

Vithal Maruti Vs. State

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Court : Mumbai

Decided On : Feb-27-1952

Reported in : AIR1952Bom451; (1952)54BOMLR626; ILR1953Bom51

Judge : Rajadhyaksha and ;Vyas, JJ.

Acts : Bombay Beggars Act, 1945 - Sections 5, 5(1), 5(4), 5(5), 6, 6(1), 6(3), 20, 23 and 23(1); [Constitution of India](#) - Article 15

Appeal No. : Criminal Appeal No. 11 of 1952

Appellant : Vithal Maruti

Respondent : State

Advocate for Def. : K.S. Daundkar, Assistant Govt. Pleader

Advocate for Pet/Ap. : D.M. Parulekar, Adv.

Judgement :

Vyas, J.

[1] This is an appeal by one Vithal son of Maruti who has been convicted by the learned Presidency Magistrate, nth Court, Kurla, Bombay under Section 5, Sub-section (5), read with Section 6, Sub-section (3), Bombay Beggars Act (Bom. XXIII [23] of 1945). The order passed against him is one of detention for a period of ten

years in a certified institution of Male Beggars Home, Worli, and it has further been directed that a period of one year out of the above mentioned term of ten years should be converted into a term of one year's rigorous imprisonment. The allegation against the appellant was that he was found bogging in a public place on 7-10-1951. The learned trial Magistrate declared him a beggar under Section 5, Sub-section (4), of the Act, and proceeded to pass the order, mentioned above, against him under Section 5, Sub-section (5), read with Section 6, Sub-section (3), of the Act.

[2] Now Mr. Parulekar's first contention, in this appeal, is that the entire scheme of the Bombay Beggars Act (XXIII [23] of 1945), is ultra vires of the Constitution, as a discrimination is made therein as between beggars on the basis of place of birth. Our attention is invited by Mr. Parulekar to Section 5, Sub-section (4), of the Act, which says:

'If on making the inquiry referred to in Sub-section (1) the Court is satisfied that such person was found begging it shall record a declaration that the person is a beggar. The Court shall also determine after making an enquiry in the manner prescribed whether the person was born in the Province of Bombay and domiciled therein and shall include its findings in the declaration. The Court shall subject to the provisions of Section 23 make further order as in this section hereinafter provided.'

It is argued by Mr. Parulekar, on the basis of this section, that such of the beggars as are born in the Province of Bombay and domiciled in the said Province are dealt with under Section 5, Sub-section (4), and in their case, provided there is a conviction for the second or subsequent time under Sub-section (1) of Section 6, the order of detention in a certified institution has got to be for a period of ten years and liberty is reserved to the Court to convert any period of the said detention, not exceeding two years, into a sentence of imprisonment. Then we are referred to Sub-section (1) of Section 23 of the Act, which says:

'If in the course of an inquiry made under Sub-section (1) of Section 5, it has appeared to the Court that the person declared a beggar under Sub-section (1) of Section 5 is neither born nor domiciled in the Province of Bombay the Court, after

making such further inquiry, if any, as it deems necessary, may, instead of proceeding further under Section 5, by order in writing direct the beggar to leave the Province of Bombay within such time and by such route or routes as may be stated in the order and not to return thereto.'

And it is argued that this section refers only to cases of beggars who are neither born nor domiciled in the Province of Bombay. Under this section, such beggars are not liable to detention in a certified institution and are also not liable to have a certain period of detention converted into a sentence of imprisonment. They are liable only to externment. From this, an argument is made before us by Mr. Parulekar that the Act makes a discrimination between beggars born in the Province of Bombay and beggars born outside the Province of Bombay and is therefore ultra vires of the [Constitution of India](#), The contention must fail.

Apart from the fact that it is not correct to say that beggars neither born nor domiciled in the Province of Bombay cannot be dealt with under Section 5, Sub-section (5), read with Section 6 of the Act, it is to be noted that under Art. 15 of the [Constitution of India](#), discrimination, which is discountenanced and forbidden, is discrimination on ground only of religion, race, caste, sex, place of birth or any of them. Where discrimination is based not only on the incidence of birth but on some other consideration along with the place of birth, the bar of the Constitution does not arise at all. Now, Section 5, Sub-section (4), of the Bombay Beggars Act, speaks of two things, namely, place of birth and domicile, both being in the Province of Bombay, and one of these ingredients is not to be read to the exclusion of the other.

In our view, the term 'domicile' as used in the Act means residence in the Province of Bombay without present intention of removing it from the Province of Bombay. It is not used in its technical sense in the Act. Before the [Constitution of India](#) came into force, there was nothing like domicile in the Province of Bombay. There was only one domicile and that was the domicile of India. Therefore, in construing the word 'domicile' in this Act of 1945, we must interpret it to mean residence in the Province of Bombay. The element of birth at a particular place is not a necessary constituent of the term 'domicile' as used in the Act. Therefore, it is clear that

Section 6, Sub-section (4) of the Act, does not deal with beggars whose place of birth only is in the Province of Bombay. In these circumstances, the contention of Mr. Parulekar, namely, that the Act makes a dis-crimination as between beggars on the ground of place of birth and is therefore ultra vires of the Constitution, is unsustainable. There is no section in the Act which makes a discrimination as between beggars only on the ground of place of birth.

[3] The second contention of Mr. Parulekar, namely, that in case of beggars neither born nor domiciled in the Province of Bombay Section 23, Bombay Beggars Act only applies and the said beggars are dealt with only under that section, is not correct. We have already quoted the section once in this judgment and therefore do not deem it necessary to reproduce it textually again. The word 'may' in the expression 'may instead of proceeding further under Section 5, by order in writing direct' is important. The expression is not 'shall, instead of proceeding further under Section 5, by order in writing direct.' In our opinion, upon a proper construction of Section 23, Sub-section (1), it would appear that beggars neither born nor domiciled in the Province of Bombay can be dealt with either under Section 5 or under Section 23 of the Act. What the Act contemplates is that if the beggars are born in the Province of Bombay and domiciled in the Province of Bombay, the proper section to apply is Section 5 only; but if the beggars are neither born nor domiciled in the Province of Bombay, there are two alternative sections either of which may be applied, namely, Section 5 or Section 23.

In this particular case, the finding of the learned trial Magistrate is that the appellant was born in Madhya Pradesh and has a domicile in that Pradesh. Clearly therefore, his case would be governed by the provisions of Section 5 or Section 23. This aspect was, it clearly appears to us, not present in the mind of the learned trial Magistrate at all. Had it been present in his mind, we are not sure which of the two sections he would have used against the appellant. Accordingly, we set aside the order of detention and imprisonment passed against the appellant by the learned trial Magistrate and remand the case to the learned Magistrate's Court, so that the learned Magistrate may use his discretion whether he should proceed against the appellant under Section 5 of the Act or under Section 23 thereof. Of course, if he chooses to exercise his discretion in favour of proceeding under

Section 23 of the Act, there would be no question of any order of detention or of converting any period out of that term of detention into a term of imprisonment.

But, if, in the exercise of the option referred-to above, he decides to proceed against the appellant under Section 5 of the Act, then, he will have to consider whether any period out of the term of detention should be converted into a term of imprisonment. Now, in this case, as we have noted already above, the learned Magistrate, in passing an order of detention for ten years, has ordered that a period of one year out of the said term should be converted into a sentence of imprisonment. In this connection it is contended before us that the period of imprisonment ordered is excessive. We do not wish to express any opinion upon the point, since we are remanding the case to the learned Magistrate in order to decide for himself whether he should exercise the option in favour of one section or the other (Section 5 or Section 23) of the Act, while proceeding against the appellant. But, in case he eventually decides to adopt the procedure of Section 5 of the Act, he would, no doubt, take the circumstances of the case into consideration and the circumstances are that although the appellant was convicted under Section 6, Sub-section (5) of the Act on 28-3-1951, he was found begging again in a public place on 7-10-1951.

It is not clear, as the record stands before us, whether the appellant escaped from the place of detention, or whether he was released under a license granted under Section 20 of the Act. Of course, no license granted under the Act can, and quite naturally so, permit begging. Therefore, even assuming that he might have been released under a license under Section 20 of the Act, there could be no justification in his begging in a public place after release. Those circumstances will, no doubt, be borne in mind by the learned Magistrate, in case he decides to use Section 5 of the Act against the appellant.

[4] Order accordingly.