

Vincent Ferrer Vs. District Revenue Officer, Ananthapur

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Court : Andhra Pradesh

Decided On : Feb-27-1974

Reported in : AIR1974AP313

Judge : Chinnappa Reddy, J.

Acts : [Foreigners Act, 1946](#) - Sections 3; [Constitution of India](#) - Articles 14 and 19(1)

Appeal No. : Writ Petn. No. 55 of 1974

Appellant : Vincent Ferrer

Respondent : District Revenue Officer, Ananthapur

Advocate for Def. : Principal Govt. pleader

Advocate for Pet/Ap. : D. Sivarama Krishna, Adv.

Judgement :

ORDER

1. Vincent Ferrer is a Foreign National. He has been in India for nearly 20 years. He has applied for Indian Citizenship. The Government of Andhra Pradesh has recommended his application. The application is pending with the Government of India. While so, the District Revenue Officer acting as the Civil Authority under the Foreigners Act has passed an order dated 24-12-173 restricting the movements of

Vincent Ferrer to the district of Anantapur and requiring him to obtain the written permission of the Civil Authority if he wanted to leave the District, irrespective of the duration of the intended absence from the district Vincent Ferrer questions this order as arbitrary and made in bad faith.

2. A foreign national though entitled to equality before the law and the equal protection of the laws guaranteed by Article 14 of the Constitution, is not entitled to the protection of the Fundamental Rights guaranteed by Article 19(1)(d) and (e) that is, the right to move freely throughout the territory of India and the right to reside and settle in any part of the territory of India, as they are rights reserved for Indian citizens. On the other hand, clause 11 of the Foreigners Order empowers the Civil Authority appointed by the Central Government to direct, by order in writing, that any foreigner shall comply with such conditions as may be specified by the order in respect of his place of residence and his movements. Clause 11 gives very wide power to the Civil Authority but it goes without saying that the wider the power vested in the executive the greater the circumspection with which it must be exercised. Though clause 11 gives wide power to the Civil Authority, it does not mean that the power can be exercised arbitrarily or mala fide. Like all other discretionary powers vested by statute in the executive it must be exercised honestly and in good faith. Arbitrariness and bad faith are the very antithesis of equality before the law and the equal protection of the laws. An order made arbitrarily or in bad faith is always open to challenge on the ground that it offends the Fundamental Right of equality before the law and equal protection of the laws. Again an order purporting to be made under a statutory power is no order under that power or on irrelevant consideration, or without the authority applying its mind to the facts of the case. When a charge of mala fide, arbitrary, colorable or mechanical exercise of power is made, be it by a citizen or a foreign national, it is the duty of the Court to scrutinize the record and satisfy itself about the validity of the order. It is now well settled that even if a law is valid, individual orders made under that law may be struck down for arbitrariness or bad faith or colorable exercise of power or failure of the authority to apply its mind.

3. In *Baswesharnath v. Income-tax Commr.*, : [1959]35ITR190(SC) the Supreme Court observed that the benefit of Art. 14 was not limited to citizens but was

available to any person within the territory of India. It was observed that Article 14 was an injunction to both legislative as well as the executive organs of the State and the other subordinate authorities. In *Kanghari Haldar v. State of West Bengal*, : [1960]2SCR646 and *Bhikuse Yamasa Kshatriya (P) Ltd., v. Union of India*, : (1963)ILLJ270SC , it was pointed out that without challenging the vires of a statute it was conceivable that a notification issued under the statute could be successfully challenged as colorable or mala fide. In *Ramakrishna Dalmia v. Justice Tendolkar* , : [1959]1SCR279 the Supreme Court observed that if a law was administered 'with an evil eye and an unequal hand' or for an oblique or unworthy purpose the Court would strike down such abuse with a heavy hand. In *State of Andhra Pradesh v. Rajareddy*, : [1967]3SCR28 it was pointed out that official arbitrariness could be more subversive and destructive of equality than statutory discrimination. In these and numerous other cases the Supreme Court has always held that orders made in exercise of statutory powers are liable to be quashed on the ground of arbitrariness, want of good faith, colorable , exercise of power, failure to apply one's mind , etc.

4. It is well to remind ourselves at this stage, of certain basic human rights. On December , 10 , 1948 the General Assembly of the United Nations adopted a Universal Declaration of Human Rights. Forty-eight countries voted for and none against the Declaration. There were eight abstentions , India with her nascent freedom was one of the countries that proudly voted for the Declaration. The Universal Declaration of Human Rights was proclaimed by the General Assembly and was the common standard of achievement for all peoples and all nations. Every individual and every organ of society were called upon to strive to promote respect for those rights and freedoms and by progressive measures to secure their universal and effective recognition and observance, Article 13(1) of the Declaration is :

'Everyone has the right to freedom of movement and residence within the borders of each State.'

Article 12 of the Declaration protects the right to privacy against arbitrary interference.

5. True, the Universal Declaration of Human Rights is not justifiable and the rights and freedoms enumerated therein cannot be enforced in any Municipal Court. But in considering the validity of an order restricting the movements of a foreign national a Court may well bear in mind that the right to freedom of movement is a right which this country has accepted as a basic human right and which its people have adopted as a Fundamental right for themselves.

6. One may well imagine a variety of situations when an order under Cl. 11 of the Foreigners Order may properly be made restricting the movements of a foreign national. Without doubt it may be made if a foreign national is suspected of engaging himself in espionage , or in subversive activities. It may perhaps be made if he is suspected of indulging in carrying on hostile propaganda against friendly nations calculated to jeopardise our relations with such friendly nations. It can certainly be made if he is suspected to have a part in clandestine criminal activities such as peddling in drugs, trafficking in women and smuggling of gold. The very nature of these activities invite such orders , if not orders of expulsion from the country. Again , an order under Cl. 11 may be made if the foreign national is likely to leave the country without discharging his obligations such as payment of taxes, etc. or with a view to evade criminal justice. It is difficult to visualise all the situations when an order may properly be made; hence , the wide discretion given to the Government .

7. What has Vincent Ferrer been up to (to) merit this order of the Civil Authority It is stated in the counter affidavit and it is admitted by the learned Government Pleader that the only basis for the impugned order is the D. O. letter C. No. 114/FR/ 70 dated 20-12-1973 addressed by the Superintendent of Police to the District Collector. The letter states the Vincent Ferrer was involved in Criminal Cases, that his movements were of a suspicious nature, that it was necessary to keep a close watch over his movements and thus it was necessary to impose restrictions on his movements so that he should inform the superintendent of Police well in advance whenever he went out of Ananthapur town . The Superintendent requested that restrictions might be imposed on Vincent Ferrer by the Civil Authority under Clause 11 of the Foreigners Order , No details of any of the Criminal Cases were mentioned in the letter nor was it explained why the

movements of Vincent Ferrer were considered to be of a suspicious nature. The counter-affidavit also does not explain what was meant by stating that the movement Ferrer were of a suspicious nature. The Government Pleader quite frankly told me that he was unable to explain why the movements were considered to be of a suspicious nature. It appears to my mind that the word 'suspicious' was used to make an innuendo without making a specific allegation . The immediate reason for the letter of the Superintendent of Police appears from that letter itself . It seems Ferrer left Ananthapur on 10-12-1973 for Bangalore and returned on 12-12-1973 . The Superintendent of Police by his letter dated 14-12-1973 demanded from Ferrer an explanation as to why he went to Bangalore without obtaining his permission. Ferrer replied stating that he had been Bangalore to attend to his personal work and that he was under no obligation to report to the Superintendent of Police . He pointed out that under the Registration of Foreigners Rule he was obliged to report to the Superintendent of Police about his absence from his registered address only in case of continuous absence for a period of two weeks or more . The Superintendent of Police was quite wrong in demanding an explanation from Ferrer as to why he left Ananthapur for Bangalore without his permission. Ferrer was quite right in pointing out that he was under no obligation to inform the Superintendent of Police unless he intended to be absent from Ananthapur for more than two weeks . The reply of Ferrer , however , was the 'billet Provocateur' for the letter of the Superintendent to the District Collector . On receipt of the Police Superintendent' s letter the Collector forwarded the same to the Civil Authority with the endorsement, 'kindly look into the Act and Rules and take necessary action.' This was on 23-12-1973. The Civil Authority without any further ado in the matter straight away passed the impugned order. The file which has been placed before me by the learned Government Pleader does not show that the Civil Authority applied his mind to the facts of the case. There is nothing whatever to indicative. I have already mentioned that the counter-affidavit sworn to by the Civil Authority does not explain the reference to suspicious movements. I have also mentioned that the learned Principal Government Pleader was also unable to explain the reference to suspicious movements . The reference to suspicious movements was vaguely and ambiguously made in the letter of the Superintendent of Police and it continues to be vague and ambiguous even now. It

was also not explained either in the counter-affidavit or by the learned Government Pleader why the involvement in some criminal cases made it necessary for the Civil Authority to make the order under Cl. 11 of the Foreigners Order . It was not whispered in the counter-affidavit or in the argument that the petitioner at any time avoided the process of any Court or that he was likely to evade justice by running away or absconding . Nor is it suggested that the petitioner is likely to engage himself in more criminal activity . If there are criminal cases against him it is always open to the Criminal Courts to take appropriate action to secure the presence of the petitioner if there is the slightest apprehension that he is likely to abscond or otherwise evade justice . But as I said , there is not the slightest suggestion that the petitioner is likely to abscond or evade justice . I have, therefore, no doubt in my mind that the impugned order arbitrarily made by the Civil Authority who failed to apply his mind to the question whether it was necessary to make the order. Neither the vague statement that the Ferrer's movements were suspicious nor the allegations that he was involved in criminal cases unaccompanied by any allegation of apprehension that he may evade justice or that he may indulge in further criminal activity can justify the impugned order. The burden of the song the respondent in his counter-affidavit is that he CASA aid which the petitioner is distributing is being mal-administered by him. If it is being mal-administered as alleged by the respondent it is open to the appropriate authority to inform the CASA about it or to take appropriate steps to prevent the mal-administration . But it is impossible to see how the alleged mal-administration of CASA aid can have any bearing on the issuance of an order Cl. 11 of the Foreigners Order.

8. The petitioner has attributed bad faith to the Civil Authority. In the affidavit filed in support of the petition a long string of events beginning from January 1973 has been mentioned which according to the petitioner illustrate the harassment to which he has been subjected by the Collector and the District Revenue Officer. It is sufficient to refer to the following observations of the learned Justice in a contempt application filed by the petitioner against the District Officials :

'Although there is a good deal which can be said against the Collector and the District Revenue Officer who have been continuously seizing the commodities,

which are not controlled or regulated and in spite of the orders of the District Revenue Officer and of this Court in more than one case they are taking their own time to release the goods, we are not satisfied that this is a fit case in which we should order contempt proceeding to be initiated because this mode should not be used for relating purpose. When once the Collector and the District Revenue Officer knew, that the goods are not regulated and the District Revenue Officer and this Court have been consistently taking that view, a good deal of care ought to have been exercised before any goods are seized. While it is open to the petitioner to take such action against the unauthorised acts, if any, of the officers we are not satisfied that the respondents have committed any contempt in the sense that they have deliberately disobeyed the orders. What they have done is to obey the order but with some delay.'

The petitioner alleges that the present order of the District Revenue Officer is a measure of relation for the contempt application filed by the petitioner against the District Revenue Officer and the Collector. I cannot but help feeling that the allegation of the petitioner is justified. the learned counsel invited my attention to certain other circumstances which took place subsequent to the filing of the petition. when the petitioner sought the permission of the Civil Authority to go to Hyderabad in connection with the affairs of the Trust founded by him the Civil Authority wanted to know the nature of the Trust, the matters in connection with which he wanted to go to Hyderabad, whether the Trust was registered with the Commissioner of Endowments, if so, the date of registration, the names of the persons whom he intended to meet at Hyderabad and a full and detailed justification for the stay for a week in Hyderabad. Surely this was an extreme and unwarranted interference with the privacy of the petitioner. One could have understood this probing enquiry if there was any suspicion that the petitioner was engaging himself in subversive activities or in criminal activities outside the District of Anantapur. As I said, there is not the slightest whisper about it. Again, when the petitioner requested the Civil Authority for permission to go to Bangalore for a medical check up the Civil Authority directed him to appear before the Superintendent of the Government Headquarters Hospital, Anantapur for examination. On the report of the Superintendent of the Government Headquarters Hospital that treatment was available at the Government Headquarters Hospital for

the ailments of the petitioner the Civil Authority refused to grant permission to the petitioner to go to Bangalore for specialised treatment. Again, I find it difficult to understand the reason for the refusal of permission. These circumstances do throw some light on the attitude of the Civil Authority. I am far from satisfied that the order of the Civil Authority was made in good faith.

9. In the result, the Writ Petition is allowed with costs and the order of the respondent dated 24-12-1973 is quashed. Advocate's fee Rs. 100/-.

10. Petition allowed.

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