

PETITIONER:
GURBACHAN SINGH

Vs.

RESPONDENT:
THE STATE OF BOMBAY AND ANOTHER.

DATE OF JUDGMENT:
07/05/1952

BENCH:
MUKHERJEA, B.K.
BENCH:
MUKHERJEA, B.K.
AIYAR, N. CHANDRASEKHARA
SASTRI, M. PATANJALI (CJ)
MAHAJAN, MEHR CHAND
DAS, SUDHI RANJAN

CITATION:
1952 AIR 221 1952 SCR 737
CITATOR INFO :
R 1956 SC 559 (7,10,14)
E&F 1956 SC 585 (11,13,16)
RF 1961 SC 293 (11)
R 1967 SC1581 (18)
R 1973 SC 630 (10)
R 1974 SC 543 (24)

ACT:
City of Bombay Police Act, 1902, s. 27 (1)--Constitution of India, Arts. 19 (1) (d), 19 (5)--Provisions relating to externment whether infringe fundamental right to freedom of movement--Validity--Externment order fixing place outside State of Bombay for residence--Legality.

HEADNOTE:

Section 27 (1) of the City of Bombay Police Act, 1902, does not contravene the provisions of Art. 19 of the Constitution inasmuch as it was enacted in the interest of the general public and, having regard to the class of cases to which this sub-section applies and the menace which an externment order passed under it is intended to avert; the restrictions that it imposes on the fundamental right of free movement of a citizen which is guaranteed by Art. 19 (1) (d) of the Constitution are reasonable and come within the purview of Art. 19 (5).

The determination of the question whether the restrictions imposed by a legislative enactment upon the fundamental rights of a citizen enumerated in Art. 19(1) (d) of the Constitution are reasonable or not within the meaning of clause (5) of the article depends as much on the procedural part of the law as upon its substantial part, and the Court has got to look in each case to the circumstances under which and the manner in which the restrictions have been imposed.

There are two kinds of externment orders contemplated by sub-section (1) of s. 27 of the City of Bombay Police Act, 1902; one, where the externment is directed from Greater Bombay, and the other where the externee is to remove himself

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from the State of Bombay. In the first class of cases, the externment order has to specify the place where the externnee is to remove himself and it must also indicate the route by which he has to reach that place. On the other hand, where the externment is from the State of Bombay, the externnee can remain anywhere he likes outside the State and no place of residence can or need be mentioned.

Where an externment order made under s. 27 (1) of the City of Bombay Police Act directed a person who resided in the City of Bombay to remove himself from Greater Bombay and to go to his native place at Amritsar, and on his representation that he did not like to go to Amritsar and might be allowed to stay at Kalyan, which was outside Greater Bombay, he was permitted to do so: Held, that in view of the subsequent request of the externnee which was acceded to by the Commissioner of Police, the externment order could be construed as an order of externment from Greater Bombay to Kalyan and it was therefore a valid order of externment.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 76 of 1952.

Application under-Art. 32 of the Constitution of India for a writ in the nature of mandamus.

H.J. Umrigar for the petitioner.

G.N. Joshi for the respondent.

1952. May 7. The Judgment of the Court was delivered by MUKHERJEE J.--This is an application under article 32 of the Constitution, presented by one Gurubachan Singh, praying for a writ, in the nature of mandamus restraining the respondents as well as their subordinates and successors from enforcing an externment order served on the petitioner under section 27(1) of the City of Bombay Police Act (1902).

The petitioner is an Indian citizen and is said to be residing with his father at a place called "Gogri Niwas", Vincent Road, Dadar, his father having a business in electrical goods in the city of Bombay. On the 23rd July, 1951, the petitioner was served with an order purporting to have been made by the Commissioner of Police, Bombay, under section 27 (1) of the City of Bombay Police Act, directing him to remove himself from Greater Bombay and go to his native place at

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Amritsar in East Punjab. It was mentioned in the order that the petitioner was to comply with its directions within two days from the date it was made, and that he was to proceed to Amritsar by rail. On July 25, 1951, the petitioner made an application to the Commissioner of Police and prayed for an extension of the time within which he was to remove himself from Greater Bombay, and on this application the Commissioner of Police gave him time till the 30th of July next. On 30th July, 1951, the petitioner himself wrote a letter to the Commissioner of Police stating that he did not desire to go to Amritsar and prayed that he might be allowed to stay at Kalyan which is outside Greater Bombay but within the State of Bombay and that he might be given a Railway ticket from Dadar to that place. It appears that acting on this letter the police took the petitioner to Kalyan on the evening of 30th July, 1951, and left him there. After that, the petitioner commenced proceedings in the Bombay High Court first in its original side under the Letters Patent and then in the Appellate Criminal Bench of the Court under articles 226 and 228 of the Constitution, complaining of the

externment order mentioned above and praying for a writ of certiorari to have it quashed. Both these applications were dismissed and the petitioner has now come up to this court under article 32 of the Constitution on the allegation that his fundamental rights under clauses (d) and (e) of article 19(1) of the Constitution have been infringed by the externment order.

Mr. Umrigar appearing in support of the petition has argued before us, in the first place that the order of externment is altogether void as it is not in conformity with the provisions of section 27(1) of the City of Bombay Police Act. His second contention is that the provisions of section 27(1) of the City of Bombay Police Act being in conflict with the fundamental rights enunciated in clauses (d) and (e) of article 19(1) of the Constitution are void under article 13(1) of the Constitution. The last contention

740 urged, though somewhat faintly, is. that the provision of section 27(1) mentioned above is discriminatory in its character and offends against article 14 of the Constitution.

As regards the first point, it is not disputed on behalf of the respondents that the order of externment, as was passed by the Commissioner of Police on 23-7-1951, is not in strict conformity with the provision of section 27(1) of the City of Bombay Police Act. The order directed the petitioner to remove himself out of Greater Bombay but at the same time mentioned Amritsar as the place where he was to go. Section 27(1) of the City of Bombay Police Act provides as follows:--

"Whenever it shall appear to the Commissioner of Police,

(a) that the movements or acts of any person in the Greater Bombay are causing or calculated to cause alarm, danger or harm to person or property, or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of the Commissioner witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property;

(b)...The Commissioner of Police may, by an order in writing duly served on him...direct such person...to remove himself outside the State or to such place within the State and by such route and within such time as the Commissioner of Police shall prescribe and not to enter the State or as the case may be the Greater Bombay."

It seems clear from this provision that there are two kinds of externment orders contemplated by the subsection; one, where externment is directed from the Greater Bombay and the other where the externnee is to remove himself from the State of Bombay. In the

741 first class of cases the order has got to specify the place where the externnee is to remove himself to and it must also indicate the route by which he has to reach that place.' On the other hand, when the externment is from the State of Bombay, the externnee can remain anywhere he likes outside the State and no place of residence can or need be mentioned.

In the case before us the externment order started by directing the petitioner to remove himself only out of

Greater Bombay. It was incumbent in such a case for the authorities to specify the place where the externee was to stay. Actually a place, namely Amritsar, was specified in the order, but as it is not within the State of Bombay, it was manifestly beyond the jurisdiction of the Commissioner of Police to name such place at all. It is argued on behalf of the petitioner, not without some force, that the omission to specify a place within the State where the petitioner was to stay vitiates the order. On the other hand the order read as a whole might indicate that the intention of the Commissioner of Police was to extern the petitioner outside the State of Bombay and this is apparent from the fact that he was directed to proceed to Amritsar which is situated in another State. It is no doubt true that the Commissioner of Police, Bombay, had no authority to fix any place outside the State as the place of residence of the externee and that direction was ineffective; but that direction certainly has a bearing on the question of the construction of the order, for it indicates that the real intention of the order was to direct the externee to remove himself not only from Greater Bombay but from the State of Bombay itself. If that was the intention, no place of residence need have been indicated at all. We need not, however, labour this aspect of the matter any further, for we are of the opinion that whatever irregularity there might have been in the original order, the subsequent conduct of the petitioner which had the sanction and approval of the Commissioner of Police removed the defect, if any. As has been stated already, on the 30th July, 1951,

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the petitioner himself by a letter written to the Commissioner of Police sought his permission to stay at Kalyan which is within the State of Bombay. His request was acceded to and the Police actually took him to Kalyan on the evening of the 30th. We think that, in these circumstances, the order made on the 23rd July, 1951, might be construed to be an order of externment from Greater Bombay and though there was a mistake regarding the place where the externee was to remove himself to, the mistake was rectified by the petitioner choosing Kalyan as the place of residence and that choice being accepted and given effect to by the Police Department. We do not think that in these circumstances there is really any substance in the first point raised by Mr. Umrigar.

The second point urged by the learned counsel raises the question as to whether section 27 (1) of the City of Bombay Police Act has imposed restrictions upon the fundamental right of a citizen which is guaranteed under article 19 (1) (d) of the Constitution and being in conflict with this fundamental right is void and inoperative under article 18 (1) of the Constitution. There can be no doubt that the provision of section 27 (1) of the Bombay Act was made in the interest of the general public and to protect them against dangerous and bad characters whose presence in a particular locality may jeopardize the peace and safety of the citizens. The question, therefore, is whether the restrictions that this law imposes upon the rights of free movement of a citizen, come within the purview of clause (5) of article 19 of the Constitution; or in other words whether the restrictions are reasonable? It is perfectly true that the determination of the question as to whether the restrictions imposed by a legislative enactment upon the fundamental rights of a citizen enunciated in article 19 (1)(d) of the Constitution are reasonable or not within the meaning of clause (5) of the article would depend as much upon the

procedural part of the law as upon its substantive part; and the court has got to look in each case to the circumstances under which and the manner in

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which the restrictions have been imposed. The maximum duration of the externment order made under section 27 (1) of the Bombay Act is a period of two years and the Commissioner of Police can always permit the externnee to enter the prohibited area even before the expiration of that period. Having regard to the class of cases to which this sub-section applies and the menace which an externment order passed under it is intended to avert, it is difficult to say that this provision is unreasonable. The Commissioner of Police can in a proper case cancel the externment order any moment he likes, if, in his opinion, the return of the externnee to the area from which he was removed ceases to be attended with any danger to the community. As regards the procedure to be followed in such cases, section 27 (4) of the Act lays down that before an order of externment is passed against any person, the Commissioner of Police or any officer authorized by him shall inform such person, in writing, of the general nature of the material allegations against him and give him a reasonable opportunity of explaining these allegations. He is permitted to appear through an Advocate, or an Attorney and can file a written statement and examine witnesses for the purpose of clearing his character. The only point which Mr. Umrigar attempts to make in regard to the reasonableness of this procedure is that the suspected person is not allowed to cross-examine the witnesses who deposed against him and on whose evidence the proceedings were started. In our opinion this by itself would not make the procedure unreasonable having regard to the avowed intention of the legislature in making the enactment. The law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain 'bad characters' whose presence in certain areas constitutes a menace to the safety of the public residing therein. This object would be wholly defeated if a right to confront or cross-examine these witnesses was given to the

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suspect. The power to initiate proceedings under the Act has been vested in a very high and responsible officer and he is expected to act with caution and impartiality while discharging his duties under the Act. This contention of Mr. Umrigar must, therefore, fail.

The last point made by Mr Umrigar does not seem to us to be tenable. It is true that a procedure different from what is laid down under the ordinary law has been provided for a particular class of persons against whom proceedings could be taken under section 27 (1) of the City of Bombay Police Act, but the discrimination if any is based upon a reasonable classification which is within the competency of the legislature to make. Having regard to the objective which the legislation has in view and the policy underlying it, a departure from the ordinary procedure can certainly be justified as the best means of giving effect to the object of the legislature. In our opinion, therefore, there is no substance in the petition and it shall stand dismissed.

Petition dismissed.

Agent for the petitioner: P.K. Chatterjee.

Agent for the respondents: P.A. Mehta.

JUDIS