

(1959) 09 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 576 of 1959

Bernardo Steenholf Ultrich

APPELLANT

Vs

District Collector, Ernakulam and Another

RESPONDENT

Date of Decision : 28-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1960 Ker 177 : (1960) CriLJ 821

Hon'ble Judges : Vaidialingam, J

Bench : Single Bench

Advocate : K.P. Abraham, for the Appellant; Ad. General, for the Respondent

Final Decision : Dismissed

Judgement

N. Varadaraja Iyengar, J.—This is an application by the petitioner, who claims to be a Bolivian National, under Article 226 of the Constitution, for issue of a writ of certiorari or any other appropriate writ or order or direction for quashing two orders dated 25-2-59 and 23-3-59, passed by the District Collector and Additional District Magistrate, Ernakulam as against the petitioner, under paragraph 11 of the Foreigners" Order, 1948.

2. There are several allegations in the affidavit filed by the petitioner in support of the application which, in my view, have no bearing on the present application. Those allegations really relate to proceedings taken by the Customs Authorities which are directly the subject-matter of challenge by the petitioner in O. P. 577/1959 which is pending decision by this court. Therefore, I shall confine myself only to the relevant matters which may have a bearing on this application.

3. It is stated in the affidavit filed in support of the application that the petitioner is a Bolivian National and that he took a honey-moon trip with his wife from Genoa to Colombo and he had also taken his car No. OFR. 770. The petitioner left Colombo with his wife for Genoa on 4-12-58 by "M. V. Australia". The petitioner states that he and his wife had no intention of disembarking anywhere

except at Genoa. On 5-12-58, the ship touched Cochin Port and it is also stated that neither the petitioner nor his wife had any idea of landing at Cochin, nor did they make any attempt to do so, nor had they any intention of unloading their car, which was in the ship at Cochin.

4. The petitioner further states about some search made by the Customs officials on the ground that they suspected the existence of smuggled goods. It is further stated by the petitioner that his wife was allowed to continue her voyage, but the petitioner himself was brought out from the Boat, by the customs authorities and kept in the custody of the Customs Officers. The petitioner was lodged in a room in the Malabar Hotel in the Wellington Island and was guarded by plain clothed men.

5. After stating certain other events that took place, the petitioner alleges that a search was made by the Customs officials of the petitioner's car which had also been unloaded from the ship, and that the Customs authorities produced several packets of currency notes comprising Rs. 3,22,000 Indian currency and 44,900 dollars of American currency. He further states that he was again confined in the Malabar Hotel. The petitioner then refers to certain proceedings which took place before the officers of the Customs Department. Ultimately, the petitioner states that he was placed under arrest on 16-12-58 and produced before the District Collector and Additional District Magistrate, Cochin. The petitioner then refers again to certain other communications received by him from the Customs officials. Finally, the petitioner winds up by saying that on 20-1-59, he was released by the District Magistrate, on his furnishing suitable cash security.

6. The petitioner further states that after he was released on bail, he went to Bombay to see his solicitors and that he came back to the Malabar Hotel on 26-1-59 so that he could be present in the Magistrate's court in connection with the prosecution initiated against him for certain offences under the Sea Customs Act.

7. It is the further case of the petitioner that on 25-2-59, the District Collector and Additional District Magistrate, Ernakulam passed the order dated 25-2-59, Ext. 5 restricting the movements of the petitioner to the premises of the Malabar Hotel, Wellington Island and to his journeys from the hotel to the District Magistrate's Court, Ernakulam and back from the court to the hotel. The petitioner states that even otherwise, whenever he was going to the District Magistrate's court, a policeman always insisted on accompanying him and the result was that it was extremely difficult for him to contact his lawyer.

According to the petitioner, no reasons have been disclosed in the order Ext. P-5 nor was he given any opportunity to show cause against the passing of such an order and the petitioner alleged that the order of the Additional District Magistrate, really tantamounts to a house arrest, in spite of his release on bail by the District Magistrate on 20-1-59.

8. It is further alleged that the petitioner's advocate addressed the District

Magistrate to relax the restrictions imposed by his order dated 25-2-59. Ext. P5, so as to allow the petitioner freedom of movement to go to his lawyer with the necessary escort that may be found necessary. But this request was met by another order being passed against the petitioner on 23-3-59 namely, Ext. P6 to the effect that the petitioner should restrict his movements to the premises of the Malabar Hotels Willington Island and to his journeys from the Hotel to the District Magistrate's court, Ernakulam and back from the court to the Hotel as and when the court requires his presence. This order, according to the petitioner, enables him to go to the District Magistrate's court only on days when the court required his presence. The petitioner further alleges that his arrest on board the ship, and the forcible landing of himself and his car and the other acts of the Customs authorities are illegal and totally without jurisdiction. Sub-paragraphs A to J and N of paragraph 12 of the petitioner's affidavit really relate to an attack on the action taken by the customs authorities and to the prosecution initiated in the criminal court against the petitioner. Sub-paragraphs K, L and M of paragraph 12 set out the petitioner's grounds of attack against the 2 orders of the District Collector and Additional District Magistrate namely Exts. P5 and P6, with which this court is concerned now in the present petition. In Sub-paragraph K it is stated that the orders passed by the District Collector and Additional District Magistrate are illegal and without jurisdiction. The Foreigners Act, according to the petitioner, only regulates voluntary entry departure and residence of foreigners in India and it is not intended to regulate movements of foreigners in India, who are forced in or dragged into the Indian territory and whose presence in India is not voluntary but compulsory. The petitioner even if he is guilty of any offence, has been granted bail, without any restrictions. As bail has been granted by a Magistrate, it is not open to any authority to circumvent the provisions of the order granting bail, by resort to the provisions of the Foreigners Act or the Foreigners Order, so as to restrict his movements.

9. Sub-paragraph L states that the orders themselves have been passed by the District Collector and Additional District Magistrate in violation of the principles of natural justice and that no opportunity was given to the petitioner to show cause against the passing of such Orders and that the petitioner was not also heard before the orders were passed.

10. In Sub-paragraph M it is alleged that the orders are not passed in good faith for the purpose of the Foreigners Act, and that they have been passed merely to prevent the petitioner from obtaining effective legal aid for the purpose of defending himself in the criminal prosecution, The second order Ext. P6 in particular, has still further restricted his movements, It is also alleged that the attempts made to restrain his movements are merely with a view to drive him to plead guilty in the magistrate's court or to disable him from having appropriate legal assistance.

11. Ultimately, the petitioner prays for quashing the two orders namely, Exts. P-5 and P-6 passed by the District Collector and Additional District Magistrate.

12. On behalf of the first and second respondents, the second respondent namely, the District Superintendent of Police, Ernakulam has filed a counter-affidavit contesting the position taken up by the petitioner in this Original Petition. It is stated that the orders passed by the first respondent and sought to be quashed by this court, are valid and within the powers of the District Collector, who has been appointed as the "Civil Authority" for purposes of the Foreigners Order 1948. The orders are supported as being legal and as having been passed by virtue of the jurisdiction vested in law, in the District Collector, It is also contended that the orders do not suffer on any ground of violation of principles of natural justice and that there is no provision either in the Foreigners Act, or in the Foreigners Order, 1948, requiring the hearing of the petitioner or for giving him an opportunity to show cause before the order is passed. The respondents also contend that the orders Exts. P-5 and P-6 are only administrative in nature.

13. In particular, paragraphs 3, 4 and 5 of the counter-affidavit set out some of the circumstances on the basis of which the 2 orders, Exs. P5 and P6, came to be passed as against the petitioner. In paragraph 3 it is stated that the authorities had information about this petitioner that he was actively associated with other persons in carrying on smuggling activities in other parts of India. Reference is made to the activities of Thomas Dana, a Cuban National, from whose car large quantities of Indian and Foreign currency are stated to have been recovered in the middle of 1957 when he was attempting to cross over to Pakistan.

14. In paragraph 4 it is stated that one Weider, again a foreigner, managed to escape out of the country though the Customs authorities were successful in preventing him from taking his car also, and it is further stated that large quantities of currency were recovered from the said car by the boundary Customs authorities in 1958.

15. In paragraph 5 of the counter-affidavit it is stated that there was information that the present petitioner, even though on bail, is likely to contact his associates or otherwise do such acts as would facilitate the commission of acts involving violation of the customs laws. It is also specifically stated that there was information that the petitioner was attempting to get out of the country by using faked passports either in his name or in an assumed name. Thus it is stated on behalf of the respondents, that in view of all these circumstances it was considered necessary that the orders Exts. P5 and P6 should be passed as against the petitioner, restricting his movements by virtue of the powers vested in the first respondent, according to law.

16. It is also contended that the grant of bail in respect of a criminal proceeding pending against the petitioner by a criminal court, has no bearing in these proceedings and that will not in any way affect the validity of the orders passed by the District Collector, namely, Exts. P5 and P6.

17. The allegation that the order is not passed in good faith and that it was with a view to drive the petitioner to plead guilty to the criminal charge pending

against him or that the orders were passed to disable him from having appropriate legal assistance, are categorically denied as being untrue and are very strongly repudiated, It is also stated:

"The petitioner is not prevented in any way from meeting his lawyer and having any legal assistance."

18. The various other allegations made by the petitioner in his affidavit regarding either the criminal cases or regarding the action taken by the Customs Authorities are stated to be irrelevant in these proceedings and it is also stated that they are the subject-matter of another application, namely, O. P. 577/59 pending in this court. It is finally stated that the orders Exts. P5 and P6, have been passed under the jurisdiction and powers vested in the first respondent and that there are no grounds for quashing the said orders.

19. The grounds of attack against the orders passed by the District Magistrate namely, Exts. P5 and P6 are, as already mentioned contained in Sub-paragraphs K, L and M of paragraph 12 of the affidavit filed by the petitioner in support of this application and they are to the effect: (a) the Foreigners Act regulates only voluntary entry, departure, and residence of foreigners in India and it has no application in respect of movements of foreigners in India who are forced or dragged into the Indian territory and whose presence in India is not voluntary but compulsory; (b) bail having been granted by the criminal court, without any restrictions it is not open to the authorities to circumvent the said order granting bail by invoking the provisions of the Foreigners Act or Foreigners Order; (c) the orders have been passed in violation of the principles of natural justice inasmuch as no show cause notice was issued, nor was the petitioner heard, nor was an opportunity given to him before such an order was passed; and (d) the orders are not passed in good faith for the purpose of the Act but merely to prevent the petitioner from obtaining effective legal aid for the purpose of defending himself in the case.

20. All these contentions have been controverted and challenged by the respondents. Though" the 2 orders have been challenged in the application on the ground that there has been a violation of the principles of natural justice and that no opportunity has been given to the petitioner before the orders were passed and also on the ground that the orders have not been passed in good faith, Mr. K. P. Abraham, learned counsel appearing for the petitioner has not really attacked the order on any of these grounds. In fact, the learned counsel did not base his attack on the two orders either on the grounds of violation of the principles of natural justice or on the ground that the orders are not passed in good faith. Therefore it has become unnecessary for me to consider these grounds of attack, excepting to take note of the contentions of the learned Advocate General that there is no provision either in the Foreigners Act or in the Foreigners Order, which requires the hearing of a party before such orders are passed and his further contention that there is no question of want of good faith in the authorities when they passed the orders in question.

21. I may also state that the learned counsel Mr. K. P. Abraham has not made any attack on the statute itself namely, the Foreigners Act or on the Foreigners Order. The only contentions that have been raised by Mr. K. P. Abraham learned counsel for the petitioner are:

(1) The Foreigners Act -- Central Act 31/1946--applies only to foreigners voluntarily entering India and who further voluntarily reside or continue to reside in India and it has no application to cases like that of the petitioner who has not entered India voluntarily, but was compulsorily disembarked by the Customs authorities from the Boat in which he was travelling, and which touched Cochin on its way from Ceylon to Genoa. As the Act itself does not apply to persons like the petitioner, the District Collector has no jurisdiction to take action under the Foreigners Order either;

(2) In respect of a criminal offence alleged against the petitioner for which he was being proceeded with in a criminal court, the latter has thought fit to release the petitioner on bail on 20-1-59 without any restrictions, and it is not open to the authorities, even assuming that they have got such powers, to invoke the provisions of the Foreigners Act and the Foreigners Order to impose restrictions on his movements;

(3) The petitioner was released on bail by a criminal court on 20-1-59. Ext. P5 was passed on 25-2-59 by the District Collector under the Foreigners Order restricting the movements of the petitioner. There is nothing on record to show that his client has committed any breach of the orders of bail so as to warrant the order Ext. P5 being passed on 25-2-59; and

(4) There is nothing on record to show that the District Collector and Additional District Magistrate, Ernakulam has been appointed as the "Civil Authority" to exercise the powers under the Foreigners Order.

22. Regarding the point No. 4 raised by Mr, K. P. Abraham, the learned counsel contended that there has been a notification on 26-12-1950 constituting the District Magistrates of Trivandrum, Quilon and Trichur as the "Civil Authority" to function under the Foreigners Order, 1948 and that notification has been issued authorising the District Collector, Ernakulam to function as the "Civil Authority" for the District of Ernakulam. Though this point has not at all been raised in the application, nevertheless I permitted Mr. K. P. Abraham to raise this contention, because, if accepted it will go to show that the first respondent has no jurisdiction to issue the orders, Exts. P5 and P6 in this case. It is stated in paragraph 2 of the counter-affidavit filed on behalf of the respondents that the orders Exts. P5 and P6 are valid and are well within "the powers of the District Collector who has been appointed as the "Civil Authority" for the purposes of the Foreigners Order 1948." This gives an indication that the District Collector, Ernakulam has been appointed as the "Civil Authority" for the purpose of the Foreigners Order, 1948. But anyhow, to have the records complete, the learned Advocate-General has produced a copy of the notification D/-1-8-58, and which I

have marked as Ext. R. 1, in these proceedings. The said notification constituted several District Collectors of the various districts as "Civil Authorities" for the purpose of the Foreigners Order for the several areas mentioned therein. It is seen that the District Collector, Ernakulam, has been appointed as the "Civil Authority" for the District of Ernakulam. In the face of this notification, the fourth contention of Mr. K. P. Abraham has to be rejected. It follows that the District Collector, Ernakulam has been appointed as the "Civil Authority" for the purpose of the Foreigners Order 1948 and that he was competent to pass orders under the Foreigners Order. No doubt, the question as to whether the Foreigners Act and the Foreigners Order apply to the Present petitioner is a totally different matter.

23. I can also dispose of the second and third contentions of Mr. Abraham. In my opinion, the fact that the criminal court has granted bail to the petitioner on 20-1-59, pending his trial for offences under the Sea Customs Act, has no bearing, nor is it relevant when action is taken, by the District Collector and Additional District Magistrate under the provisions of the Foreigners Order, read with the Foreigners Act. The Foreigners Act and the Foreigners Order deal with totally different circumstances and they have nothing to do with proceedings pending before a criminal court for offences under the Sea Customs Act. It is also seen that the offences with which the petitioner is charged before the criminal court are bailable offences. There is no question of the authorities functioning under the Foreigners Order of circumventing the order of bail granted by a criminal court. Therefore, in my opinion the fact that the petitioner has been granted bail by a criminal court, under different circumstances, has no relevancy when I have to consider the jurisdiction, validity or otherwise of orders passed by the first respondent under the Foreigners Order, 1948. The further contention that nothing happened between 20-1-59, the date of granting bail and 25-2-59, the date of Ext. P5 so as to justify the action of the first respondent again does not appeal to me. As mentioned by me, the jurisdiction exercised by a criminal court in granting a bail pending a trial for a criminal offence, and the jurisdiction exercised by the District Collector under the Foreigners Order have nothing in common as between them and different types of powers and jurisdiction are exercised by the criminal court and the District Collector, It is not really necessary, in my opinion and there is no duty on the part of the respondents to satisfy the court that something happened between these 2 dates to justify action being taken by the first respondent under the Foreigners Order, Therefore, the second, third and fourth contentions of Mr. Abraham fail and cannot be accepted.

24. The main point that remains to be considered is the first contention of Mr. K. P. Abraham, learned counsel for the petitioner that the Foreigners Act and the Foreigners Order do not apply to persons like the petitioner in this case. That is according to Mr. K. P. Abraham, the petitioner was travelling in the Boat from Ceylon to Genoa and he was disembarked by the Customs authorities from the Boat when the Boat touched Cochin on her voyage to Genoa. In this case, the

learned counsel relied upon the statement in Ext. P1. Ex. P1 is an order dated 13-12-1958 passed by the Collector of Customs. The order as such, is not material for the purpose of this application, because those proceedings, are under challenge in O. P. 577/59. But the relevant portion of this order relied upon by Mr. K. P. Abraham is the statement to this effect namely,

""The suspicion on Mr. Bernardo was still strong and therefore, Volks Vagon Motor Car No. O. F. R. 770 belonging to Mr. Bernardo and booked from Colombo to Genoa on board the same vessel was off loaded from the ship for a thorough check. Mr. Bernardo was also disembarked from the ship for being present during the search oE his car."

This statement is relied upon by the learned counsel to show that his client, who had no intention of landing in India, was practically forced to land in Cochin due to the action of the Customs authorities. The learned counsel referred to the preamble to the Foreigners Act of 1946 and contended that it is intended to provide in respect of entry of foreigners into India, their presence therein and their departure therefrom. According to the learned counsel, these expressions will only take in (a) Foreigners who enter India voluntarily; (b) or are present in India voluntarily (c) or depart from India voluntarily. The learned counsel contended that the preamble to the Foreigners Act clearly gives an indication that it is intended to operate only as against such type of foreigners mentioned above. The learned counsel also placed reliance upon the observations of their Lordships of the Supreme Court reported in *In re Kerala Education Bill, 1957* AIR 1958 SG 956 at p. 974 to" the following effect:

"That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this court and as and by way of ready reference we may mention our decision in *Biswambhar Singh and Others Vs. The State of Orissa and Another*, as an instance in point."

Applying this test, the only conclusion that could be arrived at is, according to Mr. K. P. Abraham, that the Foreigners Act will not apply to foreigners who are not present in India voluntarily but due to the act of other authorities.

25. On the other hand the learned Advocate-General contended that there is nothing either in the preamble or in the whole scheme of the Act, to limit its operation in the manner contended by Mr. K. P. Abraham. The Act deals with the foreigners in three different stages and there is nothing in any of the"sections of the Act to indicate that the Act applies only to foreigners who are present in India voluntarily. If the argument of Mr. K. P. Abraham is to be accepted, then the Act cannot apply to a foreigner who lands in Indian territory due to an Air crash when the plane is travelling through the territory of India. The learned Advocate-General also contended that the powers given under the Act are absolute and are not qualified in any manner whatsoever. Whatever may be the circumstances under which a foreigner may be in India, once he is present in

India, ample powers and jurisdiction are vested in the "Civil Authorities" to pass suitable orders as against him. If the contention of Mr. K. P. Abraham is accepted, the purpose and object of the Act and the Foreigners Order would be completely defeated. The learned Advocate-General also contended that the provisions of the Sea Customs Act give ample powers to the Customs Authorities employed in the prevention of smuggling to search any person on board of any vessel in any Port in India provided that officer has reason to believe that such person has dutiable or prohibited goods secreted about his person. The learned Advocate-General also contended that even according to the petitioner himself the ship in which he was travelling, touched Cochin Port and as such, it must be considered that the petitioner has entered Indian territory voluntarily.

26. It is not really necessary for me to consider the contention of the learned Advocate-General based upon the provisions of the Sea Customs Act or On the basis that the ship was in Indian waters, when action was taken by the Customs authorities against the petitioner.

27. After a consideration of the contention raised by Mr. K. P. Abraham learned counsel for the petitioner and the learned Advocate-General on behalf of the respondents, and after a perusal of the various sections, of the Foreigners Act and the Foreigners Order, I cannot accept the contentions of Mr. K. P. Abraham regarding the non-applicability of the Act and the order so far as his client is concerned. The observations of their Lordships of the Supreme Court extracted above and relied upon by Mr. K. P. Abraham, in my opinion, will not assist the learned counsel to restrict the scope of the applicability of the Foreigners Act only to foreigners who are present in India voluntarily. The long title of the Act itself is as follows:

"An Act to confer upon the Central Government certain powers in respect of foreigners."

The preamble to the Act is as follows:

"Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners in India their presence therein and their departure therefrom."

In my opinion, there is nothing either in the long title or the preamble of the Act to anyway indicate that it is only intended to operate as against the voluntary entry, voluntary presence and voluntary departure of foreigners. Accepting the contentions of Mr. K. P. Abraham will have the effect of reading into the statute words which are not there. In my opinion, the learned Advocate-General is well founded in his contention that the Act is intended to deal with three different aspects regarding foreigners namely (1) their entry into India; (2) their presence in India; and (3) their departure therefrom. Section 3 gives power to the Central Government to make provision by order, either generally or with respect to all foreigners. Or with respect to any particular foreigner or any prescribed class or description of foreigners for prohibiting regulating or restricting entry of

foreigners in India, or their departure therefrom Or their presence or continued presence therein. Clause (a) of Sub-section (2) of the Act deals with orders regarding entry into India. Similarly, Clause (b) of Sub-section. (2), of Section 3 deals with provision for orders regarding departure from India.

Clause (e) of Sub-section (2) of Section 3 gives power for passing orders regarding the items mentioned as 1 to 9 therein. In particular item 1 deals with the requirement of the foreigner to reside in a particular place; item 2 deals with imposing any restrictions on the movements of a foreigner, The other items mentioned therein deal with several other aspects of the matter.

28. "Civil Authority" has been defined in paragraph 2 cl. 2 of the Foreigners Order, 1948. Paragraph 3 deals with the grant or refusal of permission to a foreigner to enter India. Under that paragraph various powers are given to the "Civil Authority."

Paragraph 5 of the order deals with the power to grant permission to a foreigner to depart from India.

Para 8 of the Order places restriction on a foreigner to visit or reside in any prohibited place as defined in the Indian Official Secrets Act without the permission of the "Civil Authority."

Para 9 of the Order deals with restrictions of visits by a foreigner to a Protected area.

Para 10 deals with restrictions on employment of foreigner in the undertaking enumerated in that paragraph.

Paragraph 11 which gives power to the "Civil Authority" to impose restrictions on movements etc., of a foreigner is to the following effect:

"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;
- (3) his association with any person or class of persons specified in the order; and
- (4) his possession of such articles as may be specified in the order.

Paragraph 11 of the order gives power to a "Civil Authority" to place a condition on a foreigner regarding his place of residence, his movements, his association with any person or class of persons specified in the order and his possession of such articles as may be specified in the order.

One other provision in the order can also be referred to and that is paragraph 15 which deals with arrest and detention of a foreigner, if the civil authority

considers it necessary in public safety so to do.

29. According to Mr. K. P. Abraham, the civil authority, not having arrested the foreigner in question by virtue of powers vested in the civil authority under paragraph 15, has acted arbitrarily in taking action under paragraph 11 and restricting the movement of the foreigner to the Malabar Hotel and to his visits to the Magistrate's court whenever his presence is required.

30. It is desirable at this stage to extract the two orders that have been passed by the first respondent namely, Exts. P5 and P6.

Exhibit P5 runs as follows:

"PROCEEDINGS

OF THE DISTRICT COLLECTOR AND ADDITIONAL DISTRICT MAGISTRATE

ERNAKULAM

Present: Sbri M. K. Devassy, I, A. S., District Collector and Additional District Magistrate, Ernakulam

Read; Report No. Clause 102/59 dt. 24-2-59 from the Superintendent of Police Ernakulam.

ORDER

No. Cl.--2869/59 dt. 25-2-1959 Whereas it has been reported to me that Mr. Bernardo Steenholf Ultrich a Bolivian National the accused in C. C. 11/59 of the District Magistrate's court Ernakulam u/s 167(81) of the Sea Customs Act -- 8 of 1878 is now on bail and is residing in room No. 22 of the Malabar Hotel, Willington Island and it is necessary to restrict his movements, I do hereby order and direct under para 1 of the Foreigners Order, 1948 that the said Bernardo Steenholf Ultrich should restrict his movements to the premises of the Malabar Hotel, Willington Island and to his journeys from the hotel to the District Magistrate's court, Ernakulam and back from the court to the Hotel.

(Sd.)

District Collector and

Seal of the Court Additional District Magistrate. To

Mr. Bernardo Steenholf Ultrich, Room No. 22, Malabar Hotel, Willington Island (through the Superintendent of Police. Ernakulam).

2. Superintendent of Police, Ernakulam for information and necessary action."

Exhibit P6 runs as follows:

"PROCEEDINGS

OF THE DISTRICT COLLECTOR AND ADDITIONAL DISTRICT MAGISTRATE,

ERNAKULAM. Present: Shri M. M. Varki,, I. A. S.

District Collector and Additional District Magistrate, Ernakulam

Read: 1. Report No. CI 102/59 dt. 24-2-59 from the Superintendent of Police Ernakulam.

2. Report No. CI. 102/59 dt. 3-1959 from the Superintendent of Police, Ernakulam.

ORDER

No. CI-2869/59 dt. 23-3-1959.

Whereas it has been reported to me that Mr. Bernardo Steenholf Ultrich a Bolivian National the accused in C. C. 11/59 of the District Magistrate's court, Ernakulam u/s 167(81) of the Sea Customs Act, Act 8 of 1878 is now on bail and is residing in room No. 22 of the Malabar Hotel, Willing ton Island and it is necessary to restrict his movements, I do hereby order and direct under para 11 of the Foreigners Order 194S that the said Bernardo Steenholf Ultrich should restrict his movements to the premises of the Malabar Hotel, Willington Island and to his journeys from the Hotel to the District Magistrate's court, Ernakulam and back from the court to the hotel as and when the court requires his presence.

(Sd.)

District Collector and Additional District

Magistrate. To

Mr, Bernardo Steenholf Ultrich, Room No. 22, Malabar hotel, Willington Island (through the Supdt. of Police, Ernakulam.

2. The Superintendent of Police, Ernakulam for information and necessary action."

31. It will be seen that the first respondent has considered it necessary to restrict the petitioner's movements and the order is passed under paragraph 11 of the Foreigners Order 1948. Such a power is given to the "Civil Authority" namely the first respondent by virtue of paragraph 11 or the Order which I have already extracted. The fact that the Civil Authority has not taken action under paragraph 15 of the Order to arrest and detain the foreigner, in my opinion, is no bar to action being taken by the civil authority under paragraph 11 of the Order. Paragraph 11 gives unrestricted power to the civil authority to require any foreigner to comply with the conditions that may be specified in respect of any or all the 4 matters mentioned therein. It is open to the civil authority to take action under paragraph 11. It is also open to the civil authority to take action under paragraph 15 if the "civil authority" is of the opinion that it is necessary in the public safety to arrest and detain the foreigner. The exercise of power by the civil authority under paragraph 11 is in no way controlled by paragraph 15 of the Order,

32. Therefore, it will be seen that there is absolutely nothing either in the Foreigners Act or in the Foreigners Order which will in anyway Indicate that the foreigners who are dealt with by the authorities should be persons who have entered India voluntarily, who are present in India voluntarily OP who depart from India voluntarily. As already stated, the Act and the Order deal with three different aspects regarding a foreigner. Whatever may be the circumstances under which a foreigner comes to India, in my opinion, once he is present in India, the Civil authority has got ample jurisdiction to take action under the Foreigners Order, read with the Foreigners Act. Therefore, it follows that the exercise of the power by the first respondent is justified by paragraph 11 of the Foreigners Order.

33. In my opinion, another approach could be made to the case of the petitioner and that would really dispose of his contention that he is not present in India voluntarily. Rightly or wrongly, the Customs authorities have taken action, by virtue of the powers vested in them in law, and there is also a criminal prosecution launched as against the petitioner, which he is bound to answer according to laws of this country. Whether that prosecution is justified or not, or whether the action taken by the Customs authorities in the circumstances are also legal or not, are beyond the subject-matter of these proceedings. But there is the admitted fact that the petitioner, whether he likes it or not, is admittedly in India to answer the criminal charge which is being enquired into by the courts in this country. It cannot certainly be denied that the petitioner was present in India, when Exts, P 5 and P 6 were passed by the first respondent. That he was present in India only for the purpose of the criminal case, will not in anyway, take it out of the statute which enables authorities to take action in respect of a foreigner who is present in this country. For whatever purpose, the petitioner was certainly present in India at the material time, when action was taken under the Foreigners Order. Even on this alternative ground, the orders are perfectly legal and within the jurisdiction of the first respondent.

34. A subsidiary contention was raised by Mr. K. P. Abraham, learned counsel for the petitioner,

that a foreigner has got absolute liberty to move about in India and reside at any place and that the civil authority, if at all, can only restrict his movements in a particular way namely, that he can go about with a police escort or that he can only during particular times. Exts. P5 and P6, according to the learned counsel, could not be considered

to be the type of restrictions which are intended by paragraph 11 of the Foreigners Order.

35. I am not able to accept this contention of Mr. K. P. Abraham. Both the Act and the Order

clearly show that a foreigner has no such unrestricted right as contended by Mr, K. P. Abraham. The two orders Exts. P5 and P6, in my opinion, come strictly

within the ambit of the restrictions contemplated in paragraph 11 of the Foreigners Order. Before I conclude, I may mention that the Supreme Court, in the decision reported in *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, had to consider the Foreigners Act of 1946 in another context. Their Lordships, at

page 373 observe as follows:

".....Section 3(2)(c), Foreigners Act 1946 are intra vires."

At page 374, their Lordships consider the question of the status and rights of the foreigners in India and as to whether there is any law in India vesting the executive Government with power to expel a foreigner from India as opposed to extraditing. Their Lordships refer to Article 19 of the Constitution as conferring certain fundamental rights of freedom on the citizens of India namely, the right to move freely throughout the territory of India, and to reside and settle in any part of India, subject to laws imposing reasonable restrictions on those rights in the interests of the general public. Their Lordships observe as follows:

"No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the law of the land. This is conferred by Article 21 which is in the following terms:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

Their Lordships again observe at page 374 that the Foreigners Act vests the Central Government with absolute and unfettered discretion. Again their Lordships observe at page 374 as follows:--

"The Foreigners Act is not directly concerned with criminals or crime though the fact that a foreigner has committed offences, or is suspected of that, may be a good ground for regarding him as undesirable".

Again dealing with Section 3(2)(b) and Section 6 of the Foreigners Act, their Lordships observe as follows:

"Under the Indian law, the matter is left to the unfettered discretion of the Union Government and that Government can prescribe the route and the port or place of departure and can place him on a particular ship or plane The right of the Government to make the order "vis a vis" the man expelled is absolute".

Again dealing with the power of the Government to expel a foreigner under the Foreigners Act, their Lordships of the Supreme Court, after referring to the opinion of Oppenheim as obtaining in England and as expressed" in his book on International Law Vol. I, 7th edition at page 631, observe at page 375 as follows:

"But that is immaterial, for the law in each country is different and we are concerned with the law as it obtains in our land. Here the matter of exclusion has to be viewed from three points of view: (1) does the Constitution permit the

making of such a law? (2) does it place any limits on such laws? and (3) is there in fact any law on this topic in India and if so, what does it enact? We have already examined the law making power in this behalf and its scope, and as to the third question the law on this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel".

I have thought fit to extract some of the observations of their Lordships of the Supreme Court in the decision referred to above, as in my opinion, those observations give us an idea of the unfettered and absolute right vested in the authorities to make orders under the Foreigners Act.

36. Finally, Mr. K. P. Abraham made a request that some suggestions for relaxation of the restrictions placed on his client may be made. I regret, it is not within the province of this court to make any such suggestions to the executive authorities, when they have taken action under the Foreigners Order 1948. In the end, I hold that the first respondent had jurisdiction to pass the orders, Exts. P5 and P6 complained of by the petitioner and there is no scope for interfering with these orders under Article 226 of the Constitution.

37. In the result, this application fails and is dismissed with costs of the respondents, one set fixed in the sum of Rs. 250/-.