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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20.09.2021
DELIVERED ON	08.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

H.C.P.No.1625 of 2020

Varaluxsume

... Petitioner

.vs.

1 The State of Tamil Nadu
represented by its
Principal Secretary to Government
Public (Foreigners-II) Department
Secretariat, Chennai

2 The District Collector-cum-Camp Officer
Special Camp for Foreigners
Central Prison Campus
Tiruchirappalli

3 The Inspector of Police
"Q" Branch, Mylapore
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus against the detention order passed by the first respondent in G.O.(1D) No. 502, Public (Foreigners-II) Department dated 15.10.2019 and for a direction to the respondents to produce the detenu Premkumar, S/o Rathinavadivel, who is confined at the Special Camp, Kootapattu Refugee Camp, Tiruchirappalli, before this Court and set him at liberty.

For petitioner : Mr.R.C.Paul Kanagaraj

For respondents: Mr.R.Shanmuga Sundaram
Advocate General
assisted by Mr.R.Muniyapparaj
Additional Public Prosecutor



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Mr.R.Sankaranarayanan
Addl. Solicitor General of India and
Mr.Avinash Krishnan Ravi
Central Govt. Standing Counsel
assisted the Court

ORDER

P.N.PRAKASH, J.

One Premkumar, a Sri Lankan national, is said to have migrated with his family to India in 2006 during the ethnic crisis there and was residing in Anna Nagar, Chennai, with his family and reporting to the Inspector of Police, V-5 Thirumangalam Police Station. It is said that he got involved in a case in "Q" Branch CID Chennai City Cr.No.2 of 2019 under Section 12(1A)(a) of the Passports Act, 1967, read with Sections 120-B, 468 and 471 IPC read with Section 14 of the Foreigners Act, 1946, and was arrested by the police on 25.09.2019. His criminal antecedents have been set out in paragraph 4 of the counter affidavit filed by the Deputy Secretaries to Government Public (Foreigners) Department and Protocol (Public) Department, which reads as under:

"4. It is further submitted that during the investigation, it revealed that A1 Premkumar Ratnavadivel is a Sri Lankan national arrived India during the year 2002 using Sri Lankan Passport No.M1527883 with family and stayed at Thirumangalam Police Station limit, Chennai. It is submitted that A1 Premkumar intentionally departed from India on 17.12.2006 by Sri Lankan flight UL-122 from Chennai Airport and he again arrived in India illegally by boat purposefully to attain the refugee status and landed in Rameswaram in the year 2007. Premkumar Ratnavadivel is the actual name of A1 Premkumar. A1 Premkumar obtained Indian passport bearing no.H6414779 in the year 2009 fraudulently and dishonestly, in the name as Premkumar Sivasamy, No.79, Kalaingar Colony, Alangudi (PO), Pudukkottai 622 301"

After his release on bail, he was lodged in the Special Camp, Trichy, under Section 3(2)(e) of the Foreigners Act, vide G.O. (1D) No.502 Public (Foreigners.II) Department dated 15.10.2019, challenging which, his wife Varaluxsume has filed the present habeas corpus petition.

2 Heard Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner, Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.R.Muniyapparaj, learned Additional Public



Prosecutor and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Mr.Avinash Krishnan Ravi, learned Central Government Standing Counsel.

3 The main submission of Mr.R.C.Paul Kanagaraj was that the State Government, by order in G.O.No.SR 3/1137-1/2016 Public Department dated 20.09.2016, permitted five persons, viz., (1) Sivalingam @ Elango, (2) Jayaraj @ Senthilkumar, (3) Dheepan @ Pratheepan, (4) Prabhu @ Pratheepan and (5) Deva @ Sreeswararaja, to be delogged from the Special Camp at Trichy and therefore, Premkumar also deserves to be so delogged. In support of this contention, he placed strong reliance on the unreported judgment of a Division Bench of this Court in S. Jayachandran vs. State and 2 others¹.

4 On the contrary, Mr.Sankaranarayanan, learned Additional Solicitor General, submitted that this very habeas corpus petition is not maintainable in view of the authoritative pronouncement of a Division Bench of this Court in Kalavathy vs. State² that a person lodged in the special camp is not in any illegal detention for the issuance of a writ of habeas corpus. He took this Court through the various provisions of the Foreigners Act in support of this contention.

5 From a perusal of Sections 3 and 4 of the Foreigners Act, it is limpid that there are two classes of foreigners whose movements can be restricted and they are classified as parolees and internees. A foreigner is said to be a 'parolee' if an order under Section 3(2)(e) of the Foreigners Act, has been passed against him and a foreigner is said to be an 'internee' if an order has been passed against him under Section 3(2)(g), *ibid.* The Central Government has delegated the powers to pass orders under Section 3(2)(a) to (f), *ibid.*, to the State Government under the notification of the Government of India, Ministry of Home Affairs, No.4/3/56 (1) F-1 dated 19.04.1958, by virtue of which, the State Government has been invested with the power to pass orders under Section 3(2)(e), *ibid.* As regards the internee, the Central Government has not delegated the power under Section 3(2)(g), *ibid.* to the State of Tamil Nadu.

6 At this juncture, it may be felicitous to extract the relevant passage from paragraph 15 of the judgment in Kalavathy (*supra*):

"15.If that be so, under S. 3(2)(e) of the Act, the State Government does have the power, to require foreign nationals, not only to reside in a particular place, as a special refugee camp, but also

1 HCP No.1381 of 2020 decided on 19.08.2020

2 1995-2-L.W.(CrI.) 690



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have power to impose restrictions, on their movements. Power, to pass orders under S.3(2)(e) of the Act, indisputably has been delegated by the Central Government to the State Government. We are unable to agree, that the foreigners involved in these writ petitions, have been arrested and detained or confined. Only certain limited restrictions have been made in their movements and place of residence. A special refugee camp cannot be termed as an internment camp. If that be so, the argument that the impugned orders must be deemed to have been made under S.3(2)(g) of the Act cannot survive. Similarly, the protection sought under Art.22(4) of the Constitution also, cannot exist, since the said Article deals with protection against arrest and detention in certain cases."

(emphasis supplied)

7 In Yogeswari vs. The State and another³, a view contrary to the one taken in Kalavathy (supra) was taken by a Division Bench of this Court. Again, in Premavathy @ Rajathi vs. State and 2 others⁴, a Division Bench of this Court considered both Kalavathy (supra) and Yogeswari (supra), but, chose to follow Kalavathy (supra), without referring the matter to a larger Bench.

8 In order to reconcile this issue, a Full Bench of three Judges in Sree Latha vs. State and others⁵, went into all the aspects of the matter relating to an order passed against a foreigner under Section 3(2)(e) of the Foreigners Act and held authoritatively that the law laid down in Kalavathy (supra) was correct and not the one laid down in Yogeswari (supra). The Full Bench categorically held that directing a foreigner to stay within the special camp with certain inevitable restriction on his movement would not amount to an order of preventive detention.

9 In the light of the aforesaid discussion, an order passed by the State Government under Section 3(2)(e) of the Foreigners Act cannot be a subject matter of challenge in a habeas corpus petition as there is no order of detention and also since the protection under Article 22(4) of the Constitution of India is not available.

3 2003-1-L.W. (CrI.) 352

4 H.C.P. No.1038 of 2003 decided on 14.11.2003

5 (2007) 2 MLJ (CrI.) 1320



10 Very recently, in State vs. H. Nilofer Nisha⁶, the Supreme Court has held as under:

"13. It is a settled principle of law that a writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. As Hidayatullah, J. (as he then was) held: (SCC p. 1630, para 12)

"12. ... The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention" [Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625 : (1964) 2 Cri LJ 590].

At the same time, the law is well established that a writ of habeas corpus will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought is in accordance with the decision rendered by a court of law or by an authority in accordance with law."

(emphasis supplied)

11 In this case, at the risk of repetition, we state that an order passed under Section 3(2)(e) of the Foreigners Act by the State Government restricting the movement of foreigners is not an order of detention, as held by the Division Bench of this Court in Kalavathy (supra) and confirmed by the Full Bench of this Court in Sree Latha (supra). A foreigner does not have the right guaranteed under Article 19 of the Constitution of India. On this short ground itself, this habeas corpus petition is liable to be dismissed.

12 Coming to the Government Order dated 20.09.2016 relied upon by Mr. Paul Kanagaraj, Mr. Muniyapparaj submitted that pursuant to the suggestions of the Division Bench of this Court in Premavathy @ Rajathi (supra), a Joint Review Committee meeting was held on 02.09.2016 and the Review Committee recommended the delodgment of the five persons referred to in the said Government Order; however, the case of Premkumar was considered by the Review Committee on 29.05.2021 and was not recommended for delodgment. A copy of the proceedings of the Review Committee has been furnished to the counsel for the petitioner.

6 (2020) 14 SCC 161



13 It is trite that a foreign national does not enjoy the fundamental rights guaranteed by Article 19 of the Constitution of India, which include right to freedom of movement and therefore, the order passed under Section 3(2)(e) of the Foreigners Act, cannot be challenged on the ground of violation of Article 19(1)(d) of the Constitution of India.

14 However, the learned counsel for the petitioner submitted that the prayer may be considered on humanitarian grounds.

15 In this regard, Mr. Muniyapparaj, learned Additional Public Prosecutor, made the following submissions:

- There are 107 camps in Tamil Nadu to accommodate the families of Sri Lankan refugees who came to Tamil Nadu during the ethnic crisis. The State Government pays Rs.1,000/- per month to the head of the family, Rs.750/- per month to a member of the family who is above 12 years and Rs.450/- per month to the member of a family who is below 12 years.
- The State Government is also permitting Sri Lankan nationals to stay as 'out refugees' without seeking any financial aid from the Government, but, on condition that they should report before the local police regularly.
- If a Sri Lankan refugee or as a matter of fact, any foreigner, gets involved in an offence, he is directed to be lodged in the special camp at Trichy on the order of the Government passed under Section 3(2)(e) of the Foreigners Act after he is released on bail in the case in which he was involved. Even such a foreigner is paid Rs.175/- per day and is permitted to have gas connection and cook his own food. His relatives are permitted to call on him at the camp. He is taken to the Court under escort on the hearing dates of the case. The State Government provides him free medical treatment in the nearest Government Hospital.
- Though the Foreigners Act does not provide for any format of review of the case of foreigners kept in the special camp at Trichy, yet, on the suggestions of this Court in Premavathy (supra), a Review Committee goes into the case of each foreigner periodically and recommends for delodgment from the special camp.
- Accordingly, the case of Premkumar was considered by the Joint Review Committee on 29.05.2021 and by proceedings



dated 03.08.2021, has decided not to recommend his case for delodgment.

16 As stated above, there is no statutory requirement for the constitution of a Review Committee to go into the case of foreigners kept in the special camp at Trichy. But, this exercise is undertaken periodically in deference to the suggestions given by this Court in Premavathy (supra) and therefore, one cannot claim as a matter of a legal right that he be delodged from the special camp.

17 However, we grant liberty to Premkumar to make a detailed representation as and when the Review Committee meeting is convened, for considering his delodgement on valid grounds. We hasten to add that we are not granting any legal right of representation, inasmuch as, such a right can be conferred only by law and not by Courts. In State and others vs. G.Karunairaj⁷, a Division Bench of this Court, has clearly held that the opportunity of personal hearing would come into play only in the event of expulsion of a foreigner from this country and not while passing orders under Section 3(2)(e) of the Foreigners Act.

18 As far as the Division Bench judgment of this Court in S.Jayachandran (supra) relied on by the learned counsel for the petitioner, wherein, the order passed under Section 3(2)(e) of the Foreigners Act was set aside, is concerned, we are unable to persuade ourselves to follow the said order, since it does not even refer to the law laid down by the Full Bench in Sree Latha (supra) and by the Division Benches in Kalavathy (supra), Premavathy (supra) and Karunairaj (supra).

19 Before parting, it may be pertinent to state here that India was not a party to the 1951 Convention nor the 1967 Protocol, both relating to the status of refugees. However, even in the 1967 Protocol, Article 2 very clearly states as under:

"Article 2

GENERAL OBLIGATIONS

"Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order."

⁷ 2014 (1) CTC 113



20 The bottom line is, a Sri Lankan refugee can either choose to reside in any one of the 107 refugee camps or stay as an 'out refugee' and report in the local police station. However, he loses these privileges if he gets involved in an offence in India and thereafter, his place of stay could possibly be only in the special camp at Trichy until the State Government decides to dislodge him. Judicial review of the order of the State Government is maintainable only on very limited grounds as held in Karunairaj (supra) as under:

"33. As per the above said decision, the satisfaction of the authority on such proceedings, has to be subjective satisfaction and would be open to a narrow judicial review."

21 In view of the aforesaid discussion, we hold that a petition challenging an order passed by the State Government under Section 3(2)(e) of the Foreigners Act cannot be registered as a habeas corpus petition and at the most, be registered as a writ petition to be heard by a single Bench, as could be inferred from the Division Bench judgment of this Court in Karunairaj (supra).

22 Ex consequenti, we direct the Registry to place the matter before the Hon'ble Chief Justice for appropriate directions to number a petition challenging an order passed by the State Government under Section 3(2)(e) of the Foreigners Act or any consequential order, as a writ petition to be heard by a Single Bench, and not as a habeas corpus petition.

In the result, this habeas corpus petition is dismissed with the above observation and direction and liberty, as granted in paragraph 17 (supra).

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Principal Secretary to Government
Public (Foreigners-II) Department
Secretariat, Chennai.



2 The District Collector-cum-Camp Officer
Special Camp for Foreigners
Central Prison Campus
Tiruchirappalli

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3 The Inspector of Police
"Q" Branch, Mylapore
Chennai

4 The Public Prosecutor
Madras High Court
Chennai 600 104

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1. The Registrar General,
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High Court, Madras.
3. The Assistant Registrar,
Criminal Section,
High Court, Madras-104.
4. The Assistant Registrar,
Writ Section,
High Court, Madras-104.

H.C.P.No.1625 of 2020

PMK (CO)
CS/22/10/2021