

THILAYANADAN AND OTHERS
v.
CAPT. THILAKARATNE AND OTHERS

SUPREME COURT
AMERASINGHE, J.,
WADUGODAPITIYA, J. AND
WEERASEKERA J.
S.C. APPLICATION NO. 970/97 WITH
S.C. APPLICATION NO. 971/97
NOVEMBER 11, 1998

Fundamental rights – Transport of goods in breach of Emergency Regulations – Articles 13 (1) and 13 (2) of the Constitution.

Various goods were transported to Mannar town on permits issued by the Co-ordinating Officer, Mannar, on two applications made by one Amanulla and one application made by Gunaratnam of Ratnam Motors. The goods were stored at Francis Stores, Mannar town. Thereafter, the Commanding Officer of the Army, Mannar, received information that goods including motor spare parts, engine oil, torch batteries, tyres and tubes were being transported to Erunkulampitiya, a small village where there were no shops to market such goods. The petitioners who were transporting the goods in lorries were arrested and the goods seized. The petitioners were handed over to the police who produced them before a Magistrate. The goods seized exceeded the goods referred to in the permit. They were also excessive having regard to the number of vehicles in use in Mannar Island. The Senior Superintendent of Police, Mannar, stated that Erunkulampitiya was an uninhabited area visited by the LTTE to collect items for their camps in the mainland.

Held :

The respondents had reasonable grounds to arrest and detain the petitioners in terms of Regulations 32 (a) and 18 of the Emergency Regulations; and that there was no violation of Articles 13 (1) and 13 (2) of the Constitution.

APPLICATION for relief for infringement of fundamental rights.

Mohan Peiris and Nuwanthi Dias for petitioners.

Kolitha Dharmawardana, DSG, with *S. Rajarathnam*, SC and *P. P. Ratnayake*, SC for respondents.

Cur. adv. vult.

November 25, 1998.

AMERASINGHE, J.

SC Application Nos. 970/97 and 971/97 were heard together since they related to essentially the same facts. One A. M. M. Amanulla, the proprietor of Attanagalla Transport Agent and Distributors and the Partner of Sriharan Traders of Mannar submitted two applications to the Co-ordinating officer of Mannar, for the transportation of various goods. One Gunaratnam of Ratnam Motors also submitted an application. These applications were approved. The goods were then transported to the Mannar Island on the 22nd of October and the 24th of October, 1997 and handed over to Francis Alphons of Francis Enterprises, Mannar, the petitioner in SC Application No. 970/97 and kept at his store known as Topaz Building. The 1st and 2nd respondents in SC Application No. 971/97 arranged for the transport of the goods in two lorries from that store to Erunkulampitiya which was about 6 kilometres away from Topaz Building which was also situated on the Island of Mannar. One of the lorries was driven by the 3rd petitioner in SC Application No. 970/97 and the second lorry was driven by the 5th petitioner in SC Application No. 970/97. The 7th and 8th petitioners were in the lorry driven by the 3rd petitioner and the 2nd, 5th and 6th petitioners were in the lorry driven by the 4th petitioner. The two lorries were stopped at a check point where the Police permitted the lorry to proceed. However, about 50 metres away the lorries were stopped by Army personnel.

The Commanding Officer of the Army Camp, Mannar, had received information that a large quantity of goods was to be transported from Mannar Town to Erunkulampitiya, including motor spare parts, engine oil, torch batteries, tyres and tubes. Since Erunkulampitiya was a very small village which did not have any shops to market these items,

the Commanding Officer had set up the check point at which the lorries were stopped. The Commanding Officer was informed by one Charles that the goods had been brought to Mannar Island on a valid permit. However, when he was asked to produce the permit he stated that the permit was with Amanulla's broker. Although it was the practice that a permit had to be obtained from the Brigadier of Thalladi Army Camp to transport certain goods within Mannar Island, no such permit had been obtained. The Commanding Officer was suspicious in the circumstances and his suspicion was increased when he found that a sum of Rs. 4,000 was to be paid for the hire of each of the vehicles to travel the short distance of 6 kilometres. The Commanding Officer then released the petitioners and instructed Charles to produce the permit referred to by him on the next day. The Commanding Officer then nominated an Army party to guard the lorries and goods and reported the incident to the Commanding Officer. The persons who were in possession of the goods came to the Mannar Town Army Camp on 28.10.97 and produced some photocopies of permits. It was observed that they did not bear the two parallel lines that are usually drawn on a permit after it has been inspected. Moreover, the quantity of goods seized greatly exceeded the quantity of goods referred to in the permit. In the circumstances, the lorries and the suspects were handed over to the Police with an explanation of the circumstances in which the petitioners were arrested and the goods seized.

The petitioners state that the goods were being transported from Mannar Town to Erunkulampitiya because the store at which the goods were originally housed was in a bad state of repair. It is surprising that this fact was realised at the time the goods first arrived in Mannar Island and why it was necessary to temporarily store them instead of being transported straight away to Erunkulampitiya. On the other hand, the senior Superintendent of Police, Mannar, has explained that the consignment of the goods in the two lorries were far larger in quantity than was reasonably necessary for sale in Mannar Island. Considering the small civilian population and the number of motor vehicles within the island. I am inclined to agree that his view, considering the report marked IRI on the question of the number of

vehicles and motor cycles on Mannar Island when compared with the items listed in the permits marked A1, A2 and A3 and the inventory made by the Registrar of the District and Magistrate's Court of Mannar filed in the application. Presumably, he suspected, therefore, that the goods might be trans-shipped.

According to the Senior Superintendent of Police, Mannar, the goods were being transported to Erunkulampitiya, "a secluded and uninhabited area bordering a shallow lagoon" which was "well-known among the residents of Mannar" to have been a place visited by the LTTE to take items for their camps in the mainland area of Vidattativu.

The petitioners were produced before the Magistrate of Mannar on 1st November, 1997 and were remanded.

Although leave to proceed was granted for the alleged infringement of Articles 11, 13 (1) and 13 (3), the petitioners confined their submissions to the alleged violation of Articles 13 (1) and 13 (2) of the Constitution. Having regard to the circumstances set out above, I am of the view that the respondents had reasonable grounds to arrest and detain the petitioners in terms of Regulations 32 (a) and 18 of the Emergency Regulations No. 4 of 1994. In the circumstances, I hold that there was no violation of Articles 11, 13 (1) or 13 (2) of the Constitution and dismiss the applications.

WADUGODAPITIYA, J. – I agree.

WEERASEKERA, J. – I agree.

Applications dismissed.