

\$~SB-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2712/1991**

AMAN VACHAR Petitioner

Through : Petitioner-in-person.

versus

UNION OF INDIA Respondent

Through : Mr Tushar Mehta, Solicitor General
of India with Mr Imon Bhattacharya,
Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE JASMEET SINGH

ORDER

% **01.04.2022**

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 31428/2021

1. The substantive prayers made in the application are as follows:

“(a) Set aside and/or quash the notification/ office memorandum dated 13.07.2021 issued by the Union of India through the Ministry of External Affairs, CPV Division, Delhi;

(b) Set aside the communication dated 18.8.2021 issued by the Ministry of Law and Justice;

(c) Stay the operation of the notification/ office memorandum dated 13.07.2021 issued by the Union of India through the Ministry of External Affairs, CPV Division, Delhi during the pendency of the present application.”

2. We have heard Mr Tushar Mehta, learned Solicitor General of India.

3. The concern raised by the applicant i.e., the petitioner, who appears in person, is about the aspect embedded in paragraphs 2 and 3 of the Office Memorandum (OM) dated 13.07.2021[hereafter referred to as the “O.M.”] requiring the judges of the Supreme Court and High Courts to obtain

political clearance for private visits abroad. Since the O.M. is not too expansive, the entire O.M. is extracted hereafter for the sake of convenience:

“Subject: Policy related to the issuance of Visa Support Notes Verbale by consular, Passport and Visa Division, Ministry of External Affairs (CPV Division, MEA)

This is to convey that after a comprehensive review of the extant policies on the issuance of Visa Support Notes Verbale undertaken by the Consular, Passport and Visa Division, Ministry of External Affairs (CPV) Division, MEA); the following has been decided with the approval of competent authorities.

2. In such cases, where Visa Support Notes Verbale are sought from the CPV Division, MEA by the Hon'ble Judges of Supreme Court and the Hon'ble Judges of High Court of India, prior Political Clearance of the MEA is to be submitted for the intended private or official visits abroad. Political Clearance may be applied at <https://www.epolclearance.gov.in/>.

3. While forwarding requests for issuance of visa Support Notes Verbale to the CPV Division, MEA; the offices of the dignitaries may kindly be advised to submit appropriate Political Clearance for the intended visits, in both cases of private or official visits, along with the request for the Visa Support Notes Verable.

4. This may be circulated appropriately.

*Sd/-
(Name of officer)
Joint Secretary”*

4. The sum and substance of what has been articulated in the above-

captioned application, is that requiring judges of Constitutional Courts i.e., the Supreme Court and the High Courts to seek political clearance *qua* private visits to foreign countries, infringes not only their right of privacy¹ but also, in a sense, degrades and/or diminishes the high office that they hold.

4.1. We may note that, on 15.02.2011, guidelines had been issued concerning foreign visits by judges of the Supreme Court and the High Courts [hereafter referred to as "2011 guidelines"].

4.2. This court, *via* judgment dated 25.05.2012, had issued a slew of directions concerning the 2011 guidelines. However, insofar as paragraph 9(a) of the 2011 guidelines was concerned, the court had, at that juncture, not deemed it fit to pass any directions *vis-a-vis* the said paragraph, as it had dispensed with the requirement of the judges of the Supreme Court and the High Courts to obtain political clearance for private foreign visits. For the sake of convenience, the judgment dated 25.05.2012 is set forth hereafter :

" C.M.No.7809/2011

1. Guidelines issued under cover of letter dated February 15, 2011 by Sh.V.K.Gupta, Under Secretary to the Government of India, on the subject of foreign visits by the Judges of the Supreme Court and the High Courts has been questioned vide C.M.No.7809/2011, in so far para 8(a) and (b), paras 9(a), (b) (c) and (e) and para 10 are concerned.

2. The said paragraphs pertain to private visits by the Judges of the High Courts and the Supreme Court to foreign countries.

3. Having considered the matter keeping in view the constitutional

¹ *Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors.* (2017) 10 SCC 1

positions held by Judges of the High Courts and the Supreme Court, undisputably, the language used is inappropriate and treats as if the Judges of the High Courts and the Supreme Court hold office at the pleasure of the President of India.

4. Be it a visit abroad or a visit within India, or for that matter, whenever a Judge takes earned leave, intimation thereof is sent to the appropriate department of the Government for sanction; in the case of Judges of the Supreme Court and the Delhi High Court the sanction is in the name of the President of India and in the States the sanction is in the name of the Governor of the State. Thus, with respect to paras 8(a) and (b) of the Circular Guidelines, we modify the same noting that whenever a Judge of the Supreme Court or the High Court proceeds on leave, the necessary sanction is always obtained as per the Leave Rules. However, we clarify that whether after obtaining leave or making a visit abroad during Court vacations, intimation would be given to the Chief Justice of the respective Court, of the foreign country proposed to be visited which would include the city in which the Hon'ble Judge would be staying, and for which we may note that it is desirable for the High Commission in the country concerned where the Judge would be staying to have information of the visit of the Judge to the country concerned; should a situation of emergency arise.

*5. **Finding nothing objectionable in para 9(a)** and noting that the subject matter of para 9(b) stands covered under the existing Leave Rules, dwelling on para 9(c), we find no objection of Judges not accepting hospitality from a Foreign Government/Organization, when on a private visit and if they intend to do so, to obtain FCRA clearance, but make it clear that if for a courtesy visit to meet a Judge or to see the working of a Court or visit a place in a foreign country where protocol assistance would be necessary, it would be permissible for a Judge, during a private visit to seek the necessary courtesy. We quash para 9(e) inasmuch as we have already held that sanction pertaining to leave has to be obtained from the competent authority, be it if a Judge visits a foreign country on a personal visit, and on the subject of giving prior information before making a private visit to a foreign country, we have required the Judge to give prior information to the Chief Justice of the Court concerned.*

6. Paragraph 10 of the Circular; found to be lowering the dignity of the constitutional posts held by Judges of the High Courts and the

Court is quashed; but clarifying that information pertaining to a private visit to a foreign country would be given to the Chief Justice of the Court concerned, and which would include the duration of the visit and the city where the Judge would be staying.

7. The application stands disposed of directing the Union of India to revise the guidelines in conformity with the present decision and thereafter circulate the same to the Registrars of the various High Court.

W.P.(C)2712/1991

No pending issue requiring to be monitored remains and thus we direct that the file may be consigned to the Record Room."

[Emphasis is ours.]

4.3. In our view, in the instant O.M., the same regime ought to have been followed. Therefore, insofar as the instant O.M. dated 13.07.2021 requires judges of the Supreme Court and the High Courts to seek political clearance for private foreign visits, it is uncalled for, given the high offices they are holding, especially given the fact that nothing has changed since the 2011 guidelines were issued.

4.4. We may also add that a Special Leave Petition (SLP) was preferred against the judgment dated 25.05.2012, which was disposed of *via* order dated 29.07.2019, passed in SLP(C) No. 38262/2012, *albeit* without disturbing the order dated 25.05.2012 passed by this court

5. Mr Mehta's contention that information concerning judges travelling abroad is required even when they proceed on a private visit, so that in case of any emergency they can be extended requisite assistance, overlooks the

fact that information about judges' travel plans is known the moment a request is made to the Consular, Passport and Visa Division of the Ministry of External Affairs [CPV, Division of MEA] for issuance of a "Visa Support Notes Verbale". That said, in any case, if an Indian citizen [which includes a judge] is caught in a crisis, Indian embassies/Missions are duty-bound to extend assistance to the extent possible, as and when they receive information of such an occurrence.

6. Accordingly, the OM dated 13.07.2021, to the extent it requires the judges of the Supreme Court and the High Courts to seek political clearance *qua* private visits abroad, is struck down, in view of the reasons articulated hereinabove and given the fact that this issue has received the attention of this court on an earlier occasion, as noticed hereinabove.

7. This takes care of reliefs sought in clauses (a) and (c). Insofar as the relief sought in clause (b) is concerned, it will also have to be allowed partially as it is a communication addressed by the Government of India, Ministry of law and Justice, Department of Justice to the Secretary General, Supreme Court of India and the Registrar Generals of High Courts requiring them to take "appropriate action" in consonance with the O.M. Since we have struck down the O.M. to the extent it requires judges of the Supreme Court and the High Courts to the obtain political clearance *qua* foreign (private) visit, the said communication, which is, dated 18.08.2021 will get truncated to that degree.

8. The above-captioned application is, accordingly, disposed of in the aforesaid terms.

9. At this stage, we must record that though Mr Mehta was holding a

rather difficult brief, and while he argued the matter on behalf of his client [i.e. the Union of India] and defended its position, he did appreciate the difficulties that the judges of the Supreme Court and the High Court face on account of the impugned provision contained in the aforementioned O.M.

CM APPL. 31429/2021

10. In view of the order passed above, the above-captioned application shall stand closed.

RAJIV SHAKDHER, J

JASMEET SINGH, J

APRIL 1, 2022/tr

Click here to check corrigendum, if any