

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.8.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10979 of 2020

WMP.13345/2020

S.Aravind

... Petitioner

-vs-

State of Tamil Nadu
rep. by the Chief Secretary
Secretariat, Fort St. George
Rajaji Salai, Chennai - 600 009.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that (i) the order issued by the State of Tamil Nadu vide G.O.Ms.No.396, dated 31.7.2020, to the extent that it mandates e-passes for inter-state and intra-state movement is void ab initio and unconstitutional for being passed in violation of Article 19(1)(d) of the Constitution and Section 10(2)(1) of the Disaster Management Act, 2005; and (ii) in accordance with the orders of the National Disaster Management Authority, there shall be no requirement to obtain e-passes for inter-state and intra-state movement of people and goods in the State of Tamil Nadu.

For Petitioner : Mr.S.Sendamarai Kannan

For Respondent : Mr.V.Jayaprakash Narayanan
State Government Pleader

ORDER

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

This public interest litigation has been filed contending that people like the petitioner, who is a driver, are facing

immense problems resulting in breach of their fundamental right of movement by the enforcement of the e-pass system by the State Government, which amounts to a contravention of the directives issued by the Central Government in terms of the Disaster Management Act, 2005. The submission is that the directives of the State Government itself under G.O. (Ms.) No.396, Revenue and Disaster Management (D.M.II) Department, dated 31.7.2020 states that the directives are being notified also keeping in view the order of the Ministry of Home Affairs, Government of India, dated 29.7.2020. It is, therefore, urged that if orders issued under the Disaster Management Act, 2005 by the National Disaster Management Authority categorically recites that there shall be no restriction on inter-State and intra-State movement of persons, then in that event, compelling the petitioner and other citizens to obtain e-passes amounts to restricting the freedom of movement and, hence, such a condition should be quashed.

2. On the other hand, Mr.V.Jayaprakash Narayanan, learned State Government Pleader has informed the Court that the system of issuance of e-passes has been relaxed under the notification dated 14.8.2020 and, therefore, the contention that there is a prohibition or a restriction on movement is unfounded. It is urged that in order to regulate movement, the State Government has issued the modified notifications, which are in consonance with the directives issued by the National Disaster Management Authority.

3. The order dated 29.7.2020 issued by the National Disaster Management Authority is accompanied by the guidelines that are described as "Guidelines for Phased Re-opening (Unlock 3)". The relevant clause for the present purpose is Clause (5), which is extracted herein under:

"5. States/UTs, based on their assessment of the situation, may prohibit certain activities made outside the Containment zones, or impose such restrictions as deemed necessary.

However, there shall be no restriction on inter-State and intra-State movement of persons and goods including those for cross land-border trade under Treaties with neighbouring countries. No separate permission/approval/e-permit will be required for such movements."

4. The contention of the learned counsel for the petitioner about the offending provision in the Government Order dated 31.7.2020 relating to e-pass system is extracted herein under:

"E-pass system

E-Pass system will continue to be in force for both inter state and inter-district travel."

5. On a perusal of the provisions aforesaid, we are satisfied that the words "no restriction" in Clause (5) of the Guidelines issued by the Ministry of Home Affairs, Government of India, does not in any way get contravened by a regulatory method of issuing of e-passes, which neither restricts, nor prohibits the movement, and rather regulates the movement of travelling public in order to control the spread of Coronavirus. The relevant clause, which is stated by the learned counsel for the petitioner to be offending, categorically states that the e-pass system will continue to operate, but it nowhere states that no e-pass will be issued for an appropriate movement to any citizen.

6. On the other hand, as pointed out by the learned State Government Pleader, the Disaster Management Authority of the State has issued orders on 14.8.2020 that is extracted herein under:

"NOTIFICATION

WHEREAS on considering the recommendations of the expert team of Doctors and Public Health Specialists and based on the directives of Government of India, Ministry of Home Affairs, State-wide lockdown was extended from time to time and lastly extended till 24:00 hrs of 31.08.2020 under the Disaster Management Act, 2005 in GO.Ms.No.396, Revenue and Disaster Management (DM-II) Department, dated 31.07.2020 with various relaxations and certain restrictions.

2. Hon'ble Chief Minister in the Press Note No:153, dated 14.8.2020 announced that in order to enable the movement of people within State (Between Districts) for important they can apply E-pass with details of Aadhar/Ration card and Telephone/Mobile numbers and the E-pass will be approved immediately without any delay to all applicants, with effect from 17.8.2020.

3. The Commissioner of Revenue Administration (FAC) accordingly has sent amendment proposals in line with the above announcements to the G.O.Ms.No.396, Revenue and Disaster Management Department, dated 31.07.2020.

4. Now, therefore the Government accept the proposal of the Commissioner of Revenue Administration (FAC) and hereby amend the G.O.Ms.No.396, Revenue and Disaster Management Department, dated 31.07.2020 as detailed below:

Under the heading Prohibited Activities in Caption I - E-pass system, the existing para is replaced as detailed below:

To enable the movement of people within State (Between Districts) for important work they can apply E-pass with details of Aadhar/Ration card and Telephone/Mobile numbers and the E-pass will be approved immediately without any delay to all applicants with effect from 17.8.2020. However, the present E-pass system will continue to be in force for person who are coming from Foreign Countries and from other States to Tamil Nadu."

7. This has been done in the larger interest of the management of the entire COVID-19 pandemic situation and to regulate the travel of infected people coming from other States or foreign countries. We, therefore, do not find any contradiction with the guidelines issued by the National Disaster Management Authority, so as to strike down the continuance of the e-pass system at present on account of any violation of fundamental rights, leaving it open to the State Government to reconsider it as and when the occasion arises.

The petition, therefore, does not call for any such declaration as sought for in the present petition, which is accordingly consigned to records. No costs. Consequently, W.M.P.No.13345 of 2020 is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To:
The Chief Secretary
State of Tamil Nadu
Secretariat, Fort St. George
Rajaji Salai, Chennai - 600 009.

+1CC to the Government pleader, vide SR No.27089/2020

W.P.No.10979 of 2020

SSV(SO)
RV 26/08/2020