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Draft
இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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දිනය } 2023/12/08
 திகதி }
 Date }

Rukshan Fernando
3/4 Gamunu Mawatha,
Attidiya,
Dehiwela

vs

HRCSL Application Case No: HRC/KI/015/2021

Navy Commander
Sri Lanka Navy
Navy Headquarters,
Colombo, Sri Lanka

Synopsis of the Complaint

The Complainant made a complaint to the Human Rights Commission of Sri Lanka (HRCSL) on 5 March 2021 alleging that *inter alia* his freedom of movement guaranteed under Article 14(1)(h) of the Constitution had been infringed.

The Complainant stated that he, along with two other journalists, had arrived on the morning of 5 March 2021 at Iranaimathanagar in Mulankavil with the intention of visiting Iranaitheevu. However, the Sri Lanka Navy at the relevant checkpoint prevented the Complainant and the other two persons from boarding a boat and traveling to the island. The Complainant alleged that his freedom of movement had been violated by the prevention of his entry into Iranaitheevu.

The relief requested by the Complainant included urging the Commission to recognise that an infringement of his fundamental rights had taken place, and to make appropriate recommendations under section 15 of the HRCSL Act. The Complainant also requested compensation, including for the cost of his travel to Iranaitheevu.

Action taken by the Jaffna Regional Office of the HRCSL

1. Report from the Sri Lanka Navy Headquarters

The HRCSL, through its Regional Coordinator at its Jaffna Regional Office, called for a report from the Sri Lanka Navy Headquarters with respect to the complaint made by the Complainant.

The Regional Coordinator inquired: (a) whether the Navy denied any citizen entry into Iranaitheevu; and (b) if so, what the legal basis of such denial was.

The Sri Lanka Navy, by a letter sent on behalf of the Commander of the Sri Lanka Navy, dated 16 March 2021, informed the Commission that a 'communication gap' had occurred between the Sri Lanka Navy Headquarters and the North Central Naval Area (i.e., the Naval Area to which Iranaitheevu belongs) and that no journalists had been denied entry into the said island. Furthermore, it stated that if any journalists wished to travel to the said island in the future, they should inform the Sri Lanka Navy, which can provide assistance with respect to traveling to the island.

2. Report from the District Secretary, Kilinochchi

The HRCSL, through its Regional Coordinator at its Jaffna Regional Office, called for a report from the District Secretary of Kilinochchi. In the said report, the District Secretary stated that, as per the information provided by the Poonagary Divisional Secretary, there was a procedure that if any non-residents of Iranaitheevu wished to enter Iranaitheevu, they have to obtain permission from the District Secretary of Kilinochchi. The Commission thereafter inquired from the District Secretary: (a) whether there are any restrictions imposed on the residents of Iranaitheevu to exit Iranaitheevu; (b) whether there are any restrictions on non-residents of Iranaitheevu entering Iranaitheevu; and (c) if so, what the basis for such restrictions were.

The District Secretary of Kilinochchi responded as follows:

1. There are no restrictions to the residents of Iranaitheevu to exit Iranaitheevu.
2. There was an initiative that began in Iranaitheevu on 14 February 2021 to commence an 'export village', and that non-residents who wished to participate in the initiative were expected to inform the Sri Lanka Navy if they needed to obtain the services of the Navy for the purpose of transportation. It was clarified that it was only in those circumstances that non-residents were expected to inform the Sri Lanka Navy of the time of travel, i.e., to obtain transportation services. Apart from such circumstances, it was clarified that there were no other restrictions with respect to traveling to Iranaitheevu.
3. Since there is no police post in Iranaitheevu, the Sri Lanka Navy is usually vigilant with respect to illegal activities. Therefore, the Sri Lanka Navy usually checks the identity of non-residents who wish to enter Iranaitheevu.

The Complainant's Submissions

In response to the explanations made on behalf of the Commander of the Sri Lanka Navy dated 16 March 2021, the Complainant contended that the nature of the 'communication gap' was not explained and that this 'communication gap' had led to him being prevented from travelling to Iranaitheevu by the Sri Lanka Navy officers attached to the North Central Naval Area on 5 March 2021.

The Complainant also claimed that the official spokesperson of the Sri Lanka Navy had been quoted in two separate media outlets on the same day of the incident and had stated that the Sri Lanka Navy only allowed residents of the island to enter the island, implying that non-residents were not permitted. Furthermore, he cited an eyewitness account of a journalist that Sri Lanka Navy personnel were following a 'list' provided by the District Secretariat, permitting only island residents to enter Iranaitheevu.

Consideration of the Merits

The freedom of movement is a fundamental human right, recognised under international human rights law and under Article 14(1)(h) of the Constitution of Sri Lanka.

Article 12 of the International Covenant on Civil and Political Rights (ICCPR) specifically recognises the freedom of movement. In General Comment No. 27, the United Nations Human Rights Committee has clarified the scope of this freedom. It has observed that 'the right to move freely relates to the whole territory of a State' and such right 'precludes preventing the entry or stay of persons in a defined part of the territory'. Moreover, the enjoyment of this right 'must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place.'

Under the ICCPR, the right to freedom of movement can only be restricted in exceptional circumstances, i.e., the restriction must be provided by law, and must be necessary for the protection of a legitimate interest mentioned in Article 12(3) of the ICCPR. Therefore, as clarified by the Human Rights Committee in General Comment No. 27, any restriction on the freedom of movement must be based on clear legal grounds and be necessary and proportionate in a democratic society for the protection of national security, public order, public health or morals, or the rights and freedoms of others, and must also be consistent with the other rights contained in the ICCPR.

Under the Sri Lankan Constitution, the right guaranteed by Article 14(1)(h) may be limited under Article 15(6) and (7) of the Constitution. Any restriction on the freedom of movement must be by 'law'. Furthermore, the Supreme Court in *Thavaneethan v. Dayananda Dissanayake* [2003] 1 Sri L R 74 has clarified that 'law' in terms of Article 15(7) only includes regulations issued under the Public Security Ordinance, No. 25 of 1947 (as amended).

The legitimate grounds on which the right to the freedom of movement can be limited under Article 15(6) and (7) of the Constitution include the interests of national economy, national security, public order and the protection of public health or morality, and the rights and freedoms of others.

In *Vadivelu v. Officer in Charge, Sithambarapuram Regional Camp Police Post, Vavuniya and Others* (SC (F.R.) No. 44/2002), Justice Fernando observed:

The restrictions on the freedom to travel [in this case] were comparable to the procedures often applicable to obtaining a visa for travel to a foreign country, with no assurance that permission would be granted. Cumulatively, they were significant restrictions on the petitioner's freedom of movement and residence guaranteed by Article 14(1)(h). He held: 'There is force in the respondent's contention that the restrictions complained of were imposed in the interests of national security and were reasonably necessary for that purpose. However, Article 15(7) required that such restrictions be imposed by a law, or by regulations made under the law relating to public security. Accordingly, the travel pass system constitutes a restriction not authorised by Article 15(7).

Therefore, in this case, the Supreme Court found that a travel pass system that was not authorised by law was not in compliance with Article 15(7) of the Constitution.

Applying the same reasoning to the present complaint, it is observed that the restriction of the complainant's freedom of movement on 5 March 2021 is inconsistent with Article 14(1)(h) read with Article 15(6) and (7) of the Constitution, as it was not a restriction by 'law'. It is observed that the Sri Lanka Navy was not, at such time, authorised to act as a competent authority under any law and or any Emergency Regulations issued by the President under the Public Security Ordinance.

In the letter dated 16 March 2021, no legal provisions were cited by the Respondent in explaining the circumstances in which the Complainant was prevented entry into Iranaitheevu. Moreover, no legal provisions were cited as a basis for the Respondent's comment that journalists who wished to travel to the said island should inform the Sri Lanka Navy.

The Commission notes that the Respondent did acknowledge that the freedom of movement of the Complainant had been restricted due to a 'communication gap', and that no legal restrictions were in fact applicable with respect to the Complainant's entry into Iranaitheevu.

In the absence of any law that authorises the Sri Lanka Navy to restrict or regulate the freedom of movement of citizens to and from Iranaitheevu, the said restriction on the Complainant's entry into Iranaitheevu, regardless of any explanation with respect to a 'communication gap', amounts to an infringement of the Complainant's fundamental rights.

The Commission accordingly finds that the Complainant's freedom of movement guaranteed by Article 14(1)(h) of the Constitution was infringed on 5 March 2021.

Although the Complainant separately alleged an infringement of his fundamental right to the freedom of expression, the Commission decided not to consider the merits of this claim in view of the fact that the Complainant was free to express his criticism of the impugned restriction on his freedom of movement. Moreover, the Commission was of the view that the award of compensation and/or costs was not appropriate in this case.

Recommendations

The Commission is of the view that, given the possibility of future similar infringements on the freedom of movement of citizens seeking to enter into Iranaitheevu, it was not appropriate to refer this matter for conciliation or mediation, and that certain recommendations need to be made to the Respondent.

In terms of section 15(3)(c) and (4) of the HRCSL Act, the following recommendations are made to the Commander of the Sri Lanka Navy:

- a) Refrain from imposing any restrictions (including requirements to obtain prior authorisation or give prior notice) on the Complainant or any other citizen of Sri Lanka with respect to entering Iranaitheevu unless such restrictions are by 'law' in accordance with Article 15(6) and (7) of the Constitution;
- b) Issue clear written instructions in the form of a circular to the relevant officers stationed in the North Central Naval Area directing the same to permit all citizens of Sri Lanka to enter Iranaitheevu without any restrictions, including the need for prior authorisation or notice;
- c) Provide a copy of such instructions to the HRCSL.

- d) Within one month of the receipt of these recommendations, report back to the HRCSL on the progress made with respect to measures taken to implement recommendations a), b), and c).



Justice L.T.B. Dehideniya
Chairman
Human Rights Commission of Sri Lanka.
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka



Nimal G. Punchihewa
Commissioner
Human Rights Commission of Sri Lanka.

Copies to :

01. Minister
Ministry of Defence
Defence Headquarters
Sri Jayawardenapura.
02. Regional Coordinator
Human Rights Commission Regional Centre
Jaffna.

Nimal G. Punchihewa
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Commissioner
Human Rights Commission of Sri Lanka