

(2013) 09 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No. 15606 of 2013 and M.P. No. 1 of 2013

Suresh Kumar

APPELLANT

Vs

The Secretary Public Department (SC), The District Collector
Thiruvallur District Thiruvallur and The Tahsildar

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0088

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : T. Kalaimani, for the Appellant; Aravind Pandian AAG Assisted by Mr. M.S. Ramesh AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Sasidharan, J.—This writ petition at the instance of an inmate of a Special Camp at Poonamallee seeks a writ of Mandamus restraining

the State of Tamil Nadu from transferring the inmates of Poonamallee Special Camp to the Special Camp at Trichy.

The facts:

The petitioner is a Srilankan National having a valid passport issued by the Government of Sri Lanka. The petitioner appears to have left Srilanka

for Thailand after the end of Civil War between Tamilians and Srilankan Army. The petitioner proceeded to India from Thailand. The petitioner is

stated to be a paralytic and as such it is not possible for him to move freely. His spinal cord was damaged while he was young. The petitioner

wanted to take expert treatment. While the petitioner was staying at Pozhichalur, he was arrested by the police on 17 December 2012 and

produced before the Judicial Magistrate at Tambaram. Along with the petitioner,

three others were also arrested. Thiru Udhayasankar, who was arrested along with him, was helping the petitioner to do his routine activities. Thiru Krishnamurthy was helping him to get the residential house for rent and Thiru Maheswaran was looking after him as a para medical technician.

2. According to the petitioner, it is not possible for him to live as a human being without the help of others. The petitioner has been staying in the camp at Poonamallee and the other inmates have been helping him.

3. The immediate provocation for filing this writ petition appears to be the decision taken by the Government of Tamil Nadu to shift all the inmates from the Special Camp at Poonamallee to the Special Camp at Trichy. According to the petitioner, the adjacent land is being developed by a real estate promoter. On account of the situation of Special Camp, it would not be possible for the builder to sell the flats and that appears to be the reason for shifting the inmates to the Special Camp at Trichy. The petitioner, therefore, wanted to restrain the respondents from shifting the inmates of Poonamallee Special Camp to the Special Camp at Trichy.

4. The Deputy Secretary to Government, Public (SC) Department filed a counter affidavit on behalf of the State of Tamil Nadu. The first respondent denied the claim of the petitioner that his spinal cord was damaged when he fell from tree top. According to the first respondent, the petitioner is a hard core LTTE cadre. He worked in the electronic wing of LTTE. During the civil war with Sri Lankan Armed Forces, the petitioner was seriously injured by bomb shelling, due to which he was immobilised and bed ridden. However, he was able to handle laptops and computers. According to the first respondent, eight Srilankan Tamils are now accommodated in the Special Camp at Poonamallee. The first respondent further contended that the Government have taken a decision to shift all these inmates to the Trichy Special Camp on administrative grounds. The prison authorities wanted to use the Special Camp at Poonamallee for accommodating Borstal inmates of Saidapet Sub-jail and the same resulted in taking a decision to close the Special Camp. Accordingly, the first respondent justified the action to transfer the inmates of Special Camp at Poonamallee to the Special Camp at Trichy.

5. The petitioner filed a reply affidavit with reference to the counter affidavit filed by the first respondent. The petitioner contended that though the

Government have got every right to detain the foreigners, there should be justifiable reasons for separating them from their family. It was contended that some of the inmates are being detained for more than six years.

Submissions:

6. The learned counsel for the petitioner contended that the very decision taken by the Government to detain these Srilankan Nationals in the Special Camp itself is an illegal act. None of the inmates including the petitioner were involved in any acts which would amount to threatening the sovereignty of India. The fact that Srilankan Tamils are found in the State of Tamil Nadu would not give a right to the Government to detain them without ascertaining the actual reasons for their visit or stay. The learned counsel further submitted that the inmates have been living at Poonamallee for the last two years and their relatives are living in and around the Special Camp. In case these inmates are transferred to Trichy, they would be separated from their family. It would not be possible for the other members of the family to visit them at Trichy. Insofar as the petitioner is concerned, the learned counsel contended that it would not be possible for him to live at Trichy without the help of others. The condition of the petitioner is so bad that it would not be possible for him even to stand up or to do the routine works. The learned counsel by placing reliance on judgments of the Supreme Court and High Courts contended that even the prisoners are entitled to certain basic rights and they should not be denied of the company of their family members.

7. The learned Additional Advocate General submitted that there are only few inmates now in the Special Camp at Poonamallee. There is a Special Camp at Trichy which can house more number of inmates. The Government have taken a decision to close the Special Camp at Poonamallee on administrative grounds. The reasons which weighed with the Government to take such a decision is not justiciable. The petitioner has no right to insist that he should be detained only at Poonamallee and not at any other place. The learned Additional Advocate General submitted that the decision to shift was purely an administrative decision and as such no interference is called for.

Factual Analysis:

8. The petitioner and other Srilankans are now detained at the Special Camp,

Poonamallee. The Government appears to have passed an order to close the Camp at Poonamallee and to transfer the inmates to the special camp at Trichy.

9. The only question that arises for consideration is whether it is open to the Government to close one camp and to transfer the inmates to another camp.

10. The petitioner was arrested by the police on 17 December 2012. The petitioner was remanded by the Judicial Magistrate, Tambaram. He was released after serving as an under trial prisoner for a period of 111 days at Central Prison, Puzhal. It was only thereafter he was detained by the Q Branch Police and confined at Poonamallee Special Camp.

11. There is no dispute that the petitioner is a paralytic and it is difficult for him to move about without the assistance of others. The petitioner is now depending on others for his routine activities.

12. The supporting affidavits filed by another inmate by name Udhayadas shows that he is also confined at Poonamallee. His family is residing within the jurisdiction of K.K. Nagar Police Station. Since the Special Camp is near to his residence his wife and son used to meet him at the Special Camp. The supporting affidavit filed by another inmate Maheswaran shows that his wife is living at Chennai along with her ailing mother.

The supporting affidavit of Krishnamurthy, another inmate shows that his wife is now at Srilanka. His family members are living in and around

Poonamallee. The supporting affidavit of Gangadharan shows that his family is living in Australia. His step mother is residing at Gummidipoondi

Special Camp. The supporting affidavit of Bagirathan, another inmate shows that his wife and son are living in Srilanka. They used to come and

visit him on occasions. According to him the family would be in a position to visit him only in case he is kept somewhere near Chennai.

13. The affidavits filed by the petitioner and other inmates shows that there is a camp at Gummidipoondi and some of the inmates are confined

there. The petitioner and other inmates wanted to stay at Poonamallee. In case there is any difficulty to retain them at Poonamallee, they wanted

the Government to shift them to Gummidipoondi camp.

14. The materials produced before this Court by the first respondent shows that the Government have taken a decision to close the Poonamallee

Camp. The counter affidavit filed by the first respondent clearly shows that the prison department wanted premises for accommodating Borstal

inmates of Saidapet Sub-jail.

15. This is not a case of transfer of prisoners from one jail to another. This is essentially a case of closure of a Special Camp and transfer of

inmates to another camp. The judicial review in a matter of this nature is very limited. Though the petitioner has stated that the idea behind closing

the Poonamallee camp, was to help a local builder, who is in the process of constructing an apartment complex very near to the Poonamallee

camp, there are no materials to substantiate the said contention.

16. There is no dispute that in case the family members are living near the jail or Special Camp they would be in a position to meet the prisoners or

inmates and that would give them moral support. The inmate of the special camp is not a prisoner in the strict sense of the term. The Government

have put them in special camp taking into account so many factors. The inmates are also entitled to certain basic rights. India is a party to various

international conventions. It is true that the inmates of the special camp are not entitled to any kind of special rights. However, they are also entitled

to live like a human being. The Court has to strike a balance in a case of this nature.

17. The petitioner and other inmates are given liberty to make a representation before the first respondent with a request to transfer them to

Gummidipoondi camp. In case of giving any such representations, the same should be considered and disposed of by the first respondent on

merits. The petitioner and other inmates should be permitted to stay at Poonamallee camp till a decision is taken by the Government in the matter.

The writ petition is allowed in part as indicated above. Consequently the connected MP is closed. No costs.