

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.32567 of 2018

S.Thomsson

... Petitioner

Vs.

1. The Director General of Police,
Mylapore, Chennai - 600 004.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007.
3. The Secretary to Government,
Personnel and Administrative Reforms (A)
Department, Fort St. George,
Chennai - 600 009.

... Respondents

(R3 is impleaded as per the order of this Court dated 18.12.2018 in WMP 38674/2018 in WP.32567/2018)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the entire records relating to the impugned GO passed by the 3rd respondent in G.O.Ms.No.288, Personnel and Administrative Reforms (A) Department, dated 04.12.1997 and quash the same and consequently, direct the 2nd respondent to sanction the leave for 16 days as EL from 19.12.2018 to 03.01.2019 and four days holidays permission on 22.12.2018, 23.12.2018, 30.12.2018 and 31.12.2018 for the purpose to visit Israel, Jordan, Jerusalem and Egypt for praying the Jesus.

(This prayer is amended as per the order of this court dated 18.12.2018 made in in WMP 38674/2018 in WP.32567/2018)

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

As per G.O.Ms.No.288 dated 04.12.1997, "No Objection Certificate" has to be obtained from the Government, whenever a Government Servant is inclined to visit Foreign country. As per clause 4(i) of the G.O., disciplinary proceedings, if any pending, would be an impediment for getting No Objection Certificate. Quoting G.O.No.288 dated 04.12.1997, the petitioner's request to go abroad was rejected by the order dated 24.10.2018, which is under challenge in this writ petition.

2. Clause 4 of G.O.Ms.No.288 dated 04.12.1997 reads as under:

"4. Government also direct that the Heads of Department shall ensure the following before, granting "No Objection Certificate" to the Government Servants as aforesaid:

(i) No disciplinary proceedings are pending or contemplated against the individual.

(ii) No vigilance cases is pending or contemplated against the individual

(iii) There are no grounds to believe that the applicant could figure adversely on the security records of the Government and

(iv) The decision for the grant of "No Objection Certificate" should be taken by the Head of Department himself/herself. The No Objection Certificate should also be signed by him/her.

(v) The Government also direct that the Heads of Department shall issue the "No Objection Certificate" incorporating the following conditions namely:-

(i) That the individual should not take up any appointment or undergo any training or study programmes during his/her stay abroad without prior approval of the Government.

(ii) That the Government will not be made liable for any expenditure including travelling expenditure etc. in connection with his/her trip abroad.

(iii) That "he/she should not tender resignation of the post held by him/her under this Government while abroad and his/her resignation of appointment will not be accepted on any account.

(iv) That he/she should not canvas or seek any business while abroad.

(v) That before proceeding abroad he/she should apply to the Government for the sanction of leave to

which he/she is eligible and get it sanctioned for the entire period of his / her absence.

(vi) That he / she shall not use the passport obtained on the basis of the "No Objection Certificate" for any-subsequent trip abroad for any purpose without the prior sanction of the competent authority.

(vii) That the "No Objection Certificate" will be valid only for a period of six months from the date of issue of such certificates".

3. The petitioner, the Inspector of Police, Modern Control Room Greater Chennai Police, is facing an enquiry initiated by the Vigilance and Anti-Corruption Department, which is pending prosecution before the Court, wanted permission to go abroad, especially, to visit holy places, like, Israel, Jordan, Jerusalem and Egypt from 19.12.2018 to 03.01.2019. The authorities, by the order dated 24.10.2018, rejected the request of the petitioner.

4. The petitioner submitted that after the death of his wife and daughter under unnatural circumstances and in an unnatural way, he wanted to restore the peace of mind and towards that end, he wanted to go on a holy pilgrimage to the foreign countries, especially, the places meant for praying Jesus and without considering the request, the authorities have rejected his request.

4.1. FIR is also stated to be pending against the petitioner in Cr.No.801 of 2018 on the file of the Inspector of Police, S14 Peerkankaranai Police Station.

5. The learned counsel for the petitioner relied upon a decision of this Court passed in CrI.R.C.No.1670 of 2016 dated 14.02.2017, where, this Court granted permission to the petitioner therein, who is facing a criminal case, to go abroad with certain terms and conditions. Hence, it is prayed that the petitioner may also be allowed to visit abroad with certain terms and conditions.

6. The learned Special Government Pleader appearing for the respondents pointed out the clause 4(i) of G.O.Ms.No.288, dated 04.12.1997, which specifically states that permission cannot be granted if any enquiry is pending and therefore, the rejection order is justified. The learned Spl.G.P., further submitted that the Government Order itself curtailing the freedom of movement which is a fundamental right has to be quashed and permission has to be granted.

7. No doubt, the freedom of movement is a fundamental right, but the State has got a power to impose reasonable

restrictions under the very same constitution. How to read the provisions of the Government Order No.288, dated 04.12.1997 would be the issue to be considered while the validity of the Government Order itself is under challenge.

8. Clause 4 sub-rule (i) only directs the Head of the Department to find out whether disciplinary proceedings are contemplated before issuing No Objection Certificate to the Government Servant, who is inclined to go abroad. This cannot be interpreted as meaning that, whenever proceedings are pending, permission to go abroad should be refused. It is always open to the Government to impose suitable terms and conditions, if permission has to be / can be granted. If the word "shall" is read down as "may" then the provision of the Government Order can be held to be valid.

9. In fact, the same clause 4 sub-clause (v) (i to iii) provides for incorporation of the following conditions while issuing No Objection Certificate:-

(v) The Government also direct that the Heads of Department shall issue the "No Objection Certificate" incorporating the following conditions namely:-

(i) That the individual should not take up any appointment or undergo any training or study programmes during his/her stay abroad without prior approval of the Government.

(ii) That the Government will not be made liable for any expenditure including travelling expenditure etc. in connection with his/her trip abroad.

(iii) That "he/she should not tender resignation of the post held by him/her under this Government while abroad and his/her resignation of appointment will not be accepted on any account.

(iv) That he/she should not canvas or seek any business while abroad.

(v) That before proceeding abroad he/she should apply to the Government for the sanction of leave to which he/she is eligible and get it sanctioned for the entire period of his / her absence.

(vi) That he / she shall not use the passport obtained on the basis of the "No Objection Certificate" for any-subsequent trip abroad for any purpose without the prior sanction of the competent authority.

(vii) That the "No Objection Certificate" will be valid only for a period of six months from the date of issue of such certificates".

10. The provision of reading down, a tool towards interpretation of the statute was discussed in the case of

Maharao Sahib Sri Bhim Singhji vs Union Of India And Ors. Etc., reported in 1985 AIR 1650, 1985 SCR Supl. (1) 862, which reads as follows:

".... reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule. To be trigger-happy in shooting at sight every suspect law is judicial legicide. Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. As Lord Denning said: "A judge should not be a servant of the words used. He should not be a mere mechanic in the power-house of semantics". May Lord Denning live long, and his shadow never grow less."

11. Applying this principle, this Court holds that the word "shall" in the Government Order should be read as "may" and if that is adopted, it will be open to the Government to grant permission to the petitioner to go abroad.

12. It is also relevant to quote a decision in the case of Maneka Gandhi vs. Union of India, reported in 1978 SCR (2) 621, where the cancellation of passport was under challenge, the Hon'ble Supreme Court pointed out that the principles of natural justice is required to be read in to the Passport Act and that before cancelling of the passport, notice and opportunity of hearing was essential.

13. The learned counsel appearing for the petitioner also pointed out that the order passed in the cases of similar nature by this Court in Crl.R.C.No.1670 of 2016, dated 14.02.2017, whereunder permission to go abroad has been granted subject to certain conditions.

14. Under such circumstances, the challenge made to G.O.Ms.No.288, dated 04.12.1997, is rejected. However, the order dated 24.10.2018 is set aside and the respondents are directed to accord permission to the petitioner to visit the holy places, as mentioned in the petition.

15. The learned Special Government Pleader appearing for the respondents submitted that an affidavit should be filed by the petitioner by giving travel schedule mentioning the date of departure, date of return along with entire programme schedule, including the number of days the petitioner would be remaining in Foreign countries, shall be submitted before the respondents at the time of getting permission from the respondents. It is also submitted by the learned counsel appearing for the respondents that there should not be any adjournment on account

of non-appearance of the petitioner before the trial court; the petitioner shall ensure the same. If travel dates are changed by the petitioner, that shall not be the ground for the respondents to grant permission.

16. Subject to the terms and conditions, mentioned above, the respondents are directed to accord permission. It is also open to the respondents to impose suitable conditions, as mentioned in the Government Order itself or to impose any other condition which would be in the light of the facts and circumstances of the case.

17. The writ petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar (V.O)

//True Copy//

Sub Assistant Registrar

ogy/srk

To

1. The Director General of Police,
Mylapore, Chennai - 600 004.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007.
3. The Secretary to Government,
Personnel and Administrative
Reforms (A) Department,
Fort.St.George,
Chennai- 9.

+1cc To Mr.C.Prakasam, Advocate, SR.No.88169/18

+1cc To The Govt.Pleader, SR.No.88351/18.

RJI (CO)
KAK(28/12/2018)

W.P.No.32567 of 2018