
(1985) 09 KL CK 0007
In the High Court Of Kerala

Bino0 K. John

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-09-1985

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226

Citation : (1986) CriLJ 1413

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Judgement

K.P. Radhakrishna Menon, J.—In this petition under Article 226 of the Constitution the petitioner, who is the correspondent in Kerala for "Sunday" a weekly news magazine, published from Calcutta by Ananda Bazar group of publications, has prayed for the issue of a writ in the nature of mandamus directing the respondents to allow the petitioner to interview M/s. Vellathooval Stephen and Somaduthan, two Naxalite prisoners, housed in the Central Prison at Trivandrum.

2. Before considering the merits of the case, I shall state the law governing the issue.

3. The freedom of the press is nothing but the freedom of the citizen guaranteed under Article 19(1)(a) of the Constitution. This fundamental right, however, is not absolute although the liberty of the press is essential for the smooth functioning of a democratic system of Government. The freedom of the press therefore, is not higher than the freedom of a citizen. It is subject to the same restrictions as are imposed on a citizen by Article 19(2) of the Constitution. In other words, subject to such restrictions that may be imposed under Article 19(2), fundamental right guaranteed under Article 19(1)(a) carries with it the right to publish and circulate one's own ideas and views. (Vide Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI),).

4. The Supreme Court in Romesh Thappar Vs. The State of Madras, , has

emphasised the great value of the freedom of the press thus:

that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison who was "the leading spirit in the preparation of the First Amendment of the Federal Constitution", that "it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits.

5. In a latter decision, *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, , the Supreme Court reasserted the above view although the decision in *Romesh Thappar* and like decisions paved the way for amendment of Article 19(2) of the Constitution. It is interesting to recall the observations of the Supreme Court in *Bennett Coleman* case. The observation reads:

The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum let the people have the truth and the freedom to discuss it and all will go well". The liberty of the press remains an "Art of the Covenant" in every democracy. Steel will yield products of steel. Newsprint will manifest whatever is thought of by man. The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct.

6. In the same strain is the decision of the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, .

7. Dealing with the freedom of press guaranteed by the 1st amendment the Supreme Court of America has stated thus in *Grosjean v. American Press Co.* (1935) 297 US 233:

The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most patent of all restraints upon mis-government, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern.... A free press stands one of the great interpreters between the Government and the people. To allow it to be fettered is to fetter ourselves.

8. In England also the freedom of press enjoys a unique place. In this connection it may not be out of context to refer to the decision of Lord Denning in *Rex (a minor)* (1975) 1 All ER 697, where the learned Judge has held:

The reason why in these cases the law gives no remedy is because of the importance it attaches to the freedom of the press; or, better put, the

importance in a free society of the circulation of true information. The metes and bounds of this are already staked out by the rules of law. The law of libel stops that which is untrue on living persons. The law of contempt stops that which is prejudicial to a fair trial. The law of obscenity stops that which tends to deprave and corrupt....

9. A glance through these judicial pronouncements pertaining to press freedom in these countries where also democratic system of Government exists, would show that a free press, subject to reasonable restrictions, is the sine qua non of a free Government of a free people.

10. But in the instant case, the right claimed by the petitioner is to enable him to have an interview with the two naxalite convicts mentioned above for collecting information pertaining to their views on the recent change noticed among the Naxalite groups, in the implementation of their political ideologies.

11. Freedom of speech and freedom of expression of a citizen guaranteed under Article 19(1)(a) of the Constitution takes in its fold freedom of the press also. In this context it is apposite to refer to the following passage from "Freedom of the Press -- A Framework of Principles" (Report of the Commission on Freedom of Press in the United States of America):

A free press is free for the expression of opinion in all its phases. It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine and which existing techniques make possible. For these ends it must have full command of technical resources, financial strength, reasonable access to sources of information at home and abroad, and the necessary facilities for bringing information to the national market. The press must grow to the measure of this market.

(Emphasis supplied)

12. The Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, has noted the above passage with approval.

13. However the freedom of press as already stated, is not higher than the freedom of speech and expression guaranteed to a citizen under Article 19(1)(a) of the Constitution. While discussing the freedom of the press in the Constituent Assembly Dr. Ambedkar has stated thus:

The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity...." Constituent Assembly Debate, Vol. VII at p. 780.

(Emphasis supplied.)

Regarding the importance of the freedom of the press Pandit Nehru said:

I would rather have a completely free press with all the dangers involved in the

wrong use of that freedom than a suppressed or a regulated press." (Mankekar. "The Press under Pressure")

14. The Privy Council as early as in the year 1914 has held that "The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law, his privilege is no other and no higher." Vide Channing Arnold v. King-Emperor AIR 1914 PC 116 : 1914 (15) Cri 309. The Supreme Court in M.S.M. Sharma Vs. Sri Krishna Sinha and Others, , relied on this decision of the Privy Council and held that, "Further, being only a right (freedom of the press) flowing from the freedom of speech and expression, the liberty of the Press in India stands on no higher footing than the freedom of speech and expression of a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of the citizen."

15. The freedom of Press therefore is exercisable, subject of course to such reasonable restrictions that are imposed under Article 19(2) of the Constitution. To decide the issue before us, it is however, unnecessary to go into this aspect of the matter. It is enough if it is understood that "freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content." Vide Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others, .

16. At this stage it is necessary to evaluate the rights, fundamental or otherwise of a person who is a prisoner. Decided cases would show that prisoners are also entitled to all the Constitutional rights unless it be, such rights have been curtailed by the Constitution itself. Merely because of the conviction, it cannot be said that a person is stripped of all his Constitutional rights. A conviction of a person followed by incarceration deprives him of the freedom of movement and also the freedom to practice a profession, trade or business. But that does not mean that he is divested of certain other fundamental rights like the personal right, guaranteed under Article 21. Vide D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others, .

17. It may in this connection be remembered that the conditions regulating the fundamental rights of the prisoner are not privileges conferred on him but are only conditions subject to which alone, he can enjoy his fundamental rights. In short, a prisoner continues to enjoy his fundamental and other rights subject to the- restrictions imposed on the exercise of such right by valid laws.

18. The Supreme Court while considering these matters has held thus in Sunil Batra Vs. Delhi Administration and Others etc., :

Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellowmen, parents and other family members cannot be denied in the light of Article 19 and its sweep.... Thus, although there may be current limitations on the possible use of the Constitution

on visitations by family and friends, public policy should dictate substantial improvements in this area, in any event. We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected.

(Emphasis supplied)

19. Journalists and newspaper men therefore can legitimately be called the friends, in any event, "legitimate callers" of the prisoners. As stated by the Supreme Court in Sunil Batra's case, the journalists form "part of the prisoners" kit of rights."

20. In this context it is worth recalling the observations of the Supreme Court in Smt. Prabha Dutt Vs. Union of India (UOI) and Others, , which reads:

...and therefore we do not see any reason why newspaper men who can broadly, and we suppose without great fear of contradiction, be termed as friends of the society be denied the right of an interview under Clause (4) of Rule 549.

This Rule of the Manual for the Superintendence and Management of Jails provides that every prisoner shall be allowed such interviews and other communications with his relatives, friends and legal advisers as the Superintendent thinks reasonable. The journalists as such are not expressly referred to in the Rule. Yet the Supreme Court has held that the journalists can be treated as friends of the prisoners.

21. After considering the scope of Rule 549(4) of the Manual for the Superintendence and Management of Jails, the Supreme Court in Prabha Dutt's case allowed the journalists to interview the two convicts Billa and Ranga.

22. The above position of law notwithstanding, the learned Advocate-General opposed the Original Petition. The grounds urged in the counter opposing the grant of reliefs, are:

The petitioner's claim to be the reporter of a weekly publication can have no enforceable right to interview a prisoner in the central jail. The rules and guidelines permit only for an interview with a prisoner or an undertrial by near relatives or legal advisors for certain limited purposes like filing an appeal against the conviction or matters pertaining to the prisoner's family affairs. The prison authorities are conferred with discretionary power to permit or not to permit an interview with a particular prisoner. Even if an interview is allowed in any case such interview can be held only in the presence of the prison authorities. Neither the rules nor the guidelines issued by the Central Government provide for an interview with a prisoner by a media correspondent like the petitioner. It is in public interest that the Government decided not to permit the petitioner to interview the extremist prisoners. The Government with an intention to safeguard the better interests of the State and also to maintain the law and

order in the State decided to refuse the request made by the petitioner.

In support of the above contention the learned Advocate-General relied on Cr. 19, 23, 435, 446 and 447 of the Kerala Prisons Rules, 1958, for short the Prisons Rules. These Rules, according to the learned Advocate-General, cannot be relied on by the petitioner for the reliefs prayed for in the Original Petition because the petitioner is neither an ex-officio visitor, nor a non-officio visitor appointed by the Government, nor for that matter he is either a relative or a legal advisor.

23. This approach to the issue is fallacious in the light of the decision of the Supreme Court in Smt. Prabha Dutt Vs. Union of India (UOI) and Others, There the Supreme Court was considering an identical question with reference to Rule 549(4) of the Manual for the Superintendence and Management of Jails, applicable to Delhi. This rule more or less correspond to Rule 436 of the Prisons Rules. No doubt, Rule 436 is in general terms whereas Rule 549 considered by the Supreme Court covered the case of condemned prisoners only. However, regarding the question whether a journalist can be said to be one who is eligible to get an interview with a prisoner in the jail, there is no difference at all because under both the Rules a journalist is not recognised as one who can request for an interview with the prisoners. The Supreme Court" however, held that "...we do not see any reason why newspapermen who can broadly, and we suppose without great fear of contradiction, be termed as friends of the society be denied the right of an interview under Clause (4) of Rule 549."

24. I, therefore, am of the view that subject to considerations of security and discipline a journalist is entitled to permission to visit the prisoners. The ratio of the decision of the Supreme Court in Sunil Batra Vs. Delhi Administration and Others etc., also supports this view of mine. As observed by the Supreme Court in Sunil Batra"s case "Visits to prisoners by family and friends are a solace in insulation and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity;" The Supreme Court in conclusion has said, "...Subject to considerations of security and discipline, liberal visits by family members, close friends and legitimate callers, are part of the prisoners" kit of rights and shall be respected.

(Emphasis supplied).

25. Ext. P2 is not even a speaking order. It does not give the reasons for refusing the interview. Rule 446 provides that the Superintendent for reasons to be recorded may refuse interview. Reasons recorded must show that it is expedient in the public interest to refuse permission for interview. In the case on hand the Superintendent has not refused permission. However, the Government by Ext. P2, without assigning any reason, except to say that such permission cannot be granted under the guidelines, has refused permission for the interview. As the Supreme Court held in Smt. Prabha Dutt Vs. Union of India (UOI) and Others, only for weighty reasons, which, however, should always be recorded in writing, interview requested for, can appropriately be refused. The rejection of the

request of the petitioner for permission to interview Vellathooval Stephen and Somaduttan by Ext. P2, therefore, is liable to be vacated.

26. Taking an overall view of the matter, I am of opinion, that a journalist is entitled to get permission to interview the prisoners subject, of course, to search, discipline and other security criteria and also subject to the Prisons Rules.

27. The Original Petition accordingly is allowed. Ext. P2 is quashed and respondents are directed to consider the request of the petitioner to interview the prisoners Vellathooval Stephen and Somaduttan and pass appropriate orders taking into account the observations contained in the judgment within one month from the date of receipt of a copy of this judgment.

The Original Petition is allowed to the extent indicated above. No order as to costs.