AzizuddIn Ansari Vs. State of Hyderabad and anr.

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Court : Andhra Pradesh

Decided On : Oct-29-1953

Reported in : 1954CriLJ528

Judge : Palnitkar, C.J.,; Mohd. Ahmed Ansari and ;Srinivasachari, JJ.

Appellant : AzizuddIn Ansari

Respondent : State of Hyderabad and anr.

Judgement :

Srinivasachari, J.

1. This application by one Azizuddin Ansari is under Article 226, Constitution of India praying for an order in the nature of a Writ restraining the State of Hyderabad and the Police Commissioner from enforcing their orders calling upon the petitioner to go out of India. The Petitioner alleged that at the suggestion of some of his friends the Petitioner went to Pakistan in May 1950 for a pleasure trip; he returned to India via East Pakistan in June 1950. He further alleged that he was prosecuted under Section 5, Influx from Pakistan (Control) Act of 1949 for coming to India without a valid permit and was fined Rs. 200/- by the Chief City Magistrate of Hyderabad. He further averred that even after these proceedings were taken against him, he is being forced to go back to Pakistan by the Commissioner of Police. On these allegations the Petitioner has applied to this Court invoking our jurisdiction under Article 226 of the Constitution and prays that the State Government and the Commissioner of Police be directed to refrain from compelling him to leave the territory of India.

2. The Petitioner's contention is that he is a bona fide citizen of India and as such is entitled to reside within the territory of India. This case came up before a Division Bench of this Court and was referred to the Pull Bench having regard to the question of constitutional law involved in the case. The sum and substance of the arguments of the Petitioner is that he did not go to Pakistan with a view to setting down there permanently and under no circumstance could he be regarded as having migrated to Pakistan; under the circumstances the order that is being issued is calculated to fetter his right to reside in India which infringes one of the fundamental rights conferred by the Constitution. The Government Advocate argued that under the rules framed under the Influx from Pakistan (Control) Act, the Central Government has the power to direct the removal of a person when he does not come with a permit to settle down in India. It was also urged that when the Petitioner migrated to Pakistan his citizenship of India terminated and, therefore, he could not get the privilege of exercising his fundamental right.

3. The history of the Influx from Pakistan (Control) Act is as follows: Having regard to the extraordinary situation that had arisen by reason of the partition of India, it was thought necessary to control admission into India of persons from West Pakistan and, therefore, an ordinance called The Influx from Pakistan (Control) Ordinance' No. 17 of 1948 was promulgated under which the control of admission into India of persons from West Pakistan was regulated and certain conditions were imposed. This Ordinance was

subsequently repealed by another Ordinance called the 'Influx from Pakistan (Control) Ordinance No. 34 of 1948. This sought to repeal the prior Ordinance No. 17 of 1948, but there was a saving clause in it whereby it was provided that not withstanding such repeal any rule made, action taken, or thing done in exercise of the power conferred by the prior ordinance shall be regarded, for all purposes, to be deemed to have been made, taken or done in the exercise of the powers conferred by this Ordinance. Subsequently the second Ordinance viz. Ordinance No. 34 of 1948 was repealed by the Influx from Pakistan (Control) Act, Act 23 of 1949 and this Act extended to the whole of India except the State of Hyderabad. The Act was extended to Hyderabad also toy the Influx from Pakistan (Control) Amendment Ordinance No. 22 of 1950. It would, therefore, be clear that this Act was applied to Hyderabad on 24-7-1950, by the aforesaid Ordinance. This Act has subsequently been amended and the Act in its amended form ia Act No. 55 of 1950. By Act 55 of 1950 the words 'except the State of Hyderabad' occurring in Sub-section (2) of Section 1 Influx from Pakistan (Control) Act of 1949 were omitted. It would appear, as has been shown above, that the Petitioner now before us is said to have gone to Pakistan in May 1950 and returned in June, 1951. The aforesaid enactment was in force at the time when the Petitioner returned to India. Under this Act the Central Government is empowered to make rules for all matters ancillary or incidental to the carrying out of the purpose of this Act, and these rules, which have been framed in exercise of the powers conferred by Sec 4, Influx from Pakistan (Control) Act, 1949, are called 'Permit System Rules'.

4. As the facts narrated above would show, the Petitioner was prosecuted for violating the provisions of the rules made under Section 4 and sentenced to pay a fine of Rs. 200/- by the City Magistrate. Section 5 of the Act provides that 'whoever contravenes the provisions of any rule made under Section 4 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs. 1,000/- or with both'. The petitioner was prosecuted for having contravened the provisions of Rule 31 (2) (d) of the Permit System Rules framed under Section 4 of the Act. Sub-Rule (2) imposes a condition that the class of persons mentioned in this Sub-Rule (2) shall, if they enter India from any place from Pakistan, be required to be in possession of & permit and in Clause (d) of this Sub-Rule the following persons have been included: 'Persons domiciled in India who after a visit to or stay in West Pakistan return to India through East Pakistan'. It is common ground that the petitioner in this case went to West Pakistan for a temporary stay and returned to India through East Pakistan. Therefore, according to Clause (d) of Sub-Rule (2) of Rule 31 of the Permit System Rules, it was incumbent upon the petitioner to have obtained a permit. Therefore, it is clear that by not having obtained a permit the petitioner contravened the provisions of the above rules. The, question is where he had been prosecuted under Section 5 of the Act and punished, whether it was open to the authorities to direct his removal from India as Government is now seeking to do. It would be apparent from Section 7 of the Act that notwithstanding the provisions contained . in Section 5 of the Act wherein a person could be prosecuted for contravening the provisions of the rules under the Act, the Central Government is empowered to direct by general or special order the removal from India of any person who has committed or against whom a reasonable suspicion exists that he has committed an offence under this Act, for, the words of Section 7 of the Act are to the following effect. 'Without prejudice to the provisions contained in Section 5, the Central Government may, by general or special order, direct the removal from India of any person who has committed or against whom a reasonable suspicion exists that he has committed an offence under this Act and thereupon any officer of Government shall have all reasonable powers necessary to enforce such directions.' Therefore, the argument of the learned Advocate for the petitioner, that the petitioner having been prosecuted for contravention of the rules, the authorities had no jurisdiction or power to direct the removal cannot be sustained. This power clearly does not affect the provisions of Section 5 of the Act. This is an additional power given to the Central Government to remove persons contravening the provisions of the Act. Therefore, from the above discussion it would be clear that the Central Government is competent to make an order directing the removal of a person who contravenes the provisions of the Act. It may be mentioned at this stage that the Influx from Pakistan (Control) Act is an enactment of the Dominion Legislature and the right of the Dominion Legislature to enact in this regard is clear from Paragraph No. 17, List 1, seventh Schedule of the Government of India Act. Para 17 is to the following effect:

Admission into and emigration and expulsion from India, including in relation thereto the regulation of the movements in India of Persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.

Item No. 19 is 'Admission into, emigration and expulsion from India; passports and visas'. This subject, therefore, is a Union Subject and the Central Government is competent to legislate on this subject.

5. It was contended by the learned Advocates on behalf of the Petitioner that the Petitioner was a citizen of India and he continued to be a citizen despite his having gone to Pakistan for a short time. It was argued that it could not be said that he migrated to Pakistan, as migration would, presuppose going to Pakistan with the intention of making it the person's abode or residence in future. Going to Pakistan for a medical treatment or for any temporary purpose could not be regarded as migration within the meaning of Article 7, constitution of India. This argument was elaborated by citation of authorities showing what was meant by migration and whether by reason of a temporary absence from India he would lose his citizenship. This argument was advanced by the learned Advocates and it was contended that if he continued to be a citizen of India, he would be entitled to the fundamental rights conferred by the Constitution and one of such rights was his right to reside and settle in any part of the territory of India. It was urged that by reason of his being removed from India the rights that had been conferred on a citizen under Article 19(1)(d) and (e) were infringed. It is not necessary for us to go into the question as to whether the Petitioner could be regarded as having migrated to Pakistan and whether the fact that he went for a short stay in Pakistan would deprive him of the citizenship rights, for under the Influx from Pakistan (Control) Act of 1949, the power to remove any person who has committed an offence under the Act is not merely confined to non-citizens but to citizens as well. For the words occurring in Section 7 of the Act are.. The Central Government may, by general or special order, direct the removal from India of 'any person' who has committed an offence or against whom a reasonable suspicion exists that he has committed an offence under this Act...

We, therefore, do not think it necessary to go into the question of the right of the Petitioner's citizenship.

6. It was also argued before us that this enactment viz. The Influx from Pakistan (Control) Act of 1949 was invalid inasmuch as it affected the fundamental rights conferred by the Constitution in that it gave a power to the Government to restrict the freedom of movement of a citizen which he would otherwise have been entitled to under Article 19(1)(d) and (e). In this connection much reliance was placed upon a decision of the Allahabad High Court reported in - Shabbir Husain v. State of V.P. : AIR1952 All257 . This was a case where the person went to Lahore in 1948, wanted a permanent permit to return to India but the authorities gave a temporary permit to the Petitioner and he in that case overstayed. He was convicted under Section 5, Influx from Pakistan (Control) Act. He asked for a permanent settlement in India taut the Government rejected it and passed orders for his removal. A perusal of the judgment would show that the learned Judges of the Allahabad High Court were not in possession of the information as to whether the Dy. High Commissioner, who had granted the temporary permit, ever rejected the application of the Petitioner for permanent settlement in India. The issue was whether the Deputy High Commissioner disposed of the application of the Petitioner in that case finally. It was incumbent on the Dy. High Commissioner to pass final orders on the application of the Petitioner after the receipt of a report that was sought for from the Uttar Pradesh Government and if the report satisfied that he was domiciled in India he was to be issued a permit for return to India and if the report were otherwise he was not to be issued a permanent permit. It was not clear as to what report the U. P, Government gave and whether any final orders had been passed by the Dy. High Commissioner. That was a permit granted under pule 18 (a) of the Permit System Rules of 1948. Under those circumstances the learned Judges held that it could not be said that the period of temporary permit had come to an end and that the Petitioner had contravened the conditions of his, permit by staying on in this country. It would, therefore, be clear that the learned Judges came to the conclusion on the facts of the particular case that Shabbar Hasan, the petitioner, had not contravened the conditions of his permit and, therefore, they held that the order directing the removal of the Petitioner was unconstitutional. This case, therefore, cannot help the Petitioner.

7. Another case which was relied upon by the Advocates for the Petitioner is the case reported in - Sayedah Khatoon v. State of Bihar : AIR1951 Pat434 . In this case the appellant came under a permit. She came to Gaya through East Pakistan and later on a notice was served on her by the High Commissioner for India in Pakistan withdrawing the permit and requiring her to return in 7 days. The question as to whether there was any violation of the rules under the Influx from Pakistan (Control) Act was not discussed in that case. What the learned Judges held was that a woman born in India and married to a citizen of India, taking up temporary residence in Pakistan for medical treatment, would neither fall under the definition of an Evacuee contained in Clause (c) of Section 2 of the Bihar Administration of Evacuee Property Ordinance of 1949, nor under Clause 2 as the word 'resident' must be construed as, meaning a person who has taken up his residence in Pakistan permanently. This decision cannot be regarded as a decision wherein the question of the validity of the Influx from Pakistan (Control) Act was in issue. In so far as the validity of this Act. is concerned we must state that there is unanimity of opinion that the Act is valid. But the only divergence of opinion is with regard to the power under Section 7 of the Act given to the Central Government to remove a person from India where he contravenes any of the rules framed under Section 4 of the Act. The latter question came up for consideration before some of the High Courts in India, and it was held that this provision in the Act for the removal did not violate any of the fundamental rights conferred by the Constitution. The Nagpur High Court in a case, exactly on all fours with this case, held that the Influx from Pakistan (Control) Act was valid law and that the restriction imposed on the freedom of movement was in the interests of the general public, consequent and necessary on the partition of India, Vide - Mohd. Hanif v. State of M. P. AIR 1951 Nag 185 (C). In another case, which came before the same High Court, viz., the case of - Mohd. Ibrahim v. High Commr. for India in Pakistan AIR 1951 Nag 38 (D), on the facts the learned Judges held that the appellants migrated to Pakistan and so, under Article 7 of the Constitution, they could not be deemed to be citizens of India and, therefore, could not claim the fundamental rights. The learned Judges also held that a person could be removed under the general order of the Government under Section 7 of the Act. A third case which was considered by the same High Court was the case of - Atau Raheman v. State of M.P. AIR 1951 Nag 43 (E). In this case the applicant was convicted under Section 5 of the Act and he was later arrested with a view to being deported under Section 7 of the Act. The applicant sought for a writ of Mandamus to allow him to stay in India. The learned Judges considered the scope of Section 7 of the Act and they distinctly laid down that the provisions of the In-flux from Pakistan (Control) Act would apply to the citizens of India as much to non-citizens and they also held that the provisions contained in Section 7 of the Act could not be regarded as unconstitutional or as having become void after the Inauguration of the Constitution. The same question came up for consideration before the Bombay High Court in the case of - Amin Badshah Haji Shah v. State of Bombay (Bom) (F). This is an unreported case decided by Tendolkar, J. on 12-12-1950. In this case also it was held that Section 7, Influx from Pakistan (Control) Act could not be regarded as offending Article 19(1)(d) & (e) of the Constitution.

8. It is no longer open to contend that this Act infringes the fundamental rights conferred under Article 19(1)(d). & (e), after the pronouncement of the Supreme Court in the case of - A.K. Gopalan v. State of Madras : 1950 CriLJ1383 , where Kania, C. J. laid down as follows:

If there is a legislation directly attempting to control a citizen's freedom of speech or expression or his right to assemble peaceably ....the question whether the legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects but as a result of the operation of other legislation .... his right under any of these sub-clauses is abridged the question of the application of Article 19 does not arise.

Applying the above dictum of His Lordship the Chief Justice to the present case it would appear that the right, if any, of the petitioner can be regarded as having been abridged only by the operation of a legislation, that is to say, it is only where he violates or contravenes the rules framed under the Influx from Pakistan (Control) Act that he is visited with the penalty of having to be de-ported from India. This restriction on his freedom of residence in India is only as a result of the operation of another legislation and in such circumstances it cannot be said that the Act itself seeks to limit or restrict the freedom of movement of the petitioner. The

above observations of their Lordships of the Supreme Court were reiterated in the case of the - State of Punjab v. Ajaib Singh : 1953 CriLJ180 . This was a case under the Abducted Persons (Recovery and Restoration) Act 1949. An argument was advanced that the Act was inconsistent with the provisions of Article 19(1)(d) & (e) and Article 21. In repelling this contention their Lordships observed 'This matter is concluded by the majority decision of this Court In - 'Gopalan's case (G) (Supra)', and the High Court quite correctly negatived this contention'. This was an appeal from the order of the High Court of East Punjab and a Pull Bench of that Court held that the decision in - : AIR1952 All257 , ran counter to the principles laid down in - : 1950 CriLJ1383 and they negatived the contention that it infringed Article 19(1)(d)(e). The same view has been taken by the Bombay High Court in an unreported decision of Chagla C. J. and Gajendragadkar J! of the Bombay High Court in the case of - State v. Noor Mohammed Ali Mohammed, D/- 9-4-1952 (Bom) (I). Therefore, the argument that it violates the fundamental rights conferred by the Constitution is unsustainable. For all the above reasons we are of the opinion that this petition should fail. It is, therefore, dismissed with costs. Advocate's fee Rs. 50/-.