



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.04.2021

DELIVERED ON : 21.05.2021

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGOVAN

WP(MD)No.18037 of 2020 and
WMP(MD)No.15049 of 2020

Babitha

... Petitioner

Versus

1. State of Tamil Nadu rep. by its
Principal Secretary to Government,
Public (SC) Department,
Chennai-600 009.

2. Special Deputy Collector,
Special Camp for Srilankan
Immigrants/Refugees Camp,
Trichy-23.

... Respondents

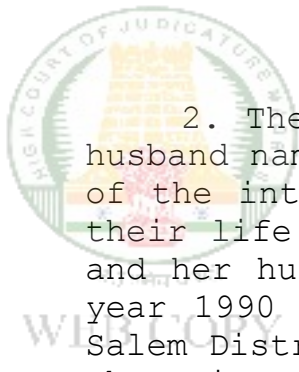
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus, calling for the records pertaining to the impugned G.O.[1D].No.536 dated 29.10.2019 passed by the 1st respondent and set aside the same and further direct the respondents to pass orders permitting the petitioner's husband to reside along with the petitioner and their three daughters at Thoppaiyar Dam Refugees Camp, Dharmapuri Taluk, Dharmapuri District.

For Petitioner : Mr.V.Rajiv Rufus

For R1 & R2 : Mr.P.Anandharaj
Additional Public Prosecutor

O R D E R

This petition is filed seeking quashment of impugned G.O.(1D) No.536 dated 29.10.2019 passed by the first respondent herein and to set aside the same and further permit the husband of the petitioner to reside along with the petitioner and her three Children at Thoppaiyar Dam, Refugee Camp, Dharmapuri District.



2. The case of the petitioner in brief. The petitioner and her husband namely, Francis Xaviour, are Srilankan Tamil people. Because of the internal disturbance in Srilanka, they came to India fearing their life. During that time, the petitioner was aged about 8 years and her husband was aged about 10 years. They reached India in the year 1990 through proper channel as refugees and they were kept in Salem District. Her husband was a Srilankan citizen. They stayed in Thoppaiyar Dam, Refugee Camp, Dharmapuri District. They married on 10.02.2003. Because of the wedlock, they got three daughters. Now, the daughters are aged about 17, 14 and 11 years. The first daughter is about to join Nursing course, second daughter is studying 10th standard and third daughter is studying 7th standard. Her husband was working as a painter.

3. A case was registered against her husband in Crime No.1 of 2008 on 27.09.2019 and he was arrested on 24.10.2020. On 29.10.2019, the first respondent passed a detention order in GO(1D)No.536, under Section 3(2)(e) of Foreigners Act and he was detained in Special Camp, Tiruchirappalli. He made several request to cancel the detention order. But that was not taken into consideration. Even though he was released on bail, the detention order has been passed. So, the detention order is arbitrary in nature and without proper reason, it has been passed. The petitioner's children have lost their father's company, care and advise. Articles 14 and 21 of the Constitution of India are available to the petitioner and her husband. Depriving the right of the petitioner and her family is a clear case of injustice. Articles 14 and 21 clearly apply to citizens and non citizens and they have been squarely violated by the first respondent. No valid ground has been made out in the detention order. It has been passed without application of mind. The petitioner's husband was not given any opportunity before passing the impugned order. The petitioner's husband was equated with that of an illegal migrant. Moreover, no mention is made with regard to exceptional circumstances warranting the detention order in the Camp. The detention order amounts to jail imprisonment. This petition is filed seeking quashment of the above said Government Order and further relief.

4. A detailed counter affidavit has been filed by the first respondent.

5. Heard both sides.

6. It is an unfortunate case of a refugee, who came to India at the tender age, married a similarly placed refugee and begot three female children. The petitioner along with her three children are staying in Thoppaiyar Dam, Refugee Camp, Dharmapuri District, whereas, the husband of the petitioner is kept in Tiruchirappalli Refugee Camp. Even though the families are now separated, the reason for separation is the petitioner's husband own doing.

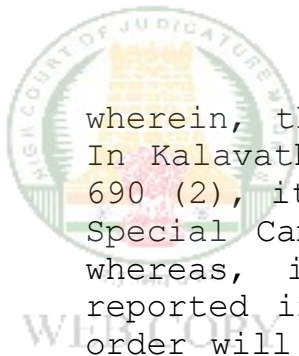


7. As per the counter filed by the 1st respondent, the petitioner's husband is involved in serious criminal case in Crime No.1 of 2019 for the offences punishable under Sections 120-B, 420, 465, 468 and 471 of IPC and 12(1A) (a), 12(1A)(b), 12(2) of Passports Act, 1967. The allegation is that the husband of the petitioner along with others obtained Indian Passport using forged documents. The preliminary investigation has proved the involvement of the petitioner's husband in the said crime. On 01.10.2019, in Rajiv Gandhi International Airport, Hyderabad, the petitioner's husband namely, Francis Xavier, based upon the Look Out Circular, was detained, when he was about to fly to Saudi Arabia using Indian Passport. On getting information, the Inspector of Police, Q Branch CID, Madurai City and Sub-Inspector of Police, Madurai City reached there and the husband of the petitioner was taken into custody. He was remanded to custody on 04.10.2019. Only based upon the above said facts, the order was passed by the Government exercising the powers conferred under Section 3(2)(e) of the Foreigners Act, 1946. The movement of the husband of the petitioner was restricted. The facts narrated in the counter affidavit clearly shows that the husband of the petitioner is involved in the criminal offence and that too, grave offence of obtaining an Indian Passport with forged document and with forged document, he also tried to fly to Saudi Arabia. No doubt, he was trying to go there for the purpose of making livelihood. However, the fact remains that he is involved in a grave criminal offence and that is why, he was ordered to remain in confinement camp which is also called as Special Camp.

8. Now, the point which arises for consideration is whether the order passed by the first respondent is perfectly valid and whether it is liable to be quashed for the reasons stated by the petitioner.

9. The first ground which is urged by the learned counsel for the petitioner is that without giving proper opportunity, the order has been passed in a mechanical manner. The power of the Government to pass such an order is no more *res integra*. The Hon'ble Division Bench of this Court consisting of the then Hon'ble Chief Justice and another Judge in Crl.A.No.651 of 2012 dated 26.11.2013 has gone into every aspects of the Powers of the Government under the above said provision. It has been categorically held that these orders cannot be construed as detention orders. Only the movement of the foreigners is restricted. So, it would not come under the category of detention. Since it is not a detention, naturally that order cannot be challenged.

10. Now, coming back to the points raised by the petitioner, the scope of the Sections 3(2)(e) and 3(2)(g) of the Foreigners Act came up for consideration before the Full Bench of this Court in Sree Latha vs. Secretary to Government, Public (SC) Department, Government of Tamil Nadu, and others reported in (2007) 2 MLJ (CRL.) 1320,

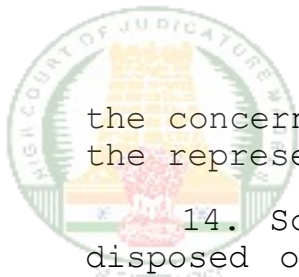


wherein, the Hon'ble Full Bench considered the following decisions. In Kalavathy vs. State of Tamil Nadu reported in (1995) 2 LW (CRL.) 690 (2), it has been held that the order regarding confinement in the Special Camp would not amount to an order of preventive detention, whereas, in the decision in Yogeswari vs. State of Tamil Nadu reported in (2003) 1 LW (CRL.) 352, it has been held that such an order will only amount to confinement. The Hon'ble Full Bench, as a result held that an order directing a person to stay in a Special Camp with restriction cannot be construed as a detention or confinement as envisaged under Section 3(2)(g) of the Foreigners Act. In Crl.A.No.651 of 2012 dated 26.11.2013, it is also held that opportunity of hearing can be given only in the event of expulsion and therefore, the grievance of the petitioner that her husband was not given any opportunity before passing the order is not also available to the petitioner. It has also been held that the authorities have ample powers to impose orders restricting movements.

11. Moreover, reading of the order clearly shows that only the movement of the husband of the petitioner is restricted. If for any purpose, he wants to move out of the camp, prior permission of the District Collector, Tiruchirappalli must be obtained.

12. The next point raised by the petitioner is that no reason has been assigned in the order and it has been passed in a mechanical manner. The question which arises for consideration is that whether this argument is available to the petitioner? This point has also been discussed in the above said judgment and it was concluded that the satisfaction of the authority to such proceedings has to be subjective satisfaction and would be open to a narrow judicial review. Administrative action can be questioned on the ground of illegality and irrationality and procedural impropriety of a superior and has prejudicial consequences. However, the petitioner has not made out any of the above. As I have mentioned earlier, his movement is restricted within the Special Camp, Tiruchirappalli since he is involved in a grave offence and he has to appear before the concerned Court for trial proceedings.

13. During the course of arguments, the learned counsel for the petitioner would make a request that the petitioner's husband may be permitted to reside within Thoppaiyar Dam Refugees Camp, Dharmapuri Taluk, Dharmapuri District where his family is also residing. No doubt, this is a request on humanitarian ground. Article 21 of the Constitution of India applies to non citizens also. Life includes right to have a family, children and their company. Such a right is available to the husband of the petitioner also. Similarly, this petitioner has right to have her husband's company and their children have right to have their father's company unless and until imprisonment is imposed upon the husband of the petitioner. However, such a direction cannot be given in this petition. If at all, the petitioner and her husband may make proper representation to the concerned authorities, setting out necessary facts and circumstances,



the concerned Authorities may be directed to take necessary action on the representation to be submitted by them.

14. So, I am of the considered view that this petition can be disposed of with the following directions, the petitioner and her husband are at liberty to make proper representation to the first respondent herein setting out the facts and circumstances, insisting to shift the stay place of the husband of the petitioner to Thoppaiyar Dam Refugees Camp, Dharmapuri Taluk, Dharmapuri District within a period of one month from the date of receipt of a copy of this order and on receipt of such representation, the first respondent herein is hereby directed to consider the same on humanitarian ground and pass orders taking into account the family circumstances of the petitioner and pass orders within a month thereafter.

15. With the above directions, this petition is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS-)

To

1. The Principal Secretary to Government,
Public (SC) Department,
Chennai-600 009.
2. The Special Deputy Collector,
Special Camp for Srilankan
Immigrants/Refugees Camp,
Trichy-23.

Order in
WP (MD) No.18037 of 2020 &
WMP (MD) No.15049 of 2020
21.05.2021

MBI

TE : 03/06/2021 : 5P/3C