she has requested that her application for permission to travel abroad may be forwarded to the first respondent for appropriate orders. But the third respondent passed the impugned order dated 30.3.2015 stating that they would not forward the application to the first respondent in view of pendency of three disciplinary proceedings and also due to administrative reasons. At this juncture, it is relevant to extract paragraph 16 of the counter affidavit of the third respondent. It reads as follows :-

16. I state that the petitioner gave an application dated 18.2.2015 to this respondent requesting to forward the same to the Director of Collegiate Education. In the application, she has sought for permission to travel to U.S.A. from 25.4.2015 to 6.6.2015. It is stated that the purpose of the visit is for consultation and further medical treatment of "cervical spondylitis" and "muscle wasting" in her right hand. She also gave a letter dated 26.3.2015 requesting the same. She gave a hand written letter on 10.4.2015 stating that the treatment for the above medical condition is available only in the United States of America.

12. A reading of paragraph 16 of the counter affidavit along with the impugned order makes it clear that the petitioner requested the third respondent also to grant permission.

13. Therefore, the whole issue is as to whether pendency of disciplinary proceedings and administrative reasons could be cited by the third respondent college to deny permission to the petitioner to travel abroad. In my view, right to travel abroad is a fundamental right guaranteed under Article 21 of the Constitution of India and the third respondent cannot deny the right that flows from Article 21 of the Constitution. In fact, Article 21 is couched in wider terms by

granting right not only to citizens but to all persons. Article 21 of the Constitution of India reads as follows :-

"21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

14. As rightly contended by the learned counsel for the petitioner, now the matter is covered by a larger Bench of the Apex Court, consisting of seven Judges in *Menaka Gandhi vs. Union of India*, 1978 (1) SCC 248. In that case, passport of Tmt. Menaka Gandhi was impounded under the Passport Act. The action of the Central Government in impounding the passport under the Passport Act was the subject matter of challenge before the Apex Court. It has been observed by the Apex court in *Menaka Gandhi's* case that the Apex Court has held in *Satwant Singh's* case that "personal liberty" within the meaning of Article 21 of the Constitution includes within its ambit, a right to go abroad and consequently, no person can be deprived of this right except according to procedure prescribed by law. The judgment in *Satwant Singh's* case led to the enactment of Passport Act. Before that the power vested with the executive. It was not regulated by any law. Thus, the right guaranteed under Article 21 of the Constitution could be deprived only by the procedure established by law. The Apex Court in *Menaka Gandhi's* case, in categorical terms, held that "law" mentioned in Article 21 of the Constitution means, the law enacted by the State, i.e. the State alone has power to interfere with the personal liberty of a citizen to travel abroad, that too by the procedure established by law. The third respondent institution cannot interfere with the fundamental right guaranteed under Article 21 of the Constitution.

15. In the aforesaid case, while impounding the passport, no reason was given by the Central Government in the impugned order. Before the Apex Court, the Central Government averred that Tmt. Menaka Gandhi was required for deposing before Justice Shah Commission Enquiry. The Apex Court held that the impugned order of impounding the passport was passed in an arbitrary manner and the same was violative of Article 14 of the Constitution of India. It is held that impounding a passport is a serious matter since it prevents a person from exercising his constitutional right to travel abroad and such a drastic consequence cannot in fairness be visited, without observing the principles of audi alteram partem.

16. Though the Apex Court held that the Central Government has power under the Passport Act, to cancel, or impound the same, impounding of passport cannot be made without hearing the person concerned. It is held that the principles of natural justice and Article 14 of the Constitution require that no adverse order could be passed without hearing the person concerned. In this case, the impugned order was passed arbitrarily without hearing the petitioner

and thus the impugned order was passed arbitrarily and in violative of the principles of natural justice and Article 14 of the Constitution.

17. Furthermore, the reasons given in the impugned order will not stand scrutiny of law. The reasons are that the petitioner is facing departmental proceeding and that she may be required for some administrative work that too after 16.5.2015.

18. Fundamental right guaranteed under Article 21 of the Constitution cannot be deprived on these flimsy grounds. When the Apex Court has held that a right guaranteed under Article 21 could be deprived only by the State by way of the law enacted for the purpose, the third respondent cannot interfere in the said available right in this cavalier fashion. At this juncture, it is also useful to take note of the observation made by the Apex Court in the aforesaid case that the passport authority shall remember that the right to travel abroad is a basic human right, recognized under Article 13 of the Universal Declaration of Human Rights. The passport authority is interfering with it, when he refuses, impounds or cancels the passport. The Apex Court has held that it is a highly valuable right, which is a part of personal liberty, an aspect of spiritual dimension of man and it should not be lightly interfered with.

19. Even before the Judgment of the Apex court in Menaka Gandhi's case, a Full Bench of the Kerala High Court in Francis Manjooran vs. Government of India, Ministry of External Affairs, New Delhi (A.I.R. 1966 Kerala 20) held that the right to travel abroad is a fundamental right, which flows from Article 21 of the Constitution of India and the same cannot be deprived except by procedure established by law. The relevant paragraph of the judgment reads as follows :-

"20. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The contentions of the petitioner are that the freedom to travel is part of his personal liberty, that the refusal of a passport amounts to a deprivation of that liberty, and that such a deprivation cannot be sustained in the absence of any procedure established by law".

20. This Court in the judgment of E.V.Perumal Samy Reddy and others vs. State rep. By the Deputy Commissioner of Police, Ambattur Range, reported in 2014(1) MLJ (CrI.) 125, has held in paragraph 9 that it is a fundamental right of a person to go abroad as provided under Article 21 of the Constitution of India. Such a right is available even to a person who is involved in a criminal case. In the case cited supra, the petitioner was facing a criminal case. It is

useful to extract paragraph 9 of the judgment.

"9.It is basic that merely because a person is involved in a criminal case, he is not denude of his fundamental rights. It is the fundamental of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged. In the celebrated case of Menaka Gandhi vs. Union of India, AIR 1978 SC 25, the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law employed in Article 21, had deep and pervasive effect on fundamental right and human right. Menaka Gandhi vs. Union of India (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of "Due Process of Law".

21. In a recent judgment, the Gujarat High Court, in the case of Subhash Daulatra Bhojani vs. State of Gujarat, dated 13.3.2015, held that the condition imposed by the trial Court on the petitioner to surrender passport and not to undertake foreign travel, while granting bail was illegal, as it offended the right to travel abroad. Thus, even an accused, whose trial is pending, has a right to travel abroad. The relevant paragraph reads as under :-

"therefore, the apprehension shown by the learned trial court is not correct and is without any basis. The trial is not commenced and therefore, in near future, the said trial will not be concluded and in view of the decision rendered by the Hon'ble Supreme Court in the case of Menaka Gandhi vs. Union of India, reported in AIR 1978 SC 597, the citizen is having fundamental right to go abroad on certain conditions. Therefore, in view of the aforesaid facts and circumstances of the case, I am of the opinion that the order dated 25.3.2013 passed by learned 7th Additional Sessions Judge, Vadodara below application Exh.1 in Criminal Misc. Application No.485 of 2013 in Special Case No.6 of 2004, is required to be quashed and set aside and therefore the same is quashed and set aside. The petition is allowed. The learned trial court is directed to return the passport to the petitioner"

22. It is also useful to take note of the judgment of the Delhi

High Court in Priya Parameshwaran Pillai vs. Union of India and ors., dated 12 March 2015, reported in CDJ 2015 DHC 399, wherein the Delhi High Court has held that the action of the Government of India in not allowing the petitioner therein, a Green Peace Activist, from travelling abroad, on the ground that she is likely to speak against the country's economic policies and how it affects environment, is illegal, as the right to travel abroad is a fundamental right under Article 21 and the right to expression includes the right to travel abroad to express unpopular opinion.

23. I am of the view that the petitioner stands in a better footing. She is not a criminal. She is a Professor, who is rendering service in the third respondent college for the past 30 years. In my view her letter dated 18.2.2015 in 26.3.2015 shall be taken as letters seeking permission from the college. In fact, when the college passed the impugned order dated 30.3.2015, they are conscious of the request made by the petitioner to travel abroad. It is also relevant to take note of the averment of the third respondent in paragraph 16 of the counter affidavit wherein it is stated that the petitioner has stated in her letter dated 10.4.2015 that the treatment for her medical condition is available only in the U.S.A.

24. According to the college, permission from the college is mandatory and mere information to the Directorate is sufficient. I am not going into that question. Now the college has taken a specific stand that they are not inclined to permit her to go abroad. Even though the learned counsel appearing for the third respondent has submitted that she could have travelled between 25.4.2015 and 15.5.2015, the impugned order does not reflect so. Even the counter affidavit also does not reflect that stand. In fact, the crux of the impugned order is that since the petitioner is facing departmental proceeding, she cannot travel abroad. As it is stated earlier, even a criminal has a right to go abroad, as such, a Professor cannot be prevented from travelling abroad, citing pending departmental proceeding as a reason, that too during the summer vacation.

25. For all the above stated reasons, I am inclined to quash the order of the third respondent. Accordingly, the order dated 30.3.2015 is quashed.

26. In view of the fundamental right guaranteed to a citizen under Article 21 of the Constitution of India, I am of the view that the petitioner can very well travel abroad. Already the petitioner is scheduled to travel to the United States on 25.4.2015. Now that time has lapsed. In the facts and circumstances of the case, I am of the view that only a formal permission is required from the first respondent. In fact, the first respondent also cannot deprive the right of a citizen to go abroad in view of the aforesaid judgments. Hence, in the facts and circumstances of the case, I am of the view that deemed permission is granted by the first respondent to the

petitioner, to go abroad.

27. The Writ Petition is ordered in the above terms. No costs. Consequently, M.P.No.1/2015 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

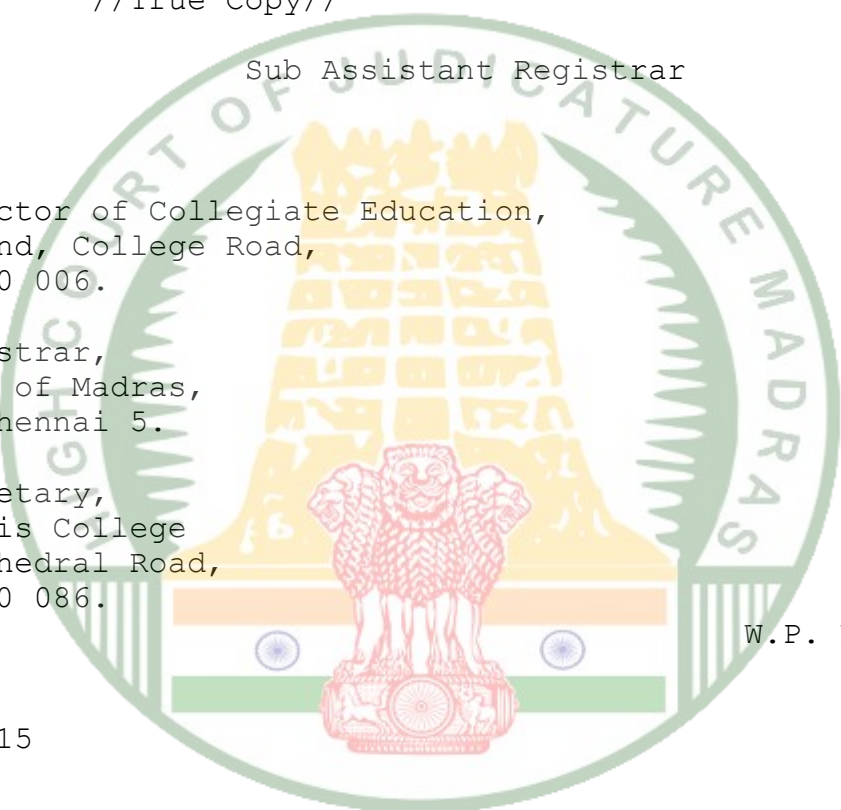
1.The Director of Collegiate Education,
DPI Compound, College Road,
Chennai 600 006.

2.The Registrar,
University of Madras,
Chepauk, Chennai 5.

3.The Secretary,
Stella Maris College
No.17, Cathedral Road,
Chennai 600 086.

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W.P. No.12017 OF 2015

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The gopuram is set against a background of a green and white striped banner. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circle around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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