

FREEDOM OF MOVEMENT

Citation Name: 2007 PLD 642 SUPREME-COURT

Side Appellant: PAKISTAN MUSLIM LEAGUE (N) through Khawaja Muhammad Asif, M.N.A. and others

Side Opponent: FEDERATION OF PAKISTAN through Secretary Ministry of Interior

Issue:

The case has been filed by the petitioners against their alleged forced exile to Saudi Arabia.

Rule:

Article 15 of the constitution of Pakistan

Article 184(3) & 199 of the constitution of Pakistan

Application:

Article 15 -- Freedom of movement --- right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.

Article 15 – Freedom of movement – every citizen has undeniable right vested in him as conferred under Article 15 of the constitution to go abroad and return back to Pakistan without any hindrance and restraint.....

Article 184(3) --- Principles --- while interpreting Article 184(3) of the constitution the interpretative approach should not be ceremonial observance of the rules or usages of the interpretation but regard should be had to the object and purpose for which the Article is enacted i.e. the interpretative approach must receive the inspiration from the triad of provisions which saturate and invigorate the entire constitution namely the Objectives Resolution (Article 2-A), the fundamental rights and the directive principles of State policy so as to achieve democracy, tolerance, equity and social justice according to Islam.

Article 184(3) --- Exercise of Jurisdiction by Supreme Court under Article 184(3) not dependent only at the instance of aggrieved party in the context of adversary proceedings --- traditional rule of locus standi can be dispensed with and procedure available in public interest litigation can be de use of, if it is brought to the court by a person acting bona fide.

Article 184(3) --- Principles --- Article 184(3), provide abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction and it would be for the Supreme Court to lay down the contours generally in order to regulate the proceedings of group or class actions from case to case.

Article 184(3) --- Interpretation and scope of Article 184(3) --- Article 184(3) is remedial in character and is conditioned by three prerequisites, namely that there is a question of public importance; that such a question involves enforcement of fundamental right, and that fundamental right sought to be enforced is conferred by Chapter 1, Part II of the constitution.

Article 184(3) --- Invocation of Article 184(3) – Element of ‘public importance’ is sine qua non – Adjective ‘public’ necessarily implies a thing belonging, to people at large, the Nation, State or a community as a whole – Issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals—Issues, in order to assume the character of public importance must be such that its decision affects the rights and liberties of people at large—if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance.

Article 184(3) & 199--- Jurisdiction of Supreme Court under Article 184(3) of the constitution of not bound by procedural trappings and limitations mentioned in Article 199 of the constitution.

Conclusion:

..... while discussing Article 15 of the constitution it was affirmed that it bestowed a right on every citizen of Pakistan to enter or move A freely throughout the country and to reside and settle any part thereof. It A is a settled principle of law that the right to enter in the country cannot be deified but a citizen can be restrained from going out of the country. The petitioners are citizens of Pakistan and have a constitutional right and a sacred prerogative to enter and remain in Pakistan

..... it is, however, to be noted that where a fundamental right is sought to be restricted by any law, care should be taken that they provide sufficient safeguards against casual, capricious or even malicious exercise of the powers conferred by them..... be as it may in the case of citizens of Pakistan, there is a fundamental right to enter Pakistan from outside and, therefore, any restriction of such right will be an invasion of this Article. The imposition of restrictions by requirement of permits, etc., is justified as a reasonable restriction in the public interest.....

..... the upshot of the above mentioned discussion is that no restriction can be imposed on the right of the petitioners to enter into Pakistan and they can come to Pakistan whenever they so desire.....

Citation Name: 2001 PLD 33 SUPREME-COURT-AZAD-KASHMIR

Side Appellant: ALI ASGHAR ABBASI

Side Opponent: AZAD JAMMU AND KASHMIR COUNCIL THROUGH SECRETARY,
AZAD JAMMU AND KASHMIR COUNCIL AT ISLAMABAD

Issue:

Petitioners are State subjects having migrated from Indian Occupied Kashmir, are residing at different places in District Muzaffarabad, Azad Kashmir. All the petitioners have been registered by the Rehabilitation Department Azad Kashmir and have been issued Identity Cards/Ration Cards by the department. Some of the petitioners are undergoing studies in different institutions of Azad Kashmir while others are otherwise living in the Camps. They applied for the State Subject Certificate which is a pre-requisite for obtaining Domicile Certificate and Identity Card which forms the basis for securing admission in different education institutions and Government departments against reserved seats for refugees and for obtaining passport, but the District Magistrate Muzaffarabad refused to issue the State Subject Certificate and in some cases it did not even entertain the applications of the petitioners on the ground that unless Azad Jammu and Kashmir Council Secretariat issues NoC in favour of the petitioners. The petitioners have called in question the action of District Magistrate in not issuing the certificate in favour of the petitioners and also seek direction to the District Magistrate and Registration Officer Muzaffarabad to issue State Subject Certificate, Domicile Certificates and Identity Cards in their favour.

Rule:

Azad Jammu and Kashmir State Subject Act, 1980 ----- section 3 and 4

Azad Jammu and Kashmir Interim Constitution Act (VIII of 1974) --- Section 2, 4(5) and 44

Application:

Writ petition --- Issuance of “State Subject Certificate” --- petitioners not only were duly registered in Azad Kashmir after obtaining clearance from all security agencies deployed in Azad Kashmir, but Identity Cards for the purpose of Ration Cards were also issued to them----- petitioners being State Subjects, could not be refused..... authority could only cancel said certificate if it was satisfied that same were obtained by means of fraud, false representation or concealing any material fact.....

Freedom of movement----- State Subject needed no permission from any Authority, for settlement in Azad Kashmir, person who was a State Subject was entitled to settle anywhere in Azad Kashmir without permission of any Authority.....

Freedom of movement---- once a person proved that he was a bona fide State Subject he was entitled to “State Subject Certificate”.....

Conclusion:

..... in the case reported as Ghulam Hussain and 2 others v. Federal Government of Pakistan (PLD 1993 AzadJ&K 153), it is held in para 10, as follows:

10. The authority to make laws relating to acquisition or loss of State Subject is vested in Azad Kashmir Council under Item 1 of 3rd Schedule of the Constitution. However, the law defining the various categories of the State Subject remains the same as referred above, and all the laws made or to be made by the Council shall have to correspond to the above definition and Notification referred therein. Any action of the Council, the GOAJ&K or the GOP derogatory to the above provisions is a nullity.

..... paras 16 and 18 are also of equal importance which are reproduced below:

16. What is made out from the above discussion is that a State Subject cannot be deprived of his status of being a State Subject by his obtaining the Passport of India or Pakistan, unless he loses that status by any of the eventualities mentioned in the Notification relating to State Subject as issued from time to time; and thus, a State Subject cannot be deprived of his right to reside and settle in any part of the State as guaranteed by section 4(4)(5) of the Constitution, of course subject to reasonable restrictions. The part of the State under the Indian yoke is a part of the State of Jammu and Kashmir, hence a resident of that part of the State is as good a State Subject as one residing in Azad Kashmir, as none of the two parts of the State is a foreign territory for the other.....

..... the result of the above discussion is that both the petitions are accepted in above stated manner.