

# SOUTH ASIAN JOURNAL OF LAW AND POLICY REVIEW

VOL.1

December 2015

ISS.1

## ARTICLES

*N.B KHARE v. STATE OF DELHI*

**- Acharya Bhakti Shripad**

STATEMENT OF FACTS .....	42
ISSUES RAISED.....	42
SUMMARY OF ARGUMENTS.....	43
<i>I.APPELLANTS</i> .....	43
<i>II.RESPONDENT</i> .....	43
JUDGEMENT.....	44

### STATEMENT OF FACTS

The petitioner who is the President of the All India Hindu Mahasabha since December, 1949, was presented with a request of externment dated for March, 1950.

By that request he is coordinated by the District Magistrate, Delhi, not to stay in the Delhi District, and instantly to expel himself from the Delhi District and not to come back to the District. The request was to proceed in power for three months. By another request of the Madhya Bharat Government he was coordinated to live in Nagpur. That request has been as of late drop. The candidate questioned the legitimacy of the first request on the ground that the East Punjab Public Safety Act, 1949, under which the order was made, is an encroachment of his fundamental right given under article 19 (1) (d) of the Constitution of India. He further battled that the grounds of the request served on him are ambiguous, inadequate and deficient. Concurring to him the object of the externment request by the District Magistrate, Delhi, was to smother political resistance to the strategy of the Government in appreciation of Pakistan and the Muslim League. It was affirmed that on the grounds that the solicitor and the Hindu Mahasabha were against the Government arrangement of mollification this request was served on him. It was in this way mala fide and illicit.

### ISSUES RAISED

I. Whether provisions were empowering Provincial Government or District Magistrate to extern persons making satisfaction of externing authority final which might lead to unreasonable restriction on an individual's right and authorising externment indefinitely and directing authority to communicate grounds of externment at its discretion reasonable.

- II. Whether the first order on the ground that the East Punjab Public Safety Act, 1949, under which the order was made, is an infringement of the fundamental right given under article 19(1) (d).
- III. Whether the grounds of the order served are vague, insufficient and incomplete.

### **SUMMARY OF ARGUMENTS**

The issues raised and their explanation by each party is as follows:

#### **I. APPELLANTS**

I. The provisions empowering Provincial Government or District Magistrate to extern persons making satisfaction of externing authority final which will lead to unreasonable restriction on an individual's right and authorising externment indefinitely and directing authority to communicate grounds of externment a choice of the externing authority is arbitrary and unjust as no court can review the decision after it has been made.

II. The first order on the ground that the East Punjab Public Safety Act, 1949, under which the order was made, is an infringement of the fundamental right given under article 19(1) (d) as Clause (c) of section 4(1) of the East Punjab Public Safety Act, 1949, authorises the Provincial Government or the District Magistrate to direct any person to remove himself from any area and prohibit him from entering the same. On the face of it such provision represents an interference with the fundamental right guaranteed by article 19(1) (d) of the Constitution. Petitioner believes that the impugned legislation would only be saved if it is within the permissible limits prescribed by clause (5) of article 19.

III. That the grounds of the order served are vague, insufficient and incomplete.

#### **II. RESPONDENT**

I. The provisions empowering Provincial Government or District Magistrate to extern persons making satisfaction of externing authority final which will not lead to unreasonable restriction on an individual's right and authorising externment indefinitely and directing authority to communicate grounds of externment at its discretion reasonable as the objective is to provide for special measures to ensure public safety and maintenance of public order. Under section 4(1)(c) of the Act, the Provincial Government or the District Magistrate may make an order directing the removal of a certain person from a particular area, if they are satisfied that such order is necessary to prevent such person from acting in any way prejudicial to public safety or maintenance of public order. Preventive orders by their very nature cannot be made after any judicial enquiry or trial. If emergent steps have got to be taken to prevent apprehended acts which are likely to jeopardise the interests or safety of the public, somebody must be given the power of taking the initial steps on his own responsibility; and no reasonable objection could be taken if the authority, who is given the power, is also entrusted with the responsibility of maintaining order and public peace in any particular district or province.

II. The first order on the ground that the East Punjab Public Safety Act, 1949, under which the order was made, is not an infringement of the fundamental right given under article 19(1)(d) as clause permits imposition of reasonable restrictions on the exercise of the right conferred by sub-clause (d) in the interests of the general public. The impugned legislation imposes reasonable restrictions on the exercise of the right

III. That the grounds of the order served are not vague, insufficient or incomplete as the reason given clearly mentioned that in the recent communal disturbances of Delhi feelings got roused between the majority and minority communities and that his presence and activities in Delhi were likely to prove prejudicial to the maintenance of law and order, due to which it was considered necessary to order him to leave Delhi.

### **JUDGEMENT**

It was a 5 bench judge and the decision was of the majority of 3 is to 2.

Majority decision: Petition Dismissed.

Minority decision: Petition allowed and order of Externment quashed.

The order is made because the activities of the petitioner are likely to prove prejudicial to the maintenance of law and order and that abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension and that the satisfaction of the officer thus does not impose an unreasonable restriction on the exercise of the citizen's right.

///