

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Sixteenth day of February Two Thousand Eighteen

PRESENT

THE HON'BLE MS.INDIRA BANERJEE, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE ABDUL QUDDHOSE

WMP No.3031 of 2018

IN WP.21305/2017

KARTI P. CHIDAMBARAM [PETITIONER]
S/O. P.CHIDAMBARAM,
NO.16, PYCROFTS GARDEN ROAD,
CHENNAI 600006

Vs

1 BUREAU OF IMMIGRATION [RESPONDENTS]
MINISTRY OF HOME AFFAIRS, GOVT OF INDIA, REP.
BY ITS COMMISSIONER (IMMIGRATION) EAST
BLOCK-VIII, LEVEL-V, SECTOR 1, R.K.PURAM,
NEW DELHI 110066

2 THE DEPUTY INSPECTOR GENERAL/HEAD
OF BRANCH (HOB), ECONOMIC OFFENCES UNIT -IV, EO-II,
CENTRAL BUREAU OF INVESTIGATION HEAD OFFICE,
4TH FLOOR, OPP. ELECTRONICS NIKETAN,
CGO COMPLEX, LODHI ROAD, NEW DELHI 110 003

3 FOREIGNER REGIONAL
REGISTRATION OFFICER (FRRO), BUREAU OF IMMIGRATION,
MINISTRY OF HOME AFFIARS, GOVT. OF INIDA,
SAHSTRI BHAVAN ANNEX BUILDING,
NO.26, HADDOWS ROAD, CHENNAI 600006

4 THE ASSISTANT FOREIGNERS REGIONAL
REGISTRATION OFFICER, BUREAU OF IMMIGRATION,
ANNA INTERNATIONAL AIRPORT, MEENAMBAKKAM
AIRPORT, CHENNAI 27

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Permit the Respondent to travel to the U.K., and France between 15th and 28th February 2018 and once again between 20th and 31st March 2018.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.GOPAL SUBRAMANIAN SENIOR COUNSEL FOR M/S.C.UMA, Advocate for the petitioner and of MR.V.VENKATESAN, SCGSC for the 1, 3 & 4 respondents and of MR.G.RAJAGOPALAN, ASG assisted by MR.K.SRINIVASAN, Special P.P. CBI for the 2nd respondent, the court made the following order:-

(Order of the Court was made by *the Hon'ble Chief Justice*)

The writ petition is directed against a Look Out Circular being reference No.1/SIC (DMC)/LOC/2017-5812, dated 16.6.2017, issued in respect of the petitioner by the Bureau of Immigration under the Ministry of Home Affairs of Government of India.

2. On 15.5.2017, the Central Bureau of Investigation (hereinafter referred to as "*the CBI*") filed an FIR against the petitioner before the Special Judge, CBI Court, New Delhi, under Sections 120-B and 420 of the Indian Penal Code read with Sections 8 and 13 of the Prevention of Corruption Act, 1988.

3. The petitioner in this writ petition was named as the third accused in the said FIR, the others named as accused being:

- (i) M/s.INX Media (P) Ltd., Mumbai, hereinafter referred to as "INX Media", through the then Director, Indrani Mukherjea and others (first accused);
- (ii) M/s.INX News (P) Ltd., hereinafter referred to as "INX News", through the then Director, Sh.Pratim Mukherjea @ Peter Mukherjea and others (second accused);
- (iii) M/s.Chess Management Services (P) Ltd., hereinafter referred to as "CMS", represented through its Director, Sh.Karti P.Chidambaram, being the petitioner and others (fourth accused);
- (iv) M/s.Advantage Strategic Consulting (P) Ltd., hereinafter referred to as "ASC", represented through its Director, Ms.Padma Vishwanathan @ Padma Bhaskararaman and others (fifth accused); and
- (v) other unknown officers of the Ministry of Finance, Government of India and other unknown persons.

4. INX Media, the first accused was apparently incorporated on 8.8.2006 under the provisions of the Companies Act, 1956, to carry on the business of creating, operating, managing and broadcasting a bouquet of television channels, including Hindi and vernacular

entertainment channels.

5. On or about 13.3.2007, INX Media applied to the Chairman, Foreign Investment Promotion Board (hereinafter referred to as "the FIPB") of the Department of Economic Affairs, Ministry of Finance, Government of India, seeking its approval for permission to issue by way of preferential allotment, in one or more tranches (i) upto 14,98,995 equity shares of Rs.10 each, and (ii) upto 31,22,605 convertible, non cumulative, redeemable preference shares of Rs.10 each collectively representing approximately 46.216% of the Issued Equity Share Capital of INX Media on an "as converted" basis to three non resident investors under the Foreign Direct Investment route, namely:

- (i) Dunearn Investment (Mauritius) Pte. Ltd.;
- (ii) NSR-PE Mauritius LLC; and
- (iii) New Vernon Pvt. Equity Ltd.

6. INX Media had in its application dated 13.3.2017 also expressed its intention, subject to the provisions of applicable laws, to make a down stream financial investment to the extent of 26% of the issued and outstanding equity share capital of INX News.

7. The application of the company seeking FIPB approval was received and acknowledged by the Department of Economic Affairs, FIPB Unit, Ministry of Finance, through its letter dated 15.3.2007. Thereafter, by a Memorandum dated 16.3.2007, the FIPB Unit forwarded the proposal of INX Media to various departments of the Government of India for their comments.

8. The FIPB at its meeting held on 18.5.2007 recommended the proposal of INX Media for consideration and approval of the then Finance Minister. However, the FIPB did not approve the down stream investment by INX Media in INX News. The recommendation of FIPB was approved by the then Finance Minister, Shri.P.Chidambaram, who happens to be the father of the petitioner.

9. The FIPB Unit issued a press release dated 30.5.2007 indicating the details of proposals approved in the FIPB meeting. The quantum of FDI (Foreign Direct Investment)/NRI (Non-Resident Indian) inflow against M/s.INX Media was shown as Rs.4.62 crores. The approval was intimated vide a letter dated 31.5.2007.

10. In the FIR, it is alleged that in contravention of the terms of the approval of FIPB conveyed vide the aforesaid letter dated 31.5.2007, INX Media deliberately made a down stream investment to the extent of 26% in the capital of INX News without the specific approval of FIPB. The down stream investment included indirect foreign investment by the same foreign investors and generated more than Rs.305 crores Foreign Direct Investment in INX Media as against the approved foreign inflow of Rs.4.62 crores by issuance of shares

to foreign investors at a premium of more than Rs.800/- per share.

11. It is further alleged that in order to wriggle out of the situation without any punitive action, INX Media, upon receipt of the letter dated 31.5.2007 from the FIPB Unit, entered into a criminal conspiracy with the petitioner, son of the then Finance Minister of India and Promoter Director of CMS, to get the issues resolved/addressed amicably by influencing the officials of the FIPB of the Ministry of Finance, taking wrongful advantage of his relationship with the then Finance Minister.

12. Based on clarifications by CMS, INX Media, through its letter dated 26.6.2008, tried to justify its action on both the counts. It is alleged in the FIR that INX Media falsely claimed that the unapproved and unauthorized down stream investment was in accordance with the approval. INX Media further justified the excess foreign inflow receipt, as premium received against shares issued.

13. In the FIR, it is also alleged that information discloses that upon receipt of the aforesaid letter of INX Media, the concerned officials of FIPB, who had been influenced by the petitioner, Mr.Karti P.Chidambaram, ignored the illegalities on the part of INX Media. In abuse of their official position, these officials showed undue favour to the INX Group of Companies and advised INX News to apply afresh for FIPB approval in respect of down stream investment. It is also alleged that the officials of the FIPB ignored the request of the Department of Revenue to investigate into down stream investment made by INX Media without FIPB approval.

14. The FIR alleges that information discloses that INX News, concealing the investment in INX Media to the extent of 26%, again approached FIPB for permission for down stream investment in pursuance of a criminal conspiracy. Such deceitful and fallacious proposals were favourably considered by the officials of the Ministry of Finance and approved by the then Finance Minister. Concurrence to a "proposed investment" when investment had been made without the approval of the Finance Ministry, smacks of malafides and dishonest intention on the part of the officials of the Ministry, who did not take any punitive action against INX Media, but covered up the illegality by seeking an application from INX News and granting permission to INX News. The permission gave an erroneous impression that INX News was yet to receive the foreign investment.

15. It is stated in the FIR that, pursuant to the criminal conspiracy with INX Group and the intermediaries, senior officials of the Ministry of Finance not only granted illegal approval, but also misinformed (sic misled) the investigation by the Investigation Wing of the Income Tax in this regard.

16. As per the FIR, information discloses that in consideration

for the services rendered by the petitioner to the INX Group, through CMS, payments were received against invoice raised on INX Media by ASC. As per source information, the reason for getting the invoice raised in the name of ASC for services rendered by CMS was to conceal the identity of the petitioner, since the petitioner was Director of CMS, when the invoice was raised and the payment was received.

17. As per the FIR, ASC was being controlled by the petitioner indirectly. In the FIR, it is further alleged that information discloses that invoices for approximately 3.5 crores were raised in favour of the INX Group in the name of other companies, in which the petitioner had sustainable interests either directly or indirectly. Such invoices were falsely raised for creation and acquisition of media content; consultancy in respect of market research; acquisition of content of various genre of audio or video, etc. INX Group, in its records, mentioned the purpose of payment of Rs.10 lakhs to ASC as towards "Management consultancy charges towards FIPB notification and clarification".

18. In the FIR, it is stated that the acts and omissions, as aforesaid, prima facie disclose commission of offence under Section 120-B read with Section 420 of the Indian Penal Code and Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against INX Media; INX News; the petitioner, Mr.Karti P.Chidambaram; CMS, through the petitioner, Mr.Karti P.Chidambaram, its Director and others; and ASC, through its Director, Smt. Padma Vishwanathan @ Padma Bhaskaraman and others, as also unknown officers and/or officials of FIPB and other unknown persons.

19. A perusal of the FIR makes it amply clear that the allegation against the petitioner was of rendering his good offices to the INX Group, through Chess Management Services (P) Ltd., in getting issues against INX Group scuttled by influencing officials and/or in other words, securing favours for the INX Group against disguised consideration received from INX Media, through ASC. The petitioner has apparently not himself been accused of misappropriation, embezzlement, financial illegalities and/or economic offences.

20. On 15.6.2017, that is after about a month, a notice was issued under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code calling upon the petitioner to appear before the Station House Officer/Investigation Officer on 29.6.2017 at 1030 Hours. On the very next day, i.e. 16.6.2017, the impugned "Look out Circular" (LOC) was issued.

21. By an order dated 10.8.2017, a learned Single Bench of this Court passed an interim order of stay of the impugned LOC dated 16.6.2017 and gave directions for filing of counter-affidavits.

22. The CBI filed an application for Special Leave to Appeal, being S.L.P.Nos.20699 - 20700 of 2017, in the Supreme Court challenging the aforesaid interim order.

23. By an order dated 14.8.2017, the Hon'ble Supreme Court stayed the interim order passed by the learned Single Judge. Thereafter, diverse orders were passed by the Supreme Court from time to time. By an order dated 31.1.2018, the Special Leave Petitions were finally disposed of with the following directions:

- (i) WP No.21305/2017, WP No.20798/2017, WP No.20885/2017 and WP No.21361/2017, challenging the Look Out Circulars of 16.06.2017 and 18.07.2017, be decided by the Division Bench presided over by the learned Chief Justice of the High Court of Madras;
- (ii) The High Court is requested to dispose of these writ petitions within two months;
- (iii) All the issues raised in these writ petitions, including the issue of territorial jurisdiction, are kept open and shall be addressed to by the High Court;
- (iv) If any application for travelling abroad is filed before the High Court, the same shall be appositely addressed;
- (v) In view of direction No.(iv), our interim order shall continue till the matter is finally disposed of.

Needless to emphasise, we have not expressed any opinion on any of the aspects of the case.

The special leave petitions along with all interlocutory applications stand disposed of accordingly."

24. The Supreme Court directed this Court to dispose of the writ petition within two months, keeping all issues open. The Supreme Court specifically directed that if any application for travelling abroad was filed, the same should be appositely addressed.

25. The application, being W.M.P.No.3031 of 2018, has been filed seeking orders allowing the petitioner to travel abroad between 15.2.2018 and 28.2.2018 and once again between 20.3.2018 and 31.3.2018.

26. By a letter dated 1.2.2018, the counsel on record for the petitioner enclosed the order of the Supreme Court to the Registry of this Court, after which the writ petitions were listed on 7.2.2018.

27. On 7.2.2018, this Bench directed that the matter be fixed for hearing on 12.2.2018 at 10.30 AM. Notice was directed to be issued

to the CBI through CBI Counsel, Mr.K.Srinivasan. Counter affidavit, if any, was directed to be filed in the meanwhile.

28. After the writ petition was taken up for hearing on 12.2.2018, the learned Additional Solicitor General submitted that the CBI had only filed counter affidavit to the miscellaneous petition filed by the petitioner to travel abroad, but not to the main petition.

29. It appears that the CBI misunderstood the order dated 7.2.2018. By our order dated 7.2.2018, we directed that counter affidavits, if any, be filed within 12.2.2018. It was not our intention that counter affidavit be only filed to the miscellaneous petition. Moreover, as early as on 10.8.2017, the learned Single Judge had issued directions for counter affidavits.

30. Be that as it may, for the ends of justice, we have granted time to the respondents till 23.2.2018 to file counter affidavits in the main writ petition and rejoinders thereto, if any, have been directed to be filed within 2.3.2018. As per the convenience of the counsel appearing on behalf of the respective parties, we have fixed the writ petition for hearing on 12.3.2018.

31. Learned Senior Counsel appearing on behalf of the petitioner, Mr.Gopal Subramaniam, submitted that the miscellaneous petition be take up on urgent basis, as the petitioner needs to travel abroad in connection with his business.

32. Mr.Gopal Subramaniam argued that on 15.5.2017 raids were conducted in diverse premises not only of the petitioner, but also of others associated with the petitioner, after which the FIR was lodged. Notice under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code was issued on 15.6.2017, directing the petitioner to appear before the CBI on 29.6.2017. However, on the very next day, that is on 16.6.2017, the impugned LOC was issued.

33. Mr.Gopal Subramaniam drew our attention to an Office Memorandum of Government of India, Ministry of Home Affairs, No.25016/31/2010-Imm., dated 27.10.2010, with regard to the circumstances in which recourse can be taken to a LOC. By a judgment delivered on 11.8.2010 in W.P. (Cr1.) No.1315/2008 (*Sumer Singh Salkan v. Assistant Director and others*) and Cr1.Ref.1/2006 (*Court on its Own Motion Re: State v. Gurnek Singh, etc.*), the High Court of Delhi held that recourse to LOC could be taken by an Investigating Agency in case of cognizable offences under the Indian Penal Code or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite non-bailable warrants (NBWs) and other coercive measures and there was a likelihood of the accused leaving the country to evade trial/arrest. The principles as laid down in the aforesaid judgment have been accepted and adopted by

the Ministry of Home Affairs by the Office Memorandum under reference.

34. Since the writ petition has been listed for final hearing on 12.3.2018, we need not decide the question of legality of the LOC at this stage. The question is whether the petitioner should be permitted to travel abroad between 15.2.2018 and 28.2.2018 and once again between 20.3.2018 and 31.3.2018, as prayed for in the miscellaneous petition. Needless to mention that it is because of the LOC that the petitioner cannot travel abroad, unless expressly permitted by this Court.

35. On a perusal of the said memorandum dated 27.10.2010, it is patently clear that LOC is a coercive measure to make a person surrender to the Investigating Agency or Court of law. Prima facie, it appears that the LOC has been issued prematurely, in haste.

36. It is a matter of record that FIR has been lodged on 15.5.2017 in respect of alleged offences which took place in the year 2007-2008. Notice under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code was issued to the petitioner on 15.6.2017, and LOC on the very next day, long before the date for appearance before the CBI mentioned in the notice.

37. Mr.Gopal Subramaniam argued that the request for issuance of LOC was made even before notice under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code was issued to the petitioner.

38. However, it would not be appropriate to decide the question of whether the request for LOC was made rightly or wrongly or whether it was made before issuance of notice to appear before the CBI at this stage, in the absence of affidavits. On the face of the records, the LOC was issued on 16.6.2017, one day after notice was issued calling upon the petitioner to appear on 29.6.2017.

39. Mr.Gopal Subramaniam submitted that the petitioner duly appeared before the CBI on 23.8.2017 and 28.8.2017. He has been cooperating with the investigation. While the Special Leave Petition was pending in the Supreme Court, the petitioner had made an application for permission to travel abroad in connection with his daughter's education. This was allowed.

40. Mr.Gopal Subramaniam submitted that the petitioner is the Director of Totus Tennis Limited, hereinafter referred to as "Totus". The petitioner filed an application dated 15.12.2017 seeking permission of the Supreme Court to travel to U.K. and France between 10th and 20th January, 2018 in connection with the business of Totus. However, since the application was not heard before 10.1.2018, the petitioner filed an affidavit dated 23.1.2018, revising the dates of

travel to UK and France from 15th to 28th February, 2018.

41. As observed above, at the time of disposal of the Special Leave Petition, the Supreme Court directed that if any application for travelling abroad was filed before the High Court, the same should be appositely addressed.

42. It is the case of the petitioner that Totus, of which the petitioner is Director, carries on business in the field of sports. Totus inter alia conducts Tennis Tournaments, and is also engaged in talent hunting and training of talented players. Totus organizes tournaments in France, Austria, Germany and Spain, identifies budding Tennis players and imparts world class training to them, in return for a revenue share of their professional earnings.

43. It is stated that the petitioner has to attend meetings in connection with the business of Totus, to finalize detailed plans, particularly budget, locate potential revenue streams to offset expenditure, etc. The meetings, according to the petitioner, are envisaged with all the stakeholders of Totus, as also with local authorities who would positively impact the business of Totus. It is, therefore, not possible to conduct the business from India and travel to UK and France is imperative.

44. In the petition, it is stated that the petitioner is a responsible citizen and a member of the All India Congress Committee (AICC). The petitioner's father, a Senior Advocate is a Member of Parliament (Rajya Sabha). He had been Finance Minister and also Home Minister for about ten years between 2004-2014. The petitioner's mother, Mrs.Nalini Chidambaram is a Senior Advocate. The petitioner's wife, Dr.Srinidhi Karti Chidambaram is a renowned Bharathanatyam Artist and Doctor. The petitioner's grand father, Mr. Justice P.S.Kailasam, was a Judge of the Supreme Court of India. Hence, the allegation that the petitioner will flee the country is an insult to the petitioner.

45. The learned Additional Solicitor General appearing on behalf of CBI has vehemently opposed this application. Firstly, it has been argued that by virtue of the order dated 31.1.2018 passed by the Hon'ble Supreme Court, the entire issue of validity of the LOC is to be decided within a period of two months; there is, therefore, no urgency in this application; and the travel of the petitioner abroad would not be in the interest of justice.

46. The learned Additional Solicitor General further argued that the petitioner had in his application stated that he was required to travel abroad for the purpose of business affairs of Totus, whose object was to identify budding Tennis Players and impart world class training to them in return for a revenue share of their professional earnings. This was not ground enough for permitting the petitioner

to go abroad when his presence for further investigation, which was at an advanced crucial stage, was required by the CBI, and that his presence in UK and other European countries would result in tampering of incriminating evidence against him in the said countries. The learned Additional Solicitor General submitted that the business interest of the petitioner cannot override public interest.

47. The learned Additional Solicitor General also submitted, upon reference to the affidavit filed on behalf of the CBI, that the petitioner's conduct in deliberately concealing his connection with Totus during the course of investigation disentitles him from any relief on equitable grounds.

48. The CBI contends that Totus is a subsidiary of Chess Global Advisory Services Private Limited, of which the petitioner is a main shareholder and Director and has been arrayed as the fourth accused in the FIR. However, Mr. Gopal Subramaniam pointed out that the fourth accused named is Chess Management Services (P) Ltd. and not Chess Global Advisory Services Private Limited, of which Totus is a subsidiary.

49. The learned Additional Solicitor General also argued that the petitioner did not initially appear before the CBI pursuant to the notice under Section 41-A(1) read with Section 41(1)(b) of the Criminal Procedure Code dated 15.6.2017 and 4.7.2017. Admittedly, the petitioner appeared before the CBI on 23.8.2017 and 28.8.2017 pursuant to the order passed by the Supreme Court.

50. The crux of the case of CBI is in paragraphs 6 to 9 of the counter affidavit extracted herein below for convenience:

" 6. I state and submit that in response to the same the petitioner applicant furnished the details of the companies in which, as per him, he was a director or had substantial interest. It is stated that the said disclosure though included the petitioners' relationship/ involvement/holding in M/s. Chess Management Services (P) Ltd. i.e., Accused No.4. However, it is pertinent to note that in the said disclosure the name of the company M/s. Totus Tennis Ltd. of which the petitioner applicant now claims to be a Director, was conspicuous by its absence.

7. I respectfully state and submit that the conduct of the petitioner whereby it deliberately concealed its involvement in M/s. Totus Tennis Ltd. per se disentitle the petitioner from seeking any permission from this Hon'ble Court to go abroad in connection with affairs of the said company which forms the subject matter of the

present investigation.

8. Furthermore, during the course of investigation the answering respondent/CBI got leads of money trail of the alleged offence reaching the shores of U.K. and other European countries. Accordingly, the respondent herein, during the course of hearing on the LOC matter in the Hon'ble Supreme Court, had furnished certain details as revealed during investigation in the instant case by way of 'note in a sealed cover' for the perusal of Hon'ble Judges, wherein, indulgence of the petitioner in certain activities prejudicial to the investigation was noticed and was brought to the notice of the Hon'ble Court.

9. I submit that since the investigation is on-going and is at a crucial advanced stage, therefore, as advised I am not placing the merits of the investigation with regard to the aforesaid averment on record of the present proceedings, which is also under further probe."

51. Anticipating what might be in the note submitted to this Court in a sealed cover, Mr.Gopal Subramaniam has drawn our attention to an additional affidavit filed by the petitioner before the Supreme Court explaining the circumstances in which certain bank accounts had to be closed and enclosing documents, including correspondence with the banks in question, which show that the accounts had to be closed at the instance of the bank concerned which refused to allow the banking operations. There was absolutely no basis for apprehension that the petitioner might tamper with evidence.

52. In the context of the contentions of the rival parties, the question before us is whether the petitioner should be permitted to travel abroad.

53. The right to liberty, including the right of free travel, is an important fundamental right and an integral part of the right enshrined under Article 21 of the Constitution of India. In *Maneka Gandhi v. Union of India* and another, reported in (1978) 1 SCC 248, the Supreme Court observed:

"Per P.N.Bhagwati, N.L.Untwalia and S.Murtaza Fazal Ali, JJ. -

5. The expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. Now, it has been held by this Court in *Satwant Singh* case [AIR 1967 SC 1836] that "personal liberty" within the meaning of Article 21

includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh case [AIR 1967 SC 1836] was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means "enacted law" or "state law" (vide A.K. Gopalan case [AIR 1950 SC 27]). Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable.

Chandrachud, J. (concurring). -

48. In Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer Government of India, New Delhi [AIR 1967 SC 1836] this Court ruled by majority that the expression "personal liberty" which occurs in Article 21 of the Constitution includes the right to travel abroad and that no person can be deprived of that right except according to procedure established by law. But the mere prescription of some kind of procedure cannot ever meet the mandate of Article 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. Secondly, even the fullest compliance with the requirements of Article 21 is not the journey's end because, a law which prescribes fair

and reasonable procedure for curtailing or taking away the personal liberty guaranteed by Article 21 has still to meet a possible challenge under other provisions of the Constitution like, for example, Articles 14 and 19. If the holding in *A.K. Gopalan v. State of Madras* [AIR 1950 SC 27] that the freedoms guaranteed by the Constitution are mutually exclusive were still good law, the right to travel abroad which is part of the right of personal liberty under Article 21 could only be found and located in that article and in no other. But in the *Bank Nationalisation case* (*R.C. Cooper v. Union of India* [(1970) 2 SCC 298]) the majority held that the assumption in *A.K. Gopalan* that certain articles of the Constitution exclusively deal with specific matters cannot be accepted as correct. Though the *Bank Nationalisation case* was concerned with the inter-relationship of Articles 31 and 19 and not of Articles 21 and 19, the basic approach adopted therein as regards the construction of fundamental rights guaranteed in the different provisions of the Constitution categorically discarded the major premise of the majority judgment in *A.K. Gopalan* as incorrect. That is how a seven-Judge Bench in *Shambhu Nath Sarkar v. State of West Bengal* [(1973) 1 SCC 856] assessed the true impact of the ratio of the *Bank Nationalisation case* on the decision in *A.K. Gopalan*. In *Shambhu Nath Sarkar* it was accordingly held that a law of preventive detention has to meet the challenge not only of Articles 21 and 22 but also of Article 19(1)(d). Later, a five-Judge Bench in *Haradhan Saha v. State of West Bengal* [(1975) 3 SCC 198] adopted the same approach and considered the question whether the Maintenance of Internal Security Act, 1971 violated the right guaranteed by Article 19(1)(d). Thus, the inquiry whether the right to travel abroad forms a part of any of the freedoms mentioned in Article 19(1) is not to be shut out at the threshold merely because that right is a part of the guarantee of personal liberty under Article 21. I am in entire agreement with brother Bhagwati when he says:

'The law must, therefore, now be taken to be well-settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article

19 would have to meet the challenge of that article.'

Krishna Iyer, J.

My concurrence with the argumentation and conclusion contained in the judgment of my learned Brother Bhagwati, J. is sufficient to regard this supplementary, in one sense, a mere redundancy. I propose only to paint the back-drop with a broad brush, project the high points with bold lines and touch up the portrait drawn so well by brother Bhagwati J. if I may colourfully, yet respectfully, endorse his judgment.

....

70. Why is the right to travel all over the world and into the beyond a human right and a constitutional freedom? Were it not so, the human heritage would have been more hapless, the human family more divided, the human order more unstable and the human future more murky.

....

76. To sum up, personal liberty makes for the worth of the human person. Travel makes liberty worthwhile.

...

78. To conclude this chapter of the discussion on the concept of personal liberty, as a sweeping supplement to the specific treatment by brother Bhagwati, J., the Jurists' Conference in Bangalore, concluded in 1969, made a sound statement of the Indian Law subject, of course, to savings and exceptions carved out of the generality of that conclusion:

"Freedom of movement of the individual within or in leaving his own country, in travelling to other countries and in entering his own country is a vital human liberty, whether such movement is for the purpose of recreation, education, trade or employment, or to escape from an environment in which his other liberties are suppressed or threatened. Moreover, in an inter-dependent world requiring for its future peace and progress an ever-growing measure of international understanding, it is desirable to facilitate individual contacts between peoples and to remove all unjustifiable restraints on their movement which may hamper such contacts."

79. So much for personal liberty and its travel facet. ...

80. If Article 21 includes the freedom of foreign travel, can its exercise be fettered or forbidden by procedure established by law? Yes, indeed. ...

90. My clear conclusion on Article 21 is that liberty of locomotion into alien territory cannot be unjustly forbidden by the establishment and passport legislation must take processual provisions which accord with fair norms, free from extraneous pressure and, by and large, complying with natural justice. Unilateral arbitrariness, police dossiers, faceless affiants, behind-the-back materials, oblique motives and the inscrutable face of an official sphinx do not fill the "fairness" bill – subject, of course, to just exceptions and critical contexts. This minimum once abandoned, the Police State slowly builds up which saps the finer substance of our constitutional jurisprudence. Not party but principle and policy are the key-stone of our Republic.

91. Let us not forget that Article 21 clubs life with liberty and when we interpret the colour and content of "procedure established by law" we must be alive to the deadly peril of life being deprived without minimal processual justice, legislative callousness despising "hearing" and fair opportunities of defence. And this realization once sanctioned, its exercise will swell till the basic freedom is flooded out."

54. Having regard to the majority view in *Maneka Gandhi*, supra, we are of the view that a person cannot be denied travel abroad for business purposes on the basis of an LOC only on the vague allegation of the possibility of tampering with evidence.

55. In the writ petition, the petitioner has not questioned the FIR. What is under challenge is the LOC, the legality/validity whereof is to be finally decided later in terms of the order of the Hon'ble Supreme Court. However, as observed above, prima facie, the LOC does not appear to be in accordance with the Office Memorandum of Government of India, Ministry of Home Affairs, No.25016/31/2010-Imm., dated 27.10.2010 and/or order of the Delhi High Court, referred to above, because, on the face of the materials on record, there was

no attempt on the part of the petitioner to deliberately evade arrest or deliberately not appear before the CBI, ***at least when the LOC was issued.***

56. There can be no doubt that CBI can carry on investigation. However, CBI has not been able to show how the absence from the country of the petitioner for a few days in February, 2018 and a few days in March, 2018 would scuttle the investigation or render the same infructuous.

57. In this context, it would perhaps be pertinent to reiterate that the allegation against the petitioner in the FIR is of influencing FIPB officials way back in 2007-2008, using his position as the son of the then Union Finance Minister to secure benefits to INX Media and INX News, for a camouflaged consideration. There is no allegation in the FIR of financial irregularities in the running of the companies with which the petitioner is associated. It is not the case of the CBI that there is likelihood or even possibility of the petitioner fleeing the country to evade the process of law and the allegation of tampering with evidence also appears somewhat farfetched considering the nature of the allegation in the FIR.

58. In view of the nature of the allegations in the FIR, there cannot be any impediment to allowing the petitioner to travel abroad on terms imposed by this Court, which are as follows:

- (i) The petitioner shall intimate travel dates and the itinerary to the CBI in advance with the address of the petitioner at the places to be visited by him.
- (ii) The petitioner shall give an undertaking to appear before the CBI immediately on his return and on dates that might be fixed by CBI for investigation, if any, after the travel period;
- (iii) The petitioner shall not change the entity or composition of any business concerns with which he is associated or close his own bank accounts or the bank accounts of entities and/or concerns under his control;
- (iv) In case closure of bank account is necessitated on account of refusal of the bank to allow operation of accounts, intimation to the CBI of the closure shall be given in advance; and
- (v) the petitioner shall return to India within 28.2.2018.

59. Since the writ petition is listed for final hearing on 12.3.2018, we need not pass orders with regard to the travel in the second phase at this stage and in any case, permission to travel would depend on compliance with the terms and conditions on which travel is now being permitted.

60. The miscellaneous petition is disposed of accordingly.

-sd/-

16/02/2018

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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2 THE DEPUTY INSPECTOR GENERAL/HEAD
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C.C. to M/S.C.UMA Advocate SR.NO. 1966

C.C. to M/S.C.VENKATESAN SCGSC SR.NO. 1953

The Special Public Prosecutor, High Court, Madras - 104. SR.NO. 1943

Order
in
WMP.3031/2018
in
WP.21305/2017

Date :16/02/2018

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