

SUPREME COURT OF INDIA

Union of India

Vs.

Rajasthan High Court & Ors.

C.A.No.717 of 2006

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud and L.Nageswara Rao,JJ.,)

14.12.2016

JUDGMENT

Dr D.Y.Chandrachud,J.,

1. A Division Bench of the Rajasthan High Court by its judgment dated 13 May 2005 issued a direction to the Union Government and to its Secretaries in the Ministries of Civil Aviation and Home Affairs “to include the Chief Justices and the judges of the High Court in the list of persons exempted from pre-embarkation security checks” at airports and to amend a circular dated 1 May 2002 of the Bureau of Civil Aviation Security (BCAS). This exercise was directed to be completed within thirty days. The High Court has directed that certain suggestions formulated by it for laying down a ‘National Security Policy’ should be considered by the Union government. The Union of India moved this Court under Article 136 of the Constitution. Leave has been granted on 20 January 2006, and the judgment of the High Court was stayed.

2. The case before the High Court arose from a report that was published in the daily edition of the Rajasthan Patrika on 10 February 2000, of a breach of security which took place at Sanganer Airport, Jaipur. On 8 February 2000, a person who was to board a flight to Mumbai was detained by airport security staff for carrying a revolver with six live cartridges. He possessed an arms license which had expired. After the passenger was apprehended he was sent to Sanganer police station where the revolver and live cartridges were seized and a First Information Report under the Arms Act was lodged. The passenger left the police station and after dodging the duty officer, boarded the aircraft destined for Mumbai. He was prosecuted for a violation of Sections 21 and 13 of the Arms Act and was eventually convicted by the Civil Judge and Judicial Magistrate of the first class at Sanganer and sentenced to a fine of rupees one thousand. The accused paid the fine and, as the Additional Superintendent of Police, Immigration states before this Court, the revolver and live cartridges were released. So much for security.

3. The Rajasthan High Court took suo moto cognizance of the news report and a public interest petition was registered. During the course of the hearing, the Division Bench directed

the Chief Security Officer of the airport, the Secretary to the Home Department and the Director General of Police to show cause how a security lapse had occurred.

4. In pursuance of the provisions contained in Section 5(e) of the Aircraft Act, 1934 and Rule 8(a) of the Aircraft Rules, 1957, the Union government has made provisions for security screening in Chapter IV of the National Civil Aviation Security Programme (NCASP). Para 2 deals with pre-embarkation security checks and divides them broadly into three categories :

“i) Manual search of hand baggage;

ii) Screening of hand baggage through an X-ray baggage inspection system; and

iii) Frisking of passengers Paragraph 4.24 contains exemptions and is in the following terms:

“4.2.1 Certain categories of VIPs/persons are exempted from frisking and searching, screening of their hand baggage if carried by themselves. The details of the List of such persons have been separately circulated to all concerned.”

5. On 1 May 2002, a circular was issued by BCAS by which the Union government exempted (as it describes) categories of “VVIPs/VIPs” from pre-embarkation security checks at civil airports in the country. Those exempted are the following:

“1) President

2) Vice-President

3) Prime Minister

4) Former Presidents

5) Speaker of Lok Sabha

6) Chief Justice of India

7) Judges of Supreme Court

8) Union Ministers of Cabinet Rank

9) Governor of States.

10)Lt. Governors of Union territories

11) Chief Ministers of States and Union territories

12) Ambassadors of foreign countries, Charge D'Affairs and High Commissioners and their spouses

13) Cabinet Secretary

14) Visiting foreign dignitaries of the same status as at SL. No.1 to 3, 5, 6, 8 to 10 above.

15) SPG Protectees”

All others are subjected to pre-embarkation security checks.

6. On 16 September 2002, the Registrar General of the Rajasthan High Court addressed a communication to the Secretary to the Union government in the Ministry of Civil Aviation. While adverting to the above circular, the letter stated that the Chief Justice of the Rajasthan High Court travels often by air between Jodhpur and Jaipur in connection with his official duties and was being inconvenienced by not being exempted from pre-embarkation security checks. The Registrar General drew attention to the warrant of precedence. The relevant part of the letter is extracted below:

“it may be mentioned here that as per table of precedence (as published on 26th July, 1979), the Hon’ble Chief Justice of the High Courts stand at serial No. 14 and Hon’ble Judges of the High Courts stand at serial at No. 20 within their respective jurisdiction and at serial No. 17 and 20 respectively outside their respective jurisdiction. But they have not been exempted from pre-embarkation security checks at civil airports in the country. It is pertinent to mention here that Hon’ble the Chief Justice is a Constitutional Authority and has often to travel by air from Jodhpur to Jaipur and vice versa in connection with the discharge of the duties of His Lordship’s office. As such non-inclusion of Hon’ble the Chief Justice in the list of VVIPs/VIPs who have been exempted from pre-embarkation security checks at civil airports in the country issued by the Ministry of Civil Aviation, Government of India, New Delhi will cause great inconvenience to His Lordship. I am, therefore, directed to request you kindly to amend the aforesaid circular accordingly and also to include Hon’ble the Chief Justice of Rajasthan High Court in the list of persons exempting from pre-embarkation security checks in the civil airports in the Country”.

In reply, the Ministry of Civil Aviation by its letter dated 24 March 2003, declined to accede to the request after the matter was examined with BCAS. The list of exempted persons, it was stated, was kept to the bare minimum in view of “the ever increasing threat perception”. Subsequently, on 26 March 2004, a security meeting was held in the Union government with the Security Categorisation Committee. In pursuance of this meeting a circular was issued by BCAS by which Chief Justices of High Courts were also included in the list of exempted persons. The list as contained in Circular 2 of 2005 reads as follows:

“1. President

2. Vice-President
3. Prime Minister
4. Former Presidents
5. Speaker of Lok Sabha
6. Chief Justice of India
7. Judges of Supreme Court
8. Union Ministers of Cabinet Rank
9. Governors of States
10. Chief Ministers of States
11. Chief Justices of High Courts
12. Lt. Governors of Union territories
13. Chief Ministers of Union territories
14. Ambassadors of foreign countries, Charge D'Affairs and High Commissioners and their spouses
15. Cabinet Secretary
16. Visiting foreign dignitaries of the same status as at SL. No.1 to 3, 5, 6, 8 and 9 above.
15. SPG Protectees”

On 10 August 2005, Circular 32 of 2005 was issued by BCAS in supersession of an earlier circular by which the following were exempted from pre-embarkation security checks :

- “1. President
2. Vice-President
3. Prime Minister
4. Former Presidents

5. Speaker of Lok Sabha
6. Chief Justice of India
7. Judges of Supreme Court
8. Leader of Opposition in Lok Sabha & Rajya Sabha
9. Union Ministers of Cabinet Rank
10. Deputy Chairman Rajya Sabha and Deputy Speaker Lok Sabha
11. Governor of States.
12. Chief Ministers of States
13. Chief Justices of the High Courts
14. Lt. Governors of Union territories
15. Chief Ministers of Union Territories
16. Ambassadors of foreign countries, Charge D'Affairs and High Commissioners and their spouses
17. Cabinet Secretary
18. Visiting foreign dignitaries of the same status as at SL. No.1 to 3, 5, 6, 9 and II above.
19. His Holiness the Dalai Lama
20. SPG Protectees
21. Shri Robert Vadra, while travelling with SPG Protectgees. By the time that the High Court decided the petition, the Chief Justices of the High Courts had been exempted from pre-embarkation security checks. Yet, in its judgment the High Court issued a direction to exempt Chief Justices and then, also issued a direction to exempt High Court judges as well:

The High Court held that:

“In not including the Chief Justice and Judges of the High Court In the list of persons exempted from pre-embarkation security checks, the Department of Civil Aviation

and Home Affairs have failed to maintain the status of the Chief Justice and the Judges of the High Court”. (emphasis supplied)

7. The rationale which the High Court indicated was that:

“Circular of exemption also makes the people believe that pre-boarding frisking of Chief Justices and Judges of the High Court is very necessary in view of ever increasing terrorist threat perception. If the Chief Justices and Judges of the High Court are not subjected to pre-boarding frisking, national security may be in danger. The Department of Civil Aviation and Home Affairs have evidently failed to realise the distinction between the Constitutional and Statutory functionaries and thus violated the directions issued by the Hon’ble Supreme Court in T.N. Seshan Vs. Union of India (Supra)”.

The High Court indicated that in view of the threat perception all VVIPs/VIPs should submit themselves to pre-embarkation security checks “without exhibiting their egos” but if certain persons amongst them were to be exempted then all constitutional functionaries should be treated at par. The High Court also proceeded to formulate certain suggestions for formulating a National Security Policy in the following terms :

(i) There should be a clear cut and well thought out National Security Policy, instead of the piece-meal chasing of the ghosts of the past.

(ii) A mechanism to task the agencies in this regard with proper powers of oversight. It may be an individual or a committee directly under the Hon’ble Prime Minister.

(iii) A single individual to oversee the functioning of the intelligence community, both uniformed and ununiformed with authority to demand the cooperation of services of the State units, despite the colour of the State Governments.

(iv) Procedures to avoid duplication and waste of resources”.

The petition was thus disposed of directing - (i) the inclusion of the Chief Justices and judges of the High Court in the list of persons exempted from pre-embarkation security checks; (ii) consideration of its observations in regard to the formulation of a National Security Policy.

8. The Union government is in appeal.

9. The High Court has evidently transgressed the ‘wise and self-imposed’ restraints (as they are described) on the power of judicial review by entertaining the writ petition and issuing these directions. The cause for invoking its jurisdiction suo moto was a news report in regard to a breach of security at Sanganer airport. Matters of security ought to be determined by authorities of the government vested with the duty and obligation to do so. Gathering of intelligence information, formulation of policies of security, deciding on steps to be taken to meet threats originating both internally and externally are matters on which courts singularly

lack expertise. The breach of security at Sanganer airport undoubtedly was an issue of serious concern and would have been carefully investigated both in terms of prosecuting the offender and by revisiting the reasons for and implications of a security lapse of this nature. This exercise was for the authorities to carry out. It was not for the Court in the exercise of its power of judicial review to suggest a policy which it considered fit. The formulation of suggestions by the High Court for framing a National Security Policy travelled far beyond the legitimate domain of judicial review. Formulation of such a policy is based on information and inputs which are not available to the court. The court is not an expert in such matters. Judicial review is concerned with the legality of executive action and the court can interfere only where there is a breach of law or a violation of the Constitution.

10. A suo moto exercise of the nature embarked upon by the High Court encroaches upon the domain of the executive. In a democracy based on the rule of law, government is accountable to the legislature and, through it, to the people. The powers under Article 226 are wide - wide enough to reach out to injustice wherever it may originate. These powers have been construed liberally and have been applied expansively where human rights have been violated. But, the notion of injustice is relatable to justice under the law. Justice should not be made to depend upon the individual perception of a decision maker on where a balance or solution should lie. Judges are expected to apply standards which are objective and well defined by law and founded upon constitutional principle. When they do so, judges walk the path on a road well-travelled. When judicial creativity leads judges to roads less travelled, in search of justice, they have yet to remain firmly rooted in law and the Constitution. The distinction between what lies within and what lies outside the power of judicial review is necessary to preserve the sanctity of judicial power. Judicial power is respected and adhered to in a system based on the rule of law precisely for its nuanced and restrained exercise. If these restraints are not maintained the court as an institution would invite a justifiable criticism of encroaching upon a terrain on which it singularly lacks expertise and which is entrusted for governance to the legislative and executive arms of government. Judgments are enforced, above all, because of the belief which society and arms of governance of a democratic society hold in the sanctity of the judicial process. This sanctity is based on institutional prestige. Institutional authority is established over long years, by a steadfast commitment to a calibrated exercise of judicial power. Fear of consequences is one reason why citizens obey the law as well as judicial decisions. But there are far stronger reasons why they do so and the foundation for that must be carefully preserved. That is the rationale for the principle that judicial review is confined to cases where there is a breach of law or of the Constitution. The judgment of the Rajasthan High Court is an example of a matter where the court should not have entered.

11. By the time that the Rajasthan High Court dealt with the case, the list of exemptions had been modified to include Chief Justices of High Courts in the list of persons exempted from pre-embarkation security. Even assuming that the intervention of the High Court in such a matter could have been invoked in the first place (though we believe it should not have been) the matter should have rested there. The cause for which the suo moto writ petition was registered was left behind and the episode which led to the invocation of the jurisdiction found no place in the ultimate directions. The direction to include judges of the High Court

was unrelated to the very basis on which the jurisdiction under Article 226 was invoked. But that apart, there is a more fundamental reason why the case should not have been entertained and directions of this nature ought not to have been issued. Matters of security are not issues of prestige. They are not matters of 'status'. The Union government has adopted the position that the issue as to whether pre-embarkation security exemptions should be granted does not depend only on the warrant of precedence. Among the factors which are borne in mind is that the person who is exempted from pre-embarkation security checks must, according to the government, be secured by such a level of government security on a 24x7 basis, which would virtually preclude the possibility of any prohibited or dangerous items being introduced on board an aircraft through his or her baggage. The security perception of the Union government is that no exemption can be granted to a dignitary if he/she is not under effective government security coverage on a 24x7 basis. Heads of foreign missions in India are exempted from pre-embarkation security checks on a reciprocal basis. We are not called upon to decide upon the legality or justification for the inclusion of the name of any particular individual in the list of exempted persons in these proceedings. What we have said above is to emphasise that the view of the Union government is based on a considered assessment of security perceptions and ought not to have been interfered with in the manner that the High Court did in the exercise of its jurisdiction under Article 226.

12. We accordingly allow the Appeal and set aside the impugned judgment and order of the High Court dated 13 May 2005. The writ petition before the High Court shall accordingly stand dismissed. There shall be no orders as to costs.

13. This transfer petition has been instituted by the Commissioner of Security (Civil Aviation), BCAS. The transfer petition has arisen in the context of an order dated 12 May 2011, passed by a Division Bench of the Allahabad High Court. The order of the High Court has been passed in a Special Appeal arising from a judgment and order of a learned Single Judge dated 11 April 2007 in writ petition 1949/S/S/2000. It appears that the proceedings before the learned Single Judge arose out of a disciplinary proceeding.

14. The record of the transfer petition indicates that the High Court in the course of the Special Appeal has made certain observations while issuing a notice to the Director General of the Bureau of Civil Aviation Security. Since the High Court has made these observations in a matter which is unrelated to the issue involved in the Special Appeal, we draw the attention of the High Court to the principles enunciated above while disposing of the Civil Appeal filed by the Union government against the judgment of the Rajasthan High Court. A copy of the above judgment shall be placed on the record of the Special Appeal filed before the High Court. In the event that the Special Appeal still remain on the file of the High Court, the High Court shall proceed to hear and dispose of the Special Appeal accordingly.

15. We clarify that we have made no observations on the merits of Special Appeal. The transfer petition is disposed of.