

Anand Swaroop Verma Vs. Union of India & Anr.

2002 VI AD (DELHI) 1025 CRLW. No. 746/2002 8.8.2002

CRL. W. 773/2002 Sherab Shenga Vs. UOI & Anr.

(DALVEER BHANDARI, RS. SODHI, JJ.)

JAppearances:

tMs. Nitya Ramakrishnan & Mr. Rakesh Shukul, Mr. Sunil Aggarwal & Ms. Preeti Verma 'Advocate for the Appellant. .

,Mr. Sanjay Jain with Mr. Jayant Tripathi for UOI.

,Ms. Rajdipa Behura for Respondent no. 2.

Constitution of India, 1950 - Articles 21, 226 - Writ of Habeas Corpus - Foreigners entitlement to fundamental rights under the Indian Constiution ---' Discussed Petitioners are. Nepalese Citizens - Associated with banned organisatio n Interrogation - Opportunity to hear - Allowed to meet their counsel appearing in writ - No violation of fundamental rights under Art. 21 - Deported b Nepal prior 10 the filing of this petition.

Held: In our considered view even the foreigners are not denuded of their rights as numerated under Article 21 of the Constitution. The respondent StatE. has to adhere to the basic spirit of the Article 21 of the Constitution even while dealing with the cases of foreigners. Affording of oppportunity would certainly depend on the facts of each case. There cannot be a straight jacket formula. Each case has to be determined on its peculiar facts and circumstances. (Para 14) . .

In the instant case we are clearly of the opinion that there has been no violation or infringement of the fundamental rights of the aforementioned 4 Nepalese citizens under Article 21 of the Constitution. (Para 15)

In the facts and circumstances of the case, we deem it appropriate to direct the respondents to make serious endeavour to get the information regarding the whereabo'uts of petitioner's husband from the Nepalese Government and inform her. No further directions are necessary in these petitions and both these petitions are accordingly disposed of. (Para 16)

Result: Petition disposed of.

Cases Referred:

1. Hans Muller of Nurenburg Vs. Superintendent. Presidency Jail, Calcutta, AIR .1955 SC 367.
2. Louis De Raedt Vs. Union of India, 1991 (3) SCC 554.

DALVEER BHANDARI, J.

These two Habeas Corpus petitions have been filed with almost identical reliefs. Therefore, we deem it appropriate to dispose of both these petitions by this common judgment.

2. Criminal Writ 746/02 has been moved on behalf of four persons, namely, Partha Chhetri, Moti Prasad, Maheshwar Dahal and Aditi. According to the petitioner they are being held by the Special Cell, Lodhi Colony, presumably, under the powers conferred by the Foreigners Act. It is incorporated in the petition filed on 12.7.2002 that the morning newspapers published that they have been served with 'Quit India' notices. It is also mentioned in the petition that to the best of the petitioner's knowledge Partha Chhetri is an Indian citizen hailing from Siliguri and there are no legal or other proceedings against him in Nepal. .

3. In the petition it is prayed that a writ, order or direction in the nature of certiorari

be issued for quashing the 'Quit India' notices. It is also prayed that the writ of Quo Warranto seeking the authority by which the respondents have/are about to deport Partha Chhetri without ascertaining his nationality by due process be issued. This petition, was filed on, 12.7.2002 and on the same day this court issued show cause notice returnable on 15.7.2002, and directed that until the next date of hearing four persons named in the petition shall not be deported. From the petition it is not clear whether these four persons have been deported or are likely to be deported.

4. In Criminal Writ 733/02 filed by Sherab Shenga it is mentioned that the petitioner is an Indian citizen and entitled to all the fundamental rights guaranteed by the Constitution. It is mentioned in the petition that the petitioner is married to Partha Chhetri and her permanent address is 5th Mile Tadong Gangtok, Sikkim. The marriage took place according to Hindu rites on 29.1.1994. Surendra Karki Chhetri is the husband of the petitioner. He has been a writer for several years and he has used the name "Partha" ever since he began to write. It is mentioned that he is neither heading any political organization nor is he a member of any organization. It is mentioned that he could have applied for Indian citizenship Under Section 5(1)(c) of the Indian Citizenship Act but in view of the status of Nepalese under the Indo-Nepal Friendship Treaty there was no need for him to do so. The petitioner had no knowledge of the deportation of her husband since she was in Sikkim. The petitioner is worried about the life and safety of her husband. . .

5. It is mentioned in the petition that Indian state is bound by the principle of non-refoulement, which is non-return of a foreigner to a hostile territory. It is also mentioned that the respondent has done so without affording the petitioner any opportunity to represent against the action. It is also mentioned that in case the petitioner's husband has been detained then near relatives or friends must be informed about the grounds of his arrest so that they may arrange for the proper assistance for him.

It is mentioned that it would be absurd to suggest that the manner in which the petitioner's husband was deported is contrary to the provisions of the Indian Constitution, even if the same was done by invoking the provisions of the Foreigners' Act. It is also mentioned that fundamental rights are neither waived nor abrogated. No statute can override the dictates of the Constitution which demands for a fair play and due process at all times. An administrative process without any opportunity to show cause against it must be struck down, otherwise the power which is invoked for it would itself become unconstitutional.

6. In the brief synopsis filed on behalf of the respondents, it is mentioned that an intelligence report was received about a week prior on 11.7.2002 that some other person along with the persons named in the petition are present in Delhi and their activities are detrimental to the interest of the country. At 3.30 p.m. on 11.7.2002 an information was received that all these people were holding a meeting at Triveni Kala Sangam which was recorded vide D.D.No .12. .

7. The officials of the Special Cell detained all the 13 persons at 5.30 p.m. They refused to give their names and addresses, then they were brought to the Special Cell, Lodhi Colony, All of them were interrogated separately and out of 13 persons, 9 persons informed that they were Indian citizens and ultimately gave their names and addresses and thereafter they were let off. A report was also called from Nepal Embassy through an officer. The remaining four persons were further interrogated by the officials of the Special Cell as well as by the DCP, Special Cell, Mr. Ashok Chand and hence they were taken to the office of FRRO, New Delhi at 9 p.m. where they were again interrogated by the DCP, FRRO himself and after satisfying himself they were served with 'Quit India' notice. The counsel appearing for these four persons was also allowed to meet them.

8. During the course of hearing, the respondent also produced the confidential file in which it is mentioned that all the four persons abovenamed are Nepalese citizen and their address are mentioned. It is mentioned that Partha Chhetri is closely associated with Akhil Bharatiya Nepalee Ekta Samaj (for short ABNES). Maheshwar Dahal is a Politbureau member of the CPN (Maoist) of Nepal and has been actively associated with the Maoist activities and has also been writing for "Jan Awaz" of Nepal. Moti Prasad is an active member of ABNES and Aditi has been writing for the Pro-CPN (Maoist) journal, Teesar (I Sansar. Their photographs and other details are in the confidential file of the respondent They were all given 'Quit India' notices. They were allowed to meet their counsel 2nd thereafter they have been deported to Nepal.

9. It may be pertinent to mention that the ABNES is one of the banned organization in the Schedule of the Prevention of Terrorism Act, 2002. The petitioner (in Cri .W. 735/02) has suppressed this fact from the Court that Partha Chhetri is a citizen of Nepal and is not associated with the 'banned organization such as ABNES. This of course leaves a bitter taste.

10. The short controversy which arises for consideration is whether the foreigners are entitled to fundamental right as alleged or not? This, question is no longer res-integra.

Their Lordships of the Supreme Court had occasion to examine similar question in *Louis De Raedt Vs. Union of India* reported as 1991 (3) SCC 554. It is mentioned that fundamental rights of the foreigner is confined to Article 21 for life and liberty and does not include right to reside and settle in this country as mentioned in Article 19(1)(e) which is applicable only to the citizen of this country.

11. In a Constitutional Bench judgment in *Hans Muller of Nuremberg Vs. Superintendent, Presidency Jail, Calcutta* reported as AIR 1955 SC 367 it is mentioned that the power of the Government to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but as far as the law which operates in India is concerned, the executive government has unrestricted right to expel a foreigner. As far as the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case.

12. In this case the court also had occasion to examine the aspect of similarity between the Foreigners Act is not governed by the provisions of the Extradition Act. The two are distinct and neither impinges on the other. Even if there is a requisition and good case of extradition, the government is bound, to accede to the request.

13. The procedure which has been laid down in Extradition Act is to be followed when a person is extradited. From the records' shown to us, in this case the action has been taken under sub-Section (2)(c) of Section 3 of the Foreigners Act, 1946. All the four persons named in the petition have been deported even before the petition was filed. On the basis of the record it has been shown to the court that the respondents could legally and legitimately deport all the four Nepalese citizens. Now, only the short question which remains for consideration is whether the foreigners are entitled to the basic fundamental rights as enumerated in Article 21 of the Constitution or not? It is the settled position that the opportunity in consonance with the principle of natural justice will depend on the facts and circumstances of each case. In the instant case it is abundantly clear that all the four persons named in the petition have been given hearing by various senior officials. Even the counsel who appeared for them in this court was permitted to meet all four of them before their deportation.

14. In our considered view even the foreigners are not denuded of their rights as enumerated under Article 21 of the Constitution. The respondent State has to adhere to the basic spirit of Article 21 of the Constitution even while dealing with the cases of foreigners. Affording of opportunity would certainly depend on the facts of each case. There cannot be a straight Jacket formula. Each case has to be determined on its peculiar facts and circumstances.

15. In the instant case we are clearly of the opinion that there has been no violation or infringement of the fundamental rights of the aforementioned 4 Nepalese citizens under Article 21 of the Constitution.

16. In the facts and circumstances of the case, we deem it appropriate to direct the respondents to make serious endeavour to get the information regarding the whereabouts of ,petitioner's husband from the Nepalese Government and inform her. No further directions are necessary in these petitions and both these petitions are accordingly disposed of.