

(1962) 11 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 364 of 1962

Momin Khan

APPELLANT

Vs

The Superintendent of Police and Another

RESPONDENT

Date of Decision : 23-11-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 491
Foreigners Act, 1946 — Section 12, 3, 3(1), 3(2)

Citation : (1962) 11 GAU CK 0003

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : P. Choudhuri, T. C. Das, for the Appellant; M.C. Patliak, Jr. Govt. Advocate, for the Respondent

Judgement

G. Mehrotra, C.J.—This rule arises out of an application under Article 266 of the Constitution filed on behalf of one Momin Khan challenging the validity of the notice issued u/s 3(2)(c) of the Foreigners Act by the Superintendent of Police and Registration Officer, Kamrup on the September 1962. By this notice he has been asked to leave India within fifteen days of receipt of the notice.

2. It is not disputed that the Petitioner is an Afghan national. He is thus a foreigner as defined under the Act. The notice u/s 3 thus could be issued against him. His contention is that the Petitioner entered India on a passport from the Afghan Government. When the period for which he could stay under the visa granted to him expired, he applied for permit to stay in India for a further period under the provisions of the Foreigners Order, 1948. The Registration Officer, Kamrup District on and April 1962 granted him a permit extending his period of stay in India till 18th December 1962. Another document which is annexed to the petition is a notice given by the Superintendent of Police, Kamrup dated the 8th September 1962 by which the Petitioner's movements have been restricted within the Gauhati town.

3. The validity of the notice issued u/s 3 of the Foreigners Act is mainly challenged on three grounds. It is firstly urged by Mr. Choudhuri for the Petitioner that the Superintendent of Police, Kamrup had no powers to issue any notice u/s 3 of the Foreigners Act (hereinafter called the Act") authorises the Central Government to pass certain orders specified therein. Section 12 of the Act gives power of delegation. The contention raised in the petition is that there can not be any delegation in law to the Superintendent of Police, Kamrup either by the Central Government or by the State Government. This statement contained in paragraphs 7 and 8 of the petition has been denied by the opposite party. It is contended that this submission is not tenable in law.

4. Mr. Choudhuri now contends that in view of the trend of the decisions in the various High Courts, he does not seriously contend the broad proposition that there is no power of delegation given to the Central Government or to the State Government. He however contends that even if the power existed there is no proof of the fact that such a power was delegated to the Superintendent of Police, Kamrup. He further contends that if there was any notification, it was for the State Government to file such notification and in the absence of any notification before this Court, this Court will not hold that the delegation was in fact made. He contends that the connected papers should be summoned in order to find out whether there is any such notification. We find that in paragraphs 7 and 8 of the petition there is no specific allegation that there was no notification delegating the power to the Superintendent of Police by the State Government. In paragraphs 7 and 8 the only contention is that in law there was no power in the Central Government or the State Government to make any such delegation. That has been conceded. In the absence of a clear averment in the petition challenging the factum of delegation, it cannot be assumed that no such notification exists and this Court will not ask the Respondents to prove the existence of such a notification. We do not think that there is any force in this contention and in this view of the matter it is not necessary to deal in detail with the two cases cited by the Petitioner, namely (1) Dawood Ali Arif and Another Vs. Deputy Commissioner of Police and Others, and (2) State Vs. Ibrahim Nabiji,

5. The next point urged is that in view of the fact that the Petitioner has been granted a permit by the Registration Officer under paragraph 7 of the Foreigners Order 1948 the Petitioner could not be asked to leave India before the expiry of the period specified in that permit. Under that permit he could stay in India up to 18th December 1962. He further contends that unless there is anything expressly authorising the authority to review that order or to pass an order u/s 3 of the Act superseding the permit granted under paragraph 7 of the Foreigners Order 1948, no such order could be passed u/s 3 of the Act. In our opinion there is nothing in paragraph 7 of the Foreigners Order 1948 which debars the proper authority to issue a notice u/s 3 of the Act. Paragraph 7 may empower the Registration Officer to extend the period of the stay of a foreigner after the expiry of his period mentioned in the visa but that does not take away the power of the proper authority to issue a notice u/s 3 of the Foreigners Act. The power

given to the Central Government u/s 3 of the Act is not subject to any order passed under paragraph 7 of the Foreigners order 1948.

6. Mr. Choudhuri contends that the language of Section 3 is such which puts a restriction on the power of the Central Government to pass an order deporting the Petitioner so long as the permit granted under paragraph 7 of the foreigners Order 1948 subsists. Section 3 of the Act reads as follows:

3(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 there from or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner-

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

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

Only the relevant portions of the section have been quoted above. The contention of Mr. Choudhuri is that the Foreigners Order 1948 was made in the exercise of the power conferred under Sub-section (1) of Section 3 and any notice issued under Sub-section (2) by the Central Government must not prejudice any order passed in the exercise of the powers conferred on the authority under the orders validly made u/s 3(1). We do not think that any such interpretation is permissible on the plain language of Section 3(2). What Section 3(2) means is that specific orders could be issued under Sub-section (2) without prejudice to the powers given to the Central Government u/s 3(1). If the power under Sub-section (2) can be exercised without prejudice to the general powers given under Sub-section (1) of Section 3, it only means that the general powers are supplemented by the specific powers which are conferred under Sub-section (2) and the two powers have got to be harmonised.

7. There is another way of looking at this question. Sub-section (1) of Section 3 only gives powers to the Central Government to pass certain orders and so far as the Foreigners Order 1943 was enacted, it was a valid order. But it does not lay down that the order passed under paragraph 7 will prevail over the specific order passed u/s 3(2). Nor does the enactment of these orders cut down the power given u/s 3, nor that Section 3 can be read in a way to import in the general language of Sub-section (2) any restriction on the exercise of the power till the orders passed under paragraph 7 exhaust their force. These are two distinct powers and they will operate on their own spheres, there if the permit granted

under paragraph 7 allows him to stay in India up to 18th December 1962, it does not in any way take away, the power of the Central Government if the other conditions necessary u/s 3(1) exist to pass an order u/s 3(2).

8. The next point urged in this connection is that it amounts to rejection of the permit granted under paragraph 7 of the Foreigners Order 1948, the principles of natural justice demanded that the Petitioner should have been given an opportunity to meet that. The principles of natural justice are not, in our opinion, attracted in this case. If any authority passes an order without observing the principles of natural justice and if the authority acts as a quasi-judicial body, it may be open to the person aggrieved by such order to approach this Court and as for setting aside the order on the ground that the principles of natural justice have been violated. But if the authority has got certain power to act, and in the exercise of that power it acts and the exercise by implication has the effect of overriding some other order passed under another provision, it cannot be said that any principles of natural justice are violated if no opportunity is given by the authority before passing the second order to the Petitioner to explain his case. It is a question mainly depending upon the extent and the ambit of the power which an authority can exercise u/s 3 and not a question of passing any judicial or quasi-judicial order which can be tested on the ground of violation of the principles of natural justice.

9. The last point which has been urged is that the order deporting the Petitioner has by implication been cancelled by the subsequent order passed on the same day, that is on the 8th September 1962, restricting his activities within the town of Gauhati. The argument is that if there are two inconsistent orders the later order must be deemed to have by implication cancelled the previous order. The answer to this contention is that there is no inconsistency between the two orders. In the first place the State has filed along with the affidavit a letter sent by the Central Government which has asked the State Government to issue orders u/s 3 deporting the Petitioner and in order to prevent his going underground, the State Government have been asked to issue an order restricting his movement. Besides this, the opposite party has filed an order issued against the Petitioner under which it is stated that the order restricting his movement in Gauhati will be operative till he leaves Gauhati for Afghanistan. Those are not to be found in the order filed along with the petition. But if we take the letter of the Central Government into consideration then the proper way of harmonizing the two orders will be that the order restricting the movement within the town of Gauhati was confined to the period during which the Petitioner could stay in Gauhati validly under the order issued on the same day u/s 3 of the Act. The operation of the subsequent order restricting his movement from the very nature of the order and from the circumstances must be confined to the period during which he could stay at Gauhati.

10. Strong reliance is placed by Mr. Choudhuri on the case of B.A. Shervashidze Vs. Govt. of West Bengal and Another, That was a case where a foreigner was

detained, arrested and kept in jail and ordered to leave India within a period of one month from the date of service of the order. Thereafter the Petitioner made an application u/s 491 of the Code of Criminal Procedure for a writ of habeas corpus asking for his release. The ground taken was that as the subsequent order was passed deporting him which could not be given effect to so long as the order of detention continued, by implication the second order has superseded the earlier order of detention. This argument was accepted. But, even accepting the principle that if a subsequent order is inconsistent with the earlier order the earlier order must be held to have been superseded by the second one as we have already pointed out, the proper interpretation of the order under consideration before us is that the period of the subsequent order restricting Petitioner's movement must be limited to the period during Which he remains in Gauhati and if under some other valid order he is to leave Gauhati on its own force, the second order restating his movement does not remain operative. In our opinion therefore, there is no force in this contention either. Therefore in our opinion none of the grounds on which the validity of the notice has been impeached by the Petitioner are substantial. The petition must therefore fail.

11. Mr. Choudhuri contends that the Petitioner should be given time to remove his goods. We do not think that there is any power in us to extend the time after we hold that the order is validly passed. But we do not think that there can be any genuine apprehension that the authorities will act in such a way as to deprive him of an opportunity to wind up his affairs. The petition is accordingly rejected with cost, which is assessed at Rs. 50/-.

S.K. Dutta, J.

12. I agree.