BOMBAY HIGH COURT

Jeshingbhai Ishwarlal

Vs.

Emperor

Criminal Appln. No. 114 of 1950

(Chagla, C.J., Bavdekar and Shah, JJ.)

14.04.1950

JUDGMENT

Chagla, C.J.

1. This is a petition by the petitioner against whom an order was served by the District Magistrate, Ahmadabad, on 12th December 1949 to the effect that he should not be in any area in the district of Ahmadabad except with the permission of the District Magistrate Ahmadabad. This order is mainly challenged on the ground that it is in violation of a fundamental right guaranteed to the citizen under Article 19 (1), sub-clauses (d) and (e). Those two sub-clauses of Article 19 (1) provide that all citizens shall have the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India and the contention of the petitioner is that to the extent that he is not permitted to be in the district of Ahmadabad his movement throughout the territory of India is restricted and his right to reside and settle in any part of the territory of India is also restricted and the contention is that these restrictions are in violation of the fundamental rights guaranteed to the citizen and thus the restrictions are bad. The order is justified on the ground that it has been issued under Section 2 (1), Bombay Public Security Measures Act (Bom Act VI [6] of 1947). That section enables the Provincial Government, if it is satisfied that any person was acting, is acting, or is likely to act, in a manner prejudicial to the public safety, the maintenance of public order, or the tranquility of the Province or any part thereof, to make an order - and we are concerned here with sub clause (b) -

> "directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in the Province as may be specified in the order."

2. Now before I consider whether the order is justified by the provisions of this statute, it is necessary to consider a preliminary point that has been raised. That is a procedural point, and the

question that we have to consider is whether this Court has the jurisdiction, assuming that the fundamental tight of the citizen is affected, to issue any order on the District Magistrate calling upon him to forbear from preventing the petitioner from entering the district of Ahmadabad. It is clear, and Mr. Purshottam has not seriously disputed the position, that a writ of certiorari cannot be issued against any of the opponents. The very basis of a writ of certiorari is that the order challenged must be a judicial or a quasi judicial order and the authority passing the order must be discharging judicial functions. It is only when the Court is satisfied that the authority is acting in excess of jurisdiction or is exercising jurisdiction not vested in it or is refusing to exercise jurisdiction which is vested in it or in the exercise of its jurisdiction it is acting with material irregularity for instance, violating the rules of natural justice, that the Court would issue the prerogative writ of certiorari. In this case the order made by the District Magistrate is obviously an administrative order and such an order cannot be corrected by a writ of certiorari. But Mr. Purshottam contends that whatever might have been the position prior to 26th January 1950, and whatever might have been the jurisdiction of this Court prior to that historic date, after the passing of the Constitution the jurisdiction of this Court has been considerably enlarged, and in order to understand what the extent of the jurisdiction of this Court is we have got to look to the provisions of Article 226. Before I look to the provisions of that article, it is necessary to state what the jurisdiction of this Court was with regard to writs of certiorari and other writs. This Court had the jurisdiction to issue writs of certiorari and prohibition, but that jurisdiction was restricted territorially to the ordinary original civil jurisdiction of this Court. The Court had also the jurisdiction to issue writs in the nature of mandamus which fall under Section 45, Specific Relief Act, but the territorial jurisdiction was similarly restricted. The Court had also the jurisdiction to issue writs in the nature of habeas corpus under Section 491, Criminal Procedure Code, and as far as that jurisdiction was concerned, the extent of that jurisdiction was the whole Province or State of Bombay.

3. Now with this background, it is necessary to turn to the provisions of Article 226. In the first place, that article confers upon this Court a very vast territorial jurisdiction, in respect of writs which it used to issue before and the territoriality of which was restricted to the ordinary original civil jurisdiction of the High Court. Now its jurisdiction has been extended to the whole State of Bombay. Further, its jurisdiction is not merely confined to the writs which it issued in the past, but power has been conferred upon it to issue directions, orders or writs for the enforcement of any of the rights conferred by part III which deals with fundamental rights. It is not possible to read "directions, orders or writs" as being ejusdem generis with what follows, because these "directions, orders or writs" refer to a larger category in which category is included writs in the nature of habeas corpus, mandamus, quo warranto and certiorari. The article further confers upon this Court the power to issue not only writs in the nature of various categories specified in that article, but those writs themselves, and further the article goes on to state that these writs or orders can be issued not only for the enforcement of fundamental rights but for any other purpose. It is clear to my mind that "any other purpose" was embodied in this article in order to remove any doubt that the High Court's jurisdiction to issue these writs was confined merely to

the enforcement of fundamental rights because the High Court could issue a writ otherwise than for the enforcement of fundamental rights, and that power of the High Court is saved and safeguarded by providing in Article 226 that the writs can be issued not only for the purposes of enforcement of fundamental rights but also for any other purpose. It is perhaps interesting and also instructive to compare the power of the Supreme Court in this respect with the powers conferred upon the High Court. The Supreme Court being a new Court, just set up under our Constitution, special powers had to be conferred upon that Court, and therefore Article 32 (2) confers upon the Supreme Court the power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by this part. Therefore, whereas the jurisdiction of the Supreme Court is restricted to the issuing of writs and orders only for the purpose of enforcement of fundamental rights, the jurisdiction of the High Court is much wider and, as I said before, these orders and writs can be issued for other purposes which purposes were availed of by the High Court prior to the enactment of the Constitution.

4. Now, the Advocate-General has contended that so construed the jurisdiction of the High Court would be very extensive and may be exercised in a manner which may seriously interfere with the administration of the State. To have jurisdiction is one thing; to exercise jurisdiction is another; and I have not the slightest doubt that as in the past when prerogative writs were issued by this Court with the utmost care and caution, in future also, notwithstanding the conferment of extensive jurisdiction upon this Court, the power of this Court will not be lightly exercised. On the other hand, I see no reason why if in an appropriate case the fundamental rights of a citizen are violated or affected, the Court should be reluctant to exercise the jurisdiction which is conferred upon it. Undoubtedly, the Court will of its own motion put limitations upon its own powers. It has been suggested by the Advocate General - and I agree with him - that the Court will not exercise its power under Article 226 in a matter which it cannot deal with judicially, nor would it take notice of anything which it cannot take notice of judicially, nor would it interfere with the action of an executive officer unless it is satisfied that that executive officer is under an obligation to do something or to forbear from doing something. Therefore, if we have the jurisdiction, as indeed we have, under Article 226 to issue an order against even an executive officer who has issued an administrative order, in order to safeguard the fundamental rights of the citizen, the next question that we have to consider is whether on the facts of this case any fundamental right of the citizen has been violated or is threatened to be violated.

5. The other argument advanced by the Advocate-General is that this order was made, as I pointed out, on 12th December 1949 and inasmuch as the order was made prior to the commencement of the Constitution the Advocate-General contends that in view of Section 6, General Clauses Act, the operation of the order is saved and the order cannot be challenged. But what Mr. Purshottam is doing before us to-day is not so much the challenging of that order as the assertion of a fundamental right which is granted to him after 26th January 1950. If we are satisfied that to-day when we are hearing this petition, the petitioner is deprived of his

fundamental right of movement and of residence, then we can undoubtedly interfere. The saving of the order under Section 6 does not mean that the State is entitled after 26th January to deprive a citizen of a fundamental right which is guaranteed to him. These fundamental rights have come into existence after 26th January. Our Constituent Assembly has provided remedies for safeguarding these rights. These rights have been made justiciable and therefore even though the operation of the order may have been saved by Section 6, General Clauses Act, as I said before we are not so much concerned with the validity of the order as the violation of the fundamental rights which have come into existence after 26th January 1950.

6. Therefore, we come to the real substantial question in the case, and that is as to whether any fundamental right has been violated. As I said before, the fundamental right on which reliance is placed is that embodied in Article 19 (1), sub-clauses (d) and (e) of the Constitution. This article is subject to proviso contained in sub clause (5) and that proviso is :

> "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

7. It is important to note that the Legislature has been given the power to impose restrictions on the exercise of the rights conferred under Article 19 (1), sub-clauses (d) and (e); but it is equally important to note that those restrictions have to be reasonable restrictions. It is not for the Legislature to determine whether the restrictions are reasonable or not. It is for the Court of law to consider the reasonableness of the restrictions imposed upon the rights. "Reasonable" is an objective expression and its objectivity is to be determined judicially by the Court of law. There is no limit placed upon the power of the Court to consider the nature of the restrictions. The Court must look upon the restrictions from every point of view. It being the duty of the Court to safeguard fundamental rights, the greater is the obligation upon the Court to scrutinize the restrictions placed by the Legislature as carefully as possible. It has been suggested that as far as these restrictions are concerned they must be only considered from one or two restricted points of view. The Advocate-General has argued that if the restriction per se is reasonable, then the Court is not entitled to look at anything more. He says, for instance, in this case the citizen is entitled to be anywhere in the Union of India except the District of Ahmadabad, and, therefore, it cannot be said that the restriction is an unreasonable restriction because a large part of the Union of India is left free to the citizen to do what he likes in that part. It is also suggested that perhaps the Court may be able to consider the duration of the restriction, and if the duration is limited and not of an unlimited character, then also the Court would say that the restriction is not unreasonable. But the Advocate-General says that apart from this it is not open to the Court to consider the nature of the restriction. In my opinion, that contention is entirely erroneous. In order to decide whether a restriction is reasonable or not, the Court must look at the nature of the restriction, the manner in

which it is imposed, its extent both territorial and temporal and if after considering all this the Court comes to the conclusion that the restriction is unreasonable, then the restriction is not justified and the Court will not uphold that restriction. It must not be forgotten that the power given to the Legislature under sub clause (5) of Article 19 is to abridge or curtail the fundamental rights of the citizen, and it is a well-established canon of construction of all constitutional documents that the Court must lean in favour of fundamental rights and must place the restrictions imposed upon the Legislature in as narrow an ambit as possible. The question that the Court has always to ask is : Is the Legislature justified in abridging or curtailing the fundamental rights given by the Constituent Assembly to the citizen? If the Court comes to the conclusion that the curtailment or abridgment is justified, then undoubtedly the restrictions are reasonable and the Court would uphold these restrictions. It has been sought to be argued by Mr. Purshottam that these restrictions under sub clause (5) can only be in the interest of the general public, and according to Mr. Purshottam this is a narrow and restricted expression and can only apply to minor things like traffic and police regulations. Mr. Purshottam draws our attention to sub-clauses (2), (3) and (4) of Article 19 which contain exceptions to the other fundamental rights guaranteed by the Constitution under Article 19. For instance, Article 19 (1) (a) speaks of the right to freedom of speech and expression, and sub clause (2) saves the operation of those laws which relate to libels, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State. Sub-clause (1) (b) deals with the right to assemble peaceably and without arms, and sub clause (3) saves the operation of the laws which are made in the interests of public order and which impose reasonable restrictions on the exercise of that right; and sub clause (1) (c) deals with the right to form associations or unions, and sub clause (4) saves the operation of the law to the extent that it imposes reasonable restrictions in the interests of public order or morality. Mr. Purshottam contends that "interests of general public" is something different from security of the State, public order, or public morality, and, therefore, the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India can only be restricted on the narrow ground of "interests of general public" which is much narrower than other grounds mentioned in sub-clauses (2), (3) and (4). I am unable to accept that contention. "Interests of general public" is a very wide expression, much wider indeed than any of the expressions used in sub-clauses (2), (3) and (4). "Interests of general public" embraces public security, public order and public morality, and, therefore, much wider power is given to the Legislature under sub clause (5) to restrict the right given under the Constitution under Article 19 (1), sub-clauses (d) and (e). Therefore the wider the power given to the Legislature the greater is the duty of the Court to see that the restrictions placed upon the liberty are reasonable restrictions.

8. I have next to consider whether Bombay Act VI [6] of 1947, to the extent that it empowers the Government to issue what I might call an externment order under Section 2 (1) (b), is void under Article 13 (1) of the Constitution, inasmuch as it imposes restrictions on the fundamental rights of the citizen under Article 19 (1), sub-clauses (d) and (e), such a restriction being an unreasonable restriction. In order to decide that question, it is necessary to look at the scheme of the Act as far as externment orders are concerned. In the first place, it is important to note that it

is not the Legislature that imposes the restrictions. The Legislature has left it to the Provincial Government, whose satisfaction is final to decide whether an externment order should be issued or not provided the externed is acting in a particular manner laid down in Section 2 (1) of the Act. It is also worth noticing that under Section 21 of the Act the power is given to the Provincial Government to delegate any of its powers and duties to any officer or subordinate authority, and really the right of the citizen is to be affected by the satisfaction of any subordinate authority contemplated by Section 21, and the grounds on which the Provincial Government or the subordinate authority to whom power has been delegated under Section 21 can make the order is that the person was acting or is acting or even is likely to act in a prejudicial manner. If this was the only objection to the Act, perhaps there would not be much force in Mr. Purshottam's contention. We can well understand the Legislature leaving it to the executive Government to determine from time to time as emergency arose or a situation developed that particular persons should either be detained or an externment order should be made against them. We can also understand that it may be necessary under certain eventualities for the executive Government to act not only when it is satisfied that a person is acting or was acting in a prejudicial manner but even if he is likely to act in a prejudicial manner.

9. But there are one or two other considerations which are much more important as far as this Act is concerned. It has been pointed out to us that no period for the duration of the externment order is laid down in the statute. The Advocate-General has pointed out that the Act is for a temporary period and therefore, the duration of the externment order is limited by the duration of the statute. In a sense he is right but it must also be pointed out that even a temporary statute can be renewed from time to time by the Legislature and even a permanent statute may be repealed by the Legislature. This very statute which originally was for two years, was amended by the Legislature to be for a duration of three years, and then subsequently for a period of six years. Therefore, there is no limit to the power of the Legislature to continue the duration of the statute. But what is much more important and to my mind what is fatal to the validity of the restriction placed by the Legislature, is the fact that the person against whom an order of externment is to be made has no right whatever to be heard in his defence before he is asked to leave his home and hearth and go and reside in some other place. There is no obligation upon the authority to tell him what he is charged with or what are the grounds against him which make it incumbent upon the Government to ask him to leave his home town. Nor is there any obligation upon the authority to hear the person against whom the order is intended to be made in his defence before the order is made. It is very curious and it is difficult to understand why a discrimination was made between an order of detention made under Section 2 (1) (a) and an order of externment made under Section 2 (1) (b), because in the case of an order made under Section 2 (1) (a) grounds have to be furnished by the Provincial Government under Section 3 and a right has been given to the detenu to make a representation to the Government. It is difficult to understand why the operation of Section 3 was restricted to cases of detention and was not extended to cases of externment. The Constituent Assembly itself has dealt with cases of detention. Article 21 provides that "no person shall be deprived of his life or personal liberty except according to

procedure established by law," and then Article 22 lays down the safeguards in favour of the citizen in cases of preventive detention. The first safeguard is the constitution of an advisory board, the second safeguard is that the maximum period of detention is to be as provided by Parliament, and the third safeguard is that it is incumbent upon the authority making the order to communicate to the person detained the grounds on which the order has been made and also that he shall afford to the detenu the earliest opportunity of making a representation against the order. Therefore, when the Constituent Assembly provided for a restriction upon the liberty of the person of the citizen, it circumscribed that restriction in the most careful manner, and the most important limitation that it placed upon that restriction was that it made it incumbent upon the authority detaining to furnish the grounds of detention and also afford an opportunity to the detenu to make a representation against the order. When we turn to the Bombay Public Security Measures Act, we find that neither of these two important safeguards find a place in that Act. Whatever view I might have taken of the restriction placed upon the citizen by this Act, to the extent that it relates to externment orders I can only take one view when I find that a man can be sent away from his district without being heard and without having the right of being heard and without knowing why he is being sent away, and that view is that the restriction imposed upon the fundamental right is not a reasonable restriction.

10. The Advocate-General has attempted to argue that the right of being heard is not a fundamental right guaranteed to the citizen under the Constitution. That is perfectly true and I do not suggest that in the case of every restriction which may be imposed under any of the sub-clauses of Article 19 the right to be heard must necessarily be granted before the Court would hold that the restriction is reasonable. I am now only concerned with sub clause (5) and although the right to be heard may not be a fundamental right I have still got to consider whether the absence of it makes the restriction reasonable or not. The Constitution has made the Courts the custodians of the fundamental rights of the citizen, and it is in that spirit and in that capacity that the Court must look upon the nature of the restriction, and even though the absence of a particular safeguard may not be the violation of a fundamental right as such, even so the absence of such a safeguard may result in the restriction not being a reasonable restriction.

11. Having given the best thought to the matter I have come to the conclusion that the restriction placed upon the petitioner is an unreasonable restriction, and therefore the law, to the extent that it imposes that unreasonable restriction, is void, being contrary to the fundamental rights conferred upon the citizen by the Constitution, and therefore the citizen is entitled to an order from this Court for the purpose of safeguarding his fundamental right. It is true that the fundamental right has not been in fact violated after the Constitution came into force, but so long as the order stands there is undoubtedly a threat of the violation of that right, and Mr. Purshottam says that he should not be driven to enter Ahmedabad and face a prosecution at the hands of the Government. In my opinion, therefore, the Court should issue an order against the respondents calling upon them to forbear from preventing the petitioner from entering the district of Ahmedabad.

Bavdekar, J.

12. I want to add a few words with regard to the interpretation of Clause (5) of Article 19 inasmuch as there has been a difference of opinion between us with regard to the meaning of that clause. The clause permits the State to make new laws imposing reasonable restrictions on the exercise of the rights conferred by Clauses (d), (e) and (f) of Article 19 (1). It similarly saves from the operation of Article 13 existing laws which permit the imposition of similar restrictions. The question is, what is meant by laws imposing reasonable restrictions on the exercise of the rights. There are two possible views. One is that even though the reasonableness of the restrictions is a matter for the Court, what the Court has to consider is whether the restrictions are reasonable per se. What is meant by this I will come to a little later. The other view which has been placed before us on behalf of the petitioner is that in deciding as to whether the law imposes only a reasonable restriction, we have got to see not only the character of the restrictions which are imposed or the duration of the restrictions but also the manner in which the restrictions are imposed, i.e., the procedure which has been gone through before an order imposing the restriction has been made.

13. Now, as my learned brother has just pointed out, in the first instance, the law with which we are concerned in this case does not itself impose any restrictions on the exercise of the right of freedom of movement. One can conceive of such a law. For example, if there was an outbreak of an epidemic in district A, the law could provide that inhabitants of that district shall not, during the pendency of the epidemic, leave that district and persons outside the district shall not enter it. In such a case the restrictions are imposed by the law itself. In the present case, the Public Security Measures Act merely permits the imposition of restrictions on the right of freedom of movement. I do not think that it would be permissible to read Clause (5) as if it read, "any law permitting the imposition of reasonable restrictions on the exercise of the rights." It is true that before we could say that any particular law which imposes restrictions is void, we have got to hold that the restrictions are unreasonable. But the clause which speaks of imposing reasonable restrictions on the exercise of the rights conferred by the freedom really speaking provides for the determination of the reasonableness or otherwise of a restriction by a consideration of the reasonableness of the law. The Constituent Assembly has provided by Clause (5) of Article 19 for two things : one, that notwithstanding the rights which have been declared by Article 19, sub clause (1), both the Parliament and the State Assemblies may make laws circumscribing the rights referred to in Clause (1) of Article 19. In the second instance, it has imposed limitations upon the laws which the Parliament or the State Legislatures could make. Only those laws will be valid, which impose reasonable restrictions on the exercise of the rights which each citizen is declared to possess by Article 19, Clause (1). It is obvious that in times of emergency restrictions upon the fundamental rights, say, for example, freedom of movement, could not be imposed by enacting laws, which themselves place restrictions upon the exercise of the rights. It may be necessary to enact laws, which permitted certain authorities to place restrictions upon the

freedom of a particular individual, for example, to move. It appears to have been contemplated that such laws would be enacted, not only in times of emergency but also in other times, and the Constituent Assembly could not but have been unaware of measures like the Bombay Public Security Measures Act, which were already on the statute book of the various Provinces. Obviously, therefore by Clause (5) of Article 19 it sought to impose limitations upon the powers of the Legislatures to enact both kinds of legislations, that which itself placed restrictions upon the freedoms conferred by Article 19, sub clause (1), and that by which authorities like the Provincial Government were permitted to impose restrictions upon the exercise of those rights by individuals; and if we were to interpret reasonable restrictions to mean restrictions which by themselves were unobjectionable on the ground of unreasonableness the words "imposing reasonable restrictions on the exercise of the rights conferred by the said sub-clauses" cannot be made applicable to laws which permit restrictions to be placed upon the fundamental freedoms. On the other hand, whenever Parliament or the State Legislature enacts a law, by which either restrictions are imposed upon the exercise of the rights, for example, of freedom of movement, or certain authorities are permitted to impose restrictions on the exercise of the rights conferred by Clause (1), sub clause (d) of Article 19, the fundamental right in this case, freedom of movement, which Article 19, sub clause (1), proceeds to guarantee, is restricted and what the Constituent Assembly wants the Courts to find out before holding the law valid is as to whether this abridgement or restriction effected by the legislation, which is impugned, is or is not reasonable. I read Article 19, Clause (6), as if it had provided in connection with new laws to be made, whether by Parliament or the State Legislature, that "nothing in sub-clauses (d), (e) and (f) of the said clause shall prevent the State from making any law reasonably restricting the rights (or the exercise of any of the rights) conferred by the said sub-clauses . . ." and of course, similarly, in regard to existing laws.

14. In case the existing laws which restrict the freedoms referred to in Clause (1) of Article 19 mast be reasonable it is obvious that they must provide that any person whose right for example, of freedom of movement, is restricted must be given an opportunity, may be after an interim order restricting his rights is passed ex parte, of showing cause why an order under a Security Act restricting his movements should not be passed. The right of hearing before condemnation is admittedly a component of the rights which taken together constitute rights of natural justice and, in my view, in case legislation which restricts the fundamental rights has got to be pronounced to be reasonable, it must give the person whose freedom is restricted, an opportunity to be heard. The manner in which he is to be heard is, of course, a different matter.

15. The only other point which I would like to refer to is that made by the learned Advocate-General that whereas when the Constituent Assembly was dealing with the question of preventive detention it has thought it fit to make it obligatory upon the detaining authority to give an early opportunity for making a representation to the detenu, it is not specifically provided in Article 19 that such an opportunity should be given to the persons against whom an order restricting their freedoms is made. The learned Advocate-General argues that if the Assembly

had thought that opportunity to be heard was of such fundamental importance it would have provided for the opportunity to be given not only where the question of preventive detention was involved but also where the question of the other freedoms was involved. The reply to that must be that there may be more than one way of securing the same object. If the word "reasonable" gives the person against whom the order is made the same right as the right expressly conferred by Article 22 (5) the Constituent Assembly might have thought that it was unnecessary to add anything further explicitly in the matter. It has got to be remembered besides that inasmuch as the right of personal liberty is a much more important right, the Constituent Assembly appears to have thought it necessary to place certain specific restrictions upon the powers of both the Central as well as the State Legislatures to make laws upon the subject. It did not think fit to leave it to the Courts to determine, for example, whether it was unreasonable to make a law of preventive detention without having the case of the detenu laid before an advisory board, and the reason why we find a specific mention of the right of being heard in Article 22 (5) is that the Constituent Assembly was dealing in detail with the laws about preventive detention. On the other hand, when there was a question of abridging the other freedoms, it thought it would be sufficient, considering the character of those freedoms if the matter was left to the Courts to be determined under the word "reasonable" which has been used by it.

Shah, J.

16. I regret I am unable to agree with the view taken by My Lord the Chief Justice and my brother Bavdekar on the question as to the validity of Section 2 (1) (b), Public Security Measures Act, 1947. I differ from them with some hesitation but I am unable to accept the argument which is pressed upon us by Mr. Purshottam that the provisions of Section 2 (1) (b), Public Security Measures Act are inconsistent with the provisions of Part III of the Constitution of India and therefore void.

17. The application filed by the petitioner mentions that he is a citizen of India and as a citizen of India he is entitled to certain fundamental rights. In the exercise of those fundamental rights, the petitioner claims a right to move freely throughout the territory of India, and to reside and settle in any part of the territory of India. He says that he apprehends that in pursuance of an order made on 12th December 1949, by the District Magistrate, Ahmadabad under which he, the petitioner, is directed not to be in any area in the district of Ahmadabad except with the permission of the District Magistrate of Ahmadabad, he is liable to be arrested contrary to the provisions of the Constitution, if he enters the district of Ahmadabad and therefore he applies for a writ that the State of Bombay and the District Magistrate of the district of Ahmadabad and the District Superintendent of Police at Ahmadabad be restrained by a suitable writ from carrying out the threat which is held out against him. The application as originally filed claimed a writ of certiorari and it was on that footing that rule was granted by this Court on 8th February 1950. It was, however, realized early in the course of the argument that a writ of certiorari could not be obtained except for the purpose of calling for the record of a proceeding which was either judicial

or quasi-judicial in character and for correcting an error of jurisdiction in that proceeding. Mr. Purshottam, therefore, at the commencement of his case, requested us to convert his application into one for a writ under Article 226 of the Constitution. Mr. Purshottam contended that he is entitled to ask for a writ other than one of the high prerogative writs which this Court was entitled before 26th January 1950, to issue, viz., writs of habeas corpus, writs of mandamus, writs of prohibition, writs of quo warranto and writs of certiorari. We have permitted Mr. Purshottam to make that application without a formal amendment.

18. Now, it is true that under the terms of Article 226 of the Constitution of India, it is open to this Court to issue to any person or authority including in appropriate cases the Government, throughout the territory in relation to which the High Court exercises jurisdiction, writs or orders including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the purpose of enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. Even though prior to 26th January 1950, this Court's jurisdiction to issue high prerogative writs was a limited jurisdiction and was confined to certain specified writs. I agree with my Lord the Chief Justice that the jurisdiction of this Court is now not confined to the issue of those writs only or to writs in the nature of those writs but extends to the issue of other writs which it may be necessary to issue for the purpose of enforcement of the rights conferred by Part III or for other purposes. This Court is constituted, under the provisions of Article 226, a custodian of the fundamental rights which have been guaranteed to the citizens of the State, and for the purpose of protecting those rights and for enforcement of the obligations arising therefrom, it is open to this Court to issue writs, though they may not be writs which have been recognized, heretofore. It was argued by the learned Advocate-General that so far as the present application is concerned by reason of the provisions of Section 6, General Clauses Act, the petitioner is not entitled to claim any fundamental right contrary to the order passed on 12th December 1949. It is difficult to accept that contention. What the petitioner is seeking to do is not to ask for an order or a writ to have the order dated 12th December 1949, set aside, but he is asking this Court to grant him protection against what he conceives to be a threatened action of the executive against his personal liberty which has been guaranteed to him under the provisions of Article 19 of the Constitution. Consequently, there is no question of applying the provisions of Section 6, General Clauses Act. Section 6, General Clauses Act, only effectuates what has already been done or suffered and provides that the rights, obligations and proceedings which have already arisen or taken place under the authority of a statute will not be affected by reason of a subsequent repeal of the statute. But in the present case, if by reason of the provisions of Article 19 a right of freedom of movement or a right to reside and settle in any part of the territory of India is granted and guaranteed to the petitioner for the first time, that provision does not in any manner repeal the provisions of any earlier statute so as to bring into operation the provisions of Section 6.

19. The question which then arises is : whether in the circumstances of the case the petitioner is entitled to a writ which he asks for, viz., a writ preventing the State of Bombay and its two

servants from enforcing the order which was made on 12th December 1949, preventing the petitioner from entering the limits of the district of Ahmadabad. In order to appreciate that question, it is necessary to refer to certain provisions of the Constitution of India. Under Article 19 (1) all citizens have inter alia the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. Under Article 13 (1) it is provided that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III which guarantee the fundamental rights, are to the extent of such inconsistency void. If the provisions of Articles 19 (1) and 13 (1) stood by themselves, the petitioner was entitled to come before the Court and claim that his right of movement and right to reside and settle in any part of the territory of India was guaranteed and in so far as the provisions of the Public Security Measures Act enable the State of Bombay or any public servant to deprive him of those rights, those provisions were void. But sub clause (6) of Article 19 provides that nothing contained in the sub-clauses which guarantee 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 shall affect the provisions of any existing law in so far as it imposes or prevents the State from making any laws imposing reasonable restrictions on the exercise of any of the rights conferred by the sub-clauses either in the interest of the general public or for the protection of the interests of any Scheduled Tribe. The effect of the sub-clause is in my judgment to prevent the provision of Article 13 from having any operation so as to render invalid any pre-existing legislation in any State in so far it sought to impose reasonable restrictions on the exercise of the rights which have been conferred under Article 19 or to prevent the State from hereafter making any law imposing any such restrictions. The Bombay Public Security Measures Act was intended to impose restrictions on the exercise of the rights which have now been conferred by clauses (d) and (e) of Article 19 (1) upon the citizens of India. That legislation would not be affected either by the provisions of Article 13 or Article 19, Constitution Act, provided the restrictions are reasonable and imposed in the interests of the general public.

20. But it is contended by Mr. Purshottam, firstly, that the restrictions contemplated to be imposed under Section 2 (1) (a), Public Security Measures Act, are not in the interest of the general public, and, secondly, that the restrictions are not reasonable. It is unnecessary to deal with the first argument in any detail beyond stating what my Lord the Chief Justice stated in rejecting the contention that the restrictions provided for in the Public Security Measures Act were not in the interests of the general public. It is difficult to accept the submission made by Mr. Purshottam that the interests of the general public which were sought to be safeguarded were only interests which were maintained either by police regulations or traffic regulations but were not more vital interests such as the security of the State or the maintenance of public order or public morality.

21. The question whether the restrictions contemplated to be imposed by an impugned statute are "reasonable" within the meaning of Article 19 (5) of the Constitution of India will have to be judged with reference not to any individual cases which may arise or any hardship which may be

caused by reason of the application of the provision of the statute but by reference solely to two considerations : (1) whether the restriction is a restriction on the exercise of the right which has been conferred by Article 19, and (2) whether the restriction itself is reasonable having regard to the interests of the general public. In my view the Court is not entitled to enter into an enquiry either that in the enforcement or imposition of the restriction by the authority entitled to impose it, the authority may possibly act unreasonably, or that the statute which provides for the imposition of the restrictions on fundamental rights is an unreasonable statute. The expression 'reasonable' does not govern the expression 'law' nor does it qualify the expression 'imposes' in Article 19, Clause (5) of the Constitution : it is intended to govern and does in fact govern the expression 'restrictions'. Having regard to the interests of the general public if it appears that the restriction on the fundamental rights contemplated to be imposed under the Public Security Measures Act is not reasonable, the provision for imposition of that restriction must be deemed to be void. This Court is the tribunal which is entitled to pronounce upon that question. But the reasonableness is to be the reasonableness of the restriction and not of the manner in which it is imposed. If the restriction which is contemplated to be imposed is per se reasonable, it is immaterial that the Legislature might have provided for more adequate safeguards against the possibility of misuse of the powers conferred, than what it has done. In my judgment the scheme of Article 19 is to provide a balance between the security of the State and the interest of the general public on the one hand, and the fundamental rights guaranteed to the citizens on the other. That article provides for the enunciation of the fundamental rights which would normally be exercised by the citizens but which in the larger interest of the State and the general public may be curtailed or restricted. If the Court is satisfied that the restriction is imposed in the interest of the general public and the restriction is not unreasonable, the Court has no jurisdiction to enquire whether the manner in which the restriction is likely to be imposed by the officer charged with the duty of enforcing it may possibly act unreasonably. The possibility of an abuse of a provision enacted in the interest of the security of the State or in the interests of the general public cannot be a ground for holding the provision as void. The remedy lies with the Legislature to remove the lacuna if any which permits that abuse. It is not in my judgment within the province of the Court to examine a statute and to declare it void on the ground of possibility of abuse of authority vested in a State or a public servant, which might have the effect of curtailing the fundamental right of an individual. As to what safeguards should be incorporated in a statute so as to prevent a possibility of an abuse is a matter within the exclusive competence of the Legislature, and the Court is not entitled to declare a statute void merely because it has failed, for reasons of which the Legislature is the best and the only judge to make provisions which it might have made but has not made. What Mr. Purshottam asks us by reference to several hypothetical cases to consider is that the Legislature could not have intended to enable executive authorities after the Constitution came into operation to drive away a person from his hearth and home without any safeguards being imposed against the arbitrary or improper exercise of these restrictions. I am afraid it is not open to this Court (apart from an allegation of mala fides) to enter upon the question whether the enforcement or the imposition of restrictions is reasonable or otherwise. Nor is it open to this Court to go into the question whether the law which provides for

the imposition of the restrictions is a reasonable one. What the Court has to consider is whether, when the Legislature provides for restrictions on the exercise of the fundamental rights, the restrictions are reasonable having regard to the interests of the general public.

22. Mr. Purshottam has contended that on four grounds the particular restrictions on the liberty of the citizen when he was externed from the limits of the State or a part of the State, were void. They are, firstly, that no grounds were given in support of the order either before or after the order of externment was passed; secondly, the adequacy or otherwise of the grounds on which the order of externment was passed was left to the satisfaction of either the Government of the State or a subordinate officer of the State; thirdly, that there was no right given to the externed of being heard either before or after the order was passed; and, lastly that the order was unlimited in duration. Even if it is open to the Court to refer to the ground on which the reasonableness of the law which provides for the imposition of restrictions is challenged, in my judgment none of the grounds are such as can render the legislation unreasonable. As I said earlier, the validity or otherwise of the legislation is to be judged solely by reference to the restrictions which are contemplated to be imposed upon the exercise of the rights and not by reference to the individual hardship that may be caused by reason of an order passed under the Public Security Measures Act.

23. Now, one can very well conceive of cases in which it may be impolitic for the State to inform the externed of the grounds on which an order of externment is passed under the provisions of Section 2 (1) (b); and if in certain cases absence of a provision for informing the externed of the grounds can be justified, it can hardly be said that the entire provision which fails to make a provision for giving grounds can be deemed to be void by reason of the fact that in other cases grounds may be given without any damage being done to the public interest. Obviously, the satisfaction as to the necessity of a person being externed can lie only with the executive in the first instance; and if that satisfaction is left to the Government or to an executive officer, it can hardly be contended on any legitimate ground that on that score the legislation is void. It is true that this Court is entitled to consider whether that satisfaction is one which is arrived at bona fide. But the Court would not be entitled to declare a piece of legislation which leaves the satisfaction to an executive authority as void on the ground that the satisfaction is left to that authority. That is trespassing upon the function of the Legislature to an extent not justified by the terms of Article 19 (5). It is the function of the executive to take steps for protecting the interests of the public or the State. If an executive officer being entitled to issue an order on being satisfied as to the existence of a state of things issues that order imposing a restriction upon a fundamental right, this Court is entitled to demand prima facie evidence of the fact that the officer *bona fide* believed in the existence of a state of things which would justify him in passing that order. The Court is entitled to see that the officer acts within the limits of his authority, and he acts *bona fide* for the purpose of performing his duty in the sphere assigned to him and not for a collateral purpose. In my judgment, however, there is nothing in the Constitution of India which enables this Court to declare a piece of legislation as void merely because the Legislature thought it

expedient to provide that the satisfaction of an executive officer instead of a Court should be a condition precedent to the issue of an order intended to protect either the security of the State or the interest of the general public. It is again true that in terms the order passed in the present case and the orders which may be passed under Section 2 (1) (b) may be unlimited in duration, but it is not necessary that the executive officer who passes the order must necessarily pass an order of an unlimited duration, nor can the order be really said to be of unlimited duration in view of the fact that the parent Act under which the orders are passed is necessarily of a temporary character passed in order to meet an emergency, and the effectiveness of the order would remain so long as the statute under which the orders are passed would remain operative. The only ground which has caused some difficulty is the ground of the absence of a provision which compels the authority passing an order of externment to hear the externed either before or after the order is passed. It is true that so far as orders of detention are concerned, a provision was made under the Public Security Measures Act of 1947 for a detenu to make a representation after he was detained, against the order of detention and he was entitled to be told as to what action the Government took on his representation. Under Article 22 of the Constitution, a provision for supplying grounds to the detenu has been made and he is entitled to make a representation against the order passed. But the sole ground of absence of a provision for being heard either before or after the passing of the order of externment, which is less drastic than an order of detention, cannot, in my opinion, render the provision of Section 2 (1) (b) void or inoperative as from 26th January 1950. The Constitution has not provided for a right of being heard before any restriction on any fundamental right is placed, and in the absence of such a provision made expressly or by necessary implication, a provision which enables an externment order to be passed cannot be deemed to be void merely on the ground that it may be regarded as contrary to rules of natural justice.

24. As to what is a reasonable restriction has, of course, to be judged by the Court, but that reasonableness has got to be judged by reference, as I said, to the character or nature of the restriction, and unless there is something per se unreasonable in the restriction imposed, I am not prepared to hold that because in certain circumstances a restriction may operate in a manner which may be called harsh, that the entire legislation which provides for imposing restrictions by executive orders, passed with a view to protect the interest of the public, is void. The expression 'reasonable restriction' is used also in clauses (3), (4) and (6) of Article 19, and if as it appears to be conceded that a right of being heard need not necessarily be given to a party likely to be affected by reason of restrictions imposed upon his fundamental rights referred to in those clauses, I fail to see why the restriction which imposes upon a person a liability to stay outside a certain limit (which cannot under any circumstances exceed the territory of a State) must be deemed to be unreasonable merely because he has not been given by the statute a right either of making a representation or of being heard either in advance or after the order is passed. On the ground that the restriction involved in an order of externment cannot be said to be unreasonable, I am unable to agree with the order proposed.

Per Curiam :- The Court directs that respondents 1, 2 and 8 or any servants of respondent 1 be prohibited from taking any action under the order dated 12th December 1949. No order as to costs. Certificate granted under Section 132 (1).
Order accordingly.