

**(2001) 08 MAD CK 0152**

**In the Madras High Court**

**Case No :** Writ Petition No's. 3238 to 3240 of 2001

P. Nedumaran

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

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**Date of Decision :** 14-08-2001

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 21, 226, 32  
Prisons Act, 1894 — Section 40, 41, 59, 59(24), 59(25)  
Tamil Nadu Prison Rules, 1983 — Rule 520, 521, 530

**Citation :** (2001) 2 LW(Cri) 805 : (2001) WritLR 651

**Hon'ble Judges :** P. Shanmugam, J

**Bench :** Single Bench

**Advocate :** K. Chandru, Counsel for A. Raghul, for the Appellant; R. Muthukumaraswamy, A.A.G. Assisted by D. Krishnakumar, Special Government Pleader, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

1. Petitioner has prayed for a declaration to declare the amendments made to Rules 520, 521 and 826 of the Tamil Nadu Prisons Rules, 1983 as ultra vires of Articles 14 and 21 of the Constitution of India. He has also questioned the communication of the second respondent issued on the basis of the amended rules.

2. The facts of the case are stated as hereunder:

According to the petitioner, he is the President of Thamizhar Desiya Iyakkam, a registered political party and also the Convenor of Human Rights Organisation. As part of his organisation's demand, he wanted to meet the prisoners who were arrested by the S.T.F. Police during the search operations. As part of this exercise, he wanted to meet one Mathaiyan, presently in the Central Jail at Coimbatore. His application dated 29.12.2001 seeking permission to interview Mathaiyan was refused in the light of the amended rule. Hence the above writ petitions.

3. According to the petitioner, the impugned rules are violative of Articles 14, 19 and 21 of the Constitution of India and also contrary to the decision of the Supreme Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, and the Division Bench judgment in *M. Karunanidhi v. State of Tamil Nadu*, 1994 (1) L.W. (Crl.) 162. It is further stated that the impugned rules are ultra vires of Section 59 of the Prisons Act, 1894 (Act 9 of 1894) inasmuch as they impose a total ban on the prisoners to have right of visitation from friends. It is further stated that the concession given in case of ex-MLAs and ex-MPs to visit under trial prisoners suffers from the vice of arbitrariness and excluding other persons who may be interested in the welfare of prisoners is violative of Article 14 of the Constitution of India.

4. A counter affidavit has been filed on behalf of the respondent stating that there have been very many incidents in jails and taking into account the changing times and growth of militancy, the Government has taken as a policy decision with reference to meetings of under trials and convicts in jails. They have referred to a number of instances stating that the prisons and prison personnel have become the target of attacks by terrorists, fundamentalists and dangerous criminals. According to them, the interview room is a place where the visitors not only exchange information with the prisoners, but also pass on permitted articles to the latter; sometimes, contraband and objectionable articles are surreptitiously smuggled during the interview with mala fide intention of creating trouble inside the prison. The expression "friends" gave ample scope for different interpretation. Hence, with a view to prevent any security threat in the prison either to the prison personnel or the prisoners themselves from the above bad elements, Rules 520 and 521 of the Prison Rules were amended with a view to permit the interview of prisoners with relatives only. The counter states that the custody and treatment of prisoners have undergone a sea-change - from punitive to rehabilitative - keeping with the changing trend. Prisoners are availing of the free legal aid facilities provided by the Tamil Nadu State Legal Services Authority and the Duty Counsel visits the prison for the purpose of interviewing the prisoners who may decide to avail of the legal aid facility. According to them, the impugned orders are legal and consistent with the Prisons Act, 1894 (Act 9 of 1894).

5. Mr. K. Chandru, senior counsel appearing on behalf of the petitioner submitted that the impugned rules came to be passed after the earlier Government Order G.I.Ms.No. 972 Home (Prison-B) dated 8.6.1992 was declared unconstitutional and illegal. Consequently, there was a direction by the Division Bench in *Dr. M. Karunanidhi's* case, referred to earlier, giving liberty to the Government to frame rules which would avail within the guidelines fixed by the Supreme Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, . Instead of framing the rules in accordance with the direction of the Supreme Court, the impugned rules came to be passed in direct opposition to the principle laid down by the Supreme Court as well as by the Division Bench of this Court. He further submitted that the impugned rules offend Articles 14, 19 and 21 of the Constitution. Depriving to

meet a friend is a denial of fundamental right of the petitioner. The Supreme Court, in number of decisions, has taken the view that right to life includes the right to live, with human dignity and as a necessary component of the same, every prisoner is entitled to have interviews with the members of his family and friends. When even the Act made during the colonial regime did not impose a total ban on prisoners to have a right of visitation and even after the impugned Government Order of the year 1992 was struck down, the present rules are made excluding "friends" in direct conflict with the directions of the Supreme Court as well as by the Division Bench of this Court. The denial of a visit by a friend who may not have relatives will be punitive in character and introduces a double jeopardy. While stating that it is open to the competent authorities to look into the specific complaints about the "friends" and regulate their visits including the time and the periods of their visits, the Government cannot make a rule totally prohibiting friends. Learned counsel referred to the operative provisions from the State of Maharashtra Prison Manual and the recommendations made by Justice M.M. Ismail and Justice R.L. Narasimhan Commissions.

6. Learned Additional Advocate General Mr. R. Muthukumaraswamy appearing on behalf of the respondents submits that the amendment was made in the light of the difficulties caused to the prison administration in view of the security reasons on account of the disturbances created by the prisoners very often under one pretext or the other. Rules 520 and 521, unamended, provided reasonable facilities to a prisoner for seeing or communicating with his relatives, friends or legal advisers for the purpose of preparation of an appeal or to procure bail and they shall also be allowed to have interviews or write letters to his relatives, friends, legal advisers once or twice or often, if the Superintendent considers it necessary, to enable him to arrange for management of his property or other family affairs. The purpose of this facility of interview is thus set out. The said provision which relates to convicts also applies to under trial prisoners. The decision of the Division Bench related to the accused and under trial prisoners under the T.A.D.A. Act, 1987, who form a separate class. In this case, according to him, the petitioner has not even himself claimed to be a friend. The facility must be looked from the angle of the prisoner. The policy decision was taken with reference to the meeting keeping in view the happenings during these meetings with friends and reasonable facility that can be allowed. In these circumstances, the amended rules, according to him, are reasonable conditions.

7. I have heard the counsel for the petitioner and the respondents and considered the matter carefully.

8. The Prison Rules are framed u/s 59 of the Prisons Act, 1894 (hereinafter referred to as the Act). Section 40 of the Act deals with the visit to prisons. Section 40 of the Act empowers the under trial prisoner to communicate with his legal adviser. Section 41 empowers the Jailor to regulate the entry of a visitor. Section 59 of the Act empowers the State Government to make rules consistent with the Act. Sub-section (24) of Section 59 empowers the State Government to

regulate the communications of prisoners with their respective friends and Sub-Section (25) empowers the Government to frame rules and guidelines for a prison. Rule 520 deals with the reasonable facilities to be allowed for interviews and letters of a convicted prisoner. As per this rule, a convicted prisoner is allowed reasonable facilities for seeing or communicating with his relatives, friends or legal advisers. He is also allowed to write letters to his relatives, friends or legal advisers. Of course, this says that this is only to enable the prisoner to arrange for management of his property or other family affairs. Rule 521 says that in addition to the privileges referred to in Rule 520, every convicted person falling under Clause (b) shall be allowed to have interviews with his friends and relatives. The said rule also lays down a detailed procedure to be observed by the Superintendent with regard to the rules of a prisoner to communicate with his friends and relatives. The explanation to Rule 826 says that the rules regulating interviews and communications in Chapter XXVII shall apply to under trials.

9. The Government introduced a proviso to Rule 521 by which a prisoner kept under T.A.D.A. was denied the benefit of a visit by his friends. This was a subject matter of challenge before a Division Bench of this Court. The proviso that was under challenge is as follows:

"Provided that in respect of accused and under trial prisoners under the Terrorists and Disruptive Activities (Prevention) Act, 1987 (Central Act 28 of 1987), only legal adviser and close family relatives namely father, mother, husband, wife, brother, sister, son and daughter of such prisoner shall alone be allowed for interviewing such prisoner. If the prisoner does not have any close relative, then the distant relatives alone will be allowed to have interviews after obtaining orders of the Government from the Home Department. Under no circumstances friends shall be allowed to interview the prisoner."

This proviso was struck down as arbitrary and unreasonable as regards the restriction imposed on distant relatives as also the prevention of interview with friends under any circumstances and was held to be unconstitutional and illegal. The Division Bench gave liberty to the Government to frame rules which would fall within the guidelines passed by the Supreme Court in Sunil Batra's case, AIR 1980 SC 1572 referred to earlier as well as by the Division Bench of this Court in Nalini and Ors. v. State of Tamil Nadu, 1993 L.W. (Cri) 606. However, the Government, without taking note of these decisions, proceeded to make amendments to Rules 520 and 521 dealing with convicted prisoners as also to Rule 826 dealing with under trial prisoners. As per this amendment, the expression "friends" was omitted and the expression "relatives" was substituted. Similarly, the proviso to Rule 826 provided one interview for under trial prisoners with their relatives subject to the maximum of three on week ends and the number of persons to be interviewed at a time shall not exceed three. There is one more amendment to Rule 826 to the explanation permitting under trial prisoners who are arrested and detained in prison for having taken part in any

agitation to be allowed to meet any Member of the Legislative Assembly, Member of Parliament, ex- Member of Legislative Assembly or ex-Member of Parliament, with the written permission of the Superintendent. As rightly pointed out, there is a sea-change in the concept of imprisonment and its purpose. Though the Supreme Court considered this issue in the light of under trial prisoners, a categorical principle governing the rights of prisoners has been laid down in *Sunil Batra Vs. Delhi Administration and Others etc.*, wherein their lordships observed as follows:

"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 prisoners' kit of rights and shall be respected."

Their Lordships held that the visits to prisoners by family members and friends are solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this human amenity. Thus, it was held that prisoners have got a guaranteed constitutional right and the treatment of the prisoners should satisfy the test of Articles 14, 19 and 21 of the Constitution. It was held by the Supreme Court that protection of a prisoner within his rights is part of the office of Articles 32 and 226 of the Constitution. Prisoners are also persons and where the rights of a prisoner either under the Constitution or under other law are violated the writ power of the court can and should run to his rescue. Whether inside the prison or outside, a person shall not be deprived of his guaranteed freedom save by methods "right, just and fair". The court has continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. The Supreme Court ultimately gave the guidelines in respect of constitutional and administrative aspects of prison justice and one of the guidelines are the right of liberal visit of family members, close friends and legitimate callers and these rights shall be respected.

10. In *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*, the Supreme Court held that any unreasonable restriction of the continuous right to meet friends would be violative of Articles 21 and 14 of the Constitution. Their Lordships held that the fundamental right to life, which is the most precious human right and which forms the arch of all other rights, must therefore be interpreted in a broad and expansive spirit so as to invest it with the significance and vitality which may endure for the years to come and enhance the dignity of individual and the worth of human person. The prisoners are convicts and are not deprived of their fundamental rights. They have got all the rights available to free person save those which are incapable of enjoyment by reason of incarceration. The prisoners obviously cannot move about freely by going outside the prison wards nor they can socialise at their free will with persons outside the jail. But, as part of their right to live with human dignity, they will be entitled to have interviews with members of their family and friends.

Their lordships held as follows:

"No prison regulation or procedure laid down by any prison regulation, regulating the prisoner's right to have interviews with members of his family and friends can be upheld as constitutionally valid under Articles 14 and 21 unless it is reasonable, fair and just."

Their Lordships have taken the view that a detainee must be permitted to have atleast two interviews in a week with his relatives and friends.

11. In *Nalini and 21 Ors. v. State of Tamil Nadu*, 1993 L.W.(CrI) 606 their Lordships dealt with Rule 530-A dealing with the security and safety of prisoners and upheld the rule. But, their Lordships also held that inhuman treatment in prison is certainly a past relic. The wide spectrum approach by the courts to Article 21 of the Constitution is that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. Any right claimed must be subject to restriction on the basis of compelling public interest.

12. In the light of these clear pronouncements and the law declared, and testing these impugned rules on the touchstone of Articles 21 and 14 of the Constitution of India, it has to be held that the amended rules impugned in these writ petitions are arbitrary, illegal and unconstitutional. The respondents have failed to take note of the clear pronouncement of the law declared by the Supreme Court in respect of the right of prisoners to have a visitation from their friends, which is said to be a right forming part of the right to life.

13. The deprivation of the right of visit by a friend to the prisoner is unconstitutional. Similarly, the deprivation of the right of a friend to visit a prisoner is unreasonable and arbitrary. The safety of the prisoners and the officers in jail can be taken care of by adopting appropriate safeguards available under the Prison Manual. Instances of violations of the facility cannot be a ground to deprive this right by altogether taking away the provision. It is no longer a facility or a privilege; it is now elevated to the level of a fundamental right to a prisoner to have an access to his relatives or friends and similarly, the right of a relative or friend of a prisoner to interview him.

14. The Government of Tamil Nadu itself has constituted two Commissions. The Justice R.L. Narasimhan's Report of the Tamil Nadu Prison Reforms Commission, in paragraph 13.8 says that in most of the prisons in Tamil Nadu, the arrangement for interviewing prisoners is satisfactory. There is no iron bar or iron mesh separating the prisoners from their relatives and friends interviewing them except in the Central Prison, Madras City. It was hoped that in Madras City also, the partition mesh will be removed. They considered that there should be free accessibility between the interviewer and the prisoner so that family intimacy may be possible and the prisoner may fondle his children and grand-children when they are brought to receive his blessings. While noticing that in some prisons, a large number of relatives and friends of the prisoners are kept waiting in the hot sun outside the prison entrance for interviewing prisoners, it was

suggested that a sufficiently big shed may be constructed attached to each Central Prison so as to serve as a waiting shelter for these persons.

15. Justice M.M. Ismail's Report of the Commission of Enquiry has recommended in Clause 25.5 (12) has suggested that prisoners should be provided with minimum facilities for a simple living with proper clothing and accommodation etc. and opportunities of communication with the outside world through a liberal system of interviews and correspondence. In Chapter XXVIII, it was pointed out that the only method by which a prisoner is able to maintain contact with outside world is through interviews and correspondence. Once it is realised that the object of imprisonment is to treat the offender so as to enable him to come out as a reformed individual to join the mainstream of the society, the old notions about interviews and correspondence must necessarily change. The greater the facilities for interviews and correspondence, the greater is the change for the offender getting reformed. The learned Judge also referred in paragraph 28.3 from "The Roots of Evil - A Social History of Crime and Punishment", that notwithstanding the restrictions which are necessary on administrative and disciplinary grounds, the modern view is to permit the prisoners to have close touch with his family and respectable friends as desirable and beneficial and the progress should be towards encouraging rather than restricting such humanising influences. Learned Judge also referred to the irony that inmates are cut off with both friends and relatives and drawn entirely to the company of criminals, which is counter to the basic premises of corrections. Apart from this, extracts from the Maharashtra Prison Manual furnished also provides opportunities for the prisoners for interviews with near relatives, friends and legal advisers.

16. The recommendations of both these commissions were said to have been accepted by the Government of Tamil Nadu. The Government, having constituted the high level Commissions and having accepted the reports and recommendations made by the Commissions suggesting progressive concepts on reforms of prisoners, the impugned amendment, in total disregard to these views and opinions, is a retrogressive step taken contrary to the well conceived principles and concepts set out above.

17. For all these reasons, I have no hesitation in holding that the impugned amendments are unreasonable, unconstitutional and arbitrary and liable to be struck down. They are accordingly quashed. The writ petitions are allowed. Consequently, W.M.P. Nos. 4461 to 4463 of 2001 are closed.