

from the settled area. It is significant to note that several questions were put to the accused including the one having reference to dishonest possession of stolen property on his part while examined by the Jirga but he refused to answer the questions. In other words, he did not deem it necessary to account for the possession of the stolen property. It is, therefore, reasonable to conclude not only that he was in possession of the stolen property knowing or having reason to believe it to be stolen property but also that his possession of it was dishonest. In these circumstances, we are clear in our minds that the prosecution has been able to bring the guilt home to the accused petitioner. But even if it be assumed for the sake of argument that the evidence produced before the Jirga was weak or meagre, it would not justify this Court in its writ jurisdiction to interfere. If any authority is needed in support of this view reference may be made to P L D 1957 Kar. 694 and P L D 1966 Pesh. 19. In the first of these cases, the view taken was that it was not proper for the High Court in its writ jurisdiction merely to set aside the verdict of guilty by Jirga under the Regulation on the ground that the case was of weak evidence or that the conviction was based on thin reasoning. In the second case, while dealing with various aspects of the matter, the learned Judges proceeded to hold that the conviction under the Regulation on evidence, however meagre, could not be called into question in writ jurisdiction.

For the foregoing reasons, there is no merit in this writ petition. We therefore decline to interfere with the findings against the petitioner and his conviction and sentence and dismiss the petition, with no order as to costs.

S. A. H.

Petition dismissed.

P L D 1980 Peshawar 275

Before Karimullah Durrani and Shah Abdul Rashid, JJ

JEAN CHARLES GROOSEN—Petitioner

versus

STATE OF PAKISTAN THROUGH THE SECRETARY, MINISTRY OF
INTERIOR, GOVERNMENT OF PAKISTAN, ISLAMABAD—
Respondent

Writ Petition No. 782 of 1979, decided on 4th May 1980.

(a) Foreigners Act (XXXI of 1946)—

—S. 3(2) (a)—Entry into Pakistan—State's powers to restrict—Natural justice, principle of—Every sovereign State possesses inherent powers to restrict, entry into, or movements in its territory—Such right of sovereign State, *held*, cannot be hampered with by any principle of natural justice or on ground of equity.—[Natural justice, principle of]. [p. 277]A

(b) Constitution of Pakistan (1973)—

—Art. 4—Right to be dealt with according to law—Natural justice, principle of—Petitioner, at time of order being passed against him not available in Pakistan—Article 4 of Constitution, *held*, cannot come to aid of petitioner.—[Natural justice, principle of]. [p. 277]B

Muhammad Aman Khan for Petitioner.

ORDER

KARIMULLAH DURRANI, J.—The petitioner Jean Charles Groosen, a Swiss National, has invoked the constitutional jurisdiction of this Court by this petition under the following circumstances :

The petitioner entered Pakistan on a valid and authorised passport in the year 1966 and remained here till 1973 at Chitral, as a tourist. During this period he was employed as an assistant by the owner of an hotel named Chitral Mountain Inn. During this period of his stay, the petitioner did not renew his registration with the police and was apprehended for that offence. He pleaded guilty and was sentenced to pay a fine of Rs. 1,000. Thereafter the petitioner left for Europe and then came back in 1976. *Vide* order dated 17-7-1976 the petitioner was allowed one month's stay in Pakistan. The petitioner according to the averments in the petition had been visiting Afghanistan during his stay in Pakistan every now and then. Thereafter he left for his country. The Ministry of Interior Division, Government of Pakistan, Islamabad, on 29-10-1976 passed an order, in the exercise of the powers conferred on them by clause (a) of subsection (2) of section 3 of the Foreigners Act, 1946, to the effect that the petitioner shall not enter Pakistan. Reason for banning his entry in Pakistan was given in the said order in the following terms :—

“Activities were prejudicial to the interest of Pakistan.”

This order was communicated by the Federal Government to various relevant authorities alongwith the particulars of the petitioner and the number of his passport.

In spite of the ban imposed on his entry by the Federal Government, the petitioner was, once again, successful in obtaining visa from the relevant authorities on a fresh and different passport (No. 1700019) valid upto 25-3-1980 and re-entered Pakistan. On 2-6-1979 the relevant authorities in Peshawar found the petitioner in Pakistan and challaned him for violating the order of the Federal Government. A criminal case on the basis of the said violation of the orders of the Federal Government is pending against the petitioner in the Court of Mr. Haider Gul Khan, City Magistrate, Peshawar.

The petitioner has challenged the *vires* of the above-mentioned order of the Federal Government, dated 29-10-1976, banning his entry in Pakistan, on the grounds that the petitioner was not served a show-cause notice before passing the impugned order nor was he given an opportunity to be heard in connection thereof. It has been urged on behalf of the petitioner by his learned counsel that the order having been passed on the back of the petitioner was violative of the principles of the natural justice, as he was condemned unheard. Reliance was placed on *The University of Dacca and another v. Zakir Ahmad* (1), wherein their Lordships of the Supreme Court of Pakistan held in the case of the expulsion of a student by University Authorities for alleged indiscipline, misconduct, and rowdiness that the student had the right to be heard before being pronounced guilty as the principles of natural justice were applicable in cases of *ex post facto* investigation and that it was the duty of every quasi-judicial or administrative tribunal to observe the principles of the natural justice. Their Lordships further laid down that this rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.

(1) P L D 1965 S C 90

1980

The learned counsel further contends that the Article 4 of the Constitution of Pakistan, 1973, enjoins upon the Federal Government to treat any person residing in Pakistan in accordance with law and that this right of an individual to be dealt with in accordance with law was equally available with a citizen of Pakistan to any other person who for the time being is within Pakistan. The learned counsel, therefore, contends that the law laid down by the Supreme Court of Pakistan in the above-cited case has to be applied to the provisions of the Foreigners Act, 1946 and therefore, the Federal Government would have no authority to ban the entry of a foreigner in Pakistan without according an opportunity to the person concerned to be heard.

The argument is misconceived; firstly because every Sovereign State has inherent powers to restrict entry into its territory or the movements in it of any foreigner. This right of a sovereign State cannot be hampered with by any principle of natural justice or on the ground of equity, as such restriction would not be commensurate with the concept of the sovereignty of a State; and secondly the Central Government enjoys unlimited powers under section 3 of the Foreigners Act, 1946 and the Foreigners Order, 1951, to prohibit or to restrict the entry of any particular foreigner or any prescribed class or description of foreigners in Pakistan. Section 3 of the said Act reads as under :—

- (1) The General Government may by order 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 (Pakistan) or their departure therefrom or their presence or continued presence therein.
- (2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—
 - (a) shall not enter (Pakistan), or shall enter (Pakistan) only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;
 - (b) shall not depart from (Pakistan), or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;
 - (c) shall not remain in (Pakistan) or in any prescribed area therein;

As regards Article 4 of the Constitution, suffice it to say that it cannot come to the aid of the petitioner as at the time the impugned order was passed the petitioner was not in Pakistan.

The impugned order was, therefore, in the exercise of the powers conferred on the Federal Government by the above-quoted section of the Foreigners Act, 1964 and while exercising these powers the Federal Government was not required to issue any prior notice to the foreigner concerned or to hear him in this regard.

It has also been urged by the learned counsel for the petitioner that the criminal proceedings taken against the petitioner were not competent

as the petitioner was not aware of the ban imposed on his entry and therefore, he had not committed any criminal offence. The question whether the petitioner has committed any offence or not by his entry in Pakistan during the existence of the ban is a matter, which the trial Court, before whom the proceedings are pending against him, would be called upon to decide. We would, therefore, refrain from making any comment on this aspect of the matters, so that any observation on our part may not prejudice the trial of the petitioner.

In view of the above discussion, we find no merit in the petition. It is dismissed *in limine*.

Petition dismissed.

S. A. H.

P L D 1980 Peshawar 278

Before Usman Ali Shah, J

S. M. ZAFAR—Petitioner

versus

STANDARD BANK (AT PRESENT HABIB BANK)—Respondent

Civil Revision No. 287 of 1978, heard on 25th June, 1980.

Civil Procedure Code (V of 1908)→

— O. XXI, rr. 84 & 85—Attachment—Sale—Tenant ordered to be evicted from house in dispute securing attachment and sale of house in collusion with decree-holder Bank and purchasing same in name of her son—Amount of bid offered by purchaser too low as compared to cantonment assessment of value but accepted by executing Court—Owner of house a resourceful person and decretal amount easily recoverable from judgment-debtor's other sources—Execution Court, *held*, shew undue indulgence to decree-holder in not only granting him time to deposit auction money repeatedly, but also in accepting his bid—Auction-purchaser's mother, tenant of house though ordered to be evicted yet not dispossessed and arrears of rent due from her also not recovered—Judgment-debtor paying up balance of decretal amount on being asked to do so—Execution proceedings about decretal amount due to petitioner from tenant ordered to be expedited, sale of house quashed, and tenant directed to vacate premises.—[Attachment]. [pp. 280, 281] A, B, C, D & E

Z. Mahfuz Khan for Petitioner.

Ahmad Khan for Respondent.

Dates of hearing : 24th and 25th June, 1980.

JUDGMENT

The Standard Bank, now merged into Habib Bank (hereinafter called the respondent-Bank), Nowshera, secured a decree in the sum of Rs. 9,072 with interest against the petitioner herein. The petitioner paid the principal amount through instalments and as he did not pay the interest of Rs. 5,811 due from him, the learned executing Court, *vide* order sheet dated 22-12-1977 directed that his Bungalow No. 10, Nowshera, be put to auction. *Adv attached*