

(2006) 03 MAD CK 0136

In the Madras High Court

Case No : Habeas Corpus Petition No. 1249 of 2005

Selvakulendran @ Selvam @ Babu

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 22
Criminal Procedure Code, 1973 (CrPC) — Section 100, 2
Foreigners Act, 1946 — Section 2, 3(2)
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2006) 03 MAD CK 0136

Hon'ble Judges : P. Sathasivam, J; J.A.K. Sampathkumar, J

Bench : Division Bench

Advocate : S. Doraisamy, for the Appellant; Abudukumar Rajarathinam, Government Advocate (Crl.), for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner Selvakulendran @ Selvam @ Babu - Srilankan citizen challenges the order made under G.O. No. SR.III/611-1.2005 dated 9.5.2005 in and by which the Government of Tamil Nadu, in exercise of the powers u/s 3(2)(e) of Foreigners Act, 1946 read with the Notification of the Government of India, Ministry of Home Affairs, No. 4/3/56(1) F-1 dated 19.4.1958, regulated the continued presence of the foreigner, by directing him to reside in the Special Camp for Sri Lankan immigrants/refugees identified and located by the Collector of Kancheepuram District at Chengalpattu. In the same order, it is directed that the petitioner shall not leave the boundaries of the said Special Camp except with the permission of the Collector.

2. It is the case of the petitioner that due to ethnic problems in Sri Lanka, he came to India in the year 1989 and stayed with his sister Vijayalakshmi at Nethaji Street, Iyyappan Nagar, Tiruchirappalli. His entire family left Sri Lanka even before he came to India. He got registered his name as a refugee in KK.Nagar Police Station, Tiruchirappalli. His sister is staying at Tiruchirappalli

along with his mother Nagalakshmi. His sister is owning a house property at Tiruchirappalli and he is running a tea shop at Tiruchirappalli for their livelihood. Recognising their permanent stay at Tiruchirappalli, the Civil Supplies Department issued a Ration card to his family bearing No. 171G/0319738 M/W/0017872 and 17/G/0319759. It is also stated that their names are included in the Voters' list. Hence, for all purpose, the petitioner and his family members are considered as citizens of India.

3. While so, on 30.4.2005, the Cantonment Police, Tiruchirappalli took the petitioner to the Police Station in the early hours and kept him illegally for five days. He was not produced before Court till 5.5.2005. Meanwhile, his mother gave telegram on 4.5.2005 to the Judicial Magistrate No. II, Tiruchirappalli. A news item was published in newspapers on 1.5.2005 that he was arrested by the Cantonment Police on 30.4.2005. The Cantonment Police registered a case against the petitioner on 1.5.2005 in Crime No. 636 of 2005 under Sections 406 and 420 I.P.C. on the complaint given by one M.Vijay, alleging that the petitioner received a sum of Rs. 2 lakhs, promising to get Visa to him to go abroad and that the petitioner cheated him. Then, the petitioner was remanded to judicial custody and lodged in the Central Prison, Tiruchirappalli. The petitioner moved a bail application in Crl.M.P. No. 3618 of 2005 and the Judicial Magistrate No. II, Tiruchirappalli by order dated 18.05.2005, granted bail to the petitioner on condition that,

- (a) he shall deposit a sum of Rs. 50,000/-;
- (b) he shall execute a bond for a sum of Rs. 1 lakh with two sureties each for a like sum to the satisfaction of Judicial Magistrate No. II, Tiruchirappalli;
- (c) he shall furnish patta which is attested by Tahsildar;
- (d) he shall surrender passport; and
- (e) he shall report before the Court every working day at 10 a.m. for 45 days.

4. It is further stated that pursuant to the said order, on 7.6.2005 a bail bond was executed and all the conditions imposed were complied with except surrendering the passport, since the petitioner was not having a passport. In spite of the same, he was not released from the jail; but, on the other hand, he was taken by the police and lodged in the Special Camp at Chengalpattu on 9.6.2005, where he was served with the order of detention dated 9.5.2005 u/s 3(2)(e) of the Foreigners Act. Questioning the same, the petitioner has filed the present petition.

5. On behalf of the first respondent/Government of Tamil Nadu, the Deputy Secretary to Government, Public (SC) Department filed a counter affidavit disputing the various averments made in the affidavit. It is stated that lodging a Sri Lankan Tamil/ foreigner in the Camp does not amount to arrest or detention. The Sri Lankan Tamils having suspected leanings towards militant organizations, unregistered Sri Lankan Tamils who involved in criminal cases in the State and

those whose presence outside the Special Camp may pose a serious threat to the safety and security of the Nation and to the VIPs/ VVIPs., etc. are usually directed to reside in Special Camp with a view to regulate their continued presence. It is stated that the petitioner is a Sri Lankan citizen who came to India by boat during 1989 via Rameswaram and registered his name in Mandapam refugee settlement as a refugee. He later came out of the settlement and stayed at Tiruchirappalli along with his brother Vijayakulendran. As there was a reliable information that the petitioner and his brother indulged in passport racket and thereby cheated many Sri Lankan nationals of Mandapam and Gummidipoondi refugee settlements to the tune of several lakhs under the guise of sending them abroad, "Q" Branch CID Personnel in Tiruchirappalli ascertained the facts through sources. Since it came to the knowledge that the petitioner and his brother started threatening the victims with rowdies who demanded back the money, the Superintendent of Police, "Q" Branch CID sent a proposal to the State Government to invoke section (2)(e) of the Foreigners Act against the petitioner and his brother to regulate their continued presence in the State.

6. After consideration of the said proposal, the Government issued orders to accommodate them in Chengalpattu Special Camp. After hectic efforts, his brother Vijayakulendran was traced at Chennai and he was accommodated at the Special Camp, Chengalpattu and ultimately, he was allowed to go back to his home land in the same year. But, the petitioner was continuously absconding and hence, the order of the Government to lodge the petitioner in the Special Camp could not be served on him. Meanwhile, the petitioner revamped his trade during 2005 and cheated as many as 15 persons and based on the complaint made by one Vijay of Tiruchirappalli on 1.5.2005 stating that the petitioner cheated Rs. 2 lakhs from him, the petitioner was arrested in Cantonment Police Station Crime No. 636 of 2005 under Sections 406 and 420 I.P.C. During the course of investigation, it came to know that the petitioner cheated more than 15 individuals and collected a huge sum of Rs. 15,80,000/- and the case is under investigation. According to the respondent/Government, the relief prayed for in the petition is not tenable and the petition is liable to be rejected.

7. Heard Mr. S. Doraisamy, learned counsel appearing for the petitioner and Mr. Abudukumar Rajarathinam, learned Government Advocate for the respondents.

8. Mr. S. Doraisamy, learned counsel for the petitioner raised the only contention that in the light of the judicial order by the Judicial Magistrate No. II, Tiruchirappalli dated 18.5.2005 ordering release of the petitioner on bail on condition, the executive order dated 09.05.2005 by the Government restricting the movement of the petitioner in the Special Camp at Chengalpattu would amount to illegal detention and hence, the said order is liable to be quashed. In other words, according to the learned counsel, the executive order dated 9.5.2005 cannot override the judicial order dated 18.5.2005 of the learned Judicial Magistrate No. II, Tiruchirappalli. He also relied on the Division Bench decision of this Court dated 10.4.2003 in H.C.P. No. 971 of 2001 Yogeswari v.

State of Tamil Nadu and Anr.

9. On the other hand, learned Government Advocate contended that in view of the fact that the petitioner is a foreigner/Sri Lankan citizen, the State Government is well within its power u/s 3(2)(e)(i) of the Foreigners Act 1946, to pass the impugned order directing the petitioner to reside in the Special Camp for Sri Lankan immigrants/ refugees. According to him, there is no error or flaw in the impugned order for interference.

10. With regard to the contention of the learned counsel for the petitioner, it is to be noted that on application by the petitioner in Crl.M.P. No. 3618 of 2005, the learned Judicial Magistrate No. II, Tiruchirappalli granted conditional bail. As it is a case relating to the offence under Sections 406 and 420 I.P.C., in the application for bail, the learned Magistrate granted bail on condition that the petitioner shall deposit a sum of Rs. 50,000/- and execute a bond for a sum of Rs. 1 lakh with two sureties each for a like sum. In the said order, the learned Magistrate directed the petitioner to surrender his passport. In addition to the same, the petitioner has to appear before the Court every working day at 10.00 a.m. for 45 days. According to the learned counsel for the petitioner, the petitioner has complied with the conditions and when he was about to come out on bail, the impugned order dated 9.5.2005 was served and then, he was taken to the Special Camp for Sri Lankan immigrants/refugees identified and located by the Collector of Kancheepuram District at Chengalpattu. As rightly pointed out by the learned Government Advocate, the order under the Foreigners Act directing the petitioner to reside in the Special Camp for Sri Lankan immigrants/refugees was passed on 9.5.2005, whereas the bail was granted by the learned Judicial Magistrate No. II, Tiruchirappalli only on 18.5.2005. In the light of the same, the contention of the learned counsel for the petitioner that the judicial order passed by the learned Magistrate granting bail cannot be altered or modified by a subsequent executive order of the Government, cannot be sustained.

11. First of all, the provision, namely Section 3(2)(e)(i) of the Foreigners Act enables the Central/State Government to pass an order to regulate the movement of a foreigner and secondly, the impugned order came to be passed well before the judicial order that was passed by the learned Judicial Magistrate granting conditional bail to the petitioner. Accordingly, the contention of the learned counsel for the petitioner is liable to be rejected. For the same reasons, the decision relied on by the learned counsel for the petitioner is not applicable to the case on hand.

12. It is worthwhile to refer the decision relied on by the learned Government Advocate in 1995 2 L.W. 690 (2) Kalavathy v. State of Tamil Nadu, wherein the Division Bench of this Court had an occasion to consider the very same provision of law and the following conclusions of the Division Bench are relevant for the purpose of this case:

15. We are unable to accept this contention, "Place" has not been defined under

the Foreigners Act. However place has been defined u/s 2(p) of the Code of Criminal Procedure, to include a house, building, tent, vehicle and vessel. Section 100 Cr.P.C. refers to inhabitants of the locality. Law Lexicon states the "Place: certainly does not mean "geometrical point of space or the earth". It must mean "area" having length and breadth. "An area" defined by specified boundaries and described otherwise to delimit its ambits is known as "a place". There is nothing to indicate, that the word "place" is either is big or as small as a town, village, market place or otherwise. The word "place" has been used to denote certainly rather than "size". "Locality" according to Law Lexicon, is a definite region in any part of space. "Locality" is a place with an area which is reasonably small and compact so that, it has come to exist and be treated as one unit, a reference to which sufficiently identifies the area and the persons therein: Ordinarily, the unit which has acquired a name by which it is referred and understood. Locality has been interpreted, not to mean the same quarter, but inclusion of places even 3 or 4 miles, of the place of search. Locality need not mean, that person should be living, within a stone's throw of the house, to be searched. It is therefore, abundantly, clear, that the word "place" contemplated u/s 3(2)(e)(i), is different from the word "locality", the latter being broader in concept. The learned Public Prosecutor submitted that the Special Camp, Saidapet has an area of 10,000 square feet. The special camp, Saidapet, can therefore, certainly be a particular place, contemplated u/s 3(2)(e)(i) of the Act. Mr. B. Kumar, was able to realise the possible difference between a place and locality and hence, conceded, that the special refugee camp can be termed as a "Particular place". If that be so, u/s 3(2)(e) of the Act, the State Government does have the power, to require foreign nationals, not only to reside in a particular place, as a special refugee camp, but also have power to impose restrictions, on their movements. Power, to pass orders u/s 3(2)(e) of the Act, indisputably has been delegated by the Central Government to the State Government. We are unable to agree, that the foreigners involved in these writ petitions, have been arrested and detained or confined. Only certain limited restrictions have been made in their movements and place of residence. A special refugee camp cannot be termed as an internment camp....

18. ...The Foreigners Act has vested the discretion in the concerned Government, to restrict the movements of foreigners and further to require them to reside in a particular place, obviously, when circumstances so warranted, such a course. The security of the State has to be the prime concern. Obviously, every possible contingency could not have been contemplated by the Legislature and in that context, prescription of a time limit u/s 3(2)(e) was apparently felt not necessary. We cannot overlook that there is no detention and hence fixation of time cannot be mandate. If a foreigner had been received in this country, with open arms when he came down due to ethnic violence in Sri Lanka he has to necessarily abide by the laws of this country. As long as he abided by the laws of this country, his having come down to India without valid travel documents, would not have been taken against him, for the circumstances then prevailing in

Sri Lanka, which needed exodus so imminently, had been taken note of by the State Government, which on humanitarian grounds had provided all facilities for the refugees. Once, some of those refugees attempted to violate the law of the land, naturally, the security of the State, which is paramount has led to the passing of the impugned orders against a few of the Sri Lankan nationals, who have been identified as having close links with the L.T.T.E. And belonging to rival ethnic groups as well. It is quite true, that the impugned orders, do not ex-facie show the reasons, which prompted the State Government to pass orders for regulating the continued presence of these foreigners. But, the counter-affidavits filed by the State, have clearly given out the reasons therefor, namely, the close links of the inmates of the special refugee camps concerned in these Writ Petitions, with the L.T.T.E. and the danger they had posed to the security of the State, apart from they being members, belonging to various militant groups.

13. The above decision makes it clear that the Foreigners Act gives power to the Central/State Government to restrict the movement of foreigners and further to require them to reside in a particular place, obviously, when circumstances so warranted such a course. As rightly contended by the learned Government Advocate, the security of State is the prime concern. The impugned order does not impose an absolute prohibition of movement from one place to another. The impugned order says that the petitioner shall reside in the Special Camp for Sri Lankan immigrants/refugees and shall not leave the boundaries of the Special Camp without the orders of District Collector. The dimensions of freedom to move throughout the territory of India available for a citizen, is not the same for a foreigner. Having regard to the particular explosive situation prevalent in the country, we are of the view that it is only a reasonable restriction that has been imposed on the petitioner/foreigner and such restriction cannot be said to be an arbitrary or capricious exercise of power violating the mandate of Articles 14 and 21 of the Constitution of India.

14. Learned Government Advocate submitted that the decision of this Court in Kalavathi case 1995 2 L.W. 690 (2) has been upheld by the Supreme Court and for that purpose, he referred the order of the Supreme Court in SLP (Crl) No. 369/96 Chinnapillai v. State of Tamilnadu and Anr. In that case SLP (Crl) No. 369/96, the petitioner before the Supreme Court is a Sri Lankan citizen, who was ordered to be released on bail by the Court, but he was lodged in Special Camp for refugees since he was not having necessary travelling documents. In Chinnapillai case, a contention was raised that lodgment in a refugee camp does not amount to detention and in support of the same, Kalavathy case 1995 2 L.W. 690 (2) was cited. The Honourable Supreme Court after finding that the SLP filed against the decision of the Madras High Court in Kalavathy case had already been dismissed, accepted the contention raised by the petitioner therein and dismissed the SLP filed by the petitioner, Chinnapillai. Though this order was passed at the admission stage, we are of the view that the Honourable Supreme Court considered the decision in Kalavathy case and approved the dictum laid down therein. The decision of this Court in Kalavathy case and the order of the

Supreme Court in Chinnapillai case support the stand taken by the learned Government Advocate.

15. Mr. Abudukumar Rajarathinam, learned Government Advocate also relied on the Division Bench decision of this Court dated 14.11.2003 rendered in H.C.P. No. 1038 of 2003, etc. batch Premavathy @ Rajathi v. The State of Tamil Nadu rep. by Secretary to Government, Public (SC) Department, Chennai and Ors. In that case, the petitioners before the Division Bench are citizens of Sri Lanka who came to India and none of them entered Indian territory with valid documents. After they came to India, they were registered as refugees and put up in the Camp. Along with other families, the petitioners therein were directed to be kept in Special Camp at Chengalpattu. It is further stated that only few of the petitioners have been released on bail. One of the contentions raised before the Division Bench is whether the continued lodgment in the Special Camp would amount to preventive detention attracting the strict safeguards of Article 22 of the Constitution of India. After referring the decision in Kalavathi case and other subsequent decisions, the Division Bench has held that,

20.2 We have seen the aforesaid judgment very carefully. In the first place, we reiterate that the judgment in Chinnapillai case, cited supra, was not without reasons and though a reference was made in the statement of facts in Yogeswari case to that effect, the High Court did not apply its mind at all. Undoubtedly, the said decision would be binding only if it is a law declared and, in our opinion, it is clearly a declared law, holding that even if a foreigner, who has a bail order in his favour, is put in the Special Camp, it would not amount to a preventive detention. Once it is held to be a binding precedent, it is obvious that though a reference was made to Chinnapialli's case. Its non-consideration would make Yogeswari decision a decision per incurium and such decisions which are per incurium would have no binding force....

16. The Division Bench on going through the decision in H.C.P. No. 971 of 2001 Yokeswari v. The State of Tamil Nadu rep. by Secretary to Government and Anr., came to the conclusion that the judgment therein is per incurium and it is not a binding decision.

Under these circumstances we are satisfied that the order of the Judicial Magistrate No. II, Tiruchirappalli dated 18.5.2005 will not affect the impugned order passed by the State Government on 9.5.2005, which is prior to the judicial order. Even otherwise, inasmuch as the petitioner is a foreigner/Sri Lankan citizen, taking note of his involvement in various offences, the State Government is empowered to pass orders including one requiring the petitioner to reside in a particular camp. We have already held that directing the petitioner to stay in a particular place, namely, Special Camp for Sri Lankan immigrants/refugees, as identified and located by the Collector of Kancheepuram District cannot be said to be an absolute restriction on his movement. Further, taking note of the security of the State, which is a prime concern, the Government has the discretion to restrict movement of foreigners requiring them to reside in a particular camp.

Accordingly, we find no merit in the claim made by the petitioner. Consequently, the H.C.P. fails and the same is dismissed.