



W.P.No.7150 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 17.08.2023

PRONOUNCING ORDERS ON : 22.08.2023

CORAM :

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.7150 of 2022

P.Krishnamoorthy @ Moorthy

.. Petitioner

..Vs..

- 1.State of Tamil Nadu rep.by its
S.C.Joint Secretary to Government
Public (SC) Department, Secretariat
Chennai - 600 009.
- 2.The District Collector
Tiruchirapalli.
- 3.The Deputy Collector (Incharge)
Special Camp, Kottappattu
Tiruchirapalli - 620 023.
- 4.The Joint Review Committee
O/o. Q Branch CID, Mylapore
Chennai-4.
- 5.The Superintendent of Police
Q Branch CID, Chennai-4.
- 6.The Assistant Commissioner of Police
Central Crime Branch, Chit, Kandhuvatti
and Fake Passport Prevention Wing
Vepery, Chennai-7.

.. Respondents



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Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 26.10.2021 and delodge him from the 3rd respondent's Special Camp on humanitarian ground in view of his long and permanent ailment.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This writ petition has been filed for the issuance of a Writ of Mandamus directing the respondents to consider the representation made by the petitioner on 26.10.2021 and to de-lodge him from the 3rd respondent's Special Camp.

2. The case of the petitioner is that he is a Srilankan Tamil Refugee who came to India in the year 1989 and was staying at Chennai. He married one Dhanam who was a deserted lady with one male child. The petitioner was taken into custody and lodged at the Refugee Camp at Tiruchirapalli pursuant to the order of detention under Section 3(2)(e) of the Foreigners Act dated 05.02.2019. The petitioner was also added as an accused in various cases involving fake passports. The petitioner was arrested and lodged in prison and thereafter he was released on bail. The petitioner was once again lodged in the Special Camp.



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3. The wife of the petitioner filed H.C.P No.2399 of 2020 to release the petitioner from the Detention Camp and to permit him to reside along with his wife and his family members. This H.C.P came to be dismissed by the Division Bench of this Court by order dated 08.10.2021. However the petitioner was granted liberty to make a detailed representation to the Review Committee seeking for de-lodgement of the petitioner and considering the health condition of the petitioner, the Review Committee was directed to assess and take a decision on the request made by the petitioner.

4. The petitioner accordingly made a representation dated 26.10.2021 to the respondents including the Review Committee requesting to de-lodge the petitioner from the Camp. No orders were passed by the Review Committee and that apart, the wife of the petitioner was also affected by stem tumor and she also underwent surgery at Coimbatore Kauvery Hospital.

5. The petitioner left with no other option / alternative has filed the present writ petition for a direction to the respondents to consider the representation dated 26.10.2021 and to de-lodge him from the Special Camp at Tiruchirapalli.

6. When the matter came up for hearing on 12.07.2023, this Court directed the Additional Public Prosecutor to take instructions. Accordingly, a counter affidavit has been filed by the 5th respondent and a status report has been filed by the 6th respondent.



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On carefully going through the same, it is seen that there are eight cases registered against the petitioner by the Central Crime Branch, Chennai and three cases were registered in Andhra Pradesh and all these cases have been registered during the period from 2005 to 2014 and it all pertains to fake passport cases. Some of the cases are under investigation and some of the cases are pending trial.

7. It has been further stated that the health condition of the petitioner was examined and it is found that the petitioner was admitted on 21.07.2023 for medical examination at M.G.M.Government Hospital and he was discharged on 22.07.2023. At the time of the discharge, a discharge summary was given, in which it is stated that there are no specific complaints and the petitioner is very much conscious and oriented.

8. Infosar as Dhanam, who claims to be the wife of the petitioner, it is stated that she has a son named Madhavan and they are now living at Muthupettai Perooratchi at Tiruvarur District. It is also stated that she suffered a tumor which was removed and she was given radiation therapy at Kovai Medical Centre Hospital and she is living with her son Madhavan and her daughter-in-law. On enquiring her, it came to be ascertained that she is the wife of one Palani and there is absolutely no material to substantiate that she is married to the petitioner and is the legally wedded wife of the petitioner. The health condition of the said Dhanam is noted as weak but stable.



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9. The respondents have strongly resisted the release of the petitioner from the Special Camp on the ground that he was repeatedly involved in creating fake passports and he is a threat to the national security and he has been already convicted in three cases. The respondents have also questioned the locus standi of the petitioner to seek for his de-lodgement on the ground that he is a foreign national and the State can always impose restriction on his movements and the same is well within the powers given under the Foreigners Act. That apart, the Special Camp in which the petitioner has been permitted to stay cannot be considered to be an illegal detention and considering the criminal record of the petitioner and the nature of the crime committed by him, the request made by the petitioner for de-lodgement from the Special Camp has been considered and rejected and hence the respondents have sought for dismissal of the writ petition.

10. The above said Dhanam and her son Madhavan have filed independent affidavits before this Court. Dhanam has stated that the petitioner is her husband and that both Dhanam as well as the petitioner are facing serious ailments and considering their health condition, she has stated that they want to live together at least for the rest of their lives and she has also undertaken that she will ensure the presence of the petitioner during the pending investigation and also his regular appearance before the Court wherever the trial is pending.



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11. Madhavan has stated in his affidavit that he was born to Dhanam and that the name of his father is Palani. The said Palani has disowned the family and is living with some other woman. He has further stated that the petitioner has taken care of him, that the petitioner and the said Dhanam were living together for more than 25 years and it was the petitioner who had spent for his educational expenses and had also arranged to get a job at Singapore. Thereafter, even his marriage was conducted by the petitioner and he only spent for the marriage expenses.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. It is seen from the proceedings of the Joint Review Committee held on 17.05.2022 that the case of the petitioner was reviewed and the petitioner was subjected to medical examination. The following findings have been rendered by the Review Committee.

“ 8. Hence, the Sri Lankan Tamil Krishnamoorthy was subjected to medical examination from 27.04.2022 to 05.05.2022 at Mahatma Gandhi Memorial Government Hospital, Trichy. The specialists of the Cardiology, Ophthalmology, Urology, Nephrology and other departments conducted medical check up and furnished their reports. After scrutinising the individual medical furnished by the above specialists. Dr. Joseph Panneer Selvam, Asst. Professor, Department of Medicine, Mahatma Gandhi



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*Memorial Government Hospital, Trichy issued Discharge Summary in which it is stated that, **"it is found that Krishnamoorthy @ Moorthy is clinically stable at present."***

9. Quoting medical report furnished by Dr. Joseph Panneer Selvam, Asst. Professor, Department of Medicine, Mahatma Gandhi Government Hospital, Trichy, the IO of the case has not recommended for his delodgement."

14. The health condition of Dhanam who is claimed to be the wife of the petitioner was also taken into consideration. The medical records have also been placed before this Court which has been issued by Kovai Medical Centre Hospital. On going through the same, it is seen that the said Dhanam was diagnosed with a tumour and was advised to undergo right CT angle tumor excision. Accordingly, she was admitted in the hospital on 29.03.2021 and she was operated and the tumor was removed on 30.03.2021. She was discharged from the hospital on 05.04.2021. Thereafter she underwent radiation therapy and that was also completed on 15.09.2021. She thereafter came for follow up tests and her last visit was on 31.01.2023.

15. The above said Dhanam had already approached this Court and filed HCP No.2399 of 2020 for permitting the petitioner to stay along with the said Dhanam as an out-refugee. This Court took into consideration the legal position and came to a conclusion that the order passed by the State Government under Section 3(2)(e) of the Foreigners Act and confining the petitioner in the Special Camp cannot be considered to



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be an illegal detention and that it merely restricts the movement of the Foreigner and the protection under Article 22(4) of the Constitution of India is also not available to the petitioner. Thus, the claim of the petitioner to be de-lodged from the Camp was rejected by the Division Bench. The only liberty that was given to the petitioner was to seek for de-lodgement by making a representation to the Review Committee only on health grounds. The health grounds claimed by the petitioner has been assessed by the Review Committee and he was found to be clinically stable. As held by the Division Bench, a Srilankan refugee can choose to reside in any one of the refugee camps or stay as an out-refugee and report in the local police station. However, he loses the privilege if he involves in any offence and thereafter his place of stay could possibly be only in the Special Camp at Tiruchirapalli until the State Government decides to de-lodge him. The judicial review of the decision taken by the State Government is maintainable only on very limited grounds.

16. The materials available on record shows that Dhanam is not the legally wedded wife of the petitioner and that the petitioner and the said Dhanam seem to have a live-in relationship. The said Dhanam has a son named Madhavan and presently she is living along with her son and daughter-in-law at Tiruvarur District. The petitioner made a request for de-lodging him from the Special Camp at Tiruchirapalli to enable the petitioner to spend time with the said Dhanam and Madhavan. The Review Committee has come to a conclusion that the petitioner is clinically stable and the said Dhanam has also taken treatment and she is taken care by her son and daughter-in-law. The



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respondents are opposing the de-lodgement of the petitioner from the Special Camp at Tiruchirapalli considering the pending criminal cases against the petitioner. Under such circumstances, it is not legally permissible for this Court to exercise its jurisdiction under Article 226 of the Constitution of India and over rule a decision taken by the Committee. This is for the reason that the final decision by the Review Committee does not suffer from any illegality and this Court has very limited powers of judicial review in cases of this nature and a direction cannot be issued in a writ petition purely on subjective humanitarian considerations.

17. In the light of the above discussion, the relief sought for by the petitioner cannot be granted by this Court and accordingly this writ petition stands dismissed. No costs.

22.08.2023

Index : Yes
Internet : Yes
KST



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N.ANAND VENKATESH,J.
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Pre-Delivery Order in
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