

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.7435 and 7437 of 2020

Choe Jae Won, aged 41 years
S/o Mr.Choe Yang Yoel,
No 129, Mannur Village,
Valarpuram Post,
Sriperumbudur Taluk,
Kancheepuram District,
Tamilnadu- 603109.

... Petitioner in W.P.No.7435 of 2020

Choi Yong Suk, aged 46 years
S/o Mr.BeakKyu Choi
Belchemp 804,
Hiranandini Park,
Oragadam,
Kancheepuram-603 109.

... Petitioner in W.P.No.7437 of 2020

Both Petitioners presently confined at
Special Camp at Trichirapalli
Based on the G.O.(1D) No.360, dated 02.08.2019
passed by the 1st Respondent

Vs.

1.The Principal Secretary to the Government (FAC)
Government of Tamilnadu,
Public (Foreigners-I) Department,
St.George Fort, Chennai.

2.The Superintendent of GST and Central Excise,
Enforcement Compliance Management Section,
Chennai Outer GST and Central Excise Commissionerate,
Newry Towers No.2054-1, II Avenue,

Anna Nagar, Chennai-600040.

3. The District Collector/District Magistrate
Office of the District Collector,
Trichirapalli District.

4. The Officer-In-charge,
Special Camp,
Trichirapalli District.

... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of writ of Mandamus, to release the Petitioners herein from the Special Camp at Tiruchirapalli and allow them to stay at Belchem 804, Hiranandini Post, Oragadam, Kancheepuram, due to the prevailing Pandemic situation caused due to COVID-19, based on the representation dated 26th March 2020.

For Petitioner in both W.Ps. : Mr.C.Arun Kumar

For Respondents 1, 3 & 4 : Mr.S.R.Rajagopal,
in both W.Ps. Additional Advocate General
assisted by
Mr.V.Jayaprakash Narayan,
Government Pleader

For 2nd Respondent : Mr.N.P.Kumar,
in both W.Ps. Special Public Prosecutor

COMMON ORDER

Due to lockdown on account of the outbreak of Corona Virus viz. COVID-19, these cases are taken up for hearing by means of 'Video Conferencing' through Zoom App.

2. Petitioners have come up with the present Writ Petitions seeking to release them from the Special Camp at Tiruchirapalli and allow them to stay at Belchem 804, Hiranandini Post, Oragadam, Kancheepuram, due to the

prevailing pandemic, based on their representations dated 26th March 2020.

3. On a reading of the Affidavits filed in support of the above Writ Petitions, it is seen that, the Petitioner in **W.P.No.7435 of 2020**, viz. **Choe Jae Won**, the General Manager of Chowel India Private Limited and the Petitioner in **W.P.No.7437 of 2020**, viz. **Choi Yong Suk**, the Managing Director of the said Company, were arrested on **24.06.2019** and remanded to judicial custody invoking the power of arrest under Section 69 of CGST Act, 2017. The said Company is engaged in the business of manufacturing Cowl bar, Bumper and seat frames used in Motor vehicles.

4. The allegation against the Company is that, it collected GST from their buyers, and has not remitted the same to the Government of India, since August 2017. The liability was assessed to the tune of **Rs.40,00,37,447/-** (Rupees Forty Crores **Thirty Seven Thousand Four Hundred and Forty Seven** only). For the said reason, the Enforcement Compliance Management Section of the GST, initiated prosecution against the Petitioners herein for the offence under Section 132(1)(d) of the Central Goods and Service Tax Act, 2017 (CGST Act, 2017) in R.R.No.20/2019 in C.No.IV/06/107/2019-ECM.

5. Petitioners were enlarged on **interim bail** till **11th September 2019**, by an order of this Court dated **09.08.2019** made in **CrI.O.P.No.19957 of 2019** with a condition to deposit a sum of **Rs.7,50,00,000/-** (Rupees Seven

Crores and Fifty Lakhs).

6. As the Petitioners were unable to mobilize the said amount, they were once again remanded to judicial custody. On 15th November 2019, this Court permitted the Petitioners to approach the Trial Court seeking the relief of **default bail** as mandated under Section 167(2) Cr.P.C. Subsequently, bail Petitions were withdrawn and liberty was granted to the Petitioners to approach the trial Court seeking the relief of default bail under Section 167(2) Cr.P.C. Thereafter, by an order dated **19.11.2019**, the learned Additional Chief Magistrate, enlarged the Petitioners on bail. However, the 1st Respondent, vide proceedings dated **21.11.2019**, sent the Petitioners to the custody of the 2nd Respondent.

7. Challenging the same, Petitioners herein filed **H.C.P.No.2767 of 2019 and H.C.P.No.2776 of 2019**, respectively. The said cases were posted for hearing on 26th March 2020, at the instance of the 2nd Respondent, to file counter. However, due to the prevailing pandemic, the said cases could not be listed.

8. It is the case of the Petitioners that, the 2nd Respondent has completed the investigation and filed a Complaint before the Additional Chief Metropolitan Magistrate, Chennai, which is numbered as EOCC No.1 of 2020. Hence, they seek permission of this Court to allow them to stay at

Belchem 804, Hiranandini Post, Oragadam, Kancheepuram, on the grounds that, the Authorities in the Special Camp at Tiruchirapalli have not taken proper measures of spraying any disinfectant in the Camp and that, social distancing is not properly maintained there.

9.Learned counsel for the Petitioners submitted that, pendency of the Habeas Corpus Petitions filed by the Petitioners is not a bar for this Court to hear the present Writ Petitions and in case, these Writ Petitions are dismissed only on the ground of alternative remedy, then, it may give rise to another round of litigation. It is his contention that, the Special Camp in Tiruchirapalli District, where the Petitioners are detained, can accommodate only 40 persons, whereas, nearly 80 persons are detained. According to him, the said Camp is not conducive for the inmates to stay safely, as, if anyone in the said Camp is infected with COVID-19, lives of other persons detained there, will be put to threat.

10. It is further submitted by the learned counsel for the Petitioners that, the Petitioners herein ensure that, they will abide by the conditions imposed by this Court, and that, they will not move from Kancheepuram District, till normalcy is back, and thereafter, they are willing to come back to the Special Camp in Tiruchirapalli District.

11.Learned Additional Advocate General appearing for Respondents

1, 3 and 4, highly objecting to the contentions of the learned counsel for the

Petitioners, submitted that, at present, none detained in the Special Camp in Tiruchirapalli District is infected with COVID-19 and that, safety measures are taken by the Authorities. He further submitted that, there are 40 rooms available in the Special Camp in Tiruchirapalli District, wherein, 73 inmates are confined and that, sufficient space is available to maintain social distancing norms among the inmates. According to him, Petitioners alone cannot be shown any indulgence by permitting them to reside in their respective residences, and in the event of granting the relief sought by the Petitioners, there is every possibility of other inmates knocking at the doors of this Court seeking similar relief, in which event, a different yardstick cannot be applied.

12. On behalf of Respondents 1, 3 and 4, counter Affidavits have been filed in both Writ Petitions. Relevant portions of the same are extracted hereunder:

“4. With reference to the averments made in (i) and (iv) in the grounds of the affidavit, it is submitted that Mobile Medical Unit has already visited the Special Camp and checked all the inmates for any symptoms of COVID-19 on 28.03.2020 and none was affected in the camp. The present strength of the inmates of the camp is 73 and there is sufficient space available in the camp to maintain the social distancing norms in view of COVID-19 outbreak.

5. With reference to the averments made in (ii), (iii) and (vi) in the grounds of the Affidavit, it is submitted that

the District Collector, Tiruchirapalli vide letter dated 27.03.2020 has instructed the Special Deputy Collector, Special Camp, Tiruchirapalli to follow the norms of social distancing and disinfection activities at the Special Camp to prevent COVID-19 and a copy of the same is enclosed herewith as Enclosure (I). Accordingly, disinfection activities are done on a daily basis. The Municipal Corporation, Tiruchirapalli is continuously spraying disinfectants in the camp and the same is being monitored by the Special Deputy Collector, Special Camp. Necessary arrangements have also been made for providing hand sanitizers and hand wash liquids to all the inmates.

6. With reference to the averments made in (vii), (viii) and (ix) in the grounds of the Affidavit, it is submitted that as per the directions of the District Collector, Tiruchirapalli, mobile medical unit is visiting the camp every fortnight and any inmate with symptoms of COVID-19 is taken immediately to the nearby Government Hospital and necessary screening and quarantining is arranged.

7. With reference to the averments made in (vii), (viii) and (ix) in the grounds of the Affidavit, it is submitted that the social distancing norms are strictly followed in the camp.

8. With reference to the averments made in (x) in the grounds of the Affidavit, it is submitted that masks have been provided as a precautionary measure to all the inmates in the camp.

9. With reference to the averments made in (xi) in the grounds of the Affidavit, it is submitted that 40 attached Toilets and 15 common Toilets are available in the Special Camp and they are cleaned regularly and as such is

adequate for the existing inmates.”

13. According to Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the 2nd Respondent, the case against the Petitioners herein, is that, they have collected GST amounting to at least Rs.40,00,37,447/- from the customers, during the period from August 2017 to February 2019, but, failed to deposit the tax collected to the Exchequer, which had resulted in taking cognizance against them for offences punishable under Section 132(1)(d) of the CGST Act, 2017, Section 132(1)(d) of the TNSGST Act, 2017 and Section 20(xxi) of the IGST Act, 2017. He further submitted that, after completion of the investigation, Charge Sheet in C.C.No.1 of 2020 has already been filed against the Petitioners before the learned Additional Chief Metropolitan Magistrate (Economic Offences-I), Egmore Chennai, and the same is pending for trial.

14. Learned Special Public Prosecutor went on to state that, on investigation, it was found that, Petitioners have not been residing in the address furnished by them and that, they initially resided in Hotel Flamingo, Shanti Colony, Anna Nagar, Chennai-40 along with another Korean national and thereafter, they vacated the said Hotel. He vehemently contended that, false address has been furnished by the Petitioners in order to escape the clutches of Law and that, in the event of releasing the Petitioners from the

Special Camp in Tiruchirapalli District to stay at their residence in Kancheepuram District, they will certainly flee away from our country to Korea, through the borders of Nepal and China.

15. The 2nd Respondent herein has filed counter Affidavit in both Writ Petitions. Relevant paragraphs are extracted hereunder:

“6. The 2nd Respondent humbly submits that they had ascertained that Shri. Choe Jaewon, who was staying at HotelFlamingo, Shanti Colony, Anna Nagar, Chennai-40 along with another Korean by name Shri. Park ByungKyu and they have vacated the hotel on 13.09.2019. It was observed that they have utilised the credit card for payment. **Shri. Choi Yong Suk herein was not staying at 804 Belchamp, Hiranadham Parks, Oragadam Kanchipuram-602105.** In this regard, Lookout circulars dated 17.09.2019 have been issued for Shri Choi Yong Suk and Choe Jae Won.

10. The 2nd Respondent submits that both the accused Choi Yong Suk and Choe Jae Won repeatedly made assurances in the Court of Economic Offence –I, Egmore and Hon'ble High Court about cooperating with the investigation, but failed to do so by deliberately absconding and not co-operating with the investigation. **Further proceedings under Central Excise Act, 1944 has been initiated by issue of following Show Cause Notices for evasion of Central Excise duty with proposal to impose personal penalty on both the accused persons:**

(1) Show Cause Notice No. 06/2019(C.Ex.) dated 08.01.2020 on them for availment of ineligible CENVAT credit to the tune of Rs.12,90,10,805/- and short payment of Central

Excise Duty of Rs.20,56,27,857/- under Central Excise Act'1944 for the period from October'2014 to Jun'2017 in respect of M/s.Chowel India Pvt.Ltd-Plant-I.

(2) Show Cause Notice No. 02/2020(C.Ex.) dated 24.03.2020 on them for availment of ineligible CENVAT credit to the tune of Rs.2,26,74,056/- (for the period from September'2014 to Jan'2017) and short payment of Central Excise Duty of Rs.3,41,37,325/- under Central Excise Act'1944 for the period from September'2014 to Jun'2017 M/s.Chowel India Pvt. Ltd- Plant-II. Which is apart from the non-payment of GST collected from customers amounting to atleast Rs.40,00,37,447/- for the GST period i.e. from July'2017 to Feb'2019.

11. The 2nd Respondent further submits that there is significant flight risk involved, in case they are given bail. Therefore, it is important that they remain in the Special Camp in Trichy, to ensure they do not flee the country before the completion of the on-going investigation (under GST enactment and other acts) and to attend the prosecution launched against them in E.O.C.C. No. 01/2020 which is pending before E.O.1 Court, Egmore and to complete the trial. Further, as order for sending the accused to special camp at Trichy was given by Public (Foreigners) Department, Tamil Nadu in exercise the power conferred under section 3(2)(e) of the Foreigners Act,1946 and hence it is not arbitrary.

The 2nd Respondent submits that aggrieved by the order of sending the Petitioner to the Special camp, the Petitioner and his General Manager preferred the H.C.P.'sand they are pending before this Hon'ble Court in HCP No.2776/2019 registration date 05.12.2019, in respect of Choi Yong Suk and H.C.P.

No.2767/2019 registration date 06.12.2019, in respect of Choe Jae Won.”

16. Heard the learned counsel for the parties and perused the documents furnished along with the Affidavits filed in support of the above Writ Petitions.

17. Petitioners are presently detained at the Special Camp in Tiruchirapalli District, and are in the custody of the 2nd Respondent herein. After seeing the photographs sent by the learned counsel for the Petitioners through e-mail, pertaining to the present condition of the rooms in the Special Camp and the inmates staying there, this Court intended to ascertain the veracity of the same. Accordingly, one S.N.Suthanthira Rajan, Special Deputy Collector was connected through WhatsApp Video call today, and he took this Court to the maximum areas of the Special Camp in Tiruchirapalli District. After watching the same, this Court is able to visualize that, the Special Camp is maintained neatly and there are no stains in the Toilets.

18. When sufficient space is available in the Special Camp in Tiruchirapalli District to accommodate 80 persons and that, only 73 inmates are staying there, this Court is of the view that, photographs furnished by the Petitioners to the effect that, *more number of persons are detained in a single room without any sign of social distancing*, have been taken by the

Petitioners only for the purpose of this case. By doing so, Petitioners are

inviting diseases and none can be blamed for their act. The cluster in the room is the act of the inmates and not on account of the Respondents.

19. As regards the argument advanced by the learned counsel for the Petitioners that, in the remand Application, residential address of the Petitioners have been furnished to the 2nd Respondent, this Court is of the view that, the same cannot be gone into at this stage. This Court is not an Investigating Agency to ascertain as to whether the address furnished by the Petitioners, is correct or not.

20. In cases of detention, the concerned State Government has to take a decision, and Courts cannot step into their shoes. Law is equal to everyone, be it an innocent or a criminal. Right of liberty and the right to live are guaranteed to every person in this Country under Article 21 of the Constitution of India.

21. It is pertinent to note that, none detained in the Special Camp in Tiruchirapalli District is infected with COVID-19. If the Petitioners are released and sent out to live in the address mentioned in Kancheepuram District, and after a few days, assuming that, they are tested positive for COVID-19 on account of shifting them, then, the entire area in which they reside will be sealed, and chances of spreading the virus to other people residing in Kancheepuram District, will be high. Instead of eradicating the pandemic, the Court will directly be responsible for spreading the virus to

innocent persons.

22. Furthermore, when there are other persons quarantined with the Petitioners in the Special Camp in Tiruchirapalli District, a different yardstick cannot be applied to the Petitioners alone. This will not only set an unfair precedent, but will also open the pandora's box, paving way to other persons detained in the Special Camp in Tiruchirapalli District to approach this Court for similar orders. Ultimately, the State machinery will crash.

23. It appears that, the Petitioners herein are unable to realize the consequences of the prevailing pandemic. When the Central and State Governments are taking effective steps to prevent further spread of COVID-19, public, as responsible citizens must extend utmost co-operation to the Government in eradicating this pandemic and shall not try to disrupt the functioning of the Government. *We must realize that, the battle is between human beings and nature; unless human beings sail with the nature, nature alone will win the war.*

24. At this juncture, learned Government Pleader appearing for Respondents 1, 3 and 4, pleaded that, instead of shifting the Petitioners from the Tiruchirapalli Camp, trial in their case may be ordered to be conducted in a speedy manner.

25. Finding justification in the plea made by the learned Government Pleader and considering the fact that, several Non-Bailable Warrants have

already been issued to the Petitioners and that, there is every possibility of the Petitioners fleeing away from the clutches of Law, *this Court while declining the relief sought by the Petitioners, without prejudice to the rights of the parties in the pending Habeas Corpus Petitions*, directs the learned Additional Chief Metropolitan Magistrate (Economic Offences-I), Egmore, Chennai to take up the case in C.C.No.1 of 2020, *after normalcy is restored post COVID-19 lockdown*, and proceed with the same on a day-to-day basis, without adjourning it beyond ten working days at any point of time.

26. Before parting with, I wish to emphasize that, there are advantages in hearing cases through *Whatsapp Video Call*, and the fact remains that, it is less time-consuming, and it will be helpful to analyze the exact scenario of each case, so as to arrive at a definite conclusion, as was done in the case on hand. The system of viewing disputed sites through “*Whatsapp Video Call or any other Application through Video mode*” can be implemented in cases pertaining to *encroachments on roads, water bodies, poramboke lands, Tanks, illegal constructions, OSR, Parks, etc. to ensure that, the Officials/Authorities discharge their work without any extraneous consideration.*

27. With the above direction and observations, Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions if any, are closed.

09.04.2020

Index : Yes/No

Speaking Order : Yes/No

(aeb)

To:

1. The Principal Secretary to the Government (FAC)
Government of Tamilnadu,
Public (Foreigners-I) Department,
St. George Fort, Chennai.
2. The Superintendent of GST and Central Excise,
Enforcement Compliance Management Section,
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Trichirapalli District.

S.VAIDYANATHAN,J.

(aeb)



Common Order in

W.P.Nos.7435 and 7437 of 2020

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