

(2020) 05 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Petition No. 3068 Of 2020

O.P. Gupta

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 08-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(d), 226, 301

Citation : (2020) 05 DEL CK 0045

Hon'ble Judges : Manmohan, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Maninder Acharya, Ripu Daman Bhardwaj, Viplav Acharya, Anil Grover

Judgement

Manmohan, J

1. The present public interest litigation under Article 226 of the Constitution of India has been listed before this Bench by the Registry in view of the urgency expressed therein.

2. The writ petition has been heard by way of video conferencing.

3. Present public interest litigation has been filed seeking a number of directions. The prayer clause is reproduced hereinbelow:-

"a) the respondent no.1 (Union of India) be directed to stop respondent no.2 (Govt. of Haryana) from doing all these restriction activities in violation of their orders dated 15.04.2020;

b) respondent no.1 be further directed to direct respondent no.2 to allow all these activities as stated above i.e. the entry of trucks carrying green & fresh vegetables, milk, food grain, medicines & other essential & life-saving commodities coming Himachal Pradesh, Jammu & Kashmir, Punjab & even from Haryana and allow the entry of persons who are employed in Delhi Jal Board, Delhi Police, Hospitals, Municipal Corporations etc. and having pass and

permissible under the orders passed by respondent no.1 dated 15.04.2020 on border points of Singhu, Tikri, Gurugram, Aya Nagar & Badarpur;

c) in case the respondent no.2 does not obey the orders & directions issued vide orders dated 15.04.2020 by respondent no.1 and further in pursuance of this writ petition, the respondent no.1 be directed to deploy Para-Central Forces on these five border points so as to stop the respondent no.2 from the above said illegal activities restricting the movements of essential supply of the vegetable, fruits, milk, medicines & people who are permanently employed in Delhi;

d) any other order which this Hon'ble Court deems just and proper may also be passed in the interest of justice."

4. Petitioner, who appears in person, states that as Sonipat is not only contiguous to Delhi but also a part of National Capital Region, a number of Delhi residents have to travel to Sonipat for essential work and similarly a number of Sonipat residents have to travel to Delhi. He submits that the District Magistrate, Sonipat, has imposed blanket cross border transit restrictions between Delhi and Sonipat and granted exemptions to only a few categories of Government officials and for movement of goods not destined for Sonipat.

5. He emphasises that even Doctors, Nurses and Court officials who either reside in Sonipat or work for gain in Sonipat are being prevented from entering/leaving Sonipat. Petitioner submits that the impugned action of the State of Haryana is contrary to and violative of the orders dated 15th April, 2020 and 01st May, 2020 issued by the Union Home Secretary.

6. Ms. Maninder Acharya, learned ASG for UOI, who appears on advance notice, draws this Court's attention to the order/letter dated 30th April, 2020 issued by the Union Home Secretary to all the Chief Secretaries.

The relevant portion of the said order is reproduced hereinbelow:-

"D.O. No.40-3/2020-DEM-I (A) 30th April, 2020

Dear Chief Secretary,

Kindly refer to Ministry of Home Affairs (MHA) Order of even number dated 15 April 2020 vide which consolidated revised guidelines on lockdown measures were issued. I would like to draw your kind attention to Clause 12 (i & vi) in regard to movement of goods/cargo, which clearly mentions that:

Clause 12(i)

"All goods traffic will be allowed to ply."

Clause 12(vi)

"Movement of all trucks and other goods/carrier vehicles with two drivers and one helper subject to the driver carrying a valid driving licence, an empty truck/ vehicle will be allowed to ply after the delivery of goods, or for pick up of goods."

2. However, it has been reported that at inter-State borders in different parts of the country, movement of trucks is not allowed freely and local authorities insist upon separate passes. While this matter has been clarified earlier vide my D.O. letters of even number dated 03.04.2020 and 12.04.2020, it is now re-iterated, as per the guidelines referred to above, that no separate passes are required for through traffic of trucks and goods carriers, including empty trucks etc. This is essential for maintaining the supply chain of goods and services across the country during the lockdown period.

3. Accordingly, all States and UTs shall ensure that district authorities and field agencies are informed of the above instructions, so that there is no ambiguity at the ground level, and movement of through traffic of trucks and goods carriers, including empty trucks is allowed without any hindrance."

With regards,

Yours sincerely,

Sd/-

(Ajay Bhalla)

Chief Secretaries of All States

(As per Standard List attached)"

(emphasis supplied)

7. Mr. Anil Grover, who appears on advance notice for respondent No.2-Govt. of Haryana, disputes and denies the contentions and submissions advanced by the petitioner. He states that the impugned order dated 25th April, 2020 has been withdrawn and a new order dated 30th April, 2020 has been issued by the District Magistrate, Sonipat. The relevant portion of the order dated 30th April, 2020 is reproduced hereinbelow:-

"8. HOWEVER, despite the lockdown efforts, there still have been cases of COVID in District Sonipat with the contact history traced to cross-border sources, THEREFORE, it becomes imperative in public interest that following measures are undertaken to contain any further spread of the virus.

a) Accommodation arrangements for persons working in Sonipat but residents of NCT Delhi & UP shall have to be made by the concerned management at Sonipat so as to preclude any daily cross-border transit.

b) Persons working in NCT Delhi and U.P. but are residents of Sonipat shall pursue similar accommodation arrangement with their concerned management in areas of their work so as to preclude any daily cross-border transit.

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11. The list of consolidated exemptions as below shall be permitted for cross-

border movement upon production of valid ID card only. It shall also be mandatory to comply with Clause 9(a) as above at all times and to undergo the procedure mentioned in 9(b) & 9(c) at such frequency as specified from time to time by the Health department or the undersigned.

a) Authorized Government officers/staff of offices covered under 8(b) above and belonging to the PMO (Prime Minister Office), Finance & Defence; Department of Post, Disaster Management and Early Warning Agencies, National Informatics Centre, Food Corporation of India.

b) Those specially issued a Restricted Movement Pass by authorised officers of Government of India/Haryana government in this behalf.

c) Ambulances

d) ATM Cash Vans

e) LPG, Oil Containers/Tankers

f) vehicle with one driver & one helper/security guard for the following:

(i) Supply of grains, eggs/meat/poultry, milk, cereals, lentils & other eatables excluding fruits and vegetables coming from NCT Delhi.

(ii) Supply of green and dry fodder for animals and poultry, piggery feed.

(iii) Supply of medicines, medical equipment and the raw materials used in manufacturing thereof.

(iv) Supply of PPE's, Masks, Gloves, Sanitizers, Ventilators and the like

g) Purely transit logistics movement of essential/non-essential items on National Highways or State Highways for cargo/raw material/finished goods, however, such vehicles shall not be allowed to halt in territory of District Sonipat.

h) Outbound movement from Sonipat of essential/non-essential items on National Highways or State Highways for vehicles carrying cargo/raw material/finished goods.

It is reiterated that for every person covered under clauses 11(a) to 11(h) the measures as outlined under Clause 9 shall be strictly applicable.

FURTHER, The persons covered under 11(d), 11(f) and 11(h) who undertake cross border transit in and out of Sonipat every day shall be mandatorily quarantined in location(s) designated by the undersigned during the entire time from his return to Sonipat till his next travel back out of Sonipat.

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The enforcement shall be strictly carried out at all border check posts and police nakas under supervision of Duty Magistrate alongwith continuous videography. Any violations shall invite criminal proceedings under the relevant provisions of

the Disaster Management Act, 2005 and the Indian Penal Code, 1860. The order u/s 144 of Cr.P.C., 1973 ISSUED VIDE

No.6623/Camp/MB, dated 25-04-2020 is hereby withdrawn.

Given under my hand and seal.

Sd/-

Anshaj Singh, IAS

District Magistrate, Sonipat

Dated 30/4/2020"

(emphasis supplied)

8. Prima facie, this Court is of the view that the order dated 30th April, 2020 of District Magistrate, Sonipat, prevents and obstructs the movement of trucks from Delhi to Sonipat as well as movement of Doctors, Nurses, Court officials etc. to and from Delhi to Sonipat. Accordingly, this Court is of the prima facie view that the order dated 30th April, 2020 by the District Magistrate, Sonipat, constitutes an infringement of Articles 19(1)(d) and 301 of the Constitution of India especially when the entire National Capital and Sonipat are not containment zones. This Court is also in prima facie agreement with the submission of the petitioner that the action of the District Magistrate, Sonipat, is contrary to the orders/letters dated 15th April, 2020, 30th April, 2020 and 01st May, 2020 issued by the Union Home Secretary. The Division Bench of High Court of Kerala vide order dated 01st April, 2020 in W.P.(TMP) No.2/2020, The Kerala High Court Advocates' Association vs. State of Kerala has held, "No doubt, restrictions may be imposed in times of a national emergency such as the present, but when the guidelines issued by the Central Government under the Disaster Management Act itself permits travel for urgent medical treatment, then the said guidelines have necessarily to be enforced by the Central Government through the removal of the blockades that prevent such travel."

9. Issue notice.

10. Mr. Ripu Daman Bhardwaj, learned counsel accepts notice on behalf of respondent No.1/Union of India.

11. Mr. Anil Grover, learned counsel accepts notice on behalf of respondent No.2/ Govt. of Haryana.

12. They pray for and are permitted to file their responses on or before 11th May, 2020 by 4.00 p.m.

13. Reply affidavits shall be e-mailed to the Court Masters.

14. List the matter on 12th May, 2020.

15. The order be uploaded on the website forthwith. Copy of the order be also

forwarded to the learned counsel through email.