

Abdul Rahiman Shamsoddin Vs. Emperor

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Court : Mumbai

Decided On : Apr-17-1950

Reported in : AIR1950Bom374; (1950)52BOMLR558

Judge : Chagla, C.J., ;Bavdekar and ;Shah, JJ.

Acts : Bombay District Police Act, 1890 - Sections 46(3); [Constitution of India](#) - Articles 13 and 19(1)

Appeal No. : Criminal Appln. No. 151 of 1950

Appellant : Abdul Rahiman Shamsoddin

Respondent : Emperor

Advocate for Def. : C.K. Daphtary, Adv.-General and ;B.G. Thakor, Addl. Asst. Govt. Pleader

Advocate for Pet/Ap. : M.B. Vora, ;V.H. Kamat and ;P.T. Lewa, Adv.

Disposition : Application dismissed

Judgement :

Chagla, C.J.

1. By this application an order made by the Additional District Magistrate of Thana dated 26th April 1949, is being challenged. Though the order directs the petitioner

to remove himself from the State of Bombay and the order is made under Section 46, Sub-section (3), Bombay District Police Act, 1890, it is contended that this provision of the law is void inasmuch as it contravenes a fundamental right given to the subject by the Constitution, and the fundamental right which is being relied upon is the fundamental right under Article 19 to move freely throughout the territory of India and to reside and settle in any part of the territory of India. We have had to consider a similar question in *Jeshingbhai Ishwarlal v. Emperor*, : AIR1950 Bom363 and we held that the provision of law under the Bombay Public Security Measures Act, for externment was void, inasmuch as there was no provision made for the externee being heard by the authority externing him. Now when we consider the provisions of the Bombay District Police Act, we find that under Section 46A, a person against whom an order is intended to be made has a right to be heard, and what is more he has also been given a right of appeal to the Provincial Government under Section 46A, Sub-clause (3). Therefore the reasons which led me and my learned brother Bavdekar to come to that particular conclusion in the other case do not apply to the facts of this case.

2. It has been argued by Mr. Vora that the Constitution does not entitle a State to extern a citizen outside the limits of the State. According to Mr. Vora the only restrictions that can be imposed upon a person are restrictions within the State area. In other words, according to Mr. Vora, the Legislature of the State can provide that a person should stay in a particular part of the State, but it cannot provide that he should leave the boundaries of the State altogether. For that purpose, attention is drawn to Items 17, 18 and 19 of List I, Schedule 7. These items deal with citizenship, naturalisation and aliens, extradition, and admission into, and emigration and expulsion from, India; and the argument is that if every State were to pass a similar legislation and a similar order were to be passed against the petitioner, then, the petitioner would not be able to reside in any of the States and would therefore compulsorily have to leave the territory of India. In our opinion, we are concerned with the legislation of our State and we are not concerned with the situation that might arise if every State were to pass a similar legislation, and what is more were to pass a similar order against the petitioner. The Bombay District Police Act does not deal with either citizenship or extradition or with the question of admission into, and emigration and expulsion from, India. It

deals with the question of public order, which is a subject which is within the competence of the State Legislature under List II of Schedule 7, Item 1.

3. Mr. Vora has also argued that the restriction within the meaning of Sub-clause (5) of Article 19 is a restriction which can only apply to movements within the State and not outside the State. That contention is obviously fallacious, because the fundamental right which is claimed is the right to claim free movement throughout the territory of India and to reside and settle in any part of the territory of India. When the Legislature deprives a person of the right to move about and reside in any part of the Union of India, it is undoubtedly a restriction of his liberty and of his fundamental right.

4. The only question that arises for our consideration is whether the restriction imposed by Section 42, Bombay District Police Act, 1890, is or is not a reasonable restriction. On that point it is urged that the order made is not limited by any duration of time. It is perfectly true that Section 42 (1) does not contemplate an order of any particular duration. But it must be borne in mind that under the General Clauses Act the authority making an order has also power to revoke that order, and there is nothing to prevent the Additional District Magistrate of Thana from revoking his own order. It must also be borne in mind that in cases that fall under Section 42, Sub-clause (1), it would be very difficult for the authority at the time it makes an order to be in a position to know how long the emergency would last or how long the danger would last and to limit the order for a particular period. In our opinion there is not much substance in the contention that the order places an unreasonable restriction inasmuch as it does not limit the period of externment.

5. The result therefore is that in our opinion the law under which the order is made has not been rendered void by Article 13 of the Constitution and the order therefore cannot be challenged by any application made by the petitioner.

6. The result is that the application fails and is dismissed.