

P.L. Lakhanpal Vs. the Union of India

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Court : Delhi

Decided On : May-11-1972

Reported in : AIR1973Delhi178; 9(1973)DLT155

Judge : V.S. Deshpande and; S. Rangarajan, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : Civil Writ Petition No. 403 of 1972

Appellant : P.L. Lakhanpal

Respondent : The Union of India

Advocate for Pet/Ap. : F.S. Nariman and; B. Kirpal, Advs

Judgement :

V.S. Deshpande, J.

(1) After the construction of Article 21 of the Constitution by the majority in Satwant Singh Sawhney v. D. Ramarathnam, the personal liberties protected by Article 21 may be classified into two groups. In the first group would fall the right to be free from wrongful confinement. In the second group would fall numerous other personal liberties which are not expressly enumerated in Article 21 but which have been implied therein on the analogy of the 5th and 14th Amendments of the U.S Constitution. The right of a person to travel abroad and the power of the

Legislature and the Government to restrict that right fall in this group. This right is excluded from Article 19(1)(d). The law restricting this right need not, therefore, satisfy the test of reasonableness embodied in Article 19(5). It need only satisfy the requirement of 'procedure established by law' within the meaning of Article 21. In *Peter Samuel Wallace v. The Regional Passport Officer*, decided by a Division Bench of this Court on 1st February 1972, it was held that the Passports Act, 1967 was such procedure established by law. Under section 6 of the said Act, the Central Government may refuse to issue a passport or a travel document to a citizen of India or to any other person on various grounds.

(2) The petitioner Lakhanpal holds a valid passport, the Central Government has not imposed any restriction on his going abroad under the Passports Act. The Consulate General of the Democratic People's Republic of Korea, that is, North Korea, wrote to the Ministry of External Affairs on 6th of March 1972 that :-

'THE Academy of Sciences of the Democratic People's Republic of Korea invites Mr. P.L. Lakhanpal to pay a visit to our country from the middle of March to the middle of May. During his visit to our country all expenses will be paid by the Academy. The Consulate General hopes that the Ministry of External Affairs is requested kindly to convey this invitation to the invited as soon as possible and render all necessary facilities enabling him to enter Korea.'

The Ministry of External Affairs, of the Central Government have not, however, conveyed this invitation to Shri P. L. Lakhanpal, the petitioner.

(3) A person residing in India may leave this country for abroad in two ways, namely :- (1) on his own and (2) on an invitation by a foreign diplomatic mission in India on behalf of the foreign government. The first mode of exit is regulated by the Passports Act, 1967. The second mode of exit is regulated in India by the following memorandum of the Ministry of External Affairs dated 7th January 1963 :-

'INSTANCES have come to the notice of the Ministry in which foreign Diplomatic Missions in Delhi have sent invitations directly to Indian nationals to visit their countries as guests of their Governments, organisations or institutions without the knowledge of the Ministry of External Affairs. The Ministry requests that invitations

extended by Foreign Diplomatic Missions on behalf of their Governments organisations or institutions to Indian nationals to visit their countries as guests for attending conferences or for holidays or for any other purpose should be communicated to it and not directly to the Indian invitees.'

(4) It was to comply with the above practice that the invitation to Shri Lakhanpal was routed through the Ministry of External Affairs. At first the Consulate General gave to the petitioner a copy of the invitation. When the petitioner found that the Ministry of External Affairs was not communicating the invitation to him, he left India without such a clearance to visit North Korea. The Government of India, however, protested to the Consulate General of North Korea and Shri Lakhanpal was informed by them as follows :-

'THE Government of India has protested to our Consulate General in New Delhi, that you have left the country without permission. We are ready and willing to receive you but in the interest of good friendly relations between India and Korea we request that you return to India, get the necessary permission from your Government and come to Korea again. We request you kindly to accept our advice in the interest of good relations with Korea.'

The petitioner wrote back to the North Korean Foreign Minister that the laws and the Constitution of his country required him to have no more permission of the Government of India than his passport and the visas which he duly possessed. Nevertheless, the Government of North Korea did not indicate to Shri Lakhanpal that they would like him to visit North Korea directly without a clearance from the Government of India.

(5) In this writ petition, Shri Lakhanpal challenges the validity of the memorandum dated 7th January 1963 issued by the Ministry of External Affairs, Government of India and also a similar note of 11th February, 1965 on the ground that the instance of the Government of India on their clearance of invitations from foreign governments to their citizens was arbitrary, illegal and unconstitutional. He also challenges the refusal of the Government to communicate the invitations to him as discriminatory and arbitrary. He, therefore, prays that the above notes should be quashed so that he would be free to travel abroad without the necessity of a

clearance from the Government of India.

(6) The interesting question for decision is whether the practice evolved by the Government of India with the agreement of the foreign governments that invitations to Indian citizens by the foreign governments should be okayed by the government of India before the Indian citizens can avail of them is illegal and as such subject to judicial review by this Court.

(7) In considering this question, the distinction made above has to be borne in mind. The Government of India is not exercising any power under the Passports Act, 1967 to prevent Shri Lakhanpal from leaving this country. His personal liberty of traveling abroad has not been curtailed at all. Further, the Government of India has not even prevented Shri Lakhanpal from directly accepting an invitation from the foreign government. A foreign government is, therefore, free not to agree to the procedure evolved by the Government of India and to insist on binding an invitation to Shri Lakhanpal to visit their country as their guest. Shri Lakhanpal has not, however, been able to persuade the Government of North Korea to extend a direct invitation to him.

(8) What the Government of India has done is totally different. The procedure by which foreign governments route the invitations to Indian citizens through the Government of India is not based on the exercise of any power by the Government of India either as an exercise of the executive power under the Constitution or as an exercise of any statutory power. The procedure is based on the agreement between the Government of India and the foreign governments. A citizen of India may challenge the exercise of executive power by the Government of India or the exercise of a statutory power by them. But can he challenge an agreement between the Government of India and the foreign government? Clearly, the foreign government is beyond the reach of any such challenge. It has a sovereign immunity from being subject to the jurisdiction of an Indian court. Can then the Government of India be said to have committed anything illegal in entering into such an agreement with the foreign governments? Shri Lakhanpal has not been able to show that such an agreement between the two governments is opposed in any way to anything in the Constitution or in any statute.

(9) Under Entry 10 of List I (Union List) of the Seventh Schedule of the Constitution, foreign affairs and all matters which bring the Union of India into relation with any foreign country is in the exclusive legislative competence of the Parliament. Similarly, entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries is in the exclusive legislative power of Parliament under Entry 14 thereof. Under Article 73 of the Constitution, the executive power of the Union of India extends to these subjects. The Government of India was thus competent to enter into such agreements with the foreign governments through their diplomatic missions at New Delhi. It is well known that the wisdom or otherwise of entering into such agreements by the Government of India is a political question into which courts will not ordinarily inquire. The object of the agreement in the present case is obvious. When a foreign government invites an Indian citizen through the Government of India, it obviously does so in furtherance of good relations between the two countries. The Government of India thus necessarily comes into the picture. It is entirely within the discretion of the Government to decide whether good relations between two countries will be helped by clearing such an invitation, If the Government is of the view that such an invitation would not be conducive to good relations it can refuse to convey the invitation to the Indian citizen concerned. It is not for this Court to decide whether good relations between the two countries would be served or not by such an invitation.

(10) On the contrary, an invitation directly sent to an Indian citizen by the foreign government and not routed through the Government of India would not perhaps be meant to further the relations between the two countries. The clearance by the Government of India of such invitation would then be unnecessary. In that event, the powers of the Government of India over the departure of an Indian citizen from India would have to be exercised under the Passports Act, 1967. But that again does not arise in the present case.

(11) Neither Shri Lakhanpal nor any court of law can dispute the responsibility of the agreement arrived at between the Government of India and the foreign governments to route the invitations from the foreign governments to Indian citizens through the Government of India particularly when the inviting foreign

government is itself unwilling that Sri Lakhanpal should visit the foreign country without a clearance from the Government of India. The refusal of the foreign government to depart from the procedure agreed to between the two governments completely cuts off all ground from the petitioner. He has no fundamental or any other right to compel the foreign government to invite him directly. The agreement between the two governments has not been shown to be such as to call for any interference from this Court.

(12) No question of discrimination made by the Government of India against Sri Lakhanpal arises at all. There is neither any pleading nor any material on record to show that some other invitee in exactly similar circumstances was permitted to go while Sri Lakhanpal was not permitted to go.

(13) The writ petition is, therefore, dismissed but in the circumstances without any order as to costs

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