

SOLOMAN DIAS
v.
SECRETARY, MINISTRY OF DEFENCE AND OTHERS

SUPREME COURT

FERNANDO, J.

J. A. N. DE SILVA, J. AND

WEERASURIYA, J.

SC NO. 604/2001 (FR)

JULY 01, 2002

Fundamental Rights – Travel to Vavuniya – Travel pass system – Article 14 (1)(h) of the Constitution.

The petitioner was an Attorney-at-Law employed under an organization in Colombo and performing functions relating to human rights and legal aid in the Vavuniya District for displaced persons. It was necessary for him to travel to Vavuniya in connection with his duties.

On 05. 09. 2001 the petitioner travelled to Vavuniya by bus. On the way it was stopped at a checkpoint and upon producing his identity card he was allowed to proceed without a pass. On his return the same day, the bus was stopped when the 3rd respondent, the officer-in-charge of the checkpoint severely admonished him for not obtaining a pass even though he said that he was a lawyer. By reason of that delay the petitioner's bus proceeded without him; and having found other means of travel he returned to Colombo only at 4 am the next morning. That event was the petitioner's first complaint.

His next complaint was that on 04. 10. 2001 he left for Vavuniya by train. At the railway station next morning, police officers instructed passengers to obtain passes. The petitioner was refused exemption. He had to go in a queue. On his producing his identity card he was issued a pass for six days. He returned by bus on 08. 10. 2001. The bus was stopped at a checkpoint and all passengers were asked to produce their passes. The petitioner produced his Bar Association identity card and was allowed to continue his journey although he had not produced the pass.

Held:

- (1) Even assuming that the petitioner's first complaint was factually accurate, the application was filed only on 08. 11. 2001. Hence, that complaint was out of time.
- (2) As regard the second complaint, the treatment of the petitioner on 05. 10. 2001 constituted no more than minor irritations. His rights under Article 14 (1) (h) were not infringed.

APPLICATION for relief for infringement of fundamental rights.

M. A. Sumanthiran with *P. S. Bandaranayake, K. Prabakaran* and *Renuka Senanayake* for petitioner.

I. Demuni de Silva, Senior State Counsel for respondents.

Cur. adv. vult.

September 05, 2002

FERNANDO, J.

This application was argued together with *Vadivelu v. Officer-in-Charge, Sithambarapuram Refugee Camp Police Post, Vavuniya*, SC Application No. 44/2002 (FR), as both cases involved a challenge to the pass system for travel to and from Vavuniya.

The petitioner is a citizen of Sri Lanka and an Attorney-at-Law employed as the Executive Secretary of the Peace and Reconciliation Committee, National Council of YMCA's of Sri Lanka, in which capacity he had functions relating to human rights education and legal aid, *inter alia*, at a centre in the Vavuniya District for internally displaced persons. It was necessary for him to travel to Vavuniya in connection with his duties.

The petitioner pleaded that Principle 25 (3) of the *Guiding Principles on Internal Displacement* formulated by the UN Special Representative on Internally Displaced Persons imposed a duty on national authorities to grant and facilitate persons engaged in the provision of humanitarian assistance rapid and unimpeded access to the internally displaced. He further contended that Article 12 (1) embodied the principle of equality before the law and that Article 14 (1) (h) guaranteed freedom of movement within Sri Lanka, free from arbitrary and unjustified restrictions; and that the "travel pass" system constituted an arbitrary and unreasonable restriction of those fundamental rights, and was not authorized by or under law or regulations made under the law relating to public security. ²⁰

The petitioner's account of the relevant facts is as follows. His first allegation was that on 05. 09. 2001 when he was travelling to Vavuniya by bus he was stopped at the Eratperiyakulam checkpoint. He was asked to submit his identity card, which disclosed that he was an Attorney-at-Law, whereupon he was allowed to proceed on his journey without obtaining a pass. On his return from Vavuniya the same day, the bus was stopped at the same checkpoint, and he was asked to produce his pass. Although he explained that he had not been required to obtain a pass that morning, he was asked to get out of the bus, and was then taken to the 3rd respondent, the officer-in-charge of the checkpoint, who interrogated him. When he said that he was a lawyer the 3rd respondent retorted : "you may know the law in the rest of the country but here in Vavuniya you have to follow our law and we require you to obtain a pass". All this resulted a delay of over 45 minutes, and by then the bus had left. There were no more buses that evening, and the petitioner had to obtain lifts to Medawachchiya, and from there to Anuradhapura, from where he boarded a bus which reached Colombo only at 4.00 a.m. the next morning. Even assuming that the petitioner's account is accurate, this application was filed only on 08. 11. 2001, and accordingly this particular complaint is out of time. ⁴⁰

The petitioner's second complaint was that on 04. 10. 2001 he left for Vavuniya by train. When he arrived at the railway station the next morning, police officers instructed passengers to obtain passes, and for that purpose to join either the queue for permanent residents of Vavuniya or the queue for visitors; his request to leave the railway station without obtaining a pass was refused. Upon submitting (but nor surrendering) his identity card, he was issued a six-day pass, and he was allowed to leave the station after his bags were checked by the police. After finishing his work he returned by bus on 08. 10. 2001. The bus was stopped at the Eratperiyakulam checkpoint, and all passengers were asked to submit their passes. The petitioner produced his Bar Association identity card, and was allowed to continue his journey although he had not produced the pass. 50

The petitioner's third grievance was that the pass system applicable to travel between Colombo and Vavuniya, and the manner in which it was being implemented, constituted an imminent infringement of Articles 12 (1) and 14 (1) (h), as in the future too persons having to travel in a sudden emergency would be liable to arrest if they did not have travel passes. It is unnecessary to consider this contention as the pass system is no longer in operation. In any event, whether an infringement is "imminent" would depend on the circumstances. 60

As for the petitioner's second complaint, it is clear that the travel pass system did not in any way hinder his return journey on 08. 10. 2001 : he was not even asked to produce the pass issued to him on 05. 10. 2001. As for the journey to Vavuniya on 05. 10. 2001, the formalities to which he was subject – queueing up, obtaining a pass, and having his baggage security-checked – were in the circumstances no more than minor irritations. 70

I, therefore, dismiss the application but without costs.

J. A. N. DE SILVA, J. – I agree.

WEERASURIYA, J. – I agree.

Application dismissed.