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**(1965) 09 MAD CK 0051**  
**In the Madras High Court**  
**Case No : Writ Appeal No. 162 of 1965**

Reserve Bank of India

APPELLANT

Vs

Vasanthi Raman

RESPONDENT

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**Date of Decision :** 07-09-1965

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1966) 36 CompCas 416

**Hon'ble Judges :** M. Anantanarayanan, O.C.J.; Natesan, J

**Bench :** Division Bench

**Advocate :** V.K. Tiruvenkatachari, for the Appellant; N.S. Raghavan, for the Respondent

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## Judgement

M. Anantanarayanan, Offg. C. J.

1. Mrs. Vasanthi Raman, the wife of a high executive in Messrs. Best and Company (Private) Ltd., whose husband was at the time in the United Kingdom on official business, applied to the Reserve Bank of India (here appellant) in the Exchange Control Department, for the issue of permission in Form "" P " for passage to the United Kingdom by an airline. In her affidavit, in paragraph 4 and the following paragraphs, she states that her first cousin, Dr. R. Sridhar, employed in America on a large salary in Purdue University, was himself proceeding to the United Kingdom, and desired her to go over there to meet him, for certain domestic consultations of a very private character. Dr. Sridhar was very advantageously situated to defray all the expenses of her stay in the United Kingdom, particularly as her intended period of stay was not to exceed a month. Certain letters from Dr. Sridhar were produced by Mrs. Vasanthi Raman (respondent), as evidence of his undertaking to defray her expenses of stay, and also thereby demonstrating that she would not require any release of foreign exchange for her tour. Notwithstanding these facts, she alleged that the Reserve Bank of India, purporting to act in accordance with the revised policy approved by the Government of India, declined the permission. According to the Reserve

Bank, clearance for passage abroad will not be granted in respect of what is known as the " guest hospitality " or " private hospitality " scheme, except for meeting parents, sons and daughters. As all attempts by her to persuade the Reserve Bank to adopt a different attitude to her case proved futile, she instituted a petition under Article 226 of the Constitution, praying for the issue of a writ of mandamus or other appropriate writ constraining the Reserve Bank to grant clearance of passage.

2. The Reserve Bank of India, Madras, opposed the writ proceeding, and contended, briefly stating the pleas that their refusal to grant the permission in Form " P " was perfectly justified, and in accordance with the latest policy adumbrated by the authorities of the bank at the highest level, and approved by the Government of India, in regard to the regulation of foreign exchange. The Reserve Bank of India (here appellant) pointed out that there was no legal obligation or duty on their part to grant such a permission ; in that sense, the prayer for the issue of a writ of mandamus was misconceived. There was a contention, apparently urged at one stage, that the attempt of the respondent to proceed to the United Kingdom was more for the purpose of a holiday to be spent with her husband (Mr. K. Raman), now there on official business, than for really any urgent objective connected with Dr. Sridhar. But, in the arguments before us, this was not further pressed. The main contention before us, as before the learned judge (Srinivasan J.), who heard the writ petition and directed the issue of a writ, was that the policy was adumbrated in order to conserve the foreign exchange resources available to this country, already at a low ebb ; the discouragement of travel abroad upon this kind of " guest hospitality " scheme, though it had been permitted to some degree earlier, was essential for such conservation. The indirect consequence of the free grant of permission in such cases was, in the analysis undertaken by the authorities of the bank, to shrink the remittances in foreign currency to this country to a very marked extent, and to adversely affect the foreign exchange position, already unsatisfactory.

3. The learned judge (Srinivasan J.) referred to Section 18B of the Foreign Exchange Regulation Act, VII of 1947, and also to certain other sections of that Act. The power of the Reserve Bank to regulate foreign exchange by the modes contemplated by the Reserve Bank of India Act, 2 of 1934, and the Foreign Exchange Regulation Act, VII of 1947, has never been in dispute at any stage of the proceedings. After broadly denning the position, the learned judge (Srinivasan J.) examined in some detail the arguments addressed before him by the learned Advocate-General on behalf of the Reserve Bank, on the conceivable adverse effect on foreign exchange resources, of the permission in this case, if granted, and in similar cases. The learned judge found these possibilities to be conjectural, remote and quite unsubstantial. He also referred to the present principles of regulation of foreign exchange with regard to passage clearances by the Reserve Bank embodied in Circular No. 3 dated April 15, 1965, and the current press note dated May 21, 1964. In his view, these did not appear to interdict the clearance of passage in cases where no release of foreign exchange,

even for any incidental expenses, was sought. The criterion, as enunciated by the learned judge, was as follows :

" To my mind, unless the transactions involve a dealing in foreign exchange, no provision of the Act, no rule framed thereunder, no authority conferred on any person or body by the provisions of the Act can interdict such a transaction."

4. The learned judge then referred to *V.G. Row v. State of Madras*, [1953] 2 M.L.J. 413 and observed that, though there was no question of a fundamental right, there was no law prohibiting travel abroad. He thought that the large powers conferred on the Reserve Bank, with reference to the regulation of foreign exchange, were subject to the basic requirement, the travel abroad should be placed under an interdict, only where it involved a drain on the foreign exchange resources or earnings of the country. Finally, he directed the issue of a writ of mandamus in the terms prayed for.

5. The Reserve Bank of India has instituted this appeal. Apart from the merits of the present case, it is strenuously contended for the appellant-bank that a very vital power to be exercised by the bank, to safeguard the foreign exchange resources of this country, is affected by the decision; for, in all likelihood, such a decision may, in its wake, lead to the institution of many applications of this kind, on the ground that the expenses of travel abroad will be met in foreign currency by some person resident abroad, and, in consequence, that the case directly involves no foreign exchange. It is this precise category of cases that has been carefully considered by the authorities, and placed under a ban, in the context of the present unsatisfactory foreign exchange position, owing to the very considerable indirect consequences on the exchange position that such instances may involve. The entire problem is of considerable interest and of some importance, and hence we propose, at the outset, to set forth the legal position relating to the Reserve Bank and its powers to regulate foreign exchange, before proceeding further to analyse the grounds on which the bank claims the right to withhold its consent, in this category of instances.

6. The preambles to both the Reserve Bank of India Act, 2 of 1934, and the Foreign Exchange Regulation Act, VII of 1947, are themselves of interest on this aspect. The preamble to the former Act states that it is expedient to constitute a Reserve Bank for India to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability in India, and generally to operate the currency and credit system of the country to its advantage. The second clause of the preamble refers to a doubt, in the disorganised state of the monetary systems of the world, whether it would be feasible to immediately determine a permanent basis for the Indian monetary system. Similarly, the Foreign Exchange Regulation Act states, in its preamble, that it is " expedient in the economic and financial interest of India to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion." u/s 7 of the Reserve Bank of India Act, the Central Government may make, and the bank may receive, such directions from

the Central Government, from time to time, as that Government might consider it necessary in the public interest. u/s 17, clause 3(a), and Section 17, Clause (12), we have the powers of the bank defined, which include powers of purchase and sale of gold coin and foreign exchange. u/s 40 of the same Act, the bank is clothed with powers in respect of transactions in foreign exchange, and for authorising purchases and sales of foreign exchange. When we turn to the Foreign Exchange Regulation Act, we find various restrictions imposed upon transactions in foreign exchange, on payments in respect of blocked accounts, import and export of currency and bullion, etc., under Sections 4(1), 5, 6, 7, 8 and 9. The important section in the present context is Section 18B which enacts that " No airline, shipping company or travel agent shall, except with the general or special permission of the Reserve Bank, and subject to such conditions, if any, as may be specified therein, book for any person a passage for a journey, the whole or any part of which is outside India."

7. The broad situation is thus clear beyond any doubt. The Reserve Bank has statutory duties and powers in this vital respect. Indisputably, any transaction or act which has repercussions on the foreign exchange resources, or the potential reserves, of this country, either direct or indirect, is a matter that concerns the Reserve Bank and its policy. That policy has suffered alteration from time to time. The latest situation can be gleaned from three documents. They are, firstly, the press note on foreign travel dated May 21, 1964, that we earlier referred to; secondly, the circular to steamer, airline, freight and travel agents dated April 15, 1965, both of which were noted by the learned judge ; and thirdly, a valuable, but brief, memorandum of foreign travel, prepared by the Controller of Foreign Exchange in the Central Office of the Reserve Bank of India at Bombay, now made available to us. The true situation, both with regard to the foreign exchange position and the policy laid down by the authorities of the bank, in regulating permits for travel abroad, can be set forth as follows:

Inward remittances to India were to the tune of 90.7 crores in foreign currencies, under several heads, in 1956. Subsequently, these remittances have shown a steady decline, and they stood at 58 crores in 1961. The note emphasises that, in spite of doubling of the number of tourists, the recorded figure "of receipts on account of tourism was only 4.7 crores, whereas it ought to have been 9 to 10 crores. Leakages in foreign exchange were detected, as occurring in a number of modes, and it was considered vital to control the booking of passages for travel abroad, in cases where no release of foreign exchange was called for. It was under those circumstances that Form " P " referred to by the writ petitioner (respondent) was evolved. The situation in June, 1962, stood thus : (a) cases where the traveller had been granted foreign exchange for his travel abroad involving no further question ; (b) the traveller obtaining the specific approval of the Reserve Bank on the " P " Form; or (c) the traveller was in the category of persons covered by any general permission granted by the bank. Category (b) consisted entirely of cases like that of the respondent, where the traveller desires to go abroad without obtaining a release of foreign exchange. Originally, there

was a " guest hospitality scheme " under which such travel facilities were permitted with a fair latitude, where a person abroad undertook to defray the expenses of the Indian tourist abroad. Such persons extending hospitality might be friends or relatives. When the exchange position worsened considerably, the authorities came to the conclusion, after a study, that the indirect consequences of the free grant of permission in such cases were very adverse to the foreign exchange position. Hence, a decision was finally taken not to grant " P " Form approval, for proceeding abroad, except for meeting parents, sons and daughters. There were certain exceptional categories, such as travel for obtaining special medical facilities, etc., which do not concern us. It is in this setting that we have to determine whether the learned judge (Srinivasan J.) was justified in his decision that, in the present case, a writ of mandamus should issue, constraining the authorities of the bank to grant the permission.

8. It appears that arguments of two kinds were advanced before the learned judge, upon the probable modes in which cases of this category might worsen the foreign exchange situation. It was contended that the very booking of passage, even by an Indian airline, involved a trip abroad, which necessarily entailed expenditure for that airline in foreign currency. Establishments abroad had to be maintained, and there were also questions of refuelling and repairs abroad. The learned judge here stated: " Even if Air India did not book a single passage from India to any foreign port, it would nevertheless have to expend in the shape of foreign exchange upon its out-of-India establishments. It is not the fact that a person books a passage to a place abroad that calls for an expenditure of foreign exchange in connection with those establishments."

9. The second line of reasoning was that every such booking might be at the expense of some other potential or possible booking, by a foreigner proceeding from India abroad ; in the latter contingency, foreign exchange would be directly earned by the company. A third argument was that, in any event, remittances in foreign currencies to this country would be affected by such cases, in a variety of ways. The learned judge had no difficulty in repelling these arguments, in regard to a concrete case like that of the respondent, as, admittedly, the respondent had not asked for the release of foreign exchange for her stay abroad. The learned judge concluded that the act of the appellant-bank in declining the permission was arbitrary, and beyond the scope of its authority.

10. We have very carefully considered the matter in the light of the arguments addressed before us and the record. In our view, the difficulty really seems to have arisen because of the imperfect character of the arguments addressed before the learned judge. Admittedly, they did not cover this vital aspect of the indirect consequences of a free grant of permission in this category of cases. As far as we are able to gather from the record, the learned judge is not correct in the conclusion that there has been no prohibition upon cases of travel abroad covered by Form "P", where no foreign exchange, even for incidental expenses, was sought for. On the contrary, the earlier press note and circular, read in

conjunction with the memorandum of the Controller of Foreign Exchange, make it clear beyond any doubt that in these cases, where no release of foreign exchange was sought, an interdict was nevertheless placed, except in those restricted instances of visit to parent, son or daughter resident abroad. We are fully convinced that the authorities of the Reserve Bank have adumbrated such a restrictive economic policy, only after deep consideration, and a careful study of the trends of decline in the foreign exchange situation of this country, and the grounds therefor. Clearly, there is a vital distinction between the, magnitude of a consequence and its character, that is, whether it is direct or indirect. Obviously, where the consequence directly affects foreign exchange, even to a small extent, the interdict is justified, as the learned judge himself points out. But even where the consequence is indirect, the magnitude might be compelling, owing to the large number of cases involved. When such a situation arises, control becomes essential. Nor is it very difficult to see how such indirect consequences might flow from the very grant of permission in all conceivable instances of this kind. Those resident abroad, who undertake to defray the expenses of Indians proceeding abroad, in that manner, might well expect, in return, that similar hospitality will be extended towards their friends and relations visiting India, even for appreciable periods of duration, with the inevitable consequences that they may fail to make remittances in foreign currency. That might at least be one causative factor, for the steady decline of the volume of remittances from abroad. So long as this is one of the probable economic consequences of not controlling the grant of permission in "P" Form instances, such restriction cannot be challenged, either as regards its legal validity or its genuineness. Experts may well differ in such a matter, but if the policy is genuinely followed and adhered to, and there is neither any discrimination nor infringement of a fundamental right, the courts will not interfere.

11. It is clear beyond doubt that a writ of mandamus will not issue, unless a person, corporation or an inferior tribunal, has to perform a public duty, which that agency neglects or fails to perform. As stated in Halsbury's Laws of England (Simonds edition), volume 11, page 84; "Its (writ's) purpose is to supply defects of justice ; and accordingly it will issue, to the end that justice may be done, in all cases, where there is a specific legal right and no specific legal remedy for enforcing that right. " In *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, their Lordships of the Supreme Court pointed out that, to sustain the issue of the writ of mandamus, there must be a legal duty cast upon the corporation, and the petitioner must have a legal right to enforce the performance of the alleged duty. In *N. Devasahayam Vs. State of Madras and Others*, , Rajagopala Ayyangar J. cited the dictum in *Joint Anti-Fascist Refugee Committee v. Megarth*, 95 L. Ed. 817 to the effect that " the touch-stone to justiciability is injury to a legally protected right. " It is also interesting to note that in *V. G. Row v. State of Madras*, [1953] 2 M.L.J. 413, which has been cited by the learned judge, Rajamannar C.J. also referred to the observations of Mr. Justice Frankfurter in that very decision : " Justiciability depends on the

existence of a right protected under the common law, statutes, or the Constitution. " In the present case, and we shall discuss this immediately following, the infringement of a fundamental right is not averred by the respondent. What is averred is that the application of the respondent involved no foreign exchange, and, consequently, that the bank (appellant) acted beyond the scope of its statutory power in rejecting the application.

12. We have already seen that this is not the case. The very criterion, as stated by the learned judge, that " jurisdiction consists undoubtedly only in ensuring that the proposed travel abroad does not involve any expenditure of foreign exchange, which would otherwise be available to the Government of India", includes indirect consequences also. Otherwise, the interpretation would defeat the very purpose with which the Reserve Bank has been clothed with powers of regulation, under the Reserve Bank of India Act and the Foreign Exchange Regulation Act. We are of the view that the learned judge has expressed the principle in too restricted a manner, when he states that there can be no interdict " unless the transactions involve a dealing in foreign exchange " ; we think that the true criterion is that transactions which, by their character, may affect the foreign exchange situation adversely, whether directly or indirectly, would be included within the scope of the bank's regulative power. This analysis shows that the respondent has no enforceable right to obtain such a permission, unless the bank is exceeding its power or is acting arbitrarily ; the corollary is that the bank has no duty to grant the permission, enforceable in law, so long as it is acting upon principle; when that principle is adumbrated, after a consideration of relevant factors, the question whether the court may or may not agree with the policy adopted, is really irrelevant.

13. The learned judge has referred to *V. G. Row v. State of Madras* in connection with a passage therein relating to the right of a citizen to travel abroad. Learned counsel for the respondent does not claim that infringement of any fundamental right is involved on the facts of the present case. The only fundamental right that could be conceivably relevant is Article 19(1)(d), relating to freedom of movement. As observed in Basu's Commentary on the Constitution of India (fourth edition), volume I, page 622, that freedom has three aspects : (1) the right to move from any part of his country to any other part, (2) the right to move out of his country, and (3) the right to return to his country from abroad. The second aspect is not explicitly covered or guaranteed by the Constitution. As a matter of comparative constitutional law, it is of interest to note that, in interpreting the American Constitution, such a right has been upheld in *Kent v. Dulles*, 357 U.S. 116, as deduced from the word " liberty ", in relation to the " due process " clause. In *V. G. Row v. State of Madras*, [1953] a M.L.J. 413, Rajamarmar C.J., towards the conclusion of his judgment, refers to such a freedom or right, and its value to the citizen. The learned judge (Srinivasan J.) points out that there is no law prohibiting the exit from the country, as such, or entry into it, by an Indian citizen; we agree with the learned judge in his view that the absence of such, a prohibition may, in itself, be significant. But this is

really travelling further a field, than is essential for the present case. The claim of the respondent is not based upon any such right, and the power of the appellant-bank to restrict the permission is not in dispute. What is claimed is that the restriction ought not to be imposed where the tour abroad does not directly impinge on the foreign exchange resources, or involve the release of foreign exchange. But that is too limited a view of the powers and functions of the appellant-bank, and we definitely consider that the matter should be judged, not merely in relation to the facts of a given instance, but in relation to a policy, and to the conceivable consequences, direct or indirect, of a large number of such cases.

14. For the foregoing reasons, we are of the view that no writ of mandamus can issue in the case, and that the appeal by the Reserve Bank of India, Madras, should succeed. The rule nisi is discharged accordingly. There will be no order as to costs.