* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on: 19.02.2015
Judgement delivered on: 12.03.2015

\+ **WP(C) 774/2015**

PRIYA PARAMESWARAN PILLAI ..... Petitioner

Versus

UNION OF INDIA AND ORS. ..... Respondents

Advocates who appeared in this case:
For the Petitioner: Ms. Indira Jaising, Sr. Advocate with Ms. Vrinda Grover, Ms. Amrita Chakravorty, Mr. Bhavook Chauhan, Ms. Sonakshi Malhan and Ms. Ratna Appanendra, Advocates
For the Respondents: Mr. Sanjay Jain, ASG with Mr. Neeraj Jain and Mr. Anirudh Shukla, Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

WP(C) 774/2015 & CM No.1352/2015 (interim relief)

PREFATORY FACTS

1. Every once in a while, citizens going about their usual and ordinary business, get entangled with the State apparatus; sometimes for good reason and at times unjustifiably so. In such a situation, an aggrieved citizen's remedy, quite naturally, is to approach the courts of law for appropriate relief. These remedies at most times are financially debilitating and not within the means of every aggrieved party.

1.1 The instant matter is a case in point. The petitioner (hereinafter referred to as Ms. Pillai) chose to travel to the United Kingdom, in the early

hours of the morning of 11.01.2015, by an Air India flight bearing no.AI-115. She was, however, stopped at the immigration for reasons that I shall, shortly, advert to in the course of my discussion.

1.2 Suffice it to state (at this stage), the concerned immigration officer proceeded to endorse, Ms. Pillai's passport with an annotation "off load". Having not been supplied with any reasons, an indignant Ms. Pillai shot off (in my view quite correctly as would be evident from facts delineated hereafter) a letter of even date i.e., 11.01.2015 to the Secretary, Government of India (GOI), Ministry of Home Affairs seeking to know the reasons which had impelled the authorities concerned to detain her at the airport. Though there was no official response to her communication dated 11.01.2015, the media was rife with reports, that a Look-Out-Circular (LOC) had been issued qua her. Resultantly, Ms Pillai dispatched yet another letter dated 12.01.2015 to the same officer, seeking to know, inter alia, as to whether, what was being bandied about, in the press, was factually correct.

1.3 Ms. Pillai's communications received no response.

2. Being aggrieved, Ms. Pillai has moved this court under Article 226 of the Constitution.

2.1 The broad plank of her challenge is pivoted on the assertion that these actions of the respondents are violative of her fundamental rights. Article 19(1) (a), 19(1) (g) and 21 have been invoked by Ms. Pillai, to assail the actions of the respondents, which she categorises, if one were to sum her submissions, as egregiously illegal.

3. Ms. Pillai's curriculum vitae, broadly, reads as follows :- She avers that she is a civil rights activist, who works in public spaces. Her core area of work relates to environmental issues. She is a lawyer by profession; and

is currently employed with Greenpeace India Society, as a Policy Officer.

4. It appears of late she has been working in Mahan in the Singrauli Coal belt, in the State of Madhya Pradesh. As an activist working in Mahan, it appears, she has associated herself with the local tribal communities, which according to her, seek to resist the possibility of a coal mine being operated in the area. The opposition, evidently, albeit non-violent, appears to be focussed against the proponent of the proposal; a company by the name of Mahan Coal Ltd, which seeks to open a coal mine in the concerned area.

4.1 Mahan Coal Ltd., apparently, is a joint venture company, formed and incorporated at the behest of two entities by the name of Hindalco and ESSAR Power Ltd. It is averred that ESSAR Power Ltd. is a wholly owned subsidiary of ESSAR Energy; a company incorporated and registered in United Kingdom (in short, U.K.). It is claimed that till very recently, ESSAR Energy, was also listed on the London Stock Exchange.

4.2 It is asserted that Mahan, is home to the oldest and largest surviving Sal forest in Asia. The assertion made in the writ petition is that opening of a mine in Mahan had the potentiality of displacing the forest / tribal communities, which in turn, could impact lives of thousands of people who, depend on forest produce. There is also an assertion that such an activity could, also degrade, the existing wild life found in the area and lead to water and air pollution in the region.

4.3 It is to talk on these aspects with British Parliamentarians that, Ms. Pillai was invited by Greenpeace U.K. Accordingly, a request for visa was sent by Greenpeace U.K., on 27.11.2014, on behalf of Ms. Pillai. In its communication, Greenpeace U.K., indicated that all expenses would be met by it, which included expenses qua travel, insurance and medical insurance.

4.4 Consequent thereto, Ms. Pillai was issued a visa by the British High

Commission, for a period of 6 months.

4.5 Based on the above, Ms. Pillai's air ticket was booked with Air India. Her seat was confirmed by the Airline, on flight no.AI 115, which was to fly out of Delhi on Sunday, 11.01.2015, at 06.50 a.m.

5. As indicated at the very outset, Ms. Pillai was detained at the airport, just before she was to board her flight. She was accosted by Mr. V.K. Ojha, an Immigration Officer employed with respondent no.2 i.e., Bureau of Immigration.

5.1 It is averred that Mr. Ojha after consultations with the officers at the Special Assistance Counter asked Ms. Pillai to accompany him to another place for further confabulations; albeit within the airport complex. It is at this point in time that Ms. Pillai was informed that she could not travel out of India. Resultantly, her baggage was retrieved from the aircraft and an endorsement to the effect, "off load" was made on her passport.

5.2 On Ms. Pillai seeking information as to why she had been detained, she was asked to speak to Mr. V.K. Ojha's superior, one, Ms. Sushma Sharma. It is averred that Ms. Sushma Sharma received a fax from an unknown source, whereupon she confirmed that Ms. Pillai had been detained since her name stood included in the "data base" of individuals, who are not allowed to leave the country. Apparently, no further information was supplied to Ms. Pillai as to why and how her name got included in the said data base.

5.3 Being unhappy with her situation, Ms. Pillai, as indicated above, wrote a letter on that very date i.e., 11.01.2015 to the Secretary, Ministry of Home Affairs wherein, she recounted her ordeal.

5.4 The said communication was followed by a letter dated 12.01.2015 whereby, she sought clarification from Secretary, Ministry of Home Affairs,

as to whether an LOC had been issued in her name. This clarification was sought as media reports were suggestive of the fact that this was the precise reason which the "official sources" had trotted out, for her detention at the airport.

5.5 In addition, Ms. Pillai, by this very communication, most emphatically sought the details of the LOC, if any, issued, along with information, as to the authority which had directed its issuance and, the reasons, which had led to its issuance. Ms. Pillai, briefly, also touched upon the fact that she had not been convicted in any criminal case, and all that she proposed to do, was to give a speech to the Members of the British Parliament.

5.6 None of the aforementioned communications of Ms. Pillai received a response. Resultantly, the captioned petition came to be moved on 28.01.2015 when, notice was issued in the matter. Since respondents had received, advance notice, they were represented by counsels. Respondents' counsels accepted notice and were accordingly given a week's time to file a counter affidavit. The returnable date fixed in the matter was 06.02.2015. Despite opportunity, no counter affidavit was filed.

5.7 However, on 06.02.2015, respondents were represented by Mr. Sanjay Jain, learned ASG who requested for further time being granted till 10.02.2015, to enable filing of a counter affidavit in the matter. The request was acceded to. Liberty was consequently granted to the petitioner to file a rejoinder before the next date of hearing.

5.8 Since the counter affidavit was not filed within the prescribed time, counsels for the petitioner pleaded that they could only bring the rejoinder to the court. Counsels were agreed though, that both, counter affidavit and rejoinder could be taken on record. Accordingly, the needful was done.

Submissions in the matter were heard on 18.02.2015 and 19.02.2015. Written submissions on behalf of the petitioner were placed on record on 19.02.2015. The respondents as requested were given two days to file written submissions in the matter. This did not happen. Upon a request being made, on mentioning, written submissions of respondents were taken on record on 23.02.2015, in the presence of counsels for the opposite side.

SUBMISSION OF COUNSELS

6. On behalf of Ms Pillai, arguments were advanced by Ms. Indira Jaising, learned senior counsel, assisted by Ms. Vrinda Grover, Ms. Amrita Chakravorty, Mr. Bhavook Chauhan, Ms. Sonakshi Malhan and Mr. Ratna Appanendra, Advocates. Respondents were represented by Mr. Sanjay Jain, learned ASG, who was assisted by Mr. Neeraj Jain and Mr. Anirudh Shukla, Advocates.

7. Ms. Jaising's submissions can be briefly paraphrased as follows :-

(i). The LOC issued in the matter which, as per the counter affidavit, is dated 10.01.2015, has been issued without due authority of law. There being no restriction imposed upon Ms. Pillai to travel outside India by any court, she could not be prevented from travelling outside the country for the stated purpose, which was to meet the British Parliamentarians with respect to work carried out by her with tribal communities, in Mahan.

(ii). The detention of Ms. Pillai, on 11.01.2015, had violated her fundamental right to travel, free speech and expression and to practice her profession and / or occupation. Consequently, the action of the respondents contravened her fundamental rights under Article 21, 19(1)(a) and 19(1)(g) of the Constitution.

(iii). The only legal recourse open to the respondents whereby, if at all, they could have lawfully prevented Ms. Pillai from exercising her

constitutional right of free travel, was to exercise powers conferred under the provisions of: The Passports Act, 1967 (in short the Passports Act).

(iii)(a) This power could if, at all, be exercised by the constituted authority or the Central Government or the designated officer perhaps only in terms of and in consonance with the provisions of Section 10 of the Passports Act.

(iii)(b) Apart from the powers contained in the aforementioned Section, which includes the power to vary, impound or revoke the passport, emergent power is found in Section 10A of the Passports Act to suspend the passport or travel documents, which are otherwise likely to be impounded or caused to be impounded or revoked under the provisions of clause (c) of sub-section (3) of Section 10, provided it is deemed necessary in public interest to do so. Such a suspension shall run for a period of four (4) weeks. The suspension can thus, be carried out by the Passport Authority, only if it deems it necessary to do so in the interest of the sovereignty and integrity of India, security of India, friendly relations of India with any foreign country, or in the interest of the general public.

(iii)(c) Even in such situations, the affected party has to be given an opportunity of hearing within a period not exceeding eight (8) weeks, reckoned from the date of passing of such an order. In other words, fetter, if any, on the constitutional right of a citizen to travel abroad can be imposed by a duly constituted authority and, that too, only in accordance with the aforementioned provisions[1].

(iv). The ostensible basis on which LOCs generally and, in particular, in this case, have been issued by the respondents, is sourced in O.M. dated 27.10.2010 (in short 2010 O.M.) which, in turn, is said to be based on the directions issued by this Court in the following judgments: ***Vikram Sharma***

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[1] See ***Hukam Chand Shyam Lal Vs. Union of India, (1976) 2 SCC 128***

Vs. Union of India, [***171 (2010) DLT 671***] and ***Sumer Singh Malkan Vs. Assistant Director & Ors.*** [***II (2010) DM 666***].

(iv)(a) A perusal of the said judgments would show that while they discuss as to the appropriate authority which can issue an LOC and, the entity, which can make a request for issuance of an LOC, they do not, address the question as to the legal basis for issuance of an LOC. The power to issue an LOC should be rooted in a substantive law, such as, the provisions of Section 41 of the Code of Criminal Procedure, 1973 (in short the Cr. PC). In other words, the 2010 O.M. is not backed by authority of law. The said O.M. which is in the nature of an executive instruction is not law "within the meaning of Article 13(3)(a) of the Constitution"[2].

(v). The respondents by their own admission have invoked the provisions of clause 8(j) of the 2010 O.M. which, empowers them to issue an LOC; albeit in exceptional cases, "without complete" or even in cases where no details are available, only against persons falling in the following categories: "counter intelligence suspects, terrorists, anti-national elements, etc. in larger public interest". Therefore, in such like cases, the safeguards contained in the 2010 O.M., can, in a sense, be side-stepped provided the person against whom an LOC is issued, falls in the categories prescribed therein.

(v)(a) Ms. Pillai has been categorized as one indulging in anti-national activities. The recourse to clause 8(j) of the 2010 O.M. is flawed as the expression, 'anti- national' has to be interpreted in the context of those expressions preceding it, that is, in consonance with, the principle of *ejusdem generis*.

(vi). Expression of opinion on economic activities of the Government or

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[2] See ***Bijoe Emmanuel and Ors. Vs. State of Kerala and Ors., (1986) 3 SCC 615***

investment decisions of a particular multinational corporation qua coal mines in India to the extent it impacts tribal communities of the area or, the environment cannot be construed as an anti-national activity, if read, in the context of the preceding expressions; obtaining in clause 8(j). The logical corollary of which, is that, anti-national activities can only be construed as those activities which impinge upon sovereignty or integrity of India. The two examples given in clause 8(j) of the 2010 O.M., such as, counter intelligence suspects and terrorists, fall in this category.

(vi)(a) This argument was, however, advanced dehors the submission that an LOC is an administrative instruction not backed by authority of law, and that, the grounds set out therein, whereby restrictions on travel could perhaps be imposed, had to abide by the mandate of Article 19(2) of the Constitution. Since the expression, 'anti-national' or 'national interest' does not find mention in Article 19(2) of the Constitution, the last category in clause 8(j) of 2010 O.M. being: "anti-national elements, etc. in larger national interest" – does not qualify as a "reasonable restriction" within the meaning of Article 19(2) of the Constitution[3].

(vii). The respondents had failed to show as to how the purpose of Ms. Pillai's visit which, involved speaking with British Parliamentarians qua rights of tribal communities, in Mahan, would constitute a threat to the sovereignty and integrity of India. Espousing a cause of particular section of people could not be considered as anti-national or creating disaffection amongst people at large[4].

(viii). The right to travel abroad is a fundamental right which, stands subsumed in the right to life and personal liberty guaranteed under Article 21 of the Constitution. No citizen of the country can be deprived of this

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[3] See ***S. Rangarajan Vs. P. Jagjivan Ram, (1989) 2 SCC 574***

right except according to the procedure established by law[5].

(ix). Ms. Pillai has a fundamental right to express her opinion on crucial economic policies of the Government which may differ from the dominant opinion and would include the right to propagate an alternative opinion. This opinion can be expressed at seminars, by publishing articles and including, in the manner, sought to be done in the instant case by meeting with parliamentarians of foreign countries. Ms. Pillai had proposed to travel to the U.K. to highlight the role of a British company, i.e., Essar Energy. Such a meeting could, by no stretch of imagination, have had an impact on the friendly relations between India and Britain as it pertained to a contestation between a British Company and the local population situate in Mahan; none of which impinged upon the relationship between Britain and India. A State cannot impose travel restrictions on its citizens without due authority of law[6].

(x). The respondents had failed to provide any material which would substantiate their claim that Ms. Pillai's association with Greenpeace India Society, as an employee posed a threat to India's sovereignty and integrity. The respondents have not imposed a ban on Greenpeace India Society and, is thus, not an unlawful association whose activities can be prohibited under the Unlawful Activities (Prevention) Act, 1967. The Greenpeace India Society is an organisation registered under the laws of India and, is thus, free to carry out its activities within the parameters of an enacted law. Though respondents have put Greenpeace International on its "watch-list", no material was placed on record by the respondents in that respect, as is evident from the decision of this court dated 20.01.2015, rendered in ***WP(C)***

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[4] See ***Sree Rama Rao Vs. Telugu Desam a Political Party and Ors., AIR (1984) AP 353***

[5] See ***Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248***

[6] See ***Dr. D.C. Saxena Vs. Hon'ble Chief Justice of India, (1996) 5 SCC 216, Nandini Sunder Vs. State***

5749/2014, titled : ***Greenpeace India Society Vs. Union of India***.

(xi). Restrictions on criticism of Government policies or programmes whether in India or abroad can if, at all, apply to Government servants. In support of this submission, reliance was placed on Rule 7 of All India Service (Conduct) Rules, 1968 and the judgment of the Supreme Court in the case of ***Vijay Shankar Pandey Vs. Union of India, (2014) 10 SCC 589***.

(xii). The fact that Ms. Pillai's air ticket was bought by Greenpeace U.K., which is an entity, separate and distinct from Greenpeace International, would not constitute a violation of the provisions of the Foreign Contribution (Regulation) Act, 2010 (in short the FCRA). The expenses incurred on behalf of Ms. Pillai would not constitute foreign contribution within the meaning of Section 2(h) of the FCRA. If at all, the expenses towards air tickets would come within the definition of "foreign hospitality", under the provisions of Section 2(i) of the FCRA. In case the respondents seek to prohibit acceptance of foreign hospitality by Ms. Pillai from Greenpeace U.K., they are required to pass an order under Section 9(e) of the FCRA and seek information in terms thereof and for the grounds stated therein. In the present case, no such order was admittedly been passed by the respondents.

(xiii). The fundamental right to free speech can only be restricted by a duly enacted law which must pass muster of the test of reasonable restrictions, as contained in Article 19(2) of the Constitution[7].

(xiv). The ostensible reason given by the respondents for preventing Ms. Pillai from travelling outside India, and thus, in effect, articulating her views to British Parliamentarians is that it would create "negative image" of India overseas, which in effect would whittle down Foreign Direct Investment

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of Chattisgarh (2011) 7 SCC 547 and Mahanadi Coalfields Vs. Mathias Oram (2010) 11 SCC 269.

(FDI), in India, so very much needed, in manufacturing and infrastructure sectors and, in addition, could also lead to sanctions. None of these reasons can be classified as anti-national activities.

(xiv)(a) The petitioner, who bears true faith and allegiance to the Constitution of India and, seeks to secure for its citizens justice, social, economic and political, cannot be categorized, as anti-national because, she seeks to assist tribal communities to claim their rights under the Forest Rights Act, 2006 (in short the Forest Rights Act).

(xv). The restrictions put on Ms. Pillai which, in sum and substance, affect her freedom of expression, is violative of the International Covenant on Civil and Political Rights (in short the ICCPR) to which India is a party. Reliance in this regard was placed on General Comment no.34 of the Human Rights Committee of the UN, in relation to Article 19 of the ICCPR. It was also stated that said covenant stands subsumed in the Municipal Law of the country via the provisions of Section 2 of the Protection of Human Rights Act, 1993.

(xvi). The maintenance of a secret data base by respondent no.3 i.e., the Intelligence Bureau, amounts to unlawful surveillance and, is thus, violative of right to privacy guaranteed under Article 21 of the Constitution[8].

(xvii). The stand of the respondents that Ms. Pillai would be allowed to travel if, she were to furnish an undertaking that she will not speak on the subject matter referred to above, to British Parliamentarians, amounts to pre-publication censorship and, in that sense, is an unconstitutional condition attached to her otherwise constitutional right to travel abroad, which is

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[7] See ***Pravasi Bhalai Sangathan Vs. Union of India, (2014) 11 SCC 477***

[8] See ***Kharak Singh Vs. State of Uttar Pradesh, (1964) 1 SCR 334, People's Union of Civil Liberties Vs. Union of India and Anr., (1997) 1 SCC 301***.

guaranteed under Article 21 of the Constitution[9].

(xviii). The counter affidavit filed on behalf of the respondents is not declared as mandated by law, as the source of information, based on which averments had been made therein are not disclosed. It is not understood as to the basis on which it is asserted by the deponent that Ms. Pillai was acting contrary to national interest. The affidavit filed on behalf of the respondents thus deserves to be ignored[10].

8. On the other hand, Mr Sanjay Jain, learned ASG, defended the stand of the respondents and made submissions, in line with the stand taken in the counter affidavit. Mr Jain's submissions thus, broadly, alluded to the following:

(i) The respondents' action of issuing LOCs in general, as also in this particular case, is backed by the necessary authority, which is contained in the 2010 O.M. The said O.M. has its genesis in the Ministry of Home Affairs, Government of India letter dated 05.09.1979, followed by O.M. dated 27.12.2000. The 2010 O.M., in that sense, refined the guidelines in the light of directions issued by this court in ***Vikram Sharma's*** case and those issued by the Division bench of this court in ***Sumer Singh Malkan's*** case. The contention advanced on behalf of the petitioner is, therefore, without basis.

(ii) In so far as Ms Pillai was concerned, she was already an LOC subject and, accordingly, an LOC dated 10.10.2014 had been issued qua her on an earlier occasion. As regards the recent incident, whereby she was detained at the airport on 11.01.2015, a numbered LOC was opened by the Assistant Director of I.B., on 10.01.2015. The purpose with which the said LOC was issued, was to prevent Ms Pillai from leaving India since, she proposed to

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[9] See ***St. Xavier Education Society, Ahmedabad vs. State of Gujarat, (1974) 1 SCC 717***

testify before the All Party Parliamentary Group (APPG) on Tribal People, comprising of British Parliamentarians, which without doubt, would have "negatively" projected the image of the Government of India.

(iii) The investigating agencies have, from time to time, issued LOCs either against persons who are involved in crime, or against those, whose activities are found to be prejudicial in national interest. Though Ms Pillai, has been permitted to travel out of India, on at least eight occasions, between January, 2007 and June, 2012, this time around she was detained, as the purpose of her visit was to depose before a formal committee of the British Parliament, with a defined motive of impacting India's image abroad, at a time, when it was looking to attract FDI, in infrastructure and manufacturing sector.

(iv) Greenpeace International U.K. office, has taken keen interest in fomenting ground level protest via Greenpeace India, because of which at least 13 foreign activists working for Greenpeace International have been blacklisted, as they were found to have acted in violation of Visa rules, in view of their involvement in training, motivating and organizing Greenpeace India's activists at field level, to protest, in close proximity to thermal plants and coal mine locations. These protests have marred India's energy security interest.

(v) The main objective of the foreign and Indian activists associated with Greenpeace International and Greenpeace India, is to step up agitations in coal producing regions, such as Mahan, in Singrauli district, in the State of Madhya Pradesh. For this purpose, a front, in the form of an entity by the name of, Mahan Sangharsh Samiti (MSS) was created, which is funded by Greenpeace India and that Ms Pillai has been posted there to organize the

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[10] See ***Amar Singh Vs. Union of India and Ors., (2011) 7 SCC 69***

villagers.

(vi) Greenpeace India's funding was curtailed by Ministry of Home Affairs in 2014, based on specific intelligence inputs. The inputs received show that Greenpeace India plans to "take-down" nearly 40000 MW thermal projects. These protests are funded through foreign sources. In this behalf specific reference was made to paragraph 22 of the counter affidavit, which set out the possible locations in which thermal plants are likely to come up. Reference was also made to protests organized at two nuclear sites, located at Kundakulam, in Tamil Nadu and Fatehbad, in Haryana. There is also a generic reference qua protests organized in respect of genetically modified food trials and with regard to India's tea export industry.

(vii) The funding pattern of Greenpeace International is opaque, as it claims that it collected donation in small amounts from persons of different nationalities located all over the world. It is because of this reason, and its activities, that it has been placed in the proscribed list of donors under Section 46 of the FCRA; in other words, in respect of each foreign donation, Greenpeace International would have to seek permission of MHA. It is thus, placed in a category which is known as "Prior Reference Category".

(viii) The Indian arm of Greenpeace International, i.e., Greenpeace India and Greenpeace Environment Trust, having violated Indian income tax laws, have been issued notices by the authorities under the Income Tax Act, which involve amounts equivalent to Rs. 3.8 crores.

(ix) Since, Greenpeace India's funding had been curtailed, and prior clearance is required for donations received by Greenpeace International, Greenpeace, UK has been used to engineer protests in Mahan. As a part of this plan, in the first instance, steps were taken to garner funds and organize visits of Ms Pillai and, one, Mr Akshay Gupta, along with five (5) activists

of MSS, to meet-up with British Parliamentarians. Because others were not able to obtain visas in time, Ms Pillai, attempted to embark alone on a trip to U.K. Based on specific intelligence input, as to the purpose of her visit, she was detained at the airport.

(x) APPG is headed by, one, Mr Martin Horwood and co-chaired by a person of Indian origin, by the name of Virendra Sharma, who is the chair of APPG, on Indo-British relations. Both persons are the members of the British Parliament. Mr Martin Horwood is a liberal democrat, whereas Mr Virendra Sharma is from the Labour Party. As would be evident, APPG is a formal committee of a foreign Parliament. The decision of Ms Pillai to depose before such a committee, with respect to the concerns of tribal communities, in Mahan, would only damage the country's image and consequently hamper its economic interest. Unlike other prominent civil rights activists, Ms Pillai has taken a decision to vent her ire and/or articulate her views against State policy before a Committee, comprising of British Parliamentarians; an act which can only be construed as an anti-national activity.

(xi) It has been a core foreign policy objective of countries, such as, the USA, UK and other European countries to issue annual reports, of their assessments, of specific human rights violation in other countries. In preparation of these reports, the testimonies of global NGOs and think-tank experts are recorded, including testimonies of human rights activists, originating from the country concerned. Reports, incorporating such testimonies, are prepared on religious freedom, as well as tribal and indigenous people.

(xi)(a) The United States has in place, a statute, titled as: International Religious Freedom Act, 1998, which empowers its government to impose

sanctions against a Country of Particular Concerns (CPC). India has come perilously close to being declared a CPC, in the reports generated by the US Commission on International Religious Freedom and the US State Department, of April and July, 2014 respectively. These reports have in fact rated India one notch above the CPC level.

(xi)(b) Similarly, the APPGs of the British Parliament have directed their focus on tribal people since, 2012. As a matter of fact, the UK APPG report on religious freedom, issued in 2014, alleges a violation of religious freedom in India. Similarly, the European Parliaments' Working Group Report on Religious Freedom of February, 2014, places India in the lowest category as a CPC alongside Pakistan. Within the CPC, India has been labelled as, a serious violator of religion and belief. There are indications that UK Parliament's APPG report will use Ms Pillai's testimony to rate India, at a low level, exposing it to the potentiality of being governed by a sanction regime.

(xi)(c) Similarly, the US President is empowered under the law obtaining in that country to issue, trade, arms and investment sanction against CPC countries.

(xi)(d) These reports on religious freedom, tribal people, indigenous people, human trafficking and dalit rights generated by various Commissions and Countries feed on each other, and thereby, create a circular documentation.

(xi)(e) In 2006, European Parliament has already passed six (6) resolutions against India on dalit rights and one on violence against women. The content of these resolutions is suggestive of the fact that Government of India and the Parliament of India have not been able to protect dalits and women, and therefore, a call is made to European Union to factor in these aspects in their trade negotiation with India and Indian companies. These

reports are used as instruments of foreign policy to impede India's growth prospects at a time when it is actively pursuing economic growth and development, which requires a massive flow of FDI.

(xi)(f) That these instruments have been used effectively against countries, is apparent, from sanctions made against countries, such as Iran, Russia and North Korea.

(xi)(g) One of the important elements in the creation of such documentation/ report is the in-person testimony of local activists, which adds to the credibility of its content qua the reports. The respondents are handicapped, in as much as, while reports generated under the aegis of United Nation can be contested, such like reports, created by formal committees of countries, like, US, UK and the European Parliament, cannot be contested as no opportunity is provided to the Government of India, or its Embassies/High Commissions, to record their opinion in the matter.

(xii) The testimony of Ms Pillai, before a formal Committee of British Parliament, would have a cascading effect, globally, which would only serve the foreign policy interest of other nations.

(xii)(a) Ms Pillai's deposition would thus, be prejudicial to "national interest". Therefore, the LOC issued qua Ms Pillai is directed "not to limit all her freedoms but was focussed only on the proposed activity", which involved deposition before a foreign parliament.

(xii)(b) In other words, if Ms Pillai were to give an undertaking that she would not depose before the Committee of British Parliamentarians, the LOC issued qua her could be lifted.

REASONS

9. Having heard the learned counsels of the parties, what has emerged from the record is as follows:

(i) An LOC was issued qua Ms Pillai on 10.10.2014, followed by a fresh LOC, which got issued on 10.01.2015. These LOCs have not been served on Ms Pillai. As a matter of fact, she had no notice of an LOC having being issued vis-à-vis her till she was detained at the airport on 11.01.2015, at a point in time when she intended to board Air India flight AI-115.

(ii) The resultant events led to her passport being endorsed with the annotation "off-load".

(iii) The respondents have claimed that the LOC is a secret document and, hence, cannot be handed over to Ms Pillai, or for that matter, to any person against whom the same has been issued. However, in order to trigger issuance of an LOC, it requires a duly authorized originator to send a request in the proforma stipulated under the 2010 O.M., to the Bureau of Immigration.

(iv) The affidavit filed on behalf of the respondents, records that the originator of the LOC was a Joint Director in IB, and that, a "numbered LOC was opened by the Assistant Director of IB, on 10.01.2015, to prevent her (Ms Pillai) from leaving India since, she would project the image of Indian Government "negatively" at the international level.

(v) Ms Pillai's communication of 11.01.2015 and 12.01.2015, addressed to the Secretary, Ministry of Home Affairs, did not receive any response.

(vi) That the stated reason for issuing the LOC, was that, Ms Pillai's testimony before a formal Committee of British Parliament, carried with it the possibility of it being incorporated in the report of the APPG on tribal people, which could in turn compromise country's economic interest as it may lead to trade and investment sanctions.

(vii) That while reports generated under the aegis of the United Nations can be contested by Government of India, by putting across its point of

view, the same opportunity is not available to it, vis-à-vis the reports generated by the APPGs and Commissions of countries, such as, US, UK and other European countries.

(viii) Ms Pillai though, has denied in the pleadings that she intended to depose before the British Parliament. It is her stand that all that she intended to do, was to meet-up with British Parliamentarians to exert necessary moral pressure on a British entity, i.e., Essar energy, which, according to her had a say in the working of a joint venture company, by the name of Mahan Coal Limited; an entity that proposed to open up a mine in Mahan to the detriment of the tribal communities located therein.

(viii)(a) Mahan Coal Limited, is a joint venture company formed and incorporated with the aid and assistance of Hindalco and Essar Power Ltd. Essar Power Ltd., is a wholly owned subsidiary of Essar Energy, which as indicated above, is a company incorporated and registered in U.K.

10. In view of the aforesaid facts, the following issues arise for consideration:

(i) Whether the right to travel abroad is a fundamental right protected by Article 21 of the Constitution? And if so, could the violation of that right impact the freedom of speech and expression of a citizen protected under Article 19(1)(a) of the Constitution?

(ii) Whether the 2010 O.M. would constitute a "law" within the meaning of Article 13(3)(a) of the Constitution?

(iii) Whether the issuance of an LOC qua Ms Pillai was justified in the given facts and circumstances?

(iv) Whether the consequent detention of Ms Pillai on 11.01.2015, at the airport, resulted in violation of her fundamental right, under Article 21, and 19(1)(a) of the Constitution?

ISSUE NO.(I)

11. In so far as the first issue is concerned, the answer to the same is fairly simple, in view of the law laid down by the Supreme Court, both pre and post, the enactment of the Passports Act, i.e., the 1967 Act. The Supreme Court in the case of ***Satwant Singh Sawhney vs D. Ramarathnam, Asstt. Passport Officer, Government of India, New Delhi & Ors., (1967) 3 SCR 525***, dealt with a matter where the petitioner, before it, assailed the decisions of the Assistant Passport Officer, New Delhi and the Regional Passport Office at Bombay, whereby he had been asked to surrender passports issued by the said authorities. The challenge was laid by the petitioner by way of a petition under Article 226 of the Constitution. The majority judgement of the Supreme Court dealt with the case purely "on the high plain of fundamental rights and their breach" as described, so felicitously, in the dissenting judgement of Hon'ble Mr Justice Hidayatullah. The majority judgement, quite strikingly, did not allow facts, bad as they were, to muddy the discernment of the width and the amplitude of the rights of the petitioner under Article 21 of the Constitution. In their discussion, the learned Judges, while citing with approval their earlier decision in ***Kharak Singh vs State of U.P., (1964) 1 SCR 332,*** made the following vital observations:

> "….This decision is a clear authority for the position that "liberty" in our Constitution bears the same comprehensive meaning as given to the expression "liberty" by the 5th and 14th Amendments to the U.S. Constitution and the expression "personal liberty" in Art. 21 only excludes the ingredients of "liberty" enshrined in Art. 19 of the Constitution. In other words, the expression "personal liberty" in Art. 21 takes in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Art. 19…."
>
> (emphasis is mine)

11.1 Thereafter, upon a brief discussion qua the judgements of various High Courts, such as Kerala, Bombay, Mysore (as it then was) and Delhi, the majority judgement concluded as follows:

> "….For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Art. 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating or depriving persons of such a right…"
>
> (emphasis is mine)

11.2 The issue came up for consideration, once again, as indicated above, post the enactment of the Passports Act (i.e., 1967 Act) before the Supreme Court in the case of ***Maneka Gandhi vs Union of India & Anr;*** Hon'ble Mr Justice Bhagwati, writing for himself, Justice Untwalia and Justice Fazal Ali, inter alia, opined that fundamental rights conferred by Part III of the Constitution were not distinct or mutually exclusive. Each freedom had different dimensions and merely because the limit of interference, with one freedom, was satisfied, the law, so brought into play, was not freed of the necessity to meet the challenge of another guaranteed freedom. In this regard, the court relied upon the minority view, in the case of ***A.K. Gopalan vs State of Madras, 1950 SCR 88***, and distinctly observed in this behalf that the majority view in the said case stood overruled in view of the decision in ***R.C. Cooper vs Union of India, (1970) 3 SCR 530***.

11.3 As regards its view with regard to the decision rendered in ***Satwant Singh Sawhney*** case, the learned judges opined as follows:

> "…. The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and

given additional protection under Article 19. Now, it has been held by this Court in Satwant Singh's case that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh's case was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State Law'. Vide A. K. Gopalan's case. Thus, no person can be deprived of his right to, go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports, Act, 1967 that is lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements ? Obviously, procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General, who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law…."

(emphasis is mine)

11.4 Having regard to the above, it is quite clear, that it can no longer be argued that the right to travel abroad is not a fundamental right. It is, as a matter of fact, a second generation right which flows from the right to life and personal liberty conferred on the citizens, under Article 21, which can be taken away only by procedure, as established in law. While, it may be true that the right to go abroad is not included the right to freedom of speech and expression – in some cases, the curtailment of right to travel abroad could impact, a citizen's right of free speech and expression. [see ***Maneka Gandhi*** case paragraph 29 at page 307 and paragraph 34 at page 311].

ISSUE No.(II), (III) and (IV)

12. In order to answer these issues, I would for a moment assume that the issuance of an LOC is rooted in the power of the executive to take action dehors a statutory enactment, as long as the power enacted by the State (in this case the Union of India), falls within one of the legislative entries, included in the Constitution; provided it does not contravene the provisions of the Constitution, in particular, Part III of the Constitution or takes away rights of citizens under existing law. [See ***Maganbhai vs UOI, (1970) 3 SCC 400***].

12.1 I must, however note, before I proceed further that, Ms Indira Jaising has argued, with much vehemence, that the respondents' stand, that the, power to issue an LOC can be traced to the 2010 O.M., or, those which precede the said O.M., is unsustainable, as it cannot be described as "law", within the meaning of Article 13(3)(a) of the Constitution. This submission, I must confess, has much merit in view of the decisions of the Supreme Court both in ***Maneka Gandhi*** case as well as in the case of ***A.K. Gopalan.*** Both judgements take the view that "law" referred to in Article 21, would mean "enacted law".

12.2 The reason I do not wish to elaborate on this issue any further, is that, while this submission was advanced by Ms Indira Jaising (both during the course of hearing, as well as in the form of written submission), in the petition, there is no relief sought to strike down the 2010 O.M. One of the reasons, perhaps for this would be that Ms Pillai was never furnished a copy of the LOC. The factum of issuance of an LOC got officially known to her only when she approached this court by way of the instant petition. Nevertheless, during the course of the proceedings, no leave was sought to seek an amendment in the writ petition.

12.3 Be that as it may, as indicated above, while Ms Jaising's point is taken that an LOC can be issued, if at all, in circumstances, delineated in Section 10(3)(h) of the Passports Act, there may arise certain situations, outside the scope of the said Act, which may require, the executive of the day, to take recourse to an LOC, under circumstances which are not covered by a statutory enactment. As adverted above, the State, is not denuded of its executive powers only because there is no statute to back the exercise of such a power. The caveat being, if a challenge is laid to the exercise of such power, on the anvil of the Constitution, say under Article 21 and 19, the State would have to make good its case that the exercise of power was under a valid law and, in doing so, it did not violate any constitutional provisions. At that stage, the court may have to enquire and rule whether the kind of impediment that issuance of an LOC envisage requires enactment of law.

12.4 As an illustration, I may only advert to the provisions of Section 41 of the Cr.P.C., which, inter alia, empowers a police officer to arrest a person, without the order of a Magistrate and arrest warrant, upon receipt of a reasonable complaint or credible information or even reasonable suspicion that he has committed a cognizable offence. Whether an LOC issued to

effectuate such a purpose, would require a further support of an enactment would require consideration as it could be argued that it is only in aid of the power contained in the statute, i.e., the Cr.P.C. I would thus leave the discussion on this issue to a better and more evolved wisdom of another court.

12.5 Suffice it to state that in this particular case, a decision on the aforesaid aspect may not be necessary, in view of the circumstances which have obtained in the instant matter.

12.6 The stand of the respondents that they had prevented Ms Pillai from leaving the country as she intended to testify before an APPG of British Parliamentarians, which in turn, would have "negatively" impacted the image of India – in my view, is a stand, which is completely untenable.

12.7 The reasons for the same are as follows: First and foremost, Ms Pillai has clearly contested this attribution vis-à-vis her, which is that, she intended to testify before a formal Committee of British Parliamentarians. It is her stated stand that she intended to meet a Group of British Parliamentarians, in London, to speak about violations of environmental laws, in Mahan Coal block; in particular, with respect to the provisions of the Environment Protection Act, the Forest Protection Act, the Forest Rights Act, the Wild Life Protection Act, which amongst other areas, are operable, in that area as well.

12.8 This conversation, Ms Pillai says she needed to have with the British Parliamentarians, so that they could call upon Essar Energy, a British company, having a major financial stake in Mahan Coal Ltd., to fall in line with the legal regime of our country.

12.9 There is nothing on record to show that Ms Pillai intended to do anything more than this. The argument of the respondents that Greenpeace

U.K. and Greenpeace International were fomenting protests in the country with respect to various public projects, especially, in the field of thermal and nuclear power generation, is not backed with actionable material. The record would show that while the respondents may have regulated the inflow of funds to Greenpeace International, by having it put in the "prior approval" category, there is no such directive issued either qua Greenpeace U.K., or Greenpeace India. Ms Pillai, is admittedly, employed with Greenpeace India.

12.10 The only violation which is brought to fore, in the counter affidavit, qua Greenpeace India, is one concerning certain notices issued by the Income Tax Authorities; which have clearly, some revenue implications. However, the alleged violation of tax laws, which I am informed is contested, would not, in my opinion by itself, be demonstrative of the fact that the activities carried out by Greenpeace India, via its employees, agents and servants, is inimical to the economic interest of the country. While there is no gainsaying that economic security, as against physical security of a nation in today's time and space, is equally vital, if not more – nothing, which is placed before me, in the form of affidavit, or is found in the record, which was shown to me in court, would have me, presently, come to a conclusion that the activities of Ms Pillai, in particular, or those of the organizations, with which she is associated, are activities, which have the potentiality of degrading the economic interest of the country.

12.11 The sense that I get, upon perusal of the stand taken by the respondents in their pleadings, is that, they do not approve of the view expressed by civil right activists, in forums outside the country, which tend to portray, according to them, an inaccurate picture of the state of human rights in the country. In other words, the respondents are concerned by the

fact that such portrayal generates an atmosphere, which retards investment of foreign funds, in vital infrastructural projects.

13. Whether this concern of the respondents is valid or not, in my opinion, is not the issue. The reason for the same is, that, developmental activities, not now, but for ages have always had a counter point. The advancement in knowledge base, and the ability of common citizen to access information vis-à-vis public projects, has only made dissent more strident and vigorous. Whether one model of development has to be rolled out as against the other, is an on-going debate. This debate impinges upon all kinds of developmental projects, which includes project, such as, mining, setting up of nuclear plants, construction of roads through forests, acquisition of land for housing projects/ industries, construction of highways, roads, dams and bridges etc. – none of which have stopped if, the executive of the day, is convinced of their need and necessity.

13.1 The mere fact that such debates obtain, or such debates metamorphose into peaceful protests, cannot be the reason for curtailing a citizen's fundamental rights. In this case, Ms Pillai's right to travel abroad and interact with relevant stake holders (i.e., the British Parliamentarians), to persuade them, to have entities incorporated in their country, to fall in line, with the developmental ethos, which is close to her ideology and belief, cannot be impeded only because it is not in sync with policy perspective of the executive.

13.2 Ms Pillai, as the facts in this case would reveal, believes that the rights of tribal communities residing in Mahan would get impacted if, a coal mine, were to be opened in that area. This, is a view, which the executive may or may not agree with. That by itself, cannot be a reason to prevent Ms Pillai from exercising her fundamental right to travel abroad and, thereby, in

effect, disable her from expressing her views on the subject. In today's time and space, because of advent of technology, and especially, the internet, the universe has been reduced to a global-village. What occurs in a remote part of any country, gets immediately known the world over, either via television or through social media.

13.3 Therefore, the argument of the respondents that they would not permit Ms Pillai to travel out of India, for the stated purpose, but otherwise, would place no impediment in her travel, is clearly flawed. Ms Pillai, need not travel abroad to express her view point. She can transmit her views via technological devices available to her, without having to move out of the country.

13.4 But that is not the point in issue. The point in issue is, why must the State interfere with the freedom of an individual, as long as the individual concerned operates within the ambit of laws framed by the legislature.

13.5 The core aspect of democracy is the freedom of an individual to be able to freely operate, within the framework of the laws enacted by the Parliament. The individual should be able to order his or her life any way he or she pleases, as long as it is not violative of the law or constitutes an infraction of any order or direction of a duly constituted court, tribunal or any statutory authority for that matter. Amongst the varied freedoms conferred on an individual (i.e., the citizen), is the right of free speech and expression, which necessarily includes the right to criticise and dissent. Criticism, by an individual, may not be palatable; even so, it cannot be muzzled. Many civil right activists believe that they have the right, as citizens, to bring to the notice of the State the incongruity in the developmental policies of the State. The State may not accept the views of the civil right activists, but that by itself, cannot be a good enough reason to

do away with dissent.

13.6 The argument advanced before me by the learned ASG that reports generated by APPG, which include inputs of civil right activists (I have deliberately not used the word "testimony" as Ms Pillai has denied that she intended to depose before any Committee of British Parliamentarians), cannot be contradicted as the response of the State is not sought by these bodies; does not impress me. The State has at its command a posse of sophisticated foreign service officers, who are skilled in the art of diplomacy and foreign affairs. They are trained to deal with negative connotations or, fall out of any discussion, that any individual or entity, may have with another State actor.

13.7 Therefore, the learned ASG's attempt to draw a distinction between the reports which are generated under the aegis of the United Nations and those which are generated by Committees and Commissions of countries, such as, U.S., U.K. and the European Parliament, is really a distinction without a substantial difference.

13.8 Therefore, having regard to the aforesaid discussion, in my view, there was no basis for the respondents to issue an LOC qua the petitioner. That being so, the decision taken to detain the petitioner at the airport on 11.01.2015, in my opinion, was illegal being violative of the Ms Pillai's right under Article 21 and 19(1)(a) of the Constitution.

13.9 The actions of the respondents do not fall within the ambit of reasonable restriction, as articulated in Clause (2) of Article 19. Clause (2) of Article 19 protects a "law" which imposes reasonable restrictions on the exercise of rights conferred upon a citizen under Article 19(1)(a), in the interest of: sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency, morality or in relation to

contempt of court, defamation or incitement to an offence. As indicated above, even if I were to assume that 2010 O.M. has the status of law, qua which I have a serious doubt, the action of the respondents in issuing an LOC vis-a-vis Ms Pillai cannot be categorized as a reasonable restriction, as it is not a restriction which falls in any of the limitations articulated in clause (2) of Article 19.

14. In order to understand the scope and amplitude of the expression "reasonable restriction", it would be relevant to briefly advert to the circumstances in which the amendments were made in clause (2) of Article 19 of the Constitution. Clause (2) of Article 19, as found in its present form has its roots in the 1st (first) and the 16th (sixteenth) Amendment to the Constitution carried out in 1951 and 1963. Prior to these amendments, the freedom of speech and expression was subject to, only, the following qualifications: i.e., the government's authority to legislate in respect of aspects concerning, libel, slander, defamation, contempt of court, or any matter offending decency and morality, or that which undermines the security or tends to overthrow the State.

14.1 Evidently, taking a cue from the above, the three State Governments, that is, the Government of Bihar, East Punjab and Madras (as they were then constituted) took recourse to these qualifications in Article 19 to enact laws, which were challenged in court in three separate cases, on the ground, that they put, a fetter, on the freedom of speech and expression guaranteed by the Constitution[11].

14.2 In the first, case, the Bihar Government exercised its power under the Press (Emergency Powers) Act, 1931, to demand, financial security qua a pamphlet issued by an entity by the name of Bharti Press, which contained

(according to the Patna High Court), a clear invitation to the readers to join total and deadly struggle, to bring about revolution, by violence, resulting in complete annihilation of those, whom the author of the pamphlet considered, as oppressors[12].

14.3 The Patna High Court rejected the Bihar Government's contention that the pamphlet incited violence; a decision which was unanimously upheld by the Supreme Court in ***State of Bihar vs Shaila Bala Devi, 1952 (3) SCR 654***[13].

14.4 In the second case, the Government in East Punjab had imposed pre-censorship on an English language weekly in the guise of maintaining public safety and order by taking recourse to the provisions of the East Punjab Public Safety Act, 1950[14].

14.5 In the third case, the Madras Government, likewise, had banned entry into the State of a journal entitled: "Crossroads" with the aid of the Madras Maintenance of Public Safety Act, 1949[15].

14.6 The Supreme Court struck down the provisions of the East Punjab Public Safety Act, 1950, and the Madras Maintenance of Public Safety Act, 1940 vide two separate judgements titled: ***Brij Bhushan vs State of Delhi, AIR 1950 SC 129*** and ***Romesh Thappar vs State of Madras, (1950) 1 SCR 602***[16].

14.7 Because of the observations made by the Court (which incidentally were judgements delivered by the same Bench), the Parliament moved to introduce the expression "reasonable restriction" in clause (2) of Article 19. The Parliament thus carried out the First Amendment which permitted the

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Government to impose reasonable restrictions on freedom of speech and expression both retroactively and prospectively[17].

14.8 The 16th Amendment Act was passed, similarly, in the background of series of events, which included the Chinese incursion in North-east, beginning in 1960, the assertion of a separate Sikh State by Master Tara Singh, in mid-1961, and the call by DMK, for an entity, separate from India, which was referred to as Dravidanad[18].

14.9 What is of relevance though is the interpretation that the Supreme Court gave to the expression "security of the State" in ***Romesh Thappar Vs. State of Madras***. In the said case, the Supreme Court observed that the expression "security of the State" is one which has reference to "those aggravated forms of prejudicial activities" which tend to endanger the very existence of the State. The Madras maintenance of Public Safety Act, 1949, which had as its object public safety and order, was declared unconstitutional, as it did not fall within the scope and ambit of the expression "Security of the State". This led, inter alia, to the insertion of the expression "public order" in clause (2) of Article 19.

15. In the context of the above, let me examine the submissions of Mr Jain, the learned ASG, which is pivoted on the rationale (albeit an erroneous one) that Ms Pillai's interface with British Parliamentarians, will impinge upon security interest (read economic Interest) of the State; as it has anti-national connotation. The power to impose such a fetter on Ms Pillai's right to travel abroad, and the consequent impediment on her exchange of views with British Parliamentarians, was traced by Mr Jain to clause 8(j) of the 2010 O.M. Clause 8(j) of the 2010 O.M. reads as follows:

"(j) In exceptional cases, LOCs can be issued without complete

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[11-18] Working a Democratic Constitution, The Indian Experience: Granville Austin

parameters and/or case details against CI suspects, terrorists, anti-national elements etc. in larger national interest…."

15.1 It was therefore asserted before me that Ms. Pillai could be categorized as an "anti-national element" in the larger national interest. According to Mr Jain, since the intended activity of Ms Pillai had the potentiality of degrading the image of India in the eyes of foreign nations, leading to a regression in the country's economic activities and endeavours, her journey out of the country could legitimately be interdicted to prevent her from espousing views which were against national interest or, in other words, views which impinged upon the security of the State. The submission, therefore, was that, since the respondents considered Ms Pillai's intended conversation/ speech with the British Parliamentarians against the national interest, it necessarily, was grounded, in larger public interest.

15.2 The difficulty in accepting this argument is three-fold. First, reasonable restrictions spoken of in clause (2) of Article 19 do not advert to anti-national activities. Pertinently, the word anti-national does not find a place in most dictionaries; it is in effect a combination of two words. If one were to deconstruct the meaning of the word anti-national, one would perhaps have to look to the meaning of the word, "Nationalism". The nearest equivalent to the word 'Nationalism' would be patriotism. Patriotism as a concept would be linked to nationhood. Nationhood has several attributes which are, inter alia, inextricably connected with symbols, such as : the National Flag; the National Anthem; the National Song; and perhaps, the common history, culture, tradition and heritage that people of an organized State share amongst themselves.

15.3 In respect of each of these attributes of nationhood, there may be disparate views amongst persons who form the nation. The diversity of

views may relate to, not only, the static symbols, such as, the National Flag and National anthem, etc. but may also pertain to the tradition and heritage of the Nation and the manner in which they are to be taken forward. Contrarian views held by a section of people on these aspects cannot be used to describe such section or class of people as anti-national. Belligerence of views on nationalism can often lead to jingoism. There is a fine but distinct line dividing the two. Either way, views held, by any section or class of people, by itself, cannot be characterized as anti-national activities.

15.4 For anti-national activities to be brought within the limitation of clause (2) of Article 19, it would have to have a close nexus with the security of the State. Security of the State as indicated in ***Romesh Thappar***'s case can only be an "aggravated form of prejudicial activities" which endangers the very existence of the State or in the very least, I would think, threatens the life and limb of its citizens. Therefore, if the expression, "anti-national elements" found in clause 8(j) of the 2010 O.M. is to be brought within the four corners of clause (2) of Article 19, its meaning will have to be confined to activities of persons who fall in the category of "counter intelligence suspects" and/ or terrorists. The endeavour of Ms. Pillai to engage with British Parliamentarians on the issues relating to developmental activities in the Mahan coal block area, cannot be construed as an anti-national activity of the kind envisaged under clause 8(j) of the 2010 O.M.

15.5 Therefore, the action of the respondents, in issuing an LOC qua Ms. Pillai with the object of preventing her from propagating and disseminating her views on developmental activities in the Mahan coal block area, cannot be construed as a reasonable restriction, which would pass muster of the provisions of clause (2) of Article 19 of the Constitution. That the right to

freedom of speech and expression includes the right to propagate ones views, which cannot be stifled or impeded, except on grounds alluded to in clause (2) of Article 19, is a constitutional principle recognized by our courts in a long line of judgements[19]. It is a right so well entrenched in our Constitution that, it cannot be dislodged, at this point in time of our nation's history.

15.6 Second, even if I were to accept that respondents could have issued an LOC for the stated purpose, by sourcing its power under clause 8(j) of 2010 O.M., the exercise of the power in Ms Pillai's case was fatally flawed. A plain reading of clause 8(j) would show that the expression "anti-national" takes colour from the preceding term and/or expressions found in clause 8(j). The clause by itself shows that it is a power which is exercisable by the State in exceptional cases, where it is entitled to side-step even the guidelines and parameters laid down in the O.M. itself. The power vested on respondents being rare and exceptional it, necessarily, is required to be confined to persons falling in specific categories, such as counter intelligence suspects, terrorists, and anti-national elements. The expression anti-national is followed by the abbreviated form of the word etcetera. Therefore, quite clearly the word anti-national, contextually can only take colour from the words preceding it. To rule otherwise would result in allowing for a situation where any and every activity could be brought within the purview of clause 8(j). This being an exceptional power conferred on the State, which is to be exercised in the larger national interest, it cannot be given a meaning wider than the purpose for which the power is vested in the State functionaries.

15.7 Therefore, to my mind, a person falling in the category of an anti-

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[19] See ***Life Insurance Corporation of India vs Prof. Manubhai D. Shah (1992) 3 SCC 637.***

national element, in the absence of any other guideline contained in the 2010 O.M., can only be that person, who projects, a present and imminent danger to the national interest. Travelling abroad and espousing views, without any criminal intent of the kind adverted to above, cannot, in my opinion, put Ms Pillai in the category of an anti-national element.

15.8 Third, what inhibits me from accepting the submission advanced on behalf of the ASG, is that, if the view advanced on behalf of the respondents is accepted, it would result in conferring un-canalised and arbitrary power in the executive, which could, based on its subjective view, portray any activity as anti-national. Such a situation, in a truly democratic country, which is governed by rule of law, is best avoided.

15.9 I must indicate herein that in the writ petition there is a disclosure of the fact that in respect of the protest led by Ms Pillai, in the Mahan coal block area, a criminal case has been lodged in Mumbai, in which she has been enlarged on bail. The order granting bail has not put any condition in place. There is no condition put by court with regard to restraint on travel. These facts have not been disputed by the respondents in their counter-affidavit. There is also no case set up by the respondents that recourse to any provisions of the Passports Act has been taken vis-a-vis Ms Pillai. Quite clearly, therefore, there is no impediment put in place by any court or statutory authority on Ms Pillai's right to travel abroad and propagate her views, on issues referred to above.

15.10 The attempt of the respondents to link Greenpeace India with Greenpeace U.K. and Greenpeace International, by adverting to the screen shots of the latter's website, in my opinion, cannot carry their case any further. According to the respondents, the website of the Greenpeace International shows Greenpeace India and Greenpeace U.K. as its affiliates.

It is sought to be suggested that since Greenpeace India is affiliated to Greenpeace International, the illegality attached to the conduct of the latter, should apply to the former as well as Greenpeace U.K. In my view, monitoring and regulation of funds received by Greenpeace International by itself cannot lead to any conclusion, at least at this stage, of alleged illegality having been committed by the said organization. Therefore, one cannot conclude that Greenpeace India has committed any illegality. Thus the attempt to inveigle Ms Pillai, in the illegality argument, via this route, must fail. The submission that Greenpeace International had intended to incur expenses qua Ms Pillai's travel and accommodation, is clearly unsustainable as there is no bar in Ms Pillai receiving "foreign hospitality" as against "foreign contribution". This is clear on a conjoint reading of the provisions of Sections 9(e), 6, 2(1)(h) and 2(1)(i) of the FCRA. Therefore, the submission made in this behalf is, in my view, being misconceived is, accordingly, rejected.

16. Therefore, having regard to the aforesaid discussion, in my opinion, the prayer made in the writ petition for quashing and setting aside the LOC issued qua Ms Pillai, is liable to be granted. It is ordered accordingly. Accordingly, the following consequential prayers are also granted. Respondent no.2 shall expunge the endorsement "off-load" made on Ms Pillai's passport. Furthermore, respondents shall also remove Ms Pillai's name from the "data base" maintained by them, pertaining to those individuals, who are not allowed to leave the country. This is, in so far as prayers made in clause A (i) to (iii) are concerned.

16.1 As regards prayer clause B, no submissions were made during the course of the arguments, nor are any specifics alluded to in the instant case. The prayer is, accordingly, declined.

16.2 As regards prayer clause C, while Ms Jaising had in the passing, argued that respondents by their action had tarnished the reputation of Ms Pillai by bracketing her as anti-national, the necessary ingredients for grant of compensation have not been adverted to with, specificity, in the body of the writ petition. Even if I were to take a broad view of the pleadings, it may not be appropriate to embark upon an exercise of ascertaining damages claimed by Ms Pillai, while exercising writ jurisdiction. It would, however, be open to Ms Pillai to take recourse to an appropriate civil remedy to agitate her rights in that behalf. Needless to say, if such an action is taken recourse to, the respondents will have a right to defend the same, in accordance with law.

17. The writ petition and the pending application are disposed of in the aforementioned terms. The costs will follow the result of the petition.

RAJIV SHAKDHER, J

MARCH 12, 2015
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