

P L D 1989 Lahore 223

Before Afrasiab Khan, J

ABDUL MAJEED and another--Petitioners
versusTHE S.H.O. POLICE STATION NAULAKHA,
LAHORE and another--Respondents

Writ Petition No.4887 of 1987, decided on 5th February, 1989.

(a) Foreigners Act (XXXI of 1946)--

---S. 2--Pakistan Citizenship Act (II of 1951), S.3--Handbook on Management of Afghan Refugees, Chap. 1, para. 10(b)--Afghan refugees--Temporary asylum extended to Afghan nationals who have come to Pakistan on account of political disturbance and occupation of foreign troops--Stay and movement of such refugees to be governed by provisions of Foreigners Act, 1946--Provisions of Pakistan Citizenship Act, 1951 do not apply to such refugees--Such refugees can live in the specified areas and they are to follow Code of Conduct and other Rules promulgated by Government of Pakistan--Government can impose reasonable restrictions on movements of refugees as demanded by dictates of security. [p. 225] A

(b) Foreigners Act (XXXI of 1946)--

---S. 2--Pakistan Citizenship Act (II of 1951), S. 3--Citizenship, grant of--Status of citizens of Pakistan given to those refugees who came to Pakistan after partition of sub-continent from territories which formed undivided India and to refugees from Jammu and Kashmir State--Such categories of refugees are clearly covered by provisions of Pakistan Citizenship Act, 1951--Afghan refugees having not been given status of citizens of Pakistan are governed by the Foreigners Act, 1946. [p. 226] B & C

(c) Foreigners Act (XXXI of 1946)--

---S. 2--Pakistan Citizenship Act (II of 1951), S. 3--Constitution of Pakistan (1973), Art. 199--Temporary asylum given to Afghan refugees--Such refugees accommodated in refugees camps set up by Government--Petitioners-refugees instead of staying in camps specified for them settled in city and carrying on regular business--Government's entitlement to restrict such refugees' movements to specified areas--Afghan refugees having been granted temporary political asylum were governed by the provisions of Foreigners Act, 1946--Government is competent to restrict such refugees' movements and drive them back to specified areas set up for them--Refugees petitioners' Constitutional petition against restriction of their movements and business thus being without substance was dismissed. [p. 227] D

Rafiq Ahmad Bajwa and Shaukat Rafiq Bajwa for Petitioners.
Rana Muhammad Arshad Khan, Addl. A.-G., Punjab and Syed
Niaz Ali Shah, Standing Counsel for the Federal Government for
Respondents.

Date of hearing: 2nd November, 1988.

JUDGMENT

The petitioners Abdul Majeed son of Haji Abdul Karim and

Haji Abdul Karim care of Messrs Majeed Carpet, Umar Gul Centre, 25-A, Nicholson Road, Lahore have moved this Constitutional petition against the S.H.O. Police Station Naulakha, Lahore and the Commissioner for Afghan Refugees, Fazal Road, Lahore, respondents praying therein that respondent No.1 may be commanded not to interfere in thier liberty, business and stay at Lahore. It is further prayed that none of his subordinate Police Officers may be permitted to indulge in such like activities. Similarly 22 other petitioners have moved separate Writ Petitions bearing Nos. 4888, 4889, 4890, 4891, 4892, 4893, 4894, 4895, 4896, 4897, 4988, 4899, 4900, 4901, 4902, 4903, 4904, 4905, 4906, 4907, 4908 and 4909 all of 1987 for similar relief in this Court. Common questions of law and facts have arisen and as such I propose to dispose of these matters together by my consolidated judgment.

2. All the petitioners are refugees from Afghanistan and the Government of Pakistan has given them political asylum because of the foreign occupation of their country. These petitioners and other millions of such people migrated from Afghanistan and entered into Pakistan on different dates after 1979 when finally the territory of Afghanistan was occupied by the invading Russian Army. Admittedly the petitioners and other such refugees were accommodated in refugees camps set up by the Government of Pakistan in some parts of the N.-W.F.P., Baluchistan and Punjab. The Government of Pakistan gave them every possible relief assistance in the said camps. The case of the petitioners is that it is not possible for them to live on the donations and ration given to them by the Government of Pakistan and other foreign countries. It is stated that per capita ration being supplied to them is not at all sufficient to keep the body and soul together. Further, they cannot otherwise continue to live on the supply of that very ration alone as there are other essential needs of the human beings and as such this is the endeavour of the Government of Pakistan itself that the refugees may be given the chance to commence some other economic activities so as to enable them to generate some other source of income to them. The petitioners submitted that in the refugee camps carpet manufacturing centers were set up with a view to rehabilitate the refugees economically. In this connection, the petitioners had to come to Lahore in order to sell their finished goods in the market. The petitioners are duly registered refugees in the respective camps mentioned above and that they have been living peacefully in Pakistan within the limits of law. There was no complaint whatsoever against them for having indulged in any illegal activity. The petitioners have obtained commercial premises on rent in Lahore and that they are carrying on their business there as commission agents in lawful and peaceful manner. The grievance of the petitioners is that respondents Nos.1 and 2 have physically started interference in their business mentioned above and that it has become impossible for them to carry on their lawful business any more. The respondents occasionally visit their business premises and interfere in the business and some times they are apprehended and confined in the police station without any legal justification. The learned counsel for the petitioners forcefully contended that the petitioners being Afghan refugees have been given political asylum by the Government of Pakistan and that there is no law under which their movements in Pakistan could be restricted. Learned counsel maintained that the petitioners can move about freely

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and can carry on their business wherever they like in the whole of Pakistan. Learned counsel submits that the provisions contained in the Foreigners Act, 1946 are not at all attracted to the case of the petitioners. He states that Afghan refugees cannot be termed as 'foreigners' within the meaning of the Foreigners Act, 1946 and the Pakistan (Control of Entry) Act, 1952. The learned counsel has also discussed the case of the millions of the refugees who migrated from India and entered into Pakistan after 14th of August, 1947 when Pakistan came into being. He also referred to the refugees from Jammu and Kashmir State who came to Pakistan after the aforementioned date on account of fear of disturbances in the State. In other words, the learned counsel submits that the case of Afghan refugees is at par with other refugees who have come to Pakistan after 14th August, 1947 from India and occupied part of Jammu and Kashmir State.

3. The learned Deputy Attorney-General of Pakistan, learned Standing Counsel for Federation of Pakistan, the learned Advocate-General and the learned Additional Advocate-General Punjab have appeared in this Court on different dates and they have presented their view points in the case at considerable length. The respondents have filed written statement in the cases and the Commissioner Afghan Refugees, Punjab has also submitted a detailed report in the case on 22-11-1987. According to the report, the stay and movement of the refugees shall be governed by the provisions of the Foreigners Act, 1946. It is admitted that temporary asylum has been extended to the Afghan nationals, who have come to Pakistan on account of political repression and occupation of their country by the foreign troops. It is stated that the asylum has been granted to them purely on humanitarian grounds without any strings or discrimination and further on account of cultural, ethnical and religious affinity between the people of Pakistan and Afghanistan. It is mentioned that the refugees can live in the specified areas and that they should follow the Code of Conduct and other Rules promulgated by the Government of Pakistan from time to time, which are contained in the handbook on Management of Afghan Refugees. It is provided under clause (b) of para. 10 of Chapter 1 of the said handbook that the Provincial Government may impose any reasonable restrictions on the movement of refugees in tribal areas/settled districts as demanded by dictates of security. All these refugees have duly been registered by the Afghan Refugees Organization. Lastly it is reported that the petitioners are being taken back from Lahore and other places under the direct instructions of the Home Department to the specified areas mentioned above, where all the necessary facilities are being made available to them.

4. I have heard the learned counsel for the parties and representatives of the Afghan Refugees Organization as well as the representatives of the petitioners. I cannot agree with the contentions of the learned counsel for the petitioners that their movement cannot be restricted under the existing laws and that they should be at liberty to carry on their business throughout Pakistan according to their sweet will. Admittedly the petitioners are the refugees from Afghanistan and they have been given political asylum by the Government of Pakistan for a temporary period. The case of the petitioners is admittedly not covered by the provisions of the Pakistan Citizenship Act, 1951. The contention of the learned counsel is that the petitioners are not the 'foreigners' and as such the provisions of

the Foreigners Act, 1946 shall not apply to their case. There is no substance in the contention of the learned counsel and as such the same is repelled. In section 2 of the said Act the expression 'foreigner' has been defined to be a person who is not a citizen of Pakistan. In other words any person who is not a citizen of Pakistan by birth, by descent, by migration, by naturalisation, by registration, by incorporation of territory is a foreigner within the meaning of the Foreigners Act, 1946. The case of the petitioners, therefore, clearly falls within definition and scope of the definition of the 'foreigners' as given by the Act mentioned above. Hundreds of thousands of Muslims, who came to Pakistan after 14th of August, 1947 on account of partition of the sub-continent, were also refugees who opted for Pakistan as their country. A number of laws were enacted by the Government of Pakistan, which pertain to the rehabilitation and settlement of those refugees. Initially Ordinances were issued for the rehabilitation of the said refugees. However, later on Registration of Claims Displaced Persons Act, 1956, Pakistan Rehabilitation Act, 1956, Administration of Evacuee Property Act, 1957, Displaced Persons (Compensation and Rehabilitation) Act, 1958 were promulgated by the Government of Pakistan in order to rehabilitate and settle the refugees. In my view all these refugees who came to Pakistan from the territories, which formed undivided Indian Union after 14-8-1947 were given the status of Citizens of Pakistan. Their cases are clearly covered by the provisions of the Pakistan Citizenship Act, 1951. For all practical purposes these refugees are an integral part of the Pakistani Nation. They have been given the compensation for the losses they suffered during the disturbances which took place in the process of formation of Pakistan and India. They have settled permanently in Pakistan for all time to come as full fledged citizens of this country. Similarly the case of the refugees from Jammu and Kashmir State is slightly a different one inasmuch as the future of the said State is still disputed and is pending adjudication before the United Nations. The refugees of Jammu and Kashmir State, who entered Pakistan after 14-8-1947 have been settled in Pakistan temporarily with an object that whenever the State is liberated from the foreign yoke, such refugees will go back to their home land. Keeping this special feature in view the Pakistan Citizenship Act was amended vide Pakistan Citizenship (Second Amendment) Act XXXIX of 1973 adding section 14-B therein, which provides as follows:

"Certain persons to be citizens of Pakistan. A person who being a subject of the State of Jammu and Kashmir, has migrated to Pakistan with the intention of residing therein for such time as the relationship between Pakistan and that State is finally determined shall, without prejudice to his status as such subject, be a citizen of Pakistan."

From the above provisions of law it is clear beyond any shadow of doubt that all the Jammu and Kashmir refugees who have come to Pakistan with a view to live therein are the citizens of Pakistan. Thus for all practical purposes they are the citizens of Pakistan within the meaning of law mentioned above. They enjoy the same rights, privileges and facilities which are being enjoyed by other citizens of Pakistan. Law does not draw any distinction between such refugees and other citizens of Pakistan. They have always been treated on equal basis.

5. The case of the petitioners stands clearly on a different footing. The Afghan refugees have been given temporary political asylum till such time the foreign forces leave the Afghan territory. It is, therefore, clear that all the Afghan Refugees are foreigners within the meaning of 'foreigners' as contained in section 2 of the Foreigners Act, 1946. Under section 3 of the said Act, the Central Government may by order make provisions either generally or with respect to all foreigners. Under clause (e)(i)(ii) subsection (2) of section 3 of the Act, it is provided that the foreigners may be directed to reside in a particular place and that restrictions on his movement can also be imposed. The provisions contained in clause (e)(i)(ii) subsection (2) of section 3 are a complete answer to the contention raised and argued by the learned counsel for the petitioners. According to these provisions the Government is competent to place the foreigners at a particular place and that their movements can be restricted by the Government. Thus, action taken by the respondents for taking the petitioners back to the refugees camps set up for accommodation of such refugees in wholly justified by the above said law. It is further provided in clause (g) that such foreigner can be arrested in the interest of security of Pakistan, detained or confined. It is known to all that some foreign powers are interested in creating instability and law and order situation in Pakistan by indulging sabotage and other illegal activities. In the garb of refugees foreign agents have entered into the holy land of Pakistan and they are busy in the implementation of their nefarious designs. Under such a situation, the Government of Pakistan is fully competent under law to take appropriate steps in the interest of security of Pakistan. In this connection, in order to achieve this object, any foreigners can be confined or detained in accordance with law. Keeping this object in view the Government of Pakistan has decided to restrict the movement of the Afghan refugees and to drive them back to the specified areas to live in the refugees camps set up for this purpose. The Government of Pakistan and the people of Pakistan have extended un-precedented hospitality and relief assistance to their Afghan brethren in this hour of their trial. Even the people of Pakistan have immensely suffered on account of Afghan issue in men and material. The Afghans' cause was represented in a bold and unprecedented manner by Pakistan before the International Forums and it was the sheer will and determination of the Government and the people of Pakistan that ultimately the dispute culminated in the execution of the Geneva Accord by all the concerned parties.

6. The upshot of the above discussion is that all the petitions, referred to above, being without substance are dismissed leaving the parties to bear their own costs.

Petitions dismissed.

A.A./A-530/L