

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(Original Jurisdiction)  
W.P. (Civil) No. 774 of 2015

IN THE MATTER OF:

PRIYA PARMESWARAN PILLAI

... PETITIONER

VERSUS

UNION OF INDIA

... RESPONDENTS

WRITTEN SUBMISSIONS BY MS. INDIRA JAISING, SENIOR  
ADVOCATE, ON BEHALF OF THE PETITIONER

*"Tolerance has never provoked a civil war;  
Intolerance has covered the earth in carnage"*

*Voltaire: Treatise on Toleration*

1. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression to all citizens of India. This fundamental right can only be restricted by a validly enacted law in the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence, as stated in Article 19(2) of the Constitution. In **Re: Ramlila Maidan Incident** (2012) 5 SCC 1 at para 30, the Hon'ble Supreme Court held that

*"The restriction can be imposed only by law or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up."*

2. In the present case, there is no law that has been invoked by the Respondents to justify their action of preventing the Petitioner from exercising her fundamental right of speech and expression before Members of Parliament in the United Kingdom (hereinafter 'UK').
3. The Look Out Circular (hereinafter 'LOC') allegedly issued against the Petitioner dated 10.01.2015 is without any authority of law. By

their own admission, the Respondents have stated that they have neither exercised power of impounding the passport under Section 10 of the *Passports Act*, 1967 nor exercised the power of suspending the passport pending impounding under Section 10A of the *Passports Act*, 1967. These are the only two provisions under the said Act, which empower the appropriate authority to impose travel restrictions on a citizen of India. It is well-settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden [***Hukum Chand Shyam Lal vs. Union of India*** [(1976) 2 SCC 128].

4. By their own admission, the Respondents have stated that they have exercised the power to prevent the Petitioner from traveling abroad on 11.01.2015 under the directions of the Respondent No. 1 issued vide O.M. 25016/31/2010-Imm dated 27.10.2010. This office memorandum was issued by the Respondent No. 1, in pursuant to the directions passed by this Hon'ble Court in ***Vikram Sharma v. Union of India*** [171 (2010) DLT 671] and in ***Sumer Singh Malkan v. Assistant Director & Ors.*** [11 (2010) DM 666]. The said judgements address the question of which authority can issue an LOC and who can originate a request for an LOC. They do not address the question of what is the legal basis of the LOC. The power to issue an LOC must be contained in a substantive law, such as for example Section 41 of the Code of Criminal Procedure, 1973, after which an LOC can be issued in terms of the office memorandum of 2010. In this case, no authority of law is shown to exist on the basis of which the said LOC is issued. The said memorandum, which is in the nature of executive instructions contained in an office circular, is not 'law' within the meaning of Article 13(3)(a) of the Constitution. In ***Bijoe Emmanuel and Ors. vs. State of Kerala and Ors.*** (1986) 3 SCC 615, the Hon'ble Supreme Court at para 13 held that

*“the circulars have no legal sanction behind them in the sense that they are not issued under the authority of any statute.”*

5. The only restriction in the office memorandum of 2010 at page 22 of the counter-affidavit of the Respondents filed on 13.02.2015 in this

Hon'ble Court, which seems to have been invoked against the Petitioner in issuing the LOC is

*“(j) In exceptional cases, LOCs can be issued without complete and /or case details against CI suspects, terrorists, anti national elements etc, in larger national interest”*

This restriction only enables the State to issue an LOC in an emergency, i.e., in an exceptional case, without all parameters prescribed in the proforma and is a procedural provision, but such LOC must be issued only under a valid law made on one the grounds mentioned in Article 19(2) and no new ground can be added as the basis of preventing a person who holds a valid passport from travelling. Hence, the grounds mentioned therein have to be referable to Article 19(2) operating through a valid law. Article 19(2) does not mention the word “anti national” nor is there any law preventing a person who is “anti national elements etc in larger national interest” from traveling abroad or exercising the right to freedom of speech and expression. The phrase “*anti national*” or “*national interest*” does not find mention in the category of reasonable restrictions in Article 19(2) of the Constitution. Hence the words “*anti national elements etc in larger national interest*” can only be interpreted as ejusdem generis with sovereignty or integrity of India, or must be ignored. Acting against the sovereignty and integrity of India can only mean action in an unlawful manner with the intention to overthrow the government with unlawful and unconstitutional means or by secessionist activities or for impairing the integration of India. Expressing an opinion on the economic activities of the government or on the investment decision of a particular multinational corporation to invest in coal mining in India, to the extent that it impacts the lives of the tribal people or the environment, cannot by any stretch of imagination, be construed as against the interests of the sovereignty and integrity of India. A similar argument questioning the policy of reservations in a film, was rejected by the Supreme Court in **S. Rangarajan v. P. Jagjivan Ram** (1989) 2 SCC 574 at paras 34 and 53.

6. It is not the case of the Respondents that the Petitioner was going to speak against the unity and integration of India or expound any secessionist views before the foreign parliamentarians in the United Kingdom. The Respondents have failed to show how the proposed visit of the Petitioner to UK and her intention to speak about the rights of tribal communities in Mahan would constitute a threat to the sovereignty and integrity of India. Espousing a cause for a particular section of people is not considered as '*anti-national*' or creating disaffection against the sovereignty and integrity of India [**V.R.V. Sree Rama Rao vs. Telugu Desam a Political Party and Others** (AIR) 1984 AP 353 at para 10]
  
7. The Petitioner has a fundamental right to travel abroad, as part of her constitutional right to life and personal liberty guaranteed under Article 21 and she cannot be deprived of this right, except according to procedure established by law. Such procedure has to be fair, just and reasonable, otherwise it will be violative of procedural fairness under Article 21. In the present case, the Petitioner was deprived of her fundamental liberty to travel to UK, without any authority of law. [**Maneka Gandhi v. Union of India** (1978) 1 SCC 278 at para 4-7, 26, 48, 54-55]
  
8. The Petitioner has the fundamental right to express her opinion on the crucial economic policies of the Government, which may differ from the dominant opinion and the said right includes the right to propagate that alternative opinion, whether by speaking at seminars, publishing articles or meeting parliamentarians in foreign countries. The Petitioner was traveling to UK to meet British parliamentarians to highlight the role of a British Company, namely Essar Energy, registered and incorporated in UK, in the Mahan coal block in Singrauli, M.P. The meeting would have had no impact on the friendly relations between States, since it pertained to a contestation between a British company and local population in Mahan with no reference to the relations between the two States. In any event, if the State seeks to impose restrictions on the travel of a citizen in the interests of friendly relations with foreign States, the same has to be done by law. [**Dr. D.C Saxena v. Hon'ble Chief Justice of India** (1996) 5 SCC 216 at paras 29-30, **Nandini Sundar vs. State of**

**Chattisgarh** (2011) 7 SCC 547, **Mahanadi Coalfields v. Mathias Oram** (2010) 11 SCC 269 at paras 8-11]

9. The Respondents have contended that the Petitioner was meeting the British MPs not in her individual capacity but at the behest of her employer, Greenpeace India Society. Greenpeace India is alleged to be funded by Greenpeace International, a foreign entity, which allegedly undertakes activities that are '*prejudicial to national interest*'. This Hon'ble Court in **Greenpeace India Society vs. Union of India** [Writ Petition (Civil) No. 5749 of 2014, judgment dated 20.01.2015] had noted that no material was brought on record that would warrant the action of including Greenpeace International in the category of "watch list" of the Ministry of Home Affairs.
10. The Petitioner has a fundamental right to associate with any organisation or a union guaranteed under Article 19(1)(c), subject to reasonable restrictions in the interests of sovereignty and integrity of India or public order or morality, as stated in Article 19(4) of the Constitution. The restrictions neither mention '*national interest*' nor '*friendly relations with foreign States*' and have to be imposed by a valid law and should be reasonable in nature.
11. The Respondents have failed to provide any material to substantiate their claim that the Petitioner's association with Greenpeace India poses a threat to India's sovereignty and integrity. By their own admission, the Respondents have stated that they have not banned Greenpeace India. It is not the case of the Respondents that Greenpeace India is an unlawful association engaging in unlawful activities, which are prohibited under the *Unlawful Activities (Prevention) Act, 1967*. As a lawfully registered organization in India, Greenpeace India is free to carry out its activities within the parameters of law in India.
12. There exists no prohibition in law on the Petitioner to express her views, even critical ones, on the governmental policies or programmes, either in India or abroad. Only the government servants, who are subject to service conduct rules, are prohibited by law from criticizing the government on certain aspects in public.

[Rule 7, All India Service (Conduct) Rules, 1968, *Vijay Shankar Pandey v. Union of India* (2014) 10 SCC 589]

13. The Petitioner submits that her travel tickets to the United Kingdom were paid by Greenpeace U.K., which is a separate entity from Greenpeace International, whose foreign contribution is alleged to have been put under 'prior reference category' by the Ministry of Home Affairs under the *Foreign Contribution (Regulation) Act* (hereinafter 'FCRA'), 2010. The said expenses do not constitute '*foreign contribution*' within the definition of Section 2(h) of the FCRA but are covered under the definition of '*foreign hospitality*' under Section 2(i) of the FCRA. The Petitioner has neither accepted 'foreign contribution' nor 'foreign hospitality' from Greenpeace International. If the Respondents sought to prohibit acceptance of foreign hospitality by the Petitioner from Greenpeace U.K., they were required to pass an order under Section 9(e) of the FCRA, which could be passed only under the specified grounds. No such order has been passed by the Respondents in the present case.
14. The fundamental right to free speech and expression can only be restricted by the laws enacted under the restrictions mentioned in Article 19(2) of the Constitution. Bona fide difference of opinion or holding an alternative view from the Government's opinion or expressing dissent from the mainstream discourse cannot be construed as 'prohibited speech' within the ambit of Article 19(2) of the Constitution [*Pravasi Bharatiya Sangathan v. Union of India* (2014) 11 SCC 477]
15. The Petitioner has been prevented from traveling abroad allegedly in exercise of powers under clause (j) of the office memorandum dated 27<sup>th</sup> October 2010, under the category of "*anti national elements etc in larger national interest*", i.e., for acting against the "*national interest*" of India by presenting a so-called negative image of India abroad. However, the Petitioner is in fact, working for the rights of the tribal communities in Mahan, Madhya Pradesh who are fighting against a foreign corporation and helping them to claim their rights under the Forest Rights Act, 2006. The Petitioner is also working towards the advancement of the economic and ecological

sustainability of the tribal communities, which is in fact, towards furthering national interest of India. The Petitioner bears true faith and allegiance to the Constitution of India and the spirit of justice, social economic and political for all. By no stretch of imagination, can she be said to be “*anti-national*”, an expression reserved for traitors to the nation. She takes strong objection to being referred to an “*anti-national*”, being equated with traitors and terrorists. No material has been produced on record for this scandalous and baseless allegation. That apart, the said Office Memorandum is not “*law*” within the meaning of Article 13 of the Constitution of India, and no restriction can be based on the said Office Memorandum, The Respondents have extraordinary powers to deal with extraordinary situations under Section 10A of the *Passports Act*, and on their own admission, no powers have been exercised under that Section. Hence, the action of the Respondents to offload the Petitioner is without authority of law. Section 10A has some built in safeguards, namely the need to give reasons to the Petitioner with the opportunity to rebut the allegations against her. The Respondents have failed to give the Petitioner any reasons or an opportunity to rebut them, and hence the action of the Respondents must be struck down on that ground alone.

16. The Respondents have alleged that the Petitioner’s speech before the foreign parliamentarians in U.K. would be used in creating documents that would negatively portray India’s human rights/forest rights record resulting in potential sanctions and affecting India’s efforts to bring foreign direct investment in manufacturing and infrastructure sectors. It is noted that Foreign Direct Investment by companies in India is a business decision, by a corporate entity, it is not a sovereign decision by a sovereign state. The investment by Essar, is not by the United Kingdom government but by a private entity. The respondents apprehend sanctions against India for violations of human rights. No material has been placed on record for the said apprehension. In any event, drawing attention to violations of human rights and non-compliance with forest rights does not amount to affecting the Sovereignty and integrity of India or affecting the Security of the State within the meaning of Article 19(2).

17. The Respondents, in the course of arguments, suggested that if the Petitioner were to give an “*undertaking*” that she would not speak to a group of parliamentarians in the UK, she would be allowed to travel. The Petitioner submitted that this amounts to pre-publication censorship and is an unconstitutional condition attached to her right to travel abroad, which is guaranteed by Article 21. [***The Ahmedabad St. Xavier's College Society and Anr. vs. State of Gujarat*** 1974(1) SCC 717 at para 158]
18. It is noted that the freedom to travel for human rights activities is an established principle in the international human rights law. The Committee on Civil and Political Rights that monitors the implementation of the *International Covenant on Civil and Political Rights* (hereinafter ‘ICCPR’) 1966 in its General Comment No. 34 on Article 19 (Freedoms of opinion and expression) categorically stated:
- “It is normally incompatible with para 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression such as persons who wish to travel to human rights-related meetings to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigation within the State party (including to conflict-affected locations, the sites of natural disasters and locations when there are allegation of human rights abuses.”* (para 45)
19. It is also an established position of law that international law can be used to expand and give effect to the fundamental rights guaranteed by our Constitution. In particular, both ICCPR and ICESCR have been domesticated in India, via Section 2 of *The Protection of Human Rights Act, 1993* that clearly provides that human rights that are enforceable in India include the rights contained in both ICESCR and ICCPR. Thus, the Indian courts can, apart from incorporating human rights under ICPPR and ICESR into Fundamental Rights while interpreting the fundamental rights, enforce human rights under ICPPR and ICESCR directly.
20. It is noted that India, as a party to ICCPR that has ratified the covenant (on 10<sup>th</sup> April, 1979), has an obligation under the ICCPR to report its compliance with the international human rights law to the



- Committee on Civil and Political Rights. Apart from the State parties, the Committee also gives an opportunity to certain NGOs to present their views on the human rights conditions in the country. Thus, NGOs play a vital role as a watchdog on the functioning of the State machinery and its compliance with the human rights laws and standards.
21. The Respondents have sought to make an arbitrary distinction between addressing and speaking about human rights at the United Nations and to British Parliamentarians on the ground that whereas at the United Nations, Indian State has an opportunity to respond, and correct any wrong impression, in the case of parliamentarians, there is no such opportunity. It is submitted that this is a distinction, without a difference and is arbitrary. It is submitted that the State has its own foreign service, whose job is to promote the interests of India including its trade and business interests and there is ample opportunity to counter any wrong impression that may be created.
22. Being put on a watch list by the Respondent No. 3, i.e., Intelligence Bureau, which is not a law enforcement agency and has no authority of law, or having a name in the "secret data base" amounts to being under unlawful surveillance by the State and violated the right of the Petitioner to privacy guaranteed under Article 21 of the Constitution of India [***Kharak Singh v. State of Uttar Pradesh*** (1964) 1 SCR 334, ***People's Union of Civil Liberties (PUCL) vs. Union of India (UOI) and Anr.*** (1997) 1 SCC 301]
23. The Petitioner submits that the counter-affidavit is not declared in accordance with law, the source of information is not disclosed as required by law. It is not understood on what basis it is being alleged that the Petitioner is acting against national interest and hence, the said affidavit ought to be ignored [***Amar Singh v. Union of India & Ors.*** (2011) 7 SCC 69 at paras 21 and 28].

FILED BY:

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