

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CRI-7-2020**

Mr. Innocent Amaeme Maduabuchukwi,  
S/o Mr. Anaeme Gilbert,  
Age 54 years,  
Nigerian National,  
Permanent R/o Imo State,  
Eziekwe Street,  
Nigeria  
Presently R/o H.No.436/1,  
Almeida Waddo, Parra, Goa  
Presently lodged at  
Detention Centre for Foreigners,  
Mapusa Goa.

... Petitioner

***Versus***

1. State of Goa  
as represented by  
Chief Secretary,  
Govt. of Goa,  
Panaji Goa.
2. The Supdt. of Police, FRRO,  
Police Headquarters,  
Panjim Goa.
3. Union of India,  
As represented by  
Ministry of Home Affairs,  
North Block, Secretariat,  
New Delhi- 110001

... Respondents

Mr. K. Poulekar, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. P. Faldessai, Additional Public Prosecutor for Respondent Nos.1 and 2.

Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.3.

**AND**  
**LD-VC-CRI-8-2020**

Mr. Anthony Ifeanyi Igboaka  
s/o Mr. Marcel Igboaka,  
Age 36 years,  
Nigerian National,  
Permanent r/o Abagana,  
Anambra, Nigeria  
Presently r/o Near Petrol Pump, Parra,  
Presently lodged at  
Detention Centre for foreigners,  
Mapusa Goa.

... Petitioner

***Versus***

1. State of Goa,  
as represented by  
Chief Secretary,  
Govt. of Goa,  
Panaji Goa.
2. The Supdt. of Police, FRRO,  
Police Headquarters,  
Panjim Goa.
3. State of Goa,  
As rep. by Police In-charge,  
Anti Narcotic Cell,  
Panaji Goa.

4. Union of India,  
As represented by  
Ministry of Home Affairs,  
North Block, Secretariat,  
New Delhi - 110001
- ... Respondents

Mr. K. Poulekar, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. P. Faldessai, Additional Public Prosecutor for the State-Respondent Nos.1 to 3.

Mr. P. Faldessai, Assistant Solicitor General of India for Respondent No.4.

**Coram:- M. S. SONAK &  
SMT. M. S. JAWALKAR, JJ.**

**Reserved on :- 3<sup>rd</sup> July, 2020**

**Pronounced on: 10<sup>th</sup> July, 2020**

**Judgment ( Per M. S. Sonak,J)**

Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties. In any case, by order dated 26<sup>th</sup> June, 2020, we had made it clear that these matters will be taken up for final disposal at the stage of admission itself.

3. Since, substantially the common issues of law and facts arise in both these petitions, with the consent of the learned counsel for the parties, they are taken up for disposal by means of common judgment and order. For sake of convenience, however, reference shall be made

mainly to the facts in LD-VC-CRI-7-2020.

4. The Petitioner, a Nigerian national arrived at Goa, India, some time in the year 2006 under cover of passport bearing No. AO837472 and student VISA which was valid upto 8<sup>th</sup> February, 2006. It is the case of the Petitioner that this VISA was renewed upto 1<sup>st</sup> October, 2007. The Petitioner claims to have lost his passport and in any case applied to the Nigerian Embassy at New Delhi for a renewed passport. There is a statement in the petition that such renewed passport was issued to the Petitioner, having validity upto 7<sup>th</sup> February, 2012.

5. On 30<sup>th</sup> December, 2008 the Petitioner was arrested by Pernem Police and eventually charge-sheeted under the provisions of Narcotic Drugs and Psychotropic Substances Act, (NDPS) for being allegedly found in possession of 4.5 grams of cocaine. The Petitioner was released on bail on 20<sup>th</sup> January, 2009 by the Special Court in Special Case No.18/2010 registered against him. The Petitioner has pleaded that he has duly complied with the terms and conditions upon which he was released on bail by the Special Court.

6. In this petition, the Petitioner, challenges the order dated 12<sup>th</sup> May, 2020 made by the Superintendent of Police, Foreigners Regional Registration Office (FRRO), Panaji Goa ordering the detention of the Petitioner in the detention centre at Mapusa. The impugned order

dated 12<sup>th</sup> May, 2020 refers to imposition of restrictions under clause (e) of sub section (2) of Section 3 of the Foreigners Act, 1946 ( the said Act ) and paragraph 11(2) of the Foreigners Order, 1948 ( the said order of 1948 ). The impugned order states that the same is to remain valid for a period of one month from the date of issue. However, it is common ground that the validity of this order has been extended from time to time. Although, the Petitioners have not bothered to amend these petitions to challenge the extension, Mr. Poulekar, learned counsel for the Petitioners in both these petitions prayed that such extensions upto date, be deemed as challenged in these petitions, as otherwise, it will be difficult for the Petitioners to apply for and carry out formal amendment to the petitions, taking into account the COVID-19 situation in the State. Accordingly, with the consent of the learned counsel appearing for the Respondents, we have proceeded on the basis that even the extensions upto date stand challenged in these two petitions.

7. Mr. Poulekar, has attacked the impugned order basically on the following three grounds :-

(A) Though the impugned orders make a reference to exercise of powers under Section 3(2)(e) of the said Act, in effect, the detention of the Petitioners, amounts to exercise of powers under Section 3(2)(g) of the said Act. He points out that while the powers under Section 3(2) (e) of the said Act may have indeed been delegated to the

State Government, there is no such delegation when it comes to exercise of powers under Section 3(2)(g) of the said Act. Therefore, the impugned orders are *ultra vires* the powers of the State Government;

(B) The order dated 7<sup>th</sup> February, 2019 issued by the State Government in exercise of powers under Section 3(2)(e) of the said Act only requires the illegal immigrants/foreign nationals “*awaiting deportation*” to reside in the Detention Centre at Old Judicial Lock-up at Mapusa next to the Mapusa Police Station. Mr. Poulekar submits that this presupposes the making of “*Deportation Order*” by appropriate Authority before any illegal immigrants or foreign nationals can be made to reside at the Detention Centre. He submits that in the present case, there is no deportation order made in respect of either of the Petitioners. In absence of any deportation order, the State has no legal authority to require the Petitioners to reside in the detention centre. Therefore, the impugned order is in excess of authority conferred upon the State Government.

(C) Mr. Poulekar then refers to paragraph 5 of the Foreigners Order, 1948 to submit that the Civil Authority is obliged to refuse to the Petitioner to leave India as the presence of the Petitioner is required in India

to answer a criminal charge. He submits that this is the reason why no deportation order has been made in relation to two Petitioners. In the absence of any deportation order, he submits that there is no question of exercise of powers under Section 3(2)(e) of the said Act requiring the Petitioners to reside at the detention centre at Mapusa. For this reason also, he submits that the impugned order is illegal, null and void.

8. In the course of hearing in these petitions, we had directed the Petitioners to file affidavit on the following aspects :

*a. The status as regards his residence in Goa.*

*b. The status as regards the funds which he claims are being sent through proper banking channels to him by his family members in Nigeria.*

9. The Petitioners, have filed affidavits but at this stage all that we can say is that our queries have not been satisfactorily answered. These aspects might have assumed relevance in case, the Petitioners, had made out a case warranting interference with the impugned orders.

10. Mr. D. Pangam, learned Advocate General defended the impugned orders by pointing out at the outset that even though the impugned orders refer to and require the Petitioners to reside at “*Detention Centre*”, it is not as if the Petitioners have been detained or arrested in any conventional sense. He submits that the State Authorities

have merely exercised the powers admittedly delegated to them under Section 3(2)(e) of the said Act and thereby required the Petitioners to reside in a particular place and impose certain restrictions on their movements. He submits that the impugned orders are entirely consistent with the provisions of Section 3(2)(e) of the said Act and this is clearly not a case of exercise of any powers under Section 3(2)(g) of the said Act.

11. By way of elaboration, the learned Advocate General has referred to the provisions of Section 4 of the said Act, in which, a distinction is made between an “*internee*” in respect of whom any order is made under Section 3(2)(g) and a person on parole in respect of whom an order is made under Section 3(2)(e) of the said Act. He submits that it is only in the case of internee that there is direction for arrest followed by detention or confinement. He submits that neither of the Petitioners are internees. Rather, he submits that the Petitioners may be regarded as persons on parole since in respect of them, there are in force the orders under Section 3(2)(e) of the said Act.

12. The learned Advocate General referred to the instructions issued by the Ministry of Home Affairs with regard to setting up of detention centres from time to time. He pointed out that such instructions require the State Governments and Union Territory Administrations to restrict the movements of the foreign nationals who

are awaiting deportation in one of the detention centres/camps to ensure their physical availability at all times for expeditious repatriation/deportation. He pointed out that the State Governments and Union Territory Administrations are in fact required to set up sufficient number of detention centres/camps and even naming of such places is left to the discretion of the Authorities. He submits that merely because there is a reference to a detention centre, that by itself does not mean that the foreigners required to reside therein have been detained at such place.

13. The learned Advocate General has made a reference to Model Detention Centre/Holding Centre/Camp Manual, 2019 to point out that the State Authorities have sufficient powers to detain the illegal immigrants awaiting deportation at such detention centres. He points out that even the foreigners against whom the orders of restriction or deportation are issued by the FRROs/FROs in their jurisdictional area can also be detained at such detention centre. He points out that the foreigners violating the VISA norms or the foreigners detained in suspicious background/violent behaviour can also be detained in such detention centre. He submits that there is no requirement of issuance of any formal deportation order as a pre-condition for detention in the detention centre. He relies on the decision of the Full Bench of Madras High Court in *Latha Vs The Secretary to Government, Public (SC) Department and others*<sup>1</sup>.

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<sup>1</sup> MANU/TN/2614/2007

14. The rival contentions now fall for our determination.

15. At the outset, the brief reference is required to be made to certain provisions of the Foreigners Act, 1946 and the Foreigners Order, 1948 in order to appreciate the rival contentions.

16. The Foreigners Act, 1946 basically confers upon the Central Government certain powers in respect of foreigners. “*Foreigner*” has been defined under Section 2(a) to mean a person who is not a citizen of India. Admittedly, the Petitioners in both these petitions are not the citizens of India and are therefore “*foreigner*” within the meaning assigned to this term under Section 2(a) of the said Act. Section 3 of the said Act empowers the Central Government to make certain orders in relation to foreigners. Section 3(1) empowers the Central Government, by order to make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

17. Section 3(2) of the said Act, provides that in particular and without prejudice to the generality of the powers referred to in Section 3(1), the orders made under Section 3, may provide *inter alia* that the foreigner :-

- (a).....
- (b).....
- (c).....
- (cc).....
- (d).....
- (e) shall comply with such conditions as may be prescribed or specified—**
- (i) requiring him to reside in a particular place;**
- (ii) imposing any restrictions on his movements;**
- (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;**
- (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
- (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- (vi) prohibiting him from association with persons of a prescribed or specified description;
- (vii) prohibiting him from engaging in activities of a prescribed or specified description;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;
- (f).....
- (g) shall be arrested and detained or confined,**  
*and may make provision [for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.*

( Emphasis supplied )

18. Section 3(3) of the said Act provides that any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) or clause (f) of sub-section (2).

19. Section 4 of the said Act refers to “*internees*” and was relied upon by the learned Advocate General to distinguish between the internees in respect of whom there is in force any order made under Section 3(2)(g) of the said Act and a person on parole in respect of whom there is in force an order made under Section 3(2)(e) of the said Act. Sub Section (1) and (2) of Section 4, indeed point out to such a distinction.

20. Section 12 of the said Act *inter alia* provides that any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

21. Finally, Section 16 of the said Act provides that the provisions of this Act shall be in addition to, and not in derogation of,

the provisions of the Registration of Foreigners Act, 1939, the Indian Passport Act, 1920 and any other enactment for the time being in force.

22. In exercise of powers conferred under Section 3 of the said Act, the Central Government has made the Foreigners Order, 1948. Since paragraph 5 of this order was referred to by Mr. Poulekar, learned counsel for the Petitioners, we reproduce the same for convenience of reference :

*“5. Power to grant permission to depart from India. -*

*[(1) No foreigner shall leave India,*

*(a) otherwise than at such port or other recognised place of departure on the borders of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf, either for foreigners generally or for any specified class or description of foreigners; or*

*(b) without the leave of the civil authority having jurisdiction at such port or place.]*

*(2) Leave shall be refused if the civil authority is satisfied that-*

*(a) the foreigner has failed to comply with the formalities of departure prescribed under the Registration of Foreigners Rules, 1939 ;*

*(b) the foreigner's presence is required in India to answer a criminal charge;*

*(c) the foreigner's departure will prejudice the relations of the Central Government with a foreign power;*

*(d) the departure of the foreigner has been prohibited under*

*an order issued by a competent authority.*

*(3)(a) Notwithstanding anything contained in the above sub-paragraphs, a civil authority may prohibit the departure of a foreigner where it is satisfied that such departure would not be conducive to the public interest.*

*(b) Whenever a civil authority issues an order under clause (a), it shall report the matter forthwith to the Central Government which may cancel or modify the order in such manner as it thinks fit.”*

23. There is no dispute whatsoever that the Central Government, in exercise of powers under Section 12 of the said Act has delegated to the State Government or its officers, the powers referred to in Section 3(2)(e) of the said Act. Equally, there is no dispute that the Central Government has not delegated to the State Government or its officers the powers referred to in Section 3(2)(g) of the said Act. Therefore, the principal issue which arises for determination in these matters is whether the impugned orders are relatable to the exercise of powers under Section 3(2)(e) of the said Act or whether they are relatable to exercise of powers under Section 3(2)(g) of the said Act. If the impugned orders are relatable to the exercise of powers under Section 3(2)(g) of the said Act as contended by and on behalf of the Petitioners, then obviously, such orders will be *ultra vires* the powers of the State Authorities. If however the impugned orders are found to relate legitimately to the exercise of powers under Section 3(2)(e) of the said Act, then, the challenge that the impugned orders are *ultra vires* will fail.

24. The impugned orders dated 12<sup>th</sup> May, 2020, in case of the Petitioner in LD-VC-CRI-7-20 reads as follows : -

*“No. FRRO/GOA/R.M.O.11/2020/2880/2020*

*Date: 12/05/2020*

### *ORDER*

*I, Shri Bosco George, Superintendent of Police, Civil Authority/Foreigners Regional Registration Officer, Panaji Goa, in pursuance of MHA's/Govt. Of India Notification No.381 issued from File No.25022/96/99-F-I dated 13/07/2000, r/w Ax/Immigration, New Delhi Order No.1/AXI/Misc.-2012 dated 02/06/2012 and Additional Director /Imm. IB MHA Govt. of India Order dated 20/06/2012, hereby impose the following restrictions under clause (e) of sub section (2) of Section 3 of the Foreigners Act, 1946 and under para 11(2) of the Foreigners Order, 1948 on the foreign national named :-*

*MR. MADUABUCHUKWI INNOCENT ANAEME, AGE-45 YEARS, NIGERIAN NATIONAL ( AS DISCLOSED BY FOREIGN NATIONAL)*

*Produced by staff of ANC Police Station, Goa as he was found staying in India without Passport and Visa and requesting restriction of his movement till his deportation. He has been medically examined at GMC Hospital Bambolim by ANC PS staff and the Medical officer has opined that he is fit to be in State Detention Centre at present.*

*That the above named foreign national will reside at the “Detention Centre at Old Judicial Lockup at Mapusa next to Mapusa Police Station” notified vide order No.2/44/2013-HD(G)/403 dated 07/02/2019 till his travel arrangements are made. This order is valid for one month from the date of issue.*

*Non compliance of this order will render him liable for prosecution under Section 14 of the Foreigners Act, 1946. The Staff of ANC Police Station are escorting the foreign national from FRRO, PHQ, Panaji Goa to "Detention Centre Mapusa".*

*Sd/-*

*( Bosco George, IPS )  
Superintendent of Police &  
Foreigners Regional Registration Officer,  
Panaji Goa.*

25. Suffice it to note that the impugned order dated 12<sup>th</sup> May, 2020 in LD-VC-CRI-8-2020 is also substantially similar and therefore not reproduced in verbatim.

26. The impugned orders, make reference to exercise of powers under Section 3(2)(e) of the said Act and paragraph 11(2) of the said order of 1948. We agree with Mr. Poulekar, learned counsel for the Petitioners that, such reference, by itself will not be the determinative factor. However, we note that the impugned orders require the Petitioners to reside at the detention centre until travel arrangements are made for the Petitioners eventual deportation. The impugned orders refer to the Petitioners being found staying in India without passport and VISA and a request from Anti Narcotic Cell for imposition of restrictions on the Petitioners movements until deportation. As noted earlier, the impugned orders were to remain valid for a period of one month from the date of issue but there is no dispute that the validity of such orders have been extended from time to time.

27. Section 3(2)(e) of the said Act admittedly empowers the Central Government and now that the powers have been delegated, even the State Authorities, to require a foreigner to reside in a particular place and further impose restrictions upon their movements. This is different and distinct from placing a foreigner under arrest and detaining and confining him in terms of Section 3(2)(g) of the said Act.

28. The Central Government from time to time, has been urging the State Authorities to set up detention centres/holding centres/camps for restricting the movements of illegal immigrants/foreign nationals awaiting deportation. In this regard, reference is necessary to communication dated 9<sup>th</sup> September, 2014 addressed by the Ministry of Home Affairs to the Principal Secretaries (Home) of all the State Governments and Union Territory Administrations.

29. The aforesaid communication dated 9<sup>th</sup> September, 2014 refers to the provisions of Section 3(2)(c) of the said Act which empowers the Central Government to make orders providing that the foreigner shall not remain in India or in any prescribed area therein. There is also reference to Section 3(2)(e) of the said Act which empowers the Central Government to issue orders requiring the foreigner to reside in a particular place and imposing restrictions on his/her movements. The communication records that these powers have been delegated to

the State Governments and Union Territory Administrations. The communication refers to advisability to restrict the movements of foreign nationals who are awaiting deportation after completion of sentence awarded to them pending the confirmation of their nationality in the detention centres/camps to ensure their physical availability at all times for expeditious/deportation as soon as the travel documents are ready. The communication refers to earlier communication dated 23<sup>rd</sup> November, 2009 addressed to all the State Governments/Union Territory Administrations conveying the detailed procedure to be adopted for deportation of illegal immigrants and setting up of sufficient number of detention centres. There is also reference to the decision of the Hon'ble Supreme Court in Writ Petition (Cri) No.310 of 2005 filed by Prof. *Bhim Singh Vs Union of India and others*, in relation to establishment of detention centres or by whatever name such places are called and requirement of providing basic facilities at such places. The communication thereafter makes detailed provisions for setting up of such detention centres by the State Governments and Union Territory Administrations.

30. Thereafter, the Ministry of Home Affairs has issued the Model Detention Centre/Holding Centre/Camp Manual, 2019.

31. The Manual *inter alia* points out to the distinction between internee foreigner and foreigner on parole by reference to the provisions

of Section 4 of the said Act to be read alongwith the provisions of Sections 3(2)(g) and 3(2)(e) of the said Act. The Manual leaves it to the discretion of the State Authorities/Union Territory Administrations to name the place whether the foreigner on parole may be required to reside i.e. whether as detention centre or holding centre or camp. This aspect according to us, answers to some extent the Petitioners' contention that by requiring them to reside at a detention centre, they have in fact been detained there at.

32. Finally, the Chapter -3 of this Manual makes reference to the categories of persons who may be placed in detention centre/holding centre/camp. The same is relevant and therefore, transcribed below for convenience of reference.

***“CATEGORIES OF PERSONS WHO MAY BE  
DETAINED IN A DETENTION  
CENTRE/HOLDING CENTRE/CAMP***

*3.1 Following categories of foreign nationals may be detained in a Detention Centre/Holding Centre/Camp :-*

*(1) Foreign nationals who have completed their sentence or acquitted by Courts awaiting deportation due to —(a) non-confirmation of nationality; (b) non-issue of travel documents by the Mission of the concerned foreign Government in India; and/or (c) delay in arranging air tickets by the foreigner concerned or by the Mission of the country concerned, for deportation.*

*(2) Illegal immigrants detected by the State Governments/UT Administrations or the law enforcement agencies awaiting deportation.*

*(3) Persons declared as foreigners by the Foreigners*

*Tribunals awaiting deportation.*

*(4) Foreigners who had arrived on forged/fraudulently obtained travel documents but were allowed to land on medical emergency and after their discharge from hospitals, are waiting to be declared to be 'fit for air travel'.*

*(5) Foreigners against whom orders of restriction or deportation are issued by FRROs/FROs in their jurisdictional area in addition to State Governments/UT Administrations.*

*(6) Foreigners violating visa norms (i.e. cases of overstay, indulging in activities which are not permitted under the visa granted to the foreigner etc.)*

*(7) Foreigners detained in suspicious background/violent behavior etc.*

*Note : In case detention of a foreign national is required to be done on the basis of orders issued under the National Security Act (NSA) or the Public Safety Act (PSA) (in the case of State of Jammu & Kashmir) on security considerations, such detention may be done in jails.”*

33. Upon construing the impugned orders in the present case in the context of provisions of Sections 3(2)(e) and 3(2)(g) of the said Act, we are unable to accept Mr. Poulekar's first contention that the impugned orders relate to the exercise of powers under Section 3(2)(g) and not Section 3(2)(e) of the said Act. Apart from the fact that the impugned orders refer to the provisions in Section 3(2)(e) of the said Act, we find that the impugned orders require the Petitioners to reside at a particular place, which in the present case, is the detention centre at Mapusa. The impugned orders thereafter impose certain restrictions on the movements of the Petitioners. Section 4(2) of the said Act provides

that any foreigner, referred to as a person on parole, in respect of whom there is in force an order under Section 3(2)(e) requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall, while residing therein, be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine. So also, paragraph 11(2) of the Foreigners Order, 1948 empowers the civil authority, by order in writing, to direct that any foreigner shall comply with such conditions which may be specified in the order in respect of his movements.

34. Upon conjoint reading of the provisions in Sections 3 and 4 of the Foreigners Act, 1946 and paragraph 11 of the Foreigners Order, 1948, we are unable to accept Mr. Poulekar's contention that the impugned orders relate to exercise of powers under Section 3(2)(g) of the said Act and since such powers have not been delegated to the State Authorities the impugned orders are *ultra vires*.

35. The Full Bench of the Madras High Court in *Latha* ( supra ) came to be constituted in order to resolve the conflict between the Division Bench decisions in *Kalavathy Vs State of Tamil Nadu and others*<sup>2</sup>, *Yogeswari Vs The State of Tamil Nadu, represented by its Secretary to Govt., Public (SC) Department, Chennai and Anr.*<sup>3</sup> and

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<sup>2</sup> 1995 2 L.W. 690

<sup>3</sup> 2003 1 L. W. (Cri.) 352

*Premavathy @ Rajathi Vs State of Tamil Nadu*<sup>4</sup>. The Division Bench in *Premavathy* had held that *Yogeswari* was not correctly decided as it had not noticed the decision in *Kalavathy*. The main issue in all these matters was whether the orders made in purported exercise of powers under Section 3(2)(e) of the Foreigners Act, requiring the foreigners to reside within the special camp established for foreigners, in effect amounted to arrest, detention or confinement of such foreigners and therefore, could be made only by the Central Government under Section 3(2)(g) of the Foreigners Act and not by the State Authorities.

36. In *Kalavathy*, the Division Bench of Madras High Court had *inter alia* held as follows :-

*"15. We are unable to accept this contention, "Place" has not been defined under the Foreigners Act. However place has been defined under Section 2(p) of the Code of Criminal Procedure, to include a house, building, tent, vehicle and vessel. Section 100, Cr.P.C. refers to inhabitants of the locality. Law Lexicon states the "Place" certainly does not mean "geometrical point of space or the earth". It must mean "area" having length and breadth. "An area" defined by specified boundaries and described otherwise to delimit its ambits is known as "a place". There is nothing to indicate, that the word "place" is either as big or as small as a town, village, market place or otherwise. The word "place" has been used to denote certainty rather than "size". "Locality" according to Law Lexicon, is a definite region in any*

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4 HCP No.1038 of 2003

*part of space. "Locality" is a place with an area which is reasonably small and compact so that, it has come to exist and be treated as one unit, a reference to which sufficiently identifies the area and the persons therein: Ordinarily, the unit which has acquired a name by which it is referred and understood. Locality has been interpreted, not to mean the same quarter, but inclusion of places even 3 or 4 miles, of the place of search. Locality need not mean, that person should be living, within a stone's throw of the house, to be searched. It is therefore, abundantly, clear, that the word "place" contemplated under Section 3(2)(e), is different from the word "locality", the latter being broader in concept. The learned Public Prosecutor submitted that the Special Camp, Saidapet has an area of 10,000 square feet. The special camp, Saidapet, can therefore, certainly be a particular place, contemplated under Section 3(2)(e)(i) of the Act. Mr.B. Kumar was able to realise the possible difference between a place and locality and hence, conceded, that the special refugee camp can be termed as a "Particular place". If that be so, under Section 3(2)(e) of the Act, the State Government does have the power, to require foreign nationals, not only to reside in a particular place, as a special refugee camp, but also have power to impose restrictions, on their movements. Power, to pass orders under Section 3(2)(e) of the Act, indisputably has been delegated by the Central Government to the State Government. We are unable to agree, that the foreigners involved in these writ petitions, have been arrested and detained or confined. Only certain limited restrictions have been made in their movements and place of residence. A special refugee camp cannot be termed as an internment camp. If that be so, the argument that the impugned orders must be deemed*

*to have been made under Section 3(2)(g) of the Act cannot survive. Similarly, the protection sought under Article 22(4) of the Constitution also, cannot exist, since the said Article deals with protection against arrest and detention in certain cases."*

37. The Full Bench decision records that the decision in *Kalavathy* was challenged before the Hon'ble Supreme Court by instituting a Special Leave Petition, which was however not entertained. Following the decision in *Kalavathy*, another petition raising a similar contention was rejected on 29<sup>th</sup> March, 1995. This order was challenged before the Hon'ble Supreme Court in Special Leave Petition (Cri.) No.369 of 1996 in *Chinnapillai Vs State of Tamil Nadu and Anr.* Even this Special Leave Petition was rejected by the Hon'ble Supreme Court by order dated 14<sup>th</sup> March, 1996, which reads as follows :-

*"The petitioner is a Sri Lankan citizen. Although, he has been ordered to be released on bail by the Court, he has been lodged in a Special Refugee Camp. He has been lodged in the Camp since he does not have the necessary travelling documents. In support of his contention that the judgment in a Refugee Camp does not amount to detention, the learned counsel for the State of Tamil Nadu cited Kalavathy etc. vs. State of Tamil Nadu etc. 1995(2) L.W. (Cri.) 690. He further states that the special leave petition against the judgment of the Madras High Court has already been dismissed by this Court. In this view of the matter, we see no ground to interfere. The special leave petition is dismissed."*

38. The Full Bench decision records that the similar contention was raised once again in *Yogeswari* before another Division Bench of Madras High Court. This time however, the Division Bench,

distinguished *Kalavathy* and held that the impugned order amounted to preventive detention and therefore, in view of provisions of National Security Act, 1980, the authorities were not justified in invoking the provisions of Section 3(2)(e) of the Foreigners Act, 1946.

39. The Full Bench decision records that subsequently the similar matter came up in *Premavathy*, which was disposed of by the Division Bench on 14<sup>th</sup> November, 2003. The Division Bench in this case observed that the ratio of *Kalavathy's* case that an order relating to residence of foreigners within a special camp did not amount to detention had been specifically approved by the Supreme Court in *Chinnapillai's* case and therefore the ratio of such decision must be considered as law declared by the Supreme Court and therefore should be followed. On this ground, the Bench which decided *Premavathy* without making any reference to a larger Bench, held that the decision in *Yogeswari* does not represent the correct position in law. In order to resolve the situation arising out of such conflicting view the Full Bench came to be constituted.

40. The Full Bench, after reference to various statutory provisions in Foreigners Act, 1946 and the Foreigners Order, 1948 at paragraph 14 posed for its determination the following question :

“14. *The main question is therefore whether the order passed by the State Government directing the husband of the petitioner to remain within the Special Camp amounts*

*to an order of detention or confinement as envisaged in Section 3(2)(g) of the Act. In this context, the submission of the learned counsel for the petitioner to the effect that the provisions contained in Section 3(2), particularly Section 3(2)(e) can be said to be impliedly repealed by the provisions contained in the National Security Act, is required to be considered at the threshold.”*

41. The aforesaid question or issue was ultimately answered by the Full Bench in paragraphs 15 to 19, which read as follows :-

*“15. The National Security Act is an Act to provide for preventive detention. Section 3 contains power to make orders detaining certain persons. As per Section 3(1)(b), the Central Government or the State Government may if satisfied with respect to any foreigner, with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do make an order directing that such person be detained.*

*16. A perusal of the aforesaid provision makes it clear that such order of detention can be passed with a view to regulating the continued presence of a foreigner in India or with a view to making arrangements for his expulsion from India. The Central Government or the State Government, as the case may be, is required to come to the conclusion that is necessary to do so. The specific power envisaged under Section 3(2)(e) appears to cover many other facets rather than detention of a foreigner. Under sub-clause (i) of Section 3(2)(e), a condition can be imposed requiring the foreigner to reside in a particular place. Under (ii) restriction can be imposed on his movement. The other sub clauses in Section 3(2)(e) refer to various other aspects which are distinct from the aspect of detention of such*

*foreigner. Therefore, it cannot be said that Section 3(2) of the National Security Act which contemplates detention of a foreigner with a view to regulate his continued presence in India or with a view to making arrangements for his expulsion from India cannot be said to be in any way inconsistent with the provisions contained in Section 3(2) (e) of the Foreigners Act. If at all there is any inconsistency, it can be said that the provisions contained in Section 3(2) (g) relating to arrest and detention of a foreigner can be said to be covered by the provisions contained in the National Security Act. However, the contention in this case is not that Section 3(2)(g) should be held to be implied repealed by the National Security Act. The specific contention is to the effect that the provisions contained in Section 3(2)(e) of the Foreigners Act shall be deemed to have been repealed by the provisions contained in the National Security Act. This latter contention, according to in our opinion, is not acceptable. Since there is no specific contention relating to Section 3(2)(g), it is not necessary to express any final opinion on this aspect.*

*17. The allied contention of the Senior Counsel is to the effect that an order directing a foreigner to stay in a special camp with condition that he has to remain in the cell from 6.00 P.M. to 6.00 A.M and cannot go beyond the camp, which is within a defined area guarded round the clock by armed police amounts to detention or confinement and, therefore, such power can be exercised only under Section 3(2)(g) and not under Section 3(2)(e) of the Foreigners Act.*

*18. In order to appreciate his contention, it is necessary to consider whether the order directing a foreigner to stay in a special camp with restriction in not allowing such person out of the camp and forcing him to stay in a cell during night can be considered as detention or confinement as envisaged under Section 3(2)(g) or would only amount to*

*condition requiring him to reside in a particular place as envisaged under Section 3(2)(e)(i) and imposing any restriction on his movements as envisaged under Section 3(2)(e)(ii). In order to appreciate this contention, it is necessary to notice the contents of Section 4. Section 4(1) envisages that an internee shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline the punishment of offences and breaches of discipline as the Central Government may determine. Under Section 4(1), in respect of whom an order under Section 3(2)(g) is in force directing him to be detained or confined in such place is known as an internee. On the other hand, under Section 4(2), any foreigner in respect of whom an order under Section 3(2)(e) is made requiring him to reside at a place, is known as a person on parole. As per Section 4(2) such a place can be set apart for the residence of number of foreigners and it shall be under supervision. Section 4(2) also envisages that such foreigners while residing at a place set apart shall be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may determine.*

*19. According to Concise Oxford Dictionary, 10th Edition, the expression confine means, to keep or restrict someone or something within certain limits of space. In a general sense, directing a foreigner to remain within a Special Camp and not allowing him to move out of such Special Camp may amount to his confinement within such Special Camp as such person is to remain within certain limits of space. However, it can be also said to be compatible with Section 3(2)(e)(i) and (ii) inasmuch as the foreigner is asked to reside in a particular place, namely, the Special Camp, along with further imposition of restriction in his movement in the sense that his movement is restricted within the space available in the Camp during day time and he is further*

*restricted to a particular cell during night time. Section 4(2) contemplates that any foreigner, a person on parole may be subjected to other conditions as to discipline.*

*Having regard to all these aspects, we are unable to accept the submission made by the petitioner and, in our considered opinion, the Division Bench decision of this Court in 1995-2-L.W.(Crl.)690 (KALAVATHY, ETC. v. STATE OF TAMIL NADU & OTHERS) had been correctly decided.*

*We are also unable to accept as correct the ratio of the subsequent decision in 2003-1-L.W.(Crl.) 352 (YOGESWARI v. THE STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVT., PUBLIC (SC) DEPARTMENT, CHENNAI AND ANOTHER) as such an order directing a foreigner to stay within a Special Camp with certain inevitable restriction regarding on his movement would amount to an order of preventive detention as envisaged under the National Security Act, 1980 and an order of arrest and detention or confinement within the meaning of Section 3(2)(g) of the Foreigners Act. Though it would have been more appropriate for the subsequent Division Bench in the unreported decision in Premavathy's case to refer the matter to a larger Bench for resolving such conflict, the ultimate conclusion was correct. Since we have approved the ratio of the decision in Kalavathy's case, it is not necessary to consider in detail the submission of the learned Senior Counsel that the Supreme Court in SLP had merely rejected the petition without laying down any particular principle of law, though prima facie the observation made in Premavathy's case that the ratio of Kalavathy's case had received the approval of the Supreme Court appears to be justified.*

*Matter shall be listed before the appropriate Division Bench for disposal.”*

42. Thus, even the Full Bench of Madras High Court has taken

the view that any direction requiring a foreigner who has no valid travel documents or any subsisting right to remain in India to reside in special camp or detention centre, does not amount to arrest or detention of such person. Rather, such orders are relatable to exercise of powers under Section 3(2)(e) of the said Act and paragraph 11 of the Foreigners Order, 1948. For these reasons as well we are unable to accept Mr. Poulekar's first contention and hold that the impugned orders are *ultra vires*.

43. In order to appreciate Mr. Poulekar's second contention, it is necessary to note at the threshold that there is nothing in the provisions of Section 3(2)(e) which suggests that the powers therein can be exercised only in respect of a foreigner against whom, a deportation order has already been made by the appropriate authority. It is true that where a deportation order has been made by the appropriate authority, certainly, the powers under Section 3(2)(e) can be exercised. However, this is quite different from saying that the existence of deportation order is the only ground or is a *sine qua non* in exercise of powers under Section 3(2)(e) of the said Act.

44. The provisions of Chapter -3 of 2019 Manual which we have extracted above also militate against the acceptance of Mr. Poulekar's second contention that the existence of deportation order is a *sine qua non* for exercise of powers under Section 3(2)(e) of the said Act. Chapter —3 lists out the several circumstances in which the powers

under Section 3(2)(e) of the said Act may be exercised. Besides in the present case, there is no dispute that both the Petitioners have neither any valid travel document nor any VISA or other permissions, which entitle them, as a matter of right to remain in India. In such circumstances, we are unable to accept Mr. Poulekar's second contention as well.

45. Mr. Poulekar's third contention is linked to his second contention. Since, we find no merit in the second contention, obviously, even the third contention fails. In any case, we observe that the Petitioners, cannot claim any special consideration on account of the circumstance that they were allegedly found involved in offences under the NDPS Act for which, they are facing trial for last several years. The Petitioners' third contention, virtually seeks to draw some sort of premium from this circumstance, which they are clearly not entitled to, in the facts and circumstances of the present case.

46. However, we agree with Mr. Poulekar's contention that the trials against the Petitioners ought not to be unduly prolonged. He has pointed out that in case of Petitioner in LD-VC-CRI-7-2020, the trial is pending since the year 2014 in which, five witnesses have already been examined. Expeditious conclusion of trial against the foreigners who may be involved in offences under the NDPS Act or in any other Act, is not only in the interest of such foreigners but also in public interest,

because it cannot be ruled out that some foreigners would like to unduly prolong their stay in India, taking advantage of the pendency of criminal proceedings against them. The Petitioner's third contention in the present matter can be construed an indicator in this direction.

47. Upon enquiry we were informed that the trial is presently not proceeding on account of COVID-19 situation. While we appreciate the pendency on account of this reason, we direct that no sooner the situation improves and Courts begin to function on regular basis, the NDPS Judge seized of these matters will endeavour to dispose of the trials against the Petitioners as expeditiously as possible and in any case within a period of four months from the date of regular functioning of the Courts.

48. Mr. Poulekar submits that in so far as the Petitioner in LD-VC-CRI-8-2020 is concerned, the trial has not yet commenced and further, the Petitioner is not even aware whether any charge-sheet has been filed. We direct that the concerned authorities look into this issue and in any case, any charge-sheet is already filed against the Petitioners, to expedite the trial, so that it is concluded within a reasonable period.

49. For all the aforesaid reasons, we are not persuaded to interfere with the impugned orders and accordingly we dismiss these petitions with the aforesaid directions.

50. Rule in these petitions is disposed of in the aforesaid terms.  
There shall be no order as to costs.

**SMT. M. S. JAWALKAR, J.**

**M. S. SONAK, J.**

**at\***

