

## GOA HIGH COURT

Sebastlao Francisco Xavier dos Remedios Monteiro of Candolim

Vs

State (Goa, Daman & Diu)

Criminal Revn. Petn. No. 55 of 1966

(V.S. Jetley, J.C.)

07.08.1967

### ORDER

#### **V.S. Jetley, J.C.**

1. The petitioner Father Monteiro was convicted by the learned Judicial Magistrate, Mapusa, for having contravened the order made by the Lt. Governor dated 19th June 1965 under Section 3(2)(c) of the Foreigners Act, 1946. The sentence imposed upon him under Section 14 of this Act was to undergo simple imprisonment for 30 days and to pay fine of Rs. 50, and, in default of payment of fine, to undergo, in addition, simple imprisonment for 5 days. The petitioner lodged an appeal in the Court of Sessions which appeal was rejected by the learned Sessions Judge by his order dated 2nd February 1966. The petitioner then preferred a second appeal to this Court. The second appeal does not lie and therefore that appeal is being treated as a revision petition under Sections 435 and 439 of the Criminal Procedure Code.

2. It is necessary to set out the relevant laws and facts before the merits of the petition are considered. The petitioner is a priest. He was a Portuguese citizen and a national before the territories of Goa, Daman and Diu were conquered by India on 20th December, 1961, (hereinafter referred to as 'the territories'). The Goa, Daman and Diu (Administration) Ordinance, 1962, was promulgated by the President of the Union of India and, as will appear from its preamble, the territories were considered as having been acquired with effect from 20th December 1961 (hereinafter referred to as 'the appointed day'). They were considered also, by virtue of Article 1 (3) (c) of the Constitution, as having been comprised within the territory of India. This Ordinance was replaced by the Goa, Daman and Diu (Administration) Act, 1952 (No. 1 of 1962). This Act was enacted by Parliament on 27th March 1962. It came into force with effect from 5th March 1962. The Constitution (Twelfth Amendment) Act, 1962 was also enacted by Parliament on the same day. The territories became constitutionally part of India by virtue of this Amendment which was brought into force with back effect from the appointed day. This Amendment followed the physical annexation of the territories belonging to India which had passed into Portuguese hands long long ago. The Citizenship Act, 1955, was extended to the territories on 17th March 1962 and came into force the same day. This extension was under Section 5 of the Goa, Daman and Diu (Administration) Ordinance 1962 (No. 2 of 1962). The

Goa, Daman and Diu (Citizenship) Order, 1962, was notified in the Government Gazette on 28th March 1962. This order was made in exercise of the powers conferred by Section 7 of the Citizenship Act. Para 2 of this order provided that every person who or either of whose parents or any of whose grand-parents was born before the appointed day in the territories shall be deemed to have become a citizen of India on that day, except where any such person made a declaration in writing that he wished to retain the citizenship or nationality which he had immediately before the appointed day. A month's time was given for mental adjustment. The petitioner made a declaration on 27th April 1962. In that declaration he solemnly declared that he wished to retain the Portuguese citizenship/Portuguese nationality which he had immediately before the appointed day and that he made this declaration conscientiously believing the same to be true. The Foreigners Act, 1946, and the Registration of Foreigners Act, 1939, were extended to the territories on 22nd November, 1962, in exercise of the power conferred by Section 3 Clause 2 of the Goa, Daman and Diu (Laws) Regulation 1962 (No. 12 of 1962). They were brought into force on 19th December 1962. On 22nd March, 1963, in pursuance of Clause (1) of Article 239 of the Constitution, notification was issued by the President enabling the Lt. Governor to discharge the functions of the Central Government under Rule 3 of the Registration of Foreigners Rules, 1939. This notification also enabled the Lt. Governor to make orders of the nature specified in Section 3(2)(c) and some other provisions of the Foreigners Act 1946 and also orders under the Foreigners Order 1948 subject to certain conditions which are not material for the present purpose. On 14th August 1964 the petitioner signed an application for a residential permit as required by the Registration of Foreigners Rules, 1939. In that application the petitioner mentioned his present and previous nationality as Portuguese. It was also mentioned that he acquired this nationality by birth. It was on the basis of this application that he was granted registration certificate and residential permit the same day. The residential permit was granted under Para 7 of the Foreigners Order 1948. In terms of that permit the petitioner was permitted to remain in India until 13th November 1964. It was stated therein that an application for extension was to be made fifteen days before this day. It was further stated that he would be liable for prosecution for contravention of the Foreigners Act if he remains in India without getting his permit renewed. The petitioner did not leave before this day nor did he apply for extension of the permit and accordingly a notice was issued to him on 18th November 1964 requiring him to 'show cause' as to why he should not be prosecuted. This notice was accepted by him but as there was no response a reminder was sent to him on 24th December 1964. In his statements dated 7th of January 1965 and 2nd of March 1965 the petitioner stated that he was born and continuously living in Goa for the last 46 years and that he did not wish to change his Portuguese Nationality which he had declared to retain on 27th April 1962, He also stated that he had a right to stay in Goa for which Government permission was not required and that he "insisted" to stay in Goa as a Portuguese national "to work for my country in the same line as before", i.e., as a priest. In this situation the local administration was left with no alternative except to file a complaint against him for contravention of the order passed by the Lt. Governor under Section 3(2) of the Foreigners Act. The petitioner was then placed on trial and sentenced as mentioned above. This, in short, is the background of the case.

3. Mr. Edward Gardner, Q.C., made the following two submissions along with others which would be discussed little later :- (1) the sovereignty of Goa before the appointed day was Portugal, is Portugal and remains Portugal; and (2) India today exercises de facto sovereignty over the territories for the purposes of international law. These submissions were also made by local advocate (Mr. Antonio Anastacio Bruto da Costa) in the lower Courts. The learned

Magistrate gave a finding on merits that India was both a de facto and de jure sovereign. The learned Sessions Judge, in his turn, recorded a finding that he had no jurisdiction to find out whether the territories are Indian or Portuguese and whether the Government of India is or is not a de jure Government of the territories. He also observed that for him to hold that the Government of India is not the de jure Government of the territories is tantamount to holding that the very law by which his Court is constituted is null and void. The learned Sessions Judge was not right in his observation that he had no jurisdiction to find out whether the territories belong to India. He had full jurisdiction to do so for the territories became integrally and constitutionally part of India as a result of the Constitutional Amendment. He could have taken judicial notice of this fact under Section 57 of the Evidence Act. As observed by this Court in '*Sagoon Jayaidee Dhond v. Sociedade Civil e Particular dos Taris of Volvoi, Ponda Concelho*<sup>1</sup>', the Municipal Courts are under a constitutional compulsion to recognize and give effect to the law of their own sovereign legislature.

4. I propose to give different reasons for not accepting the said submissions. The facts of history are to be realistically faced by all. They cannot be ignored. Logic and law may also be cast down to make place for history. Thus as was said in determining whether a tax was direct or indirect, "upon this point a page of history is worth a volume of logic," (1921) U.S. 349, as per Holmes, J., a celebrated American Judge. Portugal was a sovereign power of the territories before the appointed day. This is a historical fact. This sovereignty could not have been questioned in Municipal Courts in the rest of India. The Courts would not have entertained any plea that Portugal acquired the territories lawfully or unlawfully. This is because the question of sovereignty is an Act of State and this act being essentially, an exercise of sovereign power hence it cannot be challenged, controlled or interfered with by Municipal Courts. Its sanction is not that of law, but that of sovereign power and whatever, it be, Municipal Courts must accept it, as it is, without question. In fact, the true view of an Act of State is that it is a catastrophic change, constituting a new departure. (*Salaman v. Secretary of State for India*<sup>2</sup>, and 640 per L.J. Moulton.) The territories ceased to be in physical occupation of Portugal with effect from the appointed day, as would be clear from the narration of the laws cited earlier. India conquered the territories by military action as observed in '*Pema Chibar v. Union of India*<sup>3</sup>', This also is a historical fact. Portugal ceased to be a sovereign power and, in her place, India became and continues to be a sovereign power. It is an essential attribute of sovereignty that a sovereign State can acquire foreign territory. Reference by the President, AIR 1960 Supreme Court 845. The act of conquest is an Act of State which cannot be challenged in Municipal Courts. One of the examples of an Act of State is the annexation of land in right of conquest. (See cases - (1) *Secretary of State for India v. Kamachee Boyee Saheba*<sup>4</sup>, (2) *Vajesinghji Joravarsingh v. Secretary of State*<sup>5</sup>, In the first case it was held that as the seizure of the territory of the Rajah of Tanjore was made by the British Government acting as a sovereign power through its delegate - the East India Company - it was an Act of State and Municipal Courts had no jurisdiction to inquire into the propriety of the action. In the second case it was observed by Lord Dunedin that

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"When a territory is acquired by a Sovereign State for the first time that is an Act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same."

In the third case there was a claim of title against the Crown as represented by the Executive Government of the occupied Colony of persons holding a 'concession' of certain mineral rights in Eastern Pondoland from a native chief. After the said concession Pondoland was annexed to the Cape Colony. The Colonial Government refused to recognize the grant on several grounds of substance, and the Supreme Court of the Colony held that most of these grounds were good; one of the grounds was that the said concession conferred no legal rights before the annexation and therefore could confer none afterwards. It was held by the Judicial Committee that the acquisition of the territory was an Act of State and no Municipal Court had authority to enforce the claim based on the said concession. The Lord Chancellor observed :-

"The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an Act of State."

All these cases were decided by the Judicial Committee. When the Act of State complained of is done in the annexation of foreign territory, it is an Act of State and apart from an alien, not even a national of the State can obtain remedy in Municipal Courts. In the words of Lord Atkin in *'Eshugbayi Eleko v. Government of Nigeria'*<sup>7</sup>, it is "an act of the sovereign power directed against another sovereign power." I may also cite *'Tiaco v. Forbes'*<sup>8</sup>, "decided by the Supreme Court of the United States before invoking the assistance of some decisions of our Supreme Court based on the decisions of the Judicial Committee. In the United States the term 'Act of State' has not the same meaning as in England. This term also includes matters which are regarded in the United States as 'political'. In this case the Governor-General of the Philippine Islands expelled certain aliens. He had no authority to do so and therefore his act was not legal. This act was later authorized by the Philippine Legislature with the result that the Governor-General gained legal immunity. The Supreme Court of the United States observed :-

"It is held in England that an Act of State is a matter not cognizable in any Municipal Court and that was the purport of the Philippine Act declaring deportation not subject to question or review."

This case indicates that the Supreme Court followed the English doctrine of 'Act of State' but the following observations of the learned writer are pertinent :-

"It is to be observed that here the Supreme Court was not dealing with an act which came within the direct definition of an Act of State since it was not one that had been committed outside the territory subject to American political jurisdiction. The propriety of thus referring for support to the British doctrine is thus highly doubtful. (Willoughby on 'The Constitutional Law of the United States', Vol. III, 2nd Edn., p. 1428).

There is a wealth of weighty authority nearer home explaining and elucidating the expression 'Act of State' in its different aspects. In *'State of Saurashtra v. Memon Haji Ismail'*<sup>9</sup>, the observation of Fletcher Moulton L. J. in (1906) 1 KB 613 that an Act of State involving an alien outside the State is a catastrophic change constituting a new departure was cited with approval of their Lordships of the Supreme Court. In *'Promod Chandra v. State of Orissa'*<sup>10</sup>, at p. 1299,

Sinha, C.J., speaking for the Court, observed :

" 'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory either by conquest, treaty or cession, or otherwise."

In '*State of Gujarat v. Vora Fiddali*<sup>11</sup>', Ayyangar, J., delivering majority judgment, cited the observations of Lord Dunedin mentioned earlier in 51 Ind. App 357 : (AIR 1924 PC 216). The case-law has been discussed at length in both majority and minority judgments of the Supreme Court. It was held in that case that cession of territory by one State to another is an Act of State. Hidayatullah, J., said that "State succession takes place either in law or in fact. It takes place in law when there is a juridical substitution of one State for another. It takes place in fact when there is annexation or cession" and so on. Lastly, in '*Firm Bansidhar Premsukhdas v. State of Rajasthan*<sup>12</sup>', at p. 42, Ramaswami, J., speaking for the Court, reiterated the principle declared earlier that taking over of sovereign powers by a State in respect of territory which was not till then a part of it is an Act of State. It would thus be seen that both in England and in India the view consistently taken is that acquisition of territory by conquest, seizure and annexation, is an Act of State which cannot be questioned in Municipal Courts. In this view of the matter Mr. Edward Gardner was not permitted to question the de jure and de facto sovereignty of India. Mr. Edward Gardner did not cite any case-law. It is not that he could be unaware of the implications of an Act of State. It seems he was persuaded to make the said submissions because in the lower Courts they were debated at fair length and decided against the petitioner. Mr. Edward Gardner urged that he reserved the right of the petitioner to canvass the said submissions before the International Forum. The petitioner is under no restraint to do so.

5. Mr. Edward Gardner next made the following submissions :-

(3) The territories, when occupied in December 1961, became an 'occupied

territory' for the purposes of the Geneva Convention of 1949. They continue, as such, notwithstanding" annexation. The petitioner is a 'protected person' for the purposes of the Convention. The Convention creates permanent rights in favour of the 'protected persons'.

(4) The order passed by the Lt. Governor directing that the petitioner shall not remain in the territories is ultra vires the Convention and international law and hence inoperative. The Foreigners Act is to be so construed as to avoid conflict with the Convention and the International Law. In case of conflict the Convention, as legislated in the Act, will prevail as against the Foreigners Act, 1946.

(5) There is not the least doubt that elementary considerations of humanitarianism - envisaged in the Convention - apply to the petitioner even though he is a Portuguese national; and

(6) assuming for the sake of argument that the Convention does not apply, the order directing the petitioner that he shall not remain in the territory is ultra vires the Foreigners Act, 1946, and, therefore, inoperative.

6. It may be convenient for a proper appreciation of the submissions made by Mr. Edward Gardner to premise the discussion by setting out the scheme of the Geneva Convention, 1949, and its background (hereinafter referred to as "the Convention"). The Convention has been enacted into law known as - "The Geneva Conventions Act, 1960" (hereinafter referred to as "the Act"). The Act was enacted by Parliament on 12th March 1960 to give effect to "certain international Conventions done at Geneva on the twelfth day of August, 1949, to which India is a party, and for purposes connected therewith". The subject-matter of the Act is relatable to Article 253 of the Constitution read with Entries 13 and 14 of the Union List. The Act consists of 20 Sections. It extends to the whole of India, and was brought into force on 14th August, 1961, vide notification SRO 222 dated 2nd August 1961 published in the Gazette of India. Section 2 is a definition section. "Conventions" under Clause (2) "means the Conventions set out in the Schedules; and the First Convention, the Second Convention, the Third Convention and the Fourth Convention mean the Conventions set out in the First, Second, Third and Fourth Schedules, respectively". Clauses (c), (d) and (e) define "protected internee", "protecting power" and "protected prisoner of war" respectively. Section 3 prescribes penalty for grave breaches of Conventions. The other sections relate to certain miscellaneous and other matters. It is not necessary to notice them. The Convention consists of as many as 159 Articles. The Act is an instance of what is called skeleton legislation. The Articles constitute the flesh and Wood of the Act. Mr. Edward Gardner relied on Articles 1, 2 to 4, 6, 8, 47 and 49 of the Convention in support of the case of the petitioner. Mr. Joshi, Senior Counsel, appearing for the respondent, relied on these and other Articles in support of the case of the respondent State. I shall consider the implications of these Articles but before I do so it may not be out of place to refer to the aim and object of the Convention. It may be stated in passing that Mr. Joshi did not represent the respondent State when the submissions on "sovereignty" were made earlier by Mr. Edward Gardner.

7. Mr. Joshi and Mr. Edward Gardner both relied on Heydon's case noticed at page 18 in the 11th Edition of 'Maxwell on Interpretation of Statutes' for the purposes of the true interpretation of the Convention. This case has been cited by their Lordships of the Supreme Court in more than one decision. I may at this stage refer to the decision in '*Bengal Immunity Co., Ltd. v. State of Bihar*'<sup>13'</sup> where S.R. Das, C.J., observed :-

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when - Heydon's case, (1584) 3 Co. Rep. 7-a was decided that -

".... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

- 1st. What was the common law before the making of the Act,
- 2nd. What was the mischief and defect for which the common law did not provide,
- 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
- 4th. The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for

continuance of the mischief, and 'pro privato commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico'. In - 'In re, Mayfair Property Co' (1898) 2 Ch 28 at p. 35 Lindley M. R. in 1898 found, the rule "as necessary now as it was when Lord Coke reported 'Heydon's case. In - '*Eastman Photographic Material Co. v. Comptroller General of Patents, Designs and Trade Marks*<sup>14</sup>', at p. 576, Earl of Halsbury re-affirmed the rule as follows :

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the latter Act which provided the remedy. These three being compared I cannot doubt the conclusion". It appears to us that this rule is equally applicable to the construction of Article 288 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided the Constitution to cure that mischief".

The Convention was preceded by the Hague Regulations. The experience of the Second World War showed that these Regulations were not satisfactory. They were also incomplete in some respects. They were therefore supplemented. In the Second World War and also during the First World War, Germany, after having occupied conquered territories, deported the inhabitants for forced labour in Germany and elsewhere. The operation of the local laws in these territories was suspended. There

was a systematic policy of exploitation of men and material in the furtherance of Germany's War effort. In pursuance of the racial policy a large number of Jews in millions from these territories were exterminated, mostly in gas chambers established in concentration camps. The rest of the world reacted strongly to these wanton acts of lawlessness and cruelties during belligerent occupation by Germany. This was the mischief for which the Regulations did not provide. The Convention was later adopted by India and other countries. This was the remedy appointed to cure this mischief. The Convention was devised to ensure protection for civilian persons in time of war and also during belligerent occupation so that acts of cruelties perpetrated by Nazi Germans were not repeated. This was the true reason of the remedy.

8. The Convention was ratified by the President of India on 16th October 1950. Portugal ratified it on 14th March 1961. As in the case of India, the Convention forms part of the Municipal Law of Portugal. This would be clear from documents 'A' and 'B' placed on the record. As will appear from its preamble the Convention is "relative to the protection of civilian persons in time of war". The preamble is a key to its understanding. Article 1 requires the High Contracting Parties to respect and to ensure respect for the Convention in all circumstances. Article 2 provides that the Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of High Contracting Parties even if the state of war is not recognized by one of them. Convention applies to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. India and Portugal are the High Contracting Parties. Article 3 contemplates an armed conflict not of an international character. It imposes certain obligations and prohibits certain acts at any time and in

any place. Article 4 contains the definition of "protected person". According to that definition, persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation in the hands of a party to the conflict or Occupying Power of which they are not nationals. Article 5 denies protection of the Convention to individual protected persons who are definitely suspected of or engaged in activities hostile to the security of the State. Article 6 postulates the beginning and end of the application of the Convention. This Article says that the Convention applies from the outset of any conflict or occupation mentioned in Article 2; in the territory of parties to the conflict the Convention shall cease to apply on the general close of military operations; in the case of occupied territory the Convention shall cease to apply one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of Articles 1 to 12, 27, 29 to 34, 47, 49, 51 to 53, 59, 61 to 77 and 143. Article 8 states that protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the Convention. Article 47 declares that protected persons who are in occupied territory shall not be deprived, in any case of in any manner whatsoever, of the benefits of the Convention by any change introduced as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory. Article 49 prohibits individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, regardless of their motive. The exceptions are where the Occupying Power undertakes total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations ordinarily may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

9. Mr. Joshi drew my attention to Articles 10, 14, 34, 51, 61, 68, 78, 82, 87, 88, 132, 134 and 149. Article 10 says that the Convention will not constitute an obstacle to the humanitarian activities which the International Committee of the Red Cross may, subject to the consent of the parties to the conflict concerned, undertake for the protection of civilian persons and for their relief. Article 14 contemplates establishment of hospital and safety zones and localities in occupied areas after the outbreak of hostilities so as to protect the sick and wounded from the effect of war. Article 34 prohibits the taking of hostages. Article 51 directs the Occupying Power not to compel protected persons to serve in its armed or auxiliary forces. Article 61 relates to the distribution of the relief consignments with the co-operation and under the supervision of the Protecting Power. Article 68 provides death and other penalties in cases where protected persons commit an offence which is solely intended to harm the Occupying Power but which does not constitute an attempt on the life or limb of members of the Occupying forces or administration. Articles 64 and 65 enable imposition of death penalty in certain circumstances. Article 78 contemplates security measures concerning protected persons and also enables the occupying power to subject them to assigned residence or to internment. Article 82 relates to grouping of internees Article 87 provides for establishment of canteens in places of internment. Article 88 envisages air raid shelters in places of internment exposed to air raids and other hazards of war. Article 132 visualizes release of certain classes of internees by the Detaining Power. It enables

the Parties to the Conflict to conclude agreements for their release, repatriation to the places of residence or the accommodation in a neutral country. Article 134 requires the High Contracting Powers, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence or to facilitate their repatriation. Articles 145 and 146 contemplate legislation in terms of the Convention. Article 147 enumerates cases of grave breach of the Convention. Lastly, Article 149 contemplates enquiry at the request of the Party to the conflict concerning any alleged violation of the Convention.

10. It is common ground that the Convention applied to the conflict between India and Portugal from its outset before the appointed day. There was total occupation of the territories by India on that day. The conflict was of a local character. It lasted for 17th and 18th of December 1961. The military operations were over on or about 19th December 1961, when the Indian troops entered the territories. These facts are of recent history and are not denied by Mr. Joshi, learned counsel for the State. The hostilities ceased some time after the surrender of the Portuguese army. This is a fact of which judicial notice can be taken under Section 57 of the Evidence Act. As a High Contracting Party India is required to respect the Convention in all circumstances. This is a solemn duty not only under the Convention but also under Article 51(c) of the Constitution. Under that provision the State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. It appears the petitioner cannot be deported if the Convention continues to apply.

11. As regards the first submission by Mr. Edward Gardner, learned counsel for the petitioner - and this is the main submission - it is not disputed by Mr. Joshi that the territories became an 'occupied territory' for the purposes of the Convention. There the consensus ends. What is strenuously disputed by Mr. Joshi is the fact that the territories continue to be 'occupied territory' notwithstanding annexation, and that the petitioner is a protected person. According to him, occupation ceased on 5th March 1962 or latest on 27th March 1962. He argued that after 5th March 1962 when the Goa, Daman and Diu (Administration) Ordinance, 1962 was promulgated there was neither war nor military occupation by India. The hostilities ceased before that date. The Convention ceased to apply after the territories were formally annexed on 27th March 1962. India then ceased to be an Occupying Power and the territories ceased to be 'occupied territory' for the purposes of the Convention. The Convention applies only during the period of occupation. He also argued that the expression 'annexation' in Article 47 of the Convention means 'premature' annexation and not annexation which turns the conquest into subjugation. In support of his argument he relied on extrinsic and intrinsic aids. Mr. Edward Gardner, on the other hand, contended that the Convention applies during occupation and continues to apply even after annexation in so far as the rights and benefits under the Convention are concerned. The said rights and benefits are inviolable. He invoked Articles 4, 6 and 47 of the Convention in support of this contention. He advanced an argument that "once an occupied territory always an occupied territory for me purposes of these rights and benefits". Closely connected to that argument was the consequential argument that once a protected person always a protected person" except when the case is covered by Article 5 of the Convention. In the light of these arguments he submitted that the petitioner cannot be deported from the territories as such action would be contrary to Article 49 of the Convention.

12. In order to appreciate the rival contentions I shall first consider Article 47. This Article is important and has been canvassed and debated at length by both counsel. If it is literally

construed then annexation by India of the territories would seem to make no difference to the status of the petitioner as a 'protected person'. The petitioner was in 'occupied territory' on the appointed day and consequently he became a 'protected person' within the meaning of Article 4 of the Convention. Accordingly, he cannot be deprived, in any case, in any manner, of the rights, benefits of the Convention, not even by agreement between the Occupying Power and the authorities of the 'occupied territory', nor by any annexation by the Occupying Power of the 'occupied territory'. Mr. Joshi referred me to 'International Law by Oppenheim', Volume I, page 566 where the concept of 'subjugation' is explained. It is true that India conquered the territories through military force, but the conquest :-

"alone does not ipso facto make the conquering State the sovereign of the conquered territory, although such territory comes through conquest for the time under the sway of the conqueror. Conquest is only a mode of acquisition if the conqueror, after having firmly established the conquest, formally annexes the territory. Such annexation makes the enemy State cease to exist, and thereby brings the war to an end. And as such ending of war is named subjugation, which is conquest followed by subjugation, and not conquest alone, which gives a title and is a mode of acquiring territory....the conquered enemy territory, although actually in the possession and under the sway of the conqueror, remains legally under the sovereignty of the enemy until through annexation it comes under the sovereignty of the conqueror. Annexation turns the conquest into subjugation. It is the very annexation which *uno actu* makes the vanquished State cease to exist, and brings the territory under the conqueror's sovereignty. Thus the subjugated territory has not for one moment been no State's land, but passes from the enemy to the conqueror not through cession but through annexation. The legal status of Germany subsequent to her defeat and unconditional surrender at the end of the Second World War illustrates the distinction between conquest and subjugation. After the unconditional surrender of the German forces and the abolition of what purported to be the German Government, Great Britain, the United States of America, Russia and France, in a joint Declaration issued on June 5, 1945, assumed supreme authority with respect to Germany, including all the powers possessed by the German Government and 'any state, municipal or local Government or authority'. It was expressly stated that the assumption of these powers did not affect the annexation of Germany and that her future boundaries and status would be determined by the four States issuing the Declaration. But for that disclaimer of the intention of annexation the assumption of full authority over Germany would have been indistinguishable from subjugation".

Mr. Joshi also drew my attention to another passage at page 570 in the same Volume:-

Subjugation is, as a rule, a mode of acquiring the entire territory. But it is possible for a State to conquer and annex a part of enemy territory, either when the war ends by a treaty of peace in which the vanquished State, without ceding the conquered territory submits silently to the annexation, or by simple cessation of hostilities. It must, however, be emphasized that such a mode of acquiring a part of enemy territory is totally different from forcibly taking possession of a part thereof during the continuance of war. Such a conquest although the conqueror may intend

to keep the conquered territory and therefore to annex it, does not confer a title so long as the war has not terminated either through simple cessation of hostilities or by a treaty of peace. Therefore, the practice which sometimes prevails, of annexing during war a conquered part of enemy territory cannot be approved. For annexation of a conquered enemy territory, whether of the whole or of part, confers a title only after a firmly established conquest, and so long as war continues conquest is not firmly established. For this reason the annexation of the Orange Free State in May 1900, and of the South African Republic in September 1900, by Great Britain during the Boer War, was premature. So also was the annexation of Tripoli and Cyrenaica by Italy during the Turco-Italian war in November 1911 and, again, the annexation of Ethiopia by Italy in 1936". The aforesaid passages relied upon by Mr. Joshi lend support to his argument that the conquest of the territories was firmly established in this case by applying the law of the land with effect from 5th March 1962 and later formally annexing the territories on 27th March 1962 as a result of the constitutional amendment. This was, according to him, a case of annexation turning the conquest into subjugation following cessation of simple hostilities before 5th March 1962. He went on to add that India did not annex the territories during the course of the hostilities, and this makes all the difference between premature annexation and real annexation, for the purposes of the Convention. He also invited my attention to page 452 Vol. II by the same author where Article 47 and some other Articles have been commented thus :-

"While Articles 27-34 contain provisions of a general character already summarized, common to the protection of civilians both in belligerent territory proper and in occupied territory, Articles 47-48 are concerned exclusively with occupied territory. They are to a large extent declaratory of existing international law, though in some ways they go beyond the provisions of the Hague Regulations and supersede them as between the High Contracting Parties. Most of them bear the impress of the experience of the Second World War. Thus Article 47 lays down expressly that the civilian population shall not be deprived 'in any case or in any manner whatsoever' of the benefits of the Convention by any change introduced, as a result of the occupation of a territory, into its institutions or government or by any annexation by the belligerent of the whole or part of the occupied territory".

This passage also supports the submission by Mr. Joshi that what Article 47 objects to is annexation of the occupied territory during continuance of war or the hostilities when the territory is belligerent territory proper or when it is occupied without the intention to annex it. It may be stated that for the purposes of the Municipal Laws cited the territories were acquired in the exercise of sovereign power with effect from the appointed day and thus they were comprised within the territory of India by virtue of Article 1(3)(c) of the Constitution. They were, however, assimilated later by constitutional law enacted on 27th March 1962; but for the purposes of international law and the Convention it seems it is the formal annexation after a firmly established conquest which ended Portuguese sovereignty in all respects. A State of international law may cease to exist with its own consent, expressed in some form of cession, as when the independent State of Texas merged itself in the United States of America. Alternatively, a State of international law may cease to exist without its consent, by conquest, as in the case of South African Republic by Great Britain long ago. A distinction has necessarily to be drawn for the purposes of international law and the Convention between mere temporary occupation of

territory and real acquisition of territory through conquest and subjugation. Before annexation India seemed to have merely a right of administration. This administration was military administration, and consequently, India could not annex the territories but the position became entirely different when a formal annexation took place after cessation of hostilities and after military administration came to an end. There was no premature annexation of the occupied territories as did Germany during the Second World War when she annexed parts of Poland, Belgium and France. It may be added that there is no particular requirement as to the form of annexation. Annexation in some cases is by Royal or State Proclamation. In other cases by law as in the case by India. There is a presumption against annexation of a foreign territory. Annexation is not to be readily assumed. This presumption is rebuttable only if the conqueror takes decisive steps to assert his sovereignty as did India, when the laws were extended on 5th March, 1962, and the territories became an integral part of India, with effect from the appointed day. There were certain other acts also by which sovereignty of India was asserted.

13. Mr. Edward Gardner while refuting the contentions of Mr. Joshi argued that the expression 'annexation' in Article 47 means what it says and that it is not qualified by the word "premature" and, therefore, it is not open to this Court to give a restricted meaning. This argument deserves careful consideration. In this connection he invoked the aid of 'Maxwell on Interpretation of Statutes, Eleventh Edition, page 12', where it is stated :-

"It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do".

[65 *Thompson v. Gould and Co*<sup>15</sup>. per Lord Mersey.]

.....

"Words plainly should not be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context".

[67 *Tinkham v. Perry*<sup>16</sup>, per Lord Evershed M. R. at page 549].

The above principles of interpretation of statutes are well settled. I may also cite the following passage from 'Halsbury's Laws of England, Third Edition, Volume 36, page 394' :

"Although the words of a statute are normally to be construed in their ordinary meaning, due regard must be had to their subject matter and object, aim, [Viscountess Rhondda's claim, (1922) 2 AC 339, H. L. and to the occasion on which and the circumstances with reference to which they are used . . . [*Victoria City Corporation v. Bishop of Vancouver Island*<sup>17</sup>,] and they should be construed in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from that context. [*P. Nestle and Co. Ltd. V. Inland Revenue Commission*<sup>18</sup>, at page 1391]".

Mr. Edward Gardner was on firm ground when he said that gaps and omissions are not to be lightly inferred. This principle is stressed in 'Maxwell' and also by their Lordships of the Supreme Court in one of their decisions '*Hira Devi v. District Board, Shahjahanpur*<sup>19</sup>',:-

"But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act". (Bhagwati, J.).

The Convention is to be read as a whole. The Convention forms an integral part of the Act enacted by Parliament. All those parts are to be taken together. In *'Poppatlal Shah v. State of Madras'*<sup>19A</sup>, while construing the Madras General Sales Tax Act, 1939, it was observed :-

"It is a settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself..... The title and preamble, whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself", (as per B.K. Mukherjea, J.)

The Courts are required to adopt the principle of harmonious construction when a statute leads to anomalous results. This is a well-settled principle. In *'Veluswami v. Raja Nainar'*<sup>20</sup>, while considering the question of disqualification for the purposes of the Representation of the People Act, 1951, it was stated :-

"But when on a construction of a statute, two views are possible, one which results in an anomaly and the other, not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies".

Article 47 is to be construed reasonably so as to give its language sense and meaning in its context. It is to be considered with reference to its background and not in isolation. It is because the expression 'premature' is omitted from this Article therefore Heydon's case, (1584) 3 Co. Rep. 7-a, was relied upon in order to ascertain the true nature and meaning of this Article in particular and other Articles in general. Mr. Joshi argued that uncertainty is to be avoided in the matter of construction of a statute and, in support of this argument, he drew my attention to the following passage from 'Maxwell' at page 17 where it is stated :-

"Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system". [*Shannon Realties Ltd. v. St. Michel*<sup>21</sup> per Lord Shaw.]

In *'R.M.D. Chamarbaugwalla v. Union of India'*<sup>22</sup>, the rule in Heydon's case, (1584) 3 Co. Rep. 7-a, was applied so as to give proper meaning to the definition of "prize competition" in the Prize Competitions Act, 1955. The validity of this Act was challenged on the ground that this definition, if literally construed, would include prize competitions involving substantial skill as well as prize competitions of a gambling nature and as the definition was one and inseparable the Act was void as contravening Article 19(1)(g) of the Constitution. It was argued at the Bar that the words were clear and not ambiguous and therefore there was no scope for restricting their

meaning by interpretation. This argument was not accepted. Venkatarama Aivar, J., speaking for the Court, referred to the passage in 'Maxwell' setting out the rule in Heydon's case, (1584) 3 Co. Rep. 7-a, and, after applying it, it was held that the legislative history of the impugned law showed that prize competitions involving skill had presented no problems to the Legislature and that having regard to that history, and also the language used in the Act, the definition must by construction be limited to prize competitions of a gambling nature. The principle of harmonious construction was adopted by their Lordships. I may also cite a case decided by the Supreme Court of the United States where recourse to legislative history was resorted to - '*Harrison v. Northern Trust Co*<sup>23</sup>.', in order to give the language true sense and meaning. In that case the question arose as regards the meaning to be given to the words "payable out of" under Section 807 of the Revenue Act of 1932. The Court below had refused to consider the legislative history of this section on the ground that the words were not ambiguous. Murphy, J., observed :-

"But words are inexact tools at best and for that reason there is wisely no rule of the law forbidding resort to explanatory legislative history no matter how 'clear the words may appear' on superficial examination'.....so, accepting the Circuit Court's interpretation of Illinois law as to the incidence of the tax, we think it should have considered the legislative history of Section 807 to determine in just what sense Courts use the words 'payable out of'. The Committee reports on Section 807 demonstrated that it was intended as 'a legislative reversal of the decision' in *Edwards v. Slocum* 19 ... and that Courts use the words 'payable out of' in the sense of 'diminished or reduced by' the demand of the tax".

The ambiguity, in this case, was interpreted to harmonise with the intention of the legislature. It is well-settled law that the Court is not concerned with the presumed intention but with the intention as expressed in the statute. There are some other decisions of our Supreme Court where literal construction was departed from in order to give effect to the real intention of the Legislature and also to avoid absurdity. A literal construction has only a prima facie preference. I need not multiply citations, but shall content myself with referring to '*Kanwar Singh v. Delhi Administration*<sup>24</sup>', and '*University of Delhi v. Ram Nath*<sup>25</sup>', In the first case the word 'abandoned' in Section 418(1) of the Delhi Municipal Corporation Act, 1957 was construed, in its context, as 'let loose' in the sense of being 'left unattended' and not ownerless. This construction was with reference to the contention at the Bar that cattle which the corporation can impound must be ownerless. Their Lordships departed from the dictionary meaning in order to advance the remedy and suppress the mischief. In the second case the definition of 'industry' in Section 2(j) of the Industrial Disputes Act, 1947 in very wide terms was given a restricted meaning in its context so as to exclude educational activities of institutions like Delhi University from its scope.

14. Mr. Edward Gardner next argued that by reading the word 'premature' in Article 47 this Court would be legislating. The answer is that for the purposes of the international law and the Convention it is 'premature' annexation of the belligerent territory proper that is viewed with disfavour. In view of the aim and scope of the Convention and its contents this Article will not apply to a case where conquest by title is firmly established as in the instant case. This really is not a case of legislation or re-writing the Article but, if it is, then I would be prepared to 'legislate' in order to give the language sense and meaning in its

context as intended, and also to avoid absurdity. In this connection I may recall the famous words of Holmes, J. :-

"I recognize without hesitation that Judges do and must legislate but they do so only interstitially; they are confined from molar to molecular motion".

The law goes so far as to require the Court sometimes even to modify the ordinary sense of the words if by doing so absurdity can be avoided - see speech of Lord Wensleydale in '*Grey v. Pearson*<sup>26</sup>, at p. 106, quoted with approval by the Privy Council in '*Narayana Swami v. Emperor*<sup>27</sup>, and cited in '*Shamrao v. District Magistrate, Thana*<sup>28</sup>, This Article prohibits as a result of the occupation of the territory - conclusion of agreements between the authorities of the occupied territory and the Occupying Power. The intention seems to be that during the period of occupation such agreements may be under duress and consequently are not to operate so as to deprive the protected persons of the benefits of the Convention. The question of duress will not arise after a regular annexation. They cannot also be deprived of these benefits by any change, during the said period into the institutions or government of the said territory. There are obvious limitations on a de facto government during the said period. This is understandable. Article 8 also does not seem to apply. The petitioner was not asked to renounce any of his rights secured by the Convention. What would be the absurdity or anomaly if this Article is construed in the way Mr. Edward Gardner wished me to construe ? There would be two classes of persons in the territories after annexation - (1) persons who became Indian citizens under the Goa, Daman and Diu (Citizenship) Order, 1962; and (2) persons - like the petitioner - who continue to retain Portuguese nationality and citizenship. The latter class will have the protection of the Convention. This protection they will continue to enjoy forever so long they remain in the territories. This result, in its legislative wisdom, I am sure, Parliament could not have intended in the event of acquisition of a territory. Did the authors of the Convention intend it ? I think not. It is difficult to agree with Mr. Edward Gardner that this class of persons is the recipient of permanent benefits. In the very nature of the things the conception of 'occupied territory' can never be a permanent conception. Article 6 is relied upon by Mr. Edward Gardner to lend permanency to Article 47. This Article contemplates two situations - (1) that the Convention shall cease to apply on the general close of military operations; and (2) that in the case of 'occupied territory' the Convention shall cease to apply one year after the general close of military operations; however, the Occupying Power shall be bound for the duration of the occupation to the extent that such power exercises functions of Government in such territory by the Articles specified therein. Situation (1) obviously does not help the petitioner. Situation (2) also does not help him for the simple reason that at least with effect from 27th March 1962 India ceased to be an Occupying Power and the territories ceased to be occupied territory'. This Article is of temporary duration. I am not considering - for the purposes of the Convention based on international law - the effect of legal fiction that the territories became part of India with effect from the appointed day. Mr. Joshi contended that military occupation is writ large on the Convention. He is not wrong. The words 'war', 'armed conflict', 'protected person', 'military operations', 'Occupying Power', 'occupied territory', 'deportations', 'imperative military reason', 'hostilities', 'Protecting power', 'internees', 'repatriation', 'death penalties', 'security measures', 'air raid shelter', 'hospital and safety zones', 'Detaining power', and other words used in various Articles do not take in annexation of the territories following a firmly established conquest as in the present case. They seem to contemplate 'premature annexation'. In this connection Mr.

Edward Gardner argued that it is not open to this Court to consider whether Article 47 in particular and other Articles in general contemplate 'premature annexation' as this act, like annexation, is an Act of State. This argument, if I may say so with respect, it is difficult to appreciate. Is this Court not called upon to construe the Convention ? This is what is necessary for the purposes of deciding the revision petition. The Court is accepting the fact of 'annexation' as legally binding. The Court is not called upon to question the fact of premature annexation. What the Court is attempting to do is to avoid absurdity or anomaly in the matter of construction of the Convention. This, I take, it, is the duty of the Court.

15. Mr. Joshi next submitted that the change of sovereignty from Portugal to India was with the consent of the people dissatisfied with the Portuguese rule. This is also the conclusion of the learned Sessions Judge. The learned Sessions Judge also emphasized that acquisition of the territories by Portugal as a result of conquest was unlawful and, in achieving this result, Portugal adopted unfair methods. According to Mr. Edward Gardner, these are political questions which do not strictly fall within the scope of judicial review. I agree with him. It may, however, be stated that some commentators on international law have made a distinction between annexation, which was change of sovereignty with the consent of the population and subjugation, which was independent of its consent. We may leave these questions to Historians. Mr. Joshi also pointed out that there have been general elections to Parliament and State Legislative Assembly after the territories were annexed and that this fact is inconsistent with the concept of "occupation" as understood in the Convention. It may be added that local laws in force immediately before the appointed day were continued in accordance with Section 4 of the Goa, Daman and Diu (Administration) Ordinance 1962, (No. 2 of 1962) and subsequent laws enacted from time to time. The Courts have been giving effect to these laws. Officers and functionaries in relation to the territories immediately before the appointed day continue to function thereafter under these laws. The political rights of the residents were not invaded. The preamble, the title, the extrinsic and intrinsic evidence and the other three Conventions negative the contention of Mr. Edward Gardner that the territories are to be regarded as 'occupied territory' for the purposes of the rights and duties under the Convention. The word 'annexation' in Article 47 has to be given a restricted meaning. I think I have said enough on submission (1) and I need say no more. The conclusion is that the Convention is not attracted in this case and, as a consequence, the petitioner is not a 'protected person'. The Convention does not create permanent rights as urged by Mr. Edward Gardner. The Convention was the sheet anchor of the petitioner.

16. The Convention being out of the way the remaining submissions need not detain me long. The argument by Mr. Edward Gardner - that the order passed by the Lt. Governor dated 19th June, 1965, directing the petitioner not to remain in the territories is ultra vires the Convention - does not survive in view of my conclusion that the Convention ceased to apply latest with effect from 27th March, 1962. It is not the case of the petitioner that he cannot be expelled from other parts of India. Is this order ultra vires the International law, as urged by Mr. Edward Gardner ? The Convention is part of the Municipal law and it gives effect to the Rules and Usages which High Contracting Parties have agreed to hold as binding upon them in their dealings with one another. Independently of these Rules and Usages Mr. Edward Gardner was not able to cite any provision of international law which prevents a sovereign State from expelling aliens. International law is not as the twelve tables of ancient Rome. It is not a closed book either. It may be said that there was hope that after the Second World War the international law would be clearer in many respects; there is not yet much to show that it is. The decisions on international

law reveal a divergent approach in many matters. Be that as it may, in so far as the territorial supremacy is concerned there is no divergence. It is well settled that every sovereign State has a power to expel aliens from its territories. The question of expulsion - properly speaking - is one of Municipal and not International law. Mr. Joshi referred me to page 325, Vol. I of Oppenheim's 'International Law' where it is stated :-

"As all persons and things within the territory of a State fall under its territorial supremacy, each State has jurisdiction over them".

He also sought assistance of 'Maxwell on interpretation of Statutes' where it is said :-

"The laws of a nation apply to all its subjects and to all things and acts within its territories".

The proposition - as presented by Mr. Edward Gardner - that the Foreigners Act 1946 is to be so construed as to avoid conflict with the Convention is unobjectionable. The Convention should apply before any conflict can be considered. It may be that during the very short period of occupation if the petitioner had been expelled from the territories the question of conflict may have arisen between the Act and the Foreigners Act and, in that situation, the principle of harmonious construction and the principle 'generalia specialibus non derogant' invoked by Mr. Edward Gardner may have necessitated consideration but, as it is, these principles are not applicable. In this view of the matter I am not called upon to consider the presumptions against conflicts between International and Municipal Law as explained and elaborated in Oppenheim's 'International Law' and 'International Law' by D. P. Q'Connell. It may, however, be said in passing that international law has no supremacy over Municipal law in our Constitution. It is also not part of the law of the land, unless it is adopted as in the case of the Convention. In this connection reference may be made to Article 253 of the Constitution. Under that Article, Parliament can enact law for implementing any treaty, agreement, or convention with any other country, or countries or any decision made at any international conference, session or other body. The Anglo-American doctrine of international law as being part of the law of the land has been expressly adopted by some countries. Some other countries have even gone beyond this doctrine and provided expressly in their Constitutions the supremacy of the international law, including that established by treaty, over conflicting Municipal law. It is next urged by Mr. Edward Gardner that the petitioner should have the benefit of elementary considerations of humanitarianism. The answer is that even de hors the Convention he has been shown all possible consideration. The fact that he is a Portuguese national has made no difference. As regards the last submission, Mr. Edward Gardner was not permitted to argue the question whether the order of expulsion passed by the Lt. Governor is ultra vires the Foreigners Act 1946. Mr. Joshi objected to this question being argued on the ground that neither in the lower Courts nor in the memo of revision this ground was taken. It was for the first time in reply to the arguments of Mr. Joshi that Mr. Edward Gardner raised this question. The objection of Mr. Joshi was upheld. The petitioner cannot be permitted to raise a new ground not taken in the Courts below. It is true that the question is one of law as urged by Mr. Edward Gardner but even so there is no good reason for departing from the well-settled principles regulating procedure in criminal Courts. Parties - whether State or individual - should have prior notice of new grounds. They should not be taken by surprise.

17. The case of the petitioner as presented by Mr. Edward Gardner has been carefully considered. The learned Magistrate and the learned Sessions Judge acted correctly in upholding the validity of the order passed by the Lt. Governor requiring the petitioner not to remain in India. This order is in accordance with the provisions of the Foreigners Act, 1946. As I see this matter, there is no error of law which needs to be corrected. The Convention does not apply in the present case, Revisional jurisdiction under Section 439 of the Code of Criminal Procedure is undoubtedly discretionary in its nature, but that discretion, as in other cases, has to be sound discretion guided by law. The petitioner has not made out a case for interference with the conviction and the sentence. The petitioner has already undergone the sentence. The petition is devoid of substance and, therefore, must fail. The petition is accordingly rejected.

18. I would like to make some general observations. This case has attracted considerable attention. The petitioner was given an option to become an Indian Citizen. This was in accordance with the well-settled principle of International Law. Strictly speaking, after annexation following conquest by military action, the petitioner became ipso facto the subject of India. The petitioner opted for Portuguese nationality and citizenship. According to the petitioner, he is born and brought up in Goa and, therefore, he would not leave Goa. It is his case that he is deeply attached to the land of his birth and that he is in Goa to serve the Church. He could have continued to serve the Church - like some other priests - by becoming an Indian citizen. The Church could also be served in other parts of the world. God is omnipresent. Mr. Joshi stated that the petitioner as a Portuguese national has no right to stay in India. Mr. Joshi is right. The petitioner owns allegiance to Portugal. The question of allegiance to a country is a purely personal tie. The petitioner is expected to be loyal to Portugal. This is his national and civic duty. The petitioner is not expected to be loyal to India. This is not his duty. The petitioner has been fighting 'legal battle' from July 1965 onwards. This he has a right to do notwithstanding that he is a Portuguese national. The Constitution guarantees to the petitioner equality before the law or the equal protection of the laws. The petitioner cited some instances of Portuguese nationals like him who have not been asked to leave India. This plea of possible discrimination was not pressed by Mr. Edward Gardner. It need hardly be stated that the Constitution expects the State to treat alike persons similarly situated. In some other countries where the Rule of Law does not operate it would not have taken long to expel the petitioner. In a free democratic Country like India there are procedural delay and, therefore, the wheels of justice move slowly but the satisfaction is that the Rule of Law operates effectively. The petitioner is fortunate that he has not been dealt with severely in so far as the sentence is concerned. I only hope the petitioner is not being misled by others.

Revision petition dismissed.

#### Cases Referred.

<sup>1</sup> AIR 1966 Goa 38 (43)

<sup>2</sup>(1906) 1 K.B. 613

<sup>3</sup> AIR 1966 SC 442 and AIR 1966 Goa 38

<sup>4</sup>(1857-59) 13 Moo PC 22

<sup>651</sup> Ind App 357 : AIR 1924 PC 216; and (3) Cook v. Sprigg, (1899) A.C. 572)

<sup>7</sup>(1931) AC 662 : (AIR 1931 PC 248)

<sup>8</sup>(1912) 228 U.S. 549

<sup>9</sup> AIR 1959 SC 1383

<sup>10</sup> AIR 1962 SC 1288

- <sup>11</sup> AIR 1964 SC 1043
- <sup>12</sup> AIR 1967 SC 40
- <sup>13</sup> AIR 1955 SC 881 (674)
- <sup>14</sup> 1898 AC 571
- <sup>15</sup> (1910) AC 409, 420
- <sup>16</sup> (1951) 1 KB 547
- <sup>17</sup> (1921) 2 AC 384
- <sup>18</sup> (1952) 1 All England Reporter 1388
- <sup>19</sup> AIR 1952 SC 362 (365)
- <sup>19A</sup> AIR 1953 SC 274 (276)
- <sup>20</sup> AIR 1959 SC 422 (427)
- <sup>21</sup> (1924) AC 185 (192)
- <sup>22</sup> AIR 1957 SC 628
- <sup>23</sup> [1942] 317 US 476
- <sup>24</sup> AIR 1965 SC 871
- <sup>25</sup> AIR 1963 SC 1873
- <sup>26</sup> (1857) 6 HLC 61
- <sup>27</sup> AIR 1939 PC 47
- <sup>28</sup> AIR 1952 SC 324