

JOHN M. MEYER, JR., Petitioner
v.
GEORGE A. EPSOM, Respondent
Civil Action No. 262
Trial Division of the High Court
Marshall Islands District
June 15, 1965
See, also, 3 T.T.R. 586

Habeas corpus proceeding on Kwajalein Island. Evidence established that petitioner, after being released on bail pending appeal of criminal convictions, was subjected to restrictions ordered by United States Army beyond those ordinarily placed upon persons in petitioner's position as civilian employee on Kwajalein Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that petitioner was illegally restrained of his liberty in violation of Trust Territory law, in that he was denied substantially more of benefits of release on bail than shown to be justified under all the circumstances. Writ sustained.

1. Trust Territory-Immigration

Since Trust Territory of the Pacific Islands is strategic trusteeship, entry into it by noncitizens is forbidden without permission of United States as administering authority. (T.T.C., Sec. 667)

2. Trust Territory-Kwajalein

Army authorities have wide discretion in dealing with persons on Kwajalein Test Site as many activities carried on there are of classified and sensitive nature.

3. Trust Territory-Kwajalein

Since Kwajalein Test Site is part of Trust Territory of the Pacific Islands, Trust Territory laws apply there. (T.T.C., Sec. 35)

4. Trust Territory-Kwajalein

Army has right to put person released on bail off of Kwajalein Test Site if it so desires provided this is done in reasonably safe manner without use of any more force than reasonably necessary.

5. Bail and Recognizance-Kwajalein

Individual cannot reasonably be restricted to small part of area he was formerly allowed use of on Kwajalein Island, in manner closely approaching modified form of house arrest, while he is supposed to be at liberty on bail.

6. Bail and Recognizance-Kwajalein

Individual released on bail on Kwajalein Island should not be expected to leave jurisdiction without consent of surety on bail bond who, under ordinary principles of American law, would be entitled to prevent his leaving jurisdiction.

7. Bail and Recognizance-Generally

As matter of bail is well understood in United States and entirely foreign to Micronesian customs, incidents and effect of release on bail must be construed in accordance with American principles.

8. Bail and Recognizance

General understanding of bail in United States is to permit person so released to go at large and not be cut off from his normal contacts with society, subject to sureties' authority over him and their right to prevent his leaving jurisdiction.

9. Military-Authority Over Civilians

- Even under martial law, power of military over persons not in military service is limited to reasonable necessities of the occasion.

10. Bail and Recognizance-Generally

Where restrictions placed upon individual released on bail constitute restraint of liberty, relief is ordinarily obtainable by habeas corpus.

11. Bail and Recognizance-Generally

Since risk of having person charged with or convicted of serious crime present in community is normal incident of right to bail, desire to have such person excluded is not adequate justification for unduly close restriction while he is released on bail.

12. Trust Territory-Kwajalein

By consenting to employment on Kwajalein Test Site, individual agrees to degree of restraint usual there for persons in his position, and he has voluntarily given up his liberty of action to that extent.

13. Bail and Recognizance-Kwajalein

Army has both right and obligation to protect its classified activities from observation by unauthorized persons and to terminate right which individual released on bail may previously have had to access to such materials or particular area where they are kept or where such activities are carried on.

14. Bail and Recognizance-Kwajalein

So long as individual released on bail is required to remain at Kwajalein Test Site, he is in position like that of tenant at sufferance.

15. Bail and Recognizance-Kwajalein

Individual released on bail and required to remain at Kwajalein Test Site has no specific right to be there except that arising from exigencies of -situation, but he cannot fairly be considered trespasser and does have some rights.

16. Bail and Recognizance-Kwajalein

Individual released on bail at Kwajalein Test Site has right to normal benefits of bail within limitations he voluntarily accepted by consenting to employment on Test Site, and which do not reasonably endanger security of classified matter.

17. Bail and Recognizance-Kwajalein

Individual released on bail at Kwajalein Test Site has only consented to restrictions usual for person in his former condition on Kwajalein Island, which does not include close restraint on individual basis without showing of special need for such restraint.

18. Bail and Recognizance-Kwajalein

While on base, individual released on bail at Kwajalein Test Site should be allowed freedom on areas of island to which he was formerly entitled for purposes not directly connected with his employment, unless and until reasonable arrangement is made for him to go at large elsewhere in Trust Territory.

19. Trust Territory-Kwajalein

Consent to employment on Kwajalein Test Site carries with it obligation to act in open and straightforward manner, and obligation continues even though individual's permission to be normally on Test Site has been revoked.

FURBER, *Chief Justice*

OPINION

This is a habeas corpus proceeding. It is very clear from the petition, the respondent's oral return to the Order to Show Cause why the petition should not be granted, the evidence presented at the hearing on the return of that Order, and the arguments presented, that the petitioner, prior to the issuance of the Temporary Order for Limited Release in this proceeding was being held by the respondent under what he refers to as "restriction", ordered by the U.S. Army for the security of the Army base known as the Kwajalein Test Site of the U.S. Army Material Command, which includes the whole of Kwajalein Island. Under written order of the commanding officer of the headquarters of the said Test Site, petitioner was restricted "to the transient hotel premises except that you

may use the chapel facilities, snack bar, postoffice and the bachelor's swimming pool for exercise", and required to use only certain specified routes to and from the facilities mentioned, and made subject to a curfew from 2230 to 0600 hours during which time he was restricted to the transient hotel. This written order was later orally modified to restriction from all other areas except those enumerated in the written order, but notice of this modification was not transmitted to the petitioner until it was announced in the presence of his counsel at the hearing on the return of the Order to Show Cause. The restriction was still further modified while the bachelor's swimming pool was closed temporarily to permit him the use of the athletic field for exercise in place of the swimming pool, and the petitioner was informed of this modification. Still later the petitioner was given special permission on request to go to the hospital, the library and the barber shop on one or more specific occasions.

The respondent stated that he did not know the reason for the Army's order, that it is his understanding the Army has complete control of the Kwajalein Test Site and need not give any reason for its orders in regard to it, that he is subject to the Army's orders, but cannot speak for the Army, and that the petitioner's permission to be on the Kwajalein Test Site has been revoked.

There is no dispute but what the petitioner was a United States citizen bachelor employee on Kwajalein Island of Global Associates in wage grade 5 before he became involved in difficulties resulting in the criminal case of the *Trust Territory of the Pacific Islands v. John M. Meyer, Jr.*, Marshall Islands District Criminal Case No. 48, in which he was convicted by the Trial Division of the High Court of the Trust Territory, of burglary and grand larceny, from which convictions he has taken an appeal. As a result of that appeal the court granted a stay of exe-

cution of the sentences pending appeal and granted his release on bail which was duly posted, upon which he was released from actual imprisonment but was immediately placed under the above described "restrictions". While this habeas corpus proceeding has been going on, he has also been arrested for disturbing the peace, and released on bail in advance of trial on that charge, but has been placed under the same restrictions described above.

Under his contract of employment the petitioner is entitled to transportation to be provided by the Army back to the United States. It is the respondent's understanding that the Army would be ready to provide this or to permit the petitioner to proceed to some other part of the Trust Territory, except that the Trust Territory Government refuses to permit petitioner to enter any other part of the Trust Territory and desires that he not be permitted or at least assisted to leave the Trust Territory pending determination of his appeal. The Army therefore feels under obligation not to assist him in leaving and as a practical matter he cannot leave without some assistance from the Army.

[1-3] The court takes notice of the fact that the Trust Territory of the Pacific Islands is a strategic trusteeship and that entry into it by noncitizens of the Trust Territory is forbidden without permission of the United States as administering authority, regularly granted through the High Commissioner of the Trust Territory of the Pacific Islands, but that authority to grant this permission for the Kwajalein Test Site has been granted to the Army authorities. The court further recognizes that the Army authorities have a wide discretion in dealing with persons on the Kwajalein Test Site and that many of the activities carried on there are of a classified and sensitive nature. At the same time, the Test Site remains a part of the Trust Territory of the Pacific Islands, the Trust Territory laws still apply

there, and this is recognized in the agreement between the Army and the Trust Territory Government with regard to handling of criminal proceedings there.

[4-6] For the purposes of this proceeding the court is prepared to assume that the Army would have a right to put the petitioner off of the Test Site if it so desired, provided they did this in a reasonably safe manner without use of any more force than reasonably necessary, but whether the decision is considered that of the Army or the Trust Territory Government, it appears to the court that the petitioner cannot reasonably be restricted to a small part of the area he was formerly allowed the use of on Kwajalein Island, in a manner closely approaching a modified form of house arrest, while he is supposed to be at liberty on bail, nor should he be expected to leave the jurisdiction-especially without the consent of the surety on his bail bond who under ordinary principles of American law would be entitled to prevent his leaving the jurisdiction.

[7-10] Bail being a matter well understood in the United States and entirely foreign to Micronesian customs, it is believed that the incidents and effect of release on bail under Trust Territory law must be construed in accordance with American precedents. The general understanding of bail in the United States is to permit the person so released to "go at large" and not be cut off from his normal contacts with society, subject to the authority over him of his surety or sureties and their right to prevent his leaving the jurisdiction. 8 Am. Jur. 2nd, Bail and Recognizance, § 94, n. 17 and 18. Even under martial law in its strict sense the power of the military over persons not in the military service is limited to the reasonable necessities of the occasion. 36 Am. Jur., Military, § 112, n. 11 and 12. It is believed that there can be no question but what the restrictions referred to by the respondent constitute a restraint of liberty of the type from which

relief is ordinarily obtainable by habeas corpus. 25 Am. Jur., Habeas Corpus, §§ 23, 24, n. 9 and 10. *Jones v. Cunningham*, 371 U.S. 236, 83 S.Ct. 373 (1963).

[11] The difficult question for the court is whether this restraint must be considered justified as part of the Army's right to control one of its bases. Neither counsel has been able to call the court's attention to any precedents closely in point. Noone directly representing the Army has come forward to support the respondent or explain the reasons for the Army's close restriction on the petitioner, at either the hearing on return of the Order to Show Cause or at the hearing on the writ itself, and both counsel informed the court that no change in the petitioner's situation has been made during the fifteen days delay which the court granted between the determination that the writ should issue and the actual issuance thereof, in order to permit counsel to work out some solution with the Trust Territory Government and the Army along the lines indicated orally by the court. No showing has been made of any ground to doubt the petitioner's loyalty to the United States beyond such inference of lack of reliability as may be drawn from the convictions set forth above. The court must therefore assume from the information submitted that the reason for such close restraint of the petitioner is to cut him off from extended contact with the major part of the community on Kwajalein-presumably to improve the morale and peace of mind of the community. A desire not to have a person in their midst who has been charged with or convicted of serious crime may often be present to some extent in a community in the United States, but any risks involved are regularly accepted in the United States as a normal incident of the right to bail. Accommodating such a desire therefore does not appear to the court to

be an adequate justification or sufficient reason for such close restriction.

[12,13] By consenting to employment on the Test Site the petitioner is believed to have consented to the degree of restraint usual there for persons in his position prior to the difficulties mentioned above. He is considered to have voluntarily given up his liberty of action to that extent. The court also recognizes that the Army has both a right and an obligation to protect its classified activities from observation by unauthorized persons and to terminate any right the petitioner may previously have had to access to such materials or the particular areas where they are kept or where such activities are carried on. Counsel for the petitioner has emphatically stated that the petitioner does not wish to leave the jurisdiction of the Trust Territory of the Pacific Islands and if he were to do so, it would involve him or someone in such expense and inconvenience if his convictions are affirmed in whole or in part, that the court does not consider his possibly leaving the jurisdiction as a practical solution of the present situation.

[14-18] So long, therefore, as he is, as a practical matter, required while on bail to remain on the Kwajalein Test Site because of the combined desires and actions of the Army and the Trust Territory Government, it is believed that he is in a position somewhat like that of a tenant at sufferance. He has no specific right to be there except that arising from the exigencies of the situation, but he cannot fairly be considered a trespasser and he does still have some rights. Balancing all the interests involved, the court believes that among those rights is that to the normal benefits of the bail which he has been granted so far as those benefits are within the limitations which he has voluntarily accepted by consenting to em-

ployment on the Test Site and are not shown to reasonably endanger the security of classified matter. It is the belief of the court that his consent to the restrictions usual for a person in his former condition on Kwajalein Island cannot reasonably be held to include close restraint on an individual basis without showing of special need for such restraint, and that he should therefore, while on bail, be allowed the freedom of those ordinary community facilities and areas on Kwajalein Island to which he was formerly entitled for purposes not directly connected with his employment and to which he was permitted to go in his off duty hours, unless and until reasonable arrangement is made for him to go at large elsewhere in the Trust Territory.

[19] At the same time Kwajalein Test Site being known to handle matters of a sensitive security nature, it is believed that his consent to employment there carried with it an obligation to act in an open and straightforward manner and that this obligation continues even though his permission to be normally on the Test Site has been revoked. In other words, he should endeavor to conduct himself just as well as he was expected to as to non-duty matters while he was still employed on the Test Site.

The court therefore holds that the petitioner has been illegally restrained of his liberty in violation of Trust Territory law, in that he has been denied substantially more of the benefits of release on bail than has been shown to be justified under all the circumstances.

JUDGMENT

The petition and writ of habeas corpus issued in these proceedings having come on to be heard before this court on the 7th day of June, 1965, Kwajalein time, that is, the

8th day of June, 1965, usual Marshall Islands District time, and after hearing Roger St. Pierre, counsel for the petitioner, in support of the writ and the respondent George A. Epsom acting for himself in opposition thereto, and upon consideration, with their consent, of the oral return made to the Order to Show Cause why the petition should not be granted, and the evidence and arguments presented at the hearing on the return of the Order to Show Cause, and in accordance with the foregoing opinion, it is,

Ordered, adjudged, and decreed as follows:-

1. That said writ of habeas corpus be and the same is hereby sustained to the extent indicated below.

2. That the petitioner John M. Meyer, Jr., be and he hereby is discharged from restraint to the extent of being permitted to "go at large" on Kwajalein Island, Marshall Islands District, to all ordinary facilities and areas or parts thereof regularly open to United States citizen bachelor employees of Global Associates wage grade 5 who have permission to be on Kwajalein Island, but only during the times that such facilities or areas are regularly open to such bachelors and not including access to any parts of buildings or areas in which parts classified matters are kept, handled, or carried on, or that are used for strictly military purposes.

3. That the petitioner John M. Meyer, Jr., go at large within the areas specified above only in an open and straightforward manner, without making any effort to conceal his whereabouts or activities from Army authorities or their civilian subordinates.

4. That this judgment supersede the Temporary Order for Limited Release issued by this court June 8, 1965, Kwajalein time, i.e., June 9, 1965, usual Marshall Islands District time.