

1967

Present : Samerawickrame, J.

S. SATHAPPAN, Petitioner, *and* W. T. JAYASINGHE (Controller of Immigration and Emigration) and another, Respondents

S. C. 667/66—Habeas Corpus Application

Habeas corpus—*Immigrants and Emigrants Act, ss. 6, 27, 28 (2)—Removal orders—Persons against whom they may be made—Right of Minister to delegate his power.*

There is no justification for the view that the Immigrants and Emigrants Act is wholly inapplicable to a person who had entered Ceylon before the date of its enactment. A person who had originally entered Ceylon before the Act came into operation and who does not fall within the exceptions mentioned in section 27 is a person in respect of whom a removal order may be made under section 28 (2) if paragraph (a), (b) or (c) of that sub-section applies to him.

The discretionary power vested in the Minister to make a removal order may be delegated by him to an Assistant Secretary of the Ministry in terms of section 6 of the Act.

APPLICATION for a writ of *habeas corpus*.

K. Shanmugalingam, with *M. D. K. Kulatunga*, for the petitioner.

Mervyn Fernando, Crown Counsel, for the respondents.

Cur. adv. vult.

July 26, 1967. SAMERAWICKRAME, J.—

This is an application for the issue of a writ of Habeas Corpus. The petitioner alleges that the corpus Suppiah Enamuthu Nadarajan has been in Ceylon for the last twenty years and has never left Ceylon during that period, but has made Ceylon his home and has been domiciled here. He further alleges that on the 31st October, 1966, the said Suppiah Enamuthu Nadarajan was arrested by officers of the Immigration Department acting on the orders of the 1st respondent and that he is now detained at the Slave Island detention camp by the 2nd respondent. The petitioner states that the detention of the said Nadarajan is illegal and prays for the issue of a writ of Habeas Corpus and for an order for the release of the said Nadarajan from the said illegal detention. The respondents have filed objections to this application.

Learned Crown Counsel submitted that the matter could be disposed of upon the averment in paragraph 13 of the affidavit of Everard Joseph Stanislaus de Silva Wijeyeratne. In the said paragraph there is pleaded a removal order in respect of the corpus made in terms of Section 28 (2) read with Section 6 of the Immigrants and Emigrants Act.

Learned counsel for the petitioner has raised the following matters in regard to the validity of the said removal order. He submitted—

- (1) that the Immigrants and Emigrants Act has no application to the petitioner because the petitioner had entered Ceylon before the date of the said Act.
- (2) that the power of making a removal order in terms of Section 28 (2) could not be delegated to any other person by the Minister and that the removal order in question which has been made by an Assistant Secretary is therefore invalid.
- (3) that the petitioner is not a person to whom sub-section (c) of Section 28 (2) applied.

There are express provisions in each of the parts 3, 4, 5, of the Immigrants Act which deal with the question as to the persons to whom the said part would apply. The question, therefore, whether the particular provisions in the Act apply or do not apply to a person must be determined by reference to such provisions contained in the Act. I can see no justification for the view that the Act itself is wholly inapplicable to a person who had entered Ceylon before the date of its enactment.

Section 28 (2) empowers the Minister to make a removal order in respect of a person if he is satisfied that that person is one to whom sub-paragraphs (a), (b) or (c) of the sub-section apply. It is no doubt true that where a power of this nature is given it must be exercised by the authority to whom it has been entrusted and cannot ordinarily be delegated. This is, however, subject to the exception that the authority may be empowered by the Statute itself to delegate the exercise of the power.

S. A. de Smith in "Judicial Review of Administrative Action", 1st Edition, at page 173 states: "A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another."

Section 6 of the Immigrants and Emigrants Act states "The Minister may either generally or specially authorize the Permanent Secretary or any Assistant Secretary to the Ministry or the Controller to exercise, perform or discharge any power (other than the power conferred by section 2 or section 31 or section 52), duty or function vested in, or imposed or conferred upon, the Minister, by or under this Act."

I am of the view that under and in terms of this provision, it was open to the Minister to delegate the function conferred on him by Section 28 (2) to an Assistant Secretary of the Ministry.

Section 28 (2) states: "Where the Minister is satisfied that a person to whom this Part applies—

(a) enters or remains in Ceylon in contravention of any provision of Part III or of any regulation made by virtue of the powers conferred by that Part; or

(b) has had his visa or endorsement cancelled; or

(c) has overstayed the period specified in the visa or endorsement,

the Minister may by order, direct a prescribed officer to arrest, detain and take on board a ship such person and may further direct by that order, or by any subsequent order that the master of that ship shall remove from Ceylon such person."

Under this provision, it is clear that the Minister can only make a removal order in respect of "a person to whom this Part applies". Section 27 sets out "that this part would apply to every person unless (a) he is a citizen of Ceylon; or (b) by virtue of any order under Part I for the time being in force, he is exempted from the provisions of this Part". Nadarajan is neither a citizen of Ceylon nor has it been claimed on his behalf that an order under Part I had been made exempting him from the operation of Part V of this Act. The Minister had, therefore, authority to make a removal order in respect of Nadarajan if he was satisfied that he had overstayed the period specified in the visa or endorsement.

Where an authority is empowered to take a prescribed course of action when it is satisfied that a given state of affairs exists, the expression of satisfaction or opinion of that authority is decisive. It may be, however, that a Court might hold the action taken invalid if it can be shown that there was no evidential or rational basis upon which the authority could have formed the view that the prescribed state of affairs existed.

The only question, therefore, that I have to decide is whether the authority who took the view that Nadarajan was a person to whom sub-paragraph (c) of Section 28 (2) applied had before him evidentiary material upon which he could reasonably have formed that view.

It appears that several petitions had been received alleging that Nadarajan was overstaying his residence permit or visa. Upon inquiry it was found that permit No. C. 32207 dated 20th June, 1951, valid for two years from the date of issue and permit No. CE 9549 of the 18th August, 1953, valid from the date of issue, that is the 17th August, 1955, had been issued to one S. E. Nadarajan who in his application for the said permits had declared himself to be the holder of Passport No. 79368. While inquiries were in progress, the corpus Nadarajan made an application for a permit or visa dated 7th April, 1966, forwarding Passport No. C. 010750 and stating that he had not held a residence permit earlier. Upon being questioned he admitted that he was an Indian national but he denied that he had applied for or held permits Nos. C. 32207 and CE. 9549. Upon inquiries made at the Indian High Commission, it was found that the corpus had been issued India Ceylon Passport No. C. 010750 and that the holder of that Passport had earlier been issued India Ceylon Passport No. 79368 which had been mentioned in the application for the permits issued in 1951 and 1953. A written communication from the Indian High Commission stating these facts had been obtained by the Assistant Secretary and has been placed before Court.

Upon this evidence, it would appear that there is material to show that the corpus had held two residence permits and at least two passports. The inference is almost irresistible that he had at sometime left Ceylon after he had first entered in 1948.

Mr. Shanmugalingam appearing for the applicant submitted that even if it be correct that the corpus had issued to him residence permits and passports, it did not show that he had in fact left the country and

that he may well have made arrangements to do so and for that purpose obtained the necessary documents but that he did not in fact leave. Had the corpus admitted that he obtained these permits but that he did not in fact leave the country, the matter may have merited some inquiry but as he chose to deny the receipt by him of these documents, the authority, namely, the Assistant Secretary, cannot be blamed for drawing an inference adverse to him.

I am of the view that from the material that was available before him, the Assistant Secretary may reasonably have taken the view that it was established that the corpus had left Ceylon sometime after he had first come here in 1948.

I am, accordingly, of the view that the removal order issued in respect of the corpus is valid and that his detention is lawful. The application is, accordingly, refused.

Application refused.

