

**(1951) 01 BOM CK 0003**  
**In the Bombay High Court**

Atau Raheman

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

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**Date of Decision :** 31-01-1951

**Acts Referred:**

Constitution of India, 1950 — Article 11, 19

**Citation :** (1952) CriLJ 580

**Hon'ble Judges :** Mudholkar, J; Mangalmurti, J

**Bench :** Division Bench

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## Judgement

1. The petitioner is the son of one Niyamat (son of Makdum Bux) who is at present detained in police custody at Nagpur. It would appear that the petitioner has made a petition to this Court u/s 491, Criminal P.C., for the release of Niyamat and that an order has been passed by this Court (Misc. or. case No. 13/51) stay it g she removal of Niyamat out of the jurisdiction of this Court till the disposal of that application.

2. The reason why the applicant is detained is that having been convicted of an offence u/s 5, Influx from Pakistan (Control) Act by a Magistrate Second Class, on 24.11.1950, he has been arrested u/s 7 of that Act with a view to being deported from India. The petitioner states that Niyamat after being arrested on 8.1.1951 was taken to the borders of India but was again brought back to Nagpur on 17.1.1951 and is since then in police custody. Why Niyamat was brought back to Nagpur after being taken to the borders of India has not been explained by the petitioner.

3. The petitioner now wants that a writ of mandamus be issued to the State of Madhya Pradesh and District Magistrate Nagpur, ordering them to allow Niyamat to remain and settle in India and if necessary, "ordering them to take all possible steps to facilitate to stay of Niyamat in India." We have considered a similar matter recently in Mohommad alias Muthubhai v. High Commissioners for India in Pakistan Misc. Petn. No. 46 of 1950, D/- 2.1.1951, and come to the conclusion that, u/s 1, Influx from Pakistan (Control) Act, a person who has committed an

offence u/s 5 of the Act, or contravened the terms of his permit, is liable to be removed from India. We are, however, told by the learned Counsel that with regard to the very persona who were applicants before us in Muthubhai's case, an interim order has been issued by the Supreme Court staying their deportation from India and that there are observations in that order which would suggest that a citizen of India cannot be deported. That order is not before us.

4. In the view we have taken in Muthubhai's case, Misc. Petn. No. 46 of 1950 (Nag), the provisions of the Influx from Pakistan (Control) Act would apply to the citizens of India, equally with those who are not citizens of India. There is no doubt that the Constitution guarantees several freedoms to a citizen but it does not guarantee that a person who is once a citizen of India will always continue to be a citizen of India. Indeed "citizenship" occurs in Part II of the Constitution whereas fundamental rights are to be found in Part III. Further, Article 11 of the Constitution confers power on Parliament to make

any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

So wide and extensive a power, would, in our opinion, include the lesser power to place restrictions even on citizens in the matter of entering the territory of India. If authority were needed for this proposition, we would refer to two decisions of the United States of America. They are *Seaboard Air Line Railway Co. v. North Carolina* (1917) 245 U.S. 298 and *Ziffren, Inc. v. Reeves* (1939) 308 U.S. 132.

5. In *Seaboard Air Line Railway Co. v. North Carolina* (1917) 245 U.S. 298, a state regulation placing restrictions on the import of intoxicating liquor from neighbouring states was challenged on the ground that it infringed the Federal Constitution in that it hampered inter-state commerce. It may be mentioned that this provision was part of a law enacted by the State of North Carolina prohibiting, except in restricted cases, the Consumption, sale, manufacture, etc., of intoxicating liquor in the State. It was not questioned that the State could prohibit the consumption, sale etc. of intoxicating liquor, but what was said was that it could not prohibit the importation of that commodity from other States. Dealing with this argument, McReynolds J., who delivered the judgment of the Court observed as follows:

The challenged Act, instead of interposing an absolute bar against all such shipment, as it was within the power of the State to do, in effect permitted them upon conditions intended to secure publicity, to the end that public policy might not be set at naught by subterfuge and indirection. The greater power includes the less.

6. The restrictions placed upon persons returning from Pakistan to India by the Influx from Pakistan (Control) Act were intended to prevent emigrants to Pakistan from returning to India. It is for that reason that every person, whether of Indian domicile or not, returning from Pakistan to India is required to have a permit. To ensure the enforcement of the Act penalties have been imposed for

the infringement of a provision of the Act or of the rules made or permits issued thereunder. The placing of these restrictions is, therefore, nothing but the exercise of a lesser power by the Legislature than the one possessed by it that is, the power of complete termination of citizenship of an individual who has gone to Pakistan or, for that matter, to any other country.

7. The other decision of the United States of America, *Ziffrin, Inc. v. Reeves* (1939) 308 U.S. 132, also dealt with intoxicating liquor. The learned Judge, who delivered the judgment of the Court, observed at p. 138:

Having power absolutely to prohibit manufacture, sale, transportation, or possession of intoxicants, was it permissible for Kentucky to permit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less.

8. We may mention that an argument was advanced before us that after the Constitution came into force Section 7, Influx from Pakistan (Control) Act became void as it was repugnant to the fundamental rights guaranteed by Article 19 of the Constitution. We would like to point out that a law passed by a competent Legislature should not be declared to be void except in a clear case and that every possible presumption regarding the validity of that law should be drawn until the contrary is shown beyond reasonable doubt. We must not forget that one branch of Government cannot encroach on the domain of another without danger. In this connection, we may refer to the following passage from Cooley's Constitutional Limitations, 8th Edn., Vol. I, p. 332, which was quoted with approval in a recent decision of this Court:

It must be evident to anyone that the power to declare a legislative enactment void is one which the Judge, conscious of the fallibility of the human judgment will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility. The legislative and judicial are co-ordinate departments of the Government of equal dignity; each is alike supreme in the exercise of its proper functions and cannot directly or indirectly, while acting within the limits of its authority be subjected to the control or supervision of the other, without an unwarrantable assumption by that other of power which, by the Constitution, is not conferred upon it. The Constitution apportions the powers of Government, but it does not make any one of the three departments subordinate to another when exercising the trust committed to it. The Court may declare legislative enactments "unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative. Being required to declare what the law is in the cases which come before them, they must enforce the Constitution as the paramount law, whenever a legislative enactment comes in conflict with it. But the Courts sit not to review or revise the legislative action but to enforce the legislative will; and it is only where they find that the Legislature has failed to keep within its Constitutional limits, that they are at liberty to disregard its action and in doing as, they only do what every private citizen may do in respect to the mandates of

the Courts when the Judges assume to act and to render judgments or decrees without jurisdiction. In exercising this high, authority, the Judges claim no judicial supremacy; they are only the administrators of the public will. If an act of the Legislature is held void, it is not because the Judges have any control over the legislative power, but because the act is forbidden by the Constitution and because the will of the people, which is therein declared, is paramount to that of their representatives expressed in any law.

Nevertheless, in declaring a law unconstitutional, a Court must necessarily cover the same ground which has already been covered by the legislative department in deciding upon the propriety of enacting the law, and they must indirectly overrule the decision of that co-ordinate department, The task is therefore, a delicate one, and only to be entered upon with reluctance and hesitation. It is a solemn act in any case to declare that that body of men to whom the people have committed the sovereign function of making the laws for the commonwealth have deliberately disregarded the limitations imposed upon this delegated authority, and usurped power which the people have been careful to withhold.

9. To these observations we may add the following observations of Marshal C.J. quoted in *Ashwander v. Tennessee Valley Authority* (1936) 297 U.S. 288:

On more than one occasion, this Court has expressed the cautious circumspection with which it approaches the consideration of such questions; and has declared that; in no doubtful case would it pronounce a legislative act to be contrary to the Constitution.

We may also give another quotation. This is from a judgment of Washington J. in the same report:

But if I could rest my opinion in favour of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favour of its validity, until its violation of the Constitution is proved beyond all reasonable doubt. This has always been the language of this Court when that subject has called for its decision; and I know that it expresses the honest sentiments of each and every member of this Bench.

10. Construing the provisions of Section 7 in the light of these principles of construction, we are unable to appreciate how they can be regarded as inconsistent with the provisions of Part III of the Constitution. It cannot be gainsaid that a State has ample power to pass any law to promote or to secure public health, safety and welfare. This power is sometimes called Police Power in the United States of America. In the exercise of that power, it is within the competence of the Legislature to place restrictions on the exercise of the rights conferred by Article 19 of the Constitution. Furthermore, as we have already

observed, Article 11 empowers Parliament even to terminate citizen, ship. Consequently, Parliament has also the power to do a lesser thing, i.e., to place restrictions on the right of a citizen to enter India after having left it and having entered India, to observe the conditions subject to which he was allowed to enter. This provision is quite independent of the reasonable restrictions contemplated by Article 19 and, in our opinion, confers the widest powers on Parliament to place restrictions on a citizen returning from a foreign country.

11. We are, therefore, unable to see how the provisions of Section 7, Influx from Pakistan (Control) Act can be regarded as unconstitutional or as having become void after the inauguration of the Constitution. For these reasons, we reject the petition summarily.