

(1958) 12 BOM CK 0001
In the Bombay High Court

Bawalkhan Zelanikhan

APPELLANT

Vs

B.C. Shah

RESPONDENT

Date of Decision : 03-12-1958

Acts Referred:

Foreigners Act, 1946 — Section 3(2)

Citation : (1958) 12 BOM CK 0001

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Judgement

K.K. Desai, J.—This is a petition under Article 226 of the Constitution challenging the validity of an order dated November 1st, 1958 made by the respondent in pursuance of Clause 11 of the Foreigners Order, 1948. The relevant facts are as follows:

2. The petitioner is a foreigner and is a national of Afghanistan. By an order dated June 3rd, 1957 made by the Dy. Secretary to the Government of India in exercise of the powers conferred by Sub-section (2) of Section 3 of the Foreigners Act It was directed that the petitioner shall not remain in India and that he shall depart from India by land-route and thereafter shall not re-enter India. According to the respondent the petitioner has been Involved in six criminal cases a list whereof is en- closed as Ex, I to the affidavit in reply. The petitioner has never denied the binding character of the order of deportation dated June 3rd, 1957. The Government however has not been able to deport the petitioner from out of India because the petitioner has to go to Afghanistan by land-route and at the date of the order there was no visa available to enable the petitioner to be sent through Pakistan, At present .steps are being taken by the Government for renewing pensioner"s pass-port for his return to Afghanistan, It appears that in the meanwhile, having regard to the opinion which the respondent had formed regarding the petitioner on his having been involved in criminal cases mentioned in Ex. 1 the order in question was made on November st,1958, The relevant part of the Order dated November 1st, 1958 runs as

under :

You are hereby ordered under the powers vested in me under Para 11 of the Foreigners Order, 1948:

(a) To report to the Inspector of Police, Registration of Foreigners Branch, Special Branch, II C. I. D., at his office at 3 p.m. every day.

(b) Not to change your address without permission in writing previously obtained from the Deputy Commissioner of Police, x x x

(c) Not to leave the limits of Greater Bombay "Without permission in writing x x x

3. The petitioner has argued this petition before me by contending that under Clause 11 of the Foreigners Order referred to in the impugned order, there is no power of any kind in the respondent to give directions as contained in Clause (a) in the order, viz, to report to the Inspector of Police, Registration of Foreigners Branch, Special Branch, II C. I. D., at his office at 3 p.m. every day. The petitioner has contended that as there is no such power contained in Clause 11 of the Foreigners. Order, this part of the order is without jurisdiction and there should be a writ of mandamus directing the respondent to forbear from enforcing that order.

4. In connection with the arguments advanced on behalf of the petitioner and the respondent, it is relevant to refer to certain provisions of the Foreigners Act and the Foreigners Order. The relevant provisions in the Foreigners Act are as follows ;"

3. Power to make orders: (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

2. In particular and without prejudice to the generality of the foregoing power, orders made under this Section may provide that the foreigner

(a) shall not enter India or shall enter India only at such times and by such route x x x

(b) shall not depart from India, or shall depart only at such times and by such route x x x

(c) shall, not remain in India or in any prescribed area therein.

(cc) x x x x

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may, be prescribed or specified?

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movement.

(iii) to (viii) x x x x

(ix) otherwise regulating his conduct in any, such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions:

and make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

5. Now, before referring to the Foreigners Order enacted in exercise of the powers contained in Section 3 of the Act it is relevant to point out that from Section 3 above the object of the Act appears to be to provide for prescribing, regulating and restricting amongst other things the presence and continued presence of a foreigner in India. What appears to have been intended is to confer power on the executive authority to prescribe and specify conditions for continuance of a foreigner in India. Extremely wide kind of or unlimited restrictions and prohibitions and regulations can be validly prescribed and specified. The legislature intended to give widest possible powers to the Government for obvious reasons. A foreigner is not entitled to any guarantees or fundamental rights as a citizen is entitled to under the Constitution. A foreigner can be dangerous to security of India, His presence may be undesirable for security of India. His presence may be undesirable for any reason of any kind and it appears to have been intended by the Legislature to leave the whole matter of the foreigner's presence in India to the executive discretion of the Government. The provisions as contained in Section 3 make this object of the Act abundantly clear. The last words in the Sub-section (2) of Section 3 of the Act show the wide character of the powers intended to be conferred on the Government. The power is given to make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters which may be deemed expedient or necessary by the Government for giving effect to the Act. I have accordingly no doubt that under the several items mentioned in subsection (2) of Section 3 there is power vested in the Central Government including the power to direct a foreigner in connection with his residence in India to report every day to the police authority as mentioned in Clause (a) of the impugned order....It is not as if there is no jurisdiction under the Act to make such an order. Even if I come to the conclusion that there was under Clause 11 of the Foreigners Order referred to in the impugned order no power in the respondent to direct the petitioner to report every day to the police authority I would be justified in holding that such power was intended to be conferred on the Central Government and that if not under Clause 11 such power was

otherwise also vested and I should not, having regard to the antecedents of the petitioner be justified in giving him the relief which he wants by way of writ,

6. The relevant part of Clause 11 of the Foreigners Order runs as under:

11. Powers to impose restrictions on movements etc: The civil authority may, by order in writing direct that any foreigner shall comply with such conditions as may be specified in the order in respect of:

1. his place of residence.

2. his movements.

2. x x x x

3. x x x x

7. Mr. Buch has contended that I must give effect to the marginal note and/or heading in this clause and also to the word "movements" as used in Clause 11, He says that the word "restrictions" has been used in the marginal note in the same sense as the same has been used in the Act in Section 3 (2)(e)(ii). He says that the word "restrictions" imports directions of a negative character and not of a positive character such as to report to the police authorities as contained in the impugned order. Mr. Kantawala for the respondent has contended that the provisions of Clause 11 are clear, and that I should not at all look to the marginal note or the heading of that clause for the meaning of the word "movements" as used in Sub-clause (2) of Clause 11. He has pointed out by referring to Murray's Oxford Dictionary the meaning of the word "movements" (mentioned as in the 2nd column of page 728 of Vol. 6 in the Murray's English Dictionary) under sub-heading (d) where it is stated as follows: "Chiefly pi : Actions, activities, doings of a person or body of persons". He has contended that having regard to this meaning of the word "movements" and having regard to the object of the Act as already mentioned by me above the true meaning of Clause 11(2) of the Foreigners Order is that the civil authorities can place any conditions on "actions, activities or doings" of a foreigner. He has contended that the reporting to the police authority is directly a condition on the actions or activities or doings of the petitioner and therefore the respondent had jurisdiction to make the impugned order.

8. In my view it is important to bear in mind that the word used is plural, viz., "movements" and not "movement". The conditions whenever they relate to movements, i.e., activities of a foreigner, may be specified in an order made under Clause 11(2). The condition to report to the Inspector of Police relates to the activity of the petitioner. It is not something foreign to the activity of the petitioner. I do not accept the contention of Mr. Buch that a condition relating to movements must be with reference to the movement of a foreigner from one place to another. The general condition as to the activities or a particular condition with reference to any activity of a foreigner would be justifiable under the provisions of Clause 11. I must admit that I have come to this construction

With certain hesitation. But having regard to the general scheme of the Act and the object as aforesaid of the Act, I must give widest possible meaning to the Clause 11 in the Foreigners Order and hold that the same is intended to empower the] civil authorities to take action of the kind contained in the impugned order. It is for this reason that I have given general meaning to the word "movements" and come to the conclusion that the respondent had jurisdiction to make the impugned order and was justified in imposing the condition as contained in Clause (a) of the impugned order. I do not agree that the conditions imposed must be negative and cannot be of positive kind.

9. Having regard to my aforesaid finding, the petitioner is not entitled to any relief. The petition is dismissed with costs. Rule discharged.