

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :04.11.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.30323 of 2019

Anbarasu

..Petitioner

vs

The State rep. by
The Commissioner
Commissionerate of Social Welfare
Saidapet, Chennai-600 015. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondent to issue no objection certificate for permitting the petitioner to go abroad pursuant to the invitation dated 26.09.2019 vide communication No.85/2019/AISGEF/HQ, dated 29.07.2019 and also to grant leave for 16 days for the purpose of attending XIII TUI PS & A World Congress conference organised by Trade Union International of Public and Allied Workers in Larcana - Cyprus on 16th to 17th November 2019 pursuant to the petitioner's requisition dated; 01.10.2019 within a week.

For Petitioner : Mr.N.G.R.Prasad, Senior Counsel
for Mr.R.Thirumoorthy
For Respondent : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

Writ Petition is filed for issuance of Writ of Mandamus to direct the respondent to issue no objection certificate for permitting the petitioner to go abroad pursuant to the invitation dated 26.09.2019 vide communication No.85/2019/AISGEF/HQ, dated 29.07.2019 and also to grant leave for 16 days for the purpose of attending XIII TUI PS & A World Congress conference organised by Trade Union International of Public and Allied Workers in Larcana - Cyprus on 16th to 17th November 2019 pursuant to the petitioner's requisition dated; 01.10.2019 within a week.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

3. The case of the petitioner is that he is working as Superintendent under the respondent. He was elected as General Secretary for co-ordination committee in Tamil Nadu Government Employees Association (TNGEA), which was formed to espouse the cause of Government Employees grievance. The petitioner has possessed valid passport and other requisite qualification to visit any foreign country. Since the petitioner is holding the post of General Secretary in Tamil Nadu Government Employees Association, he was invited as one of the delegates to participate in the conference, which is scheduled to be held on 16th to 17th November 2019 at Larcana, Cyprus. As per the Government Servant Rules, the petitioner has to get permission of the Government to travel abroad. Therefore, he has sent a requisition to the respondent on 01.10.2019 requesting them to grant a No Objection Certificate to go abroad as well as for sanction of leave to proceed further with his trip. However, no action has been taken by the respondent on the said requisition. The petitioner apprehends that a charge memo was issued to him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 29.01.2019 citing that he was involved in two criminal cases. That criminal cases were registered for the offences under Section 188 and 143 of IPC on the ground that the petitioner participated in the protest and for the said reason, his requisition cannot be rejected. Hence, the present writ petition.

4. Learned Senior Counsel appearing for the petitioner submitted that refusing to accord permission to the petitioner to travel abroad citing pendency of the criminal cases is no longer existence. The issue involved in the present writ petition has been considered by this Court in the judgment reported in 2015 (4) CTC 511 (Dr. Ordetta Hanna Mendoza vs. Government of Tamil Nadu and others) and the relevant paragraphs are extracted hereunder:

"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.

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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.

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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 (Crl.) 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"

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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.

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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."

5. Learned Special Government Pleader appearing for the respondent filed counter affidavit and the relevant paragraphs read as follows:

"5. It is submitted that the averments put forward by the Petitioner from para 6 to para 8 of the affidavit are devoid of truth and does not hold water. The Petitioner herein is a Coordinator for JACTO GEO and working as Superintendent in the Commissionerate of Social Welfare and Noon Meals Programme Department, took part in the JACTO and GEO strike on 22.01.2019 which attracted Rule 22 of Tamil Nadu Government Servants Conduct Rules 1973. For violating Rule 22 of Tamil Nadu Government Servants Conduct Rules 1973 charges were framed against the petitioner for allegedly participating in the indefinite strike called for by certain Associations from 22.01.2019 and conducted unlawful Protest and agitation on 23.01.2019, 24.01.2019 and 25.01.2019 in front of Government Office Complexes and also indulged in road roko on important roads in Chennai City. In this connection, The Commissioner of Social Welfare, Chennai in Lr.C.No.136/SB XV/2019-6, dated 26.01.2019 addressed to the Commissioner of Social Welfare, Chennai, stated that for the unlawful activities of JACTO Geo led by the petitioner on 22.01.2019, 23.01.2019 and 25.01.2019 a case was registered in Periamed Police Station Cr.No.17/19 u/s 143, 188, 341 IPC. Further another case was also registered in North Beach Police Station Cr.No.17/19 u/s 143 and 188 IPC against 98 protestors including the petitioner for organizing another protest agitation in front of Chennai District Collectorate on 24.01.2019.

6.It is submitted that based on the issue mentioned above, the Commissioner of Social Welfare in Lr.No.2681/Admn 5-1/2019, dated 29.01.2019 issued a charge memo to the petitioner under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules containing five counts. The petitioner in his representation dated 23.04.2019 addressed to the respondent stated that an appeal is pending before the Hon'ble Madurai Bench of Madras High Court with regard to the disciplinary action initiated during the strike period, the petitioner shall submit his explanation based on the final orders of the Hon'ble High Court. In the mean while, it is submitted that Tmt.B.Sundari, Joint Director (Child Welfare Section), Commissionerate of Social Welfare has been appointed as the inquiry Officer to conduct the inquiry into the charges. As per Lr.No.2681/Admn 5(1) 2019, dated 23.10.2019, the petitioner was duly informed that the inquiry will be conducted on 24.10.2019 at 11.30 am. The petitioner attended the inquiry. The disciplinary proceedings initiated against the petitioner under Rule 17(b) of Tamil Nadu Government Civil Services (Discipline & Appeal) Rules is pending as on date.

7.It is submitted that the petitioner has given an representation on 01.10.2019, requesting to grant No Objection Certificate to go abroad as well as for sanction of leave to proceed with his trip. In this connection, it is important to mention here that the petitioner is issued with a charge memo under 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules for violating rule 22 and 22-A of the Tamil Nadu Government Servants' Conduct Rules, 1973.

Rule 22. States:-

"No Government servant shall engage himself in strike or in incitements thereto or in similar activities.

Explanation - For the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar

purposes".

It is submitted that Rule 22-A, which deals with the conduct of Government Servant taking part in Procession and meetings. It says,

"No Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises-

(a) during office hours on any working day, and

(b) outside office hours or on holidays, same with the prior permission of the head of the Department or head of office, as the case may be".

Further, G.O.Ms.No.109, Personnel and Administrative Reforms (A) Department, dated 31.07.2006 deals with the delegation of powers to the Heads of Department in respect of Group B, C and D Officers in the issuance of "No Objection Certificate" to Government Servants to undertake trip to a foreign country and sanction of leave. The para 4 of the Government Order stipulate the following:

"the Government also direct that the Heads of Departments shall ensure the following before granting "No Objection Certificate" to the Government Servants.

(i) No disciplinary proceedings are pending or contemplated against the individual under rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules".

(ii) No Vigilance case 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; (report should be obtained from SBCID) and

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

8.It is submitted that as the petitioner violated Rule 22 and 22A of Tamil Nadu Government Servants Conduct Rules 1973, he has been served with the charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same is pending as on date, issue of "No Objection Certificate" to the petitioner to go abroad is against the standing rules and also Government Orders. Hence, it is submitted that the NOC could not be issued for the individual to go abroad and the same was also communicated to the petitioner in Roc.No.2861/Admn 5(1) / 2019, dated 30.10.2019."

6.Admitted facts are that the petitioner was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the ground that the petitioner participated in the protest made by the Union and consequently, they registered a criminal case under Section 143 and 188 IPC. Except these charges, no other heinous charge was committed by the petitioner, which required to complete the disciplinary proceedings. However, disciplinary proceedings was initiated by the authority against the petitioner for participating in the protest commenced by the Union and thereby, criminal case was filed. Subsequently, it came to understand that requisition sent by the petitioner to grant him permission to travel abroad was rejected.

7. Considering the above facts and circumstances of the case, the decision relied on by the learned Senior Counsel appearing for the petitioner is squarely applicable to the facts of the present case. In the light of the above judgment, I am inclined to allow this writ petition. Accordingly, the writ petition stands allowed setting aside the rejection order passed by the respondent. This Court hereby directs the respondent to issue no objection certificate for permitting the petitioner to go abroad pursuant to the invitation dated 26.09.2019 vide communication No.85/2019/AISGEF/HQ, dated 29.07.2019 and also to grant leave for 16 days for the purpose of attending XIII TUI PS & A World Congress conference organised by Trade Union International of Public and Allied Workers in Larcana - Cyprus on 16th to 17th November 2019 pursuant to the petitioner's requisition dated 01.10.2019, with a condition that the petitioner shall file an undertaking affidavit before the respondent on 05.11.2019 stating the date of his return from

abroad. On receipt of such affidavit, the respondent is directed to issue No Objection Certificate to the petitioner on or before 06.11.2019. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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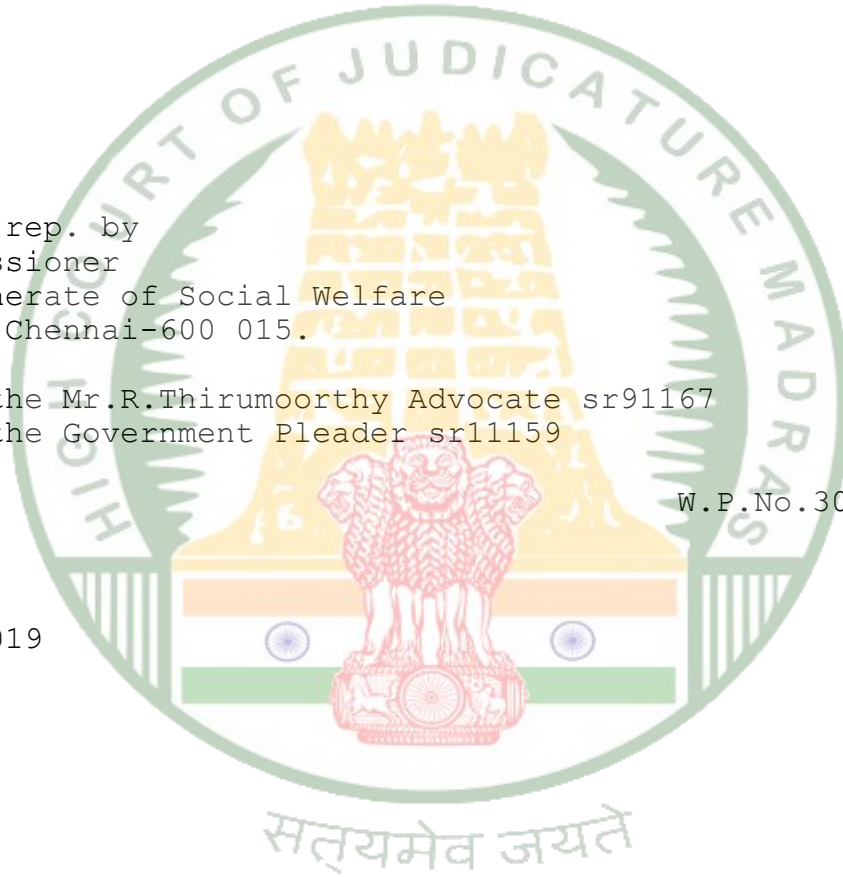
To

The State rep. by
The Commissioner
Commissionerate of Social Welfare
Saidapet, Chennai-600 015.

+1 cc to the Mr.R.Thirumoorthy Advocate sr91167
+1 cc to the Government Pleader sr11159

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