

Advocate-on-Record

For Respondent No.1 : Mr. Mohammad Arsadur Rouf, Advocate
(In C.P.No.605/20) instructed by Mrs. Madhumaloti
Chowdhury Barua, Advocate-on-Record

For Respondent No.1 : Mr. Murad Reza, Advocate, instructed by
(In C.P.No.1523/21) Mr. Mohd. Abdul Hye, Advocate-on-
Record

For the Proforma respondents : Mr. Biswajit Debnath, Deputy Attorney
(In all the cases) General (appeared with the leave of the
Court).

Date of hearing and judgment : 27.09.2021

J U D G M E N T

Hasan Foez Siddique, J: These Civil Petitions for Leave to Appeal No.605 of 2020, 1009, 1184, 1340 and 1523 of 2021 have been heard together and they are being disposed of by this common judgment and order since the issue involved in all these cases, is almost identical, therefore, we find it expedient to decide the titled cases together. In all the petitions Durnity Daman Commission (hereinafter referred to as Commission) are the petitioners.

Civil Petition for Leave to Appeal No.605 of 2020 is directed against the judgment and order dated 26.01.2020 passed by the High Court Division in Writ Petition No.13300 of 2019. Respondent Arif Hassan was the writ petitioner in that writ petition. He obtained Rule in the High Court Division calling upon the writ respondents (Government and others) to show cause as to why the action of the writ respondents in violation of the writ petitioner's fundamental right guaranteed under Articles 27,31,32 and 36 of the Constitution by preventing him and imposing embargo upon his leaving Bangladesh should not be declared to be without lawful authority and is of no legal effect and for a direction upon the writ respondents to allow him to leave and re-enter Bangladesh. The High Court Division upon hearing the parties disposed of the Rule with the direction upon the writ

respondents to allow the writ petitioner (bearing Passport No. BY0140253) to go abroad. The High Court Division also directed the writ petitioner-respondent to come back to Bangladesh within three months from the date of his departure for abroad and to inform the writ respondent No.7, Commission about his return to Bangladesh and to file an affidavit-in-compliance without fail.

Against the said judgment and order dated 26.01.2020 passed in Writ Petition No.13300 of 2019, the Commission has filed Civil Petition for Leave to Appeal No.605 of 2020.

Civil Petition for Leave to Appeal No.1009 of 2021 has been filed by the Commission against the judgment and order dated 16.03.2021 passed by the High Court Division in Writ Petition No.824 of 2021. The said writ petition was filed by one Md. Ataur Rahman @ Ataur Rahman. He obtained Rule calling upon the writ respondents to show cause as to why the order communicated under Nathi No.00.01.0000.501.01.113.19-31084/1(3) dated 20.12.2020 issued by an Assistant Director of the Commission asking the writ respondent No.5 (Special Police Super, Immigration) (Airport Special Branch, Bangladesh Police) imposing embargo upon the writ petitioner to leave Bangladesh should not be declared to have been passed without lawful authority and was of no legal effect.

The High Court Division by a judgment and order dated 16.03.2021 made the Rule absolute with following observations and directions:

“তর্কিত আদেশ, সংযুক্তি-এইচ যার দ্বারা কমিশন ইমিগ্রেশন কতৃপক্ষ,
রেসপনডেন্ট নং ৫ কে আবেদনকারী যাতে দেশ ত্যাগ করতে না পারে সে মর্মে

ব্যবস্থা গ্রহণের অনুরোধ জানিয়েছিল- তা আইনসংগত কর্তৃত্ব ব্যতিরেকে করা হয়েছে এবং এর কোন আইনগত কার্যকারিতা নেই মর্মে ঘোষিত হলো।

তবে, আবেদনকারী বিদেশ যেতে চাইলে তিনি কোন দেশে যাবেন, সেখানে অবস্থাকালীন ঠিকানা, মোবাইল ফোন ও ই-মেইল নম্বর কমিশন-কে লিখিতভাবে জানাতে হবে। কমিশন প্রয়োজন মনে করলে অনুসন্ধানের স্বার্থে ই-মেইল ও মোবাইল ফোনে বার্তা দিয়ে যুক্তিসংগত সময় দিয়ে আসামীকে অনুসন্ধান বা তদন্তের স্বার্থে কমিশনের সম্মুখে হাজির হওয়ার নির্দেশ দিতে পারবে। এ ক্ষেত্রে আবেদনকারীকে অবশ্যই কমিশনের সামনে উপস্থিত হতে হবে।”

Civil Petition for Leave to Appeal No.1184 of 2001 has been filed against the judgment and order dated 05.05.2021 passed in Writ Petition No.4437 of 2021. Respondent Tafsir Mohammad Awal filed the said Writ Petition in the High Court Division against the Government, Anti-Corruption Commission and others challenging the action of the writ respondents preventing him from going outside Bangladesh. He also challenged the legality of the letter communicated under Memo No.00.01.0000.502.01.037.20.21479 dated 04.10.2020 issued by the Commission. Filing the aforesaid writ petition, the writ petitioner-respondent obtained Rule and ad-interim order directing the writ respondents to allow him to leave and re-enter Bangladesh for a period of 3(three) months from date subject to no order of restraint or warrant of arrest pending against him. The Commission, against the said ad-interim order dated 05.05.2021 passed in Writ Petition No.4437 of 2021, has filed this Civil Petition for Leave to Appeal.

Facts of Civil Petition for Leave to Appeal No.1340 of 2021, in short, are that respondent No.1, G.B. Hasan as writ petitioner filed Writ Petition No.4162 of 2021 in the High Court Division challenging the order

communicated under Memo No.১৫৬২৫ ঢাকা, প্রধান কার্যালয় ঢাকার নথি নং- দুদক/বিঃ
 অনুঃ তদন্ত-১/মাঃলঃ প্রঃ/৫৫-২০১৪ dated 18.04.2016 issued by the Commission
 asking the writ respondent No.5, Special Police Super, Immigration
 (Airport) Special Branch, Bangladesh Police Dhaka imposing embargo
 upon his leaving Bangladesh should not be declared unlawful. The High
 Court Division, by an order dated 02.05.2021, issued Rule and passed ad-
 interim direction upon the writ respondents to allow the writ petitioner-
 respondent to leave and re-enter Bangladesh for a period of 6(six) months
 from date subject to no order of restraint or warrant of arrest pending
 against him. Impugning the said ad-interim order, the Commission has filed
 this Civil Petition.

Facts, in a nutshell, of Civil Petition for Leave to Appeal No.1523 of
 2021 are that respondent No.1 Md. Ahsan Habib filed Writ Petition
 No.1046 of 2021 in the High Court Division challenging the letter
 communicated under memo No.28923 dated 21.07.2019 issued under the
 signature writ respondent No.7, Deputy Director of Anti Corruption
 Commission so far the same relates to the writ petitioner-respondent
 imposing embargo upon him to leave and re-enter the country and
 retention /seizure of the writ petitioner's Passport No.BY0288904 by the
 officer-in-charge (Immigration Police) Special Branch, Hazrat Shahjalal
 International Airport, Dhaka and obtained Rule. The High Court Division,
 by the impugned judgment and order dated 14.03.2019, disposed of the
 Rule formulating following guidelines:

- “ 1. That if any person/accused of the schedule offences of the
 Anti Corruption Commission, 2004 during pendency of inquiry
 and/or investigating is debarred from leaving the country and the

passport is impounded/seized in an emergency situation without showing any cause and hearing, the Anti Corruption Commission and/or the investigating officer shall submit an application before the Court of Senior Special Judge/Special Judge for post-approval of the memo of the restraining order and the act of the seizure of the passport as early as possible preferably within 15(fifteen) days from the date of passing the impugned memo as well as from the date of seizing the passport as the case may be.

2. That the Senior Special Judge/Special Judge having received the application from the Commission if any shall notify the person/accused of cognizable offences and upon hearing the parties may pass necessary order approving or disapproving the memo of restraining order and act of seizure of the passport.
3. That the learned Special Judge will hear and dispose of the application of the Commission if any as early as possible preferably within 60(sixty) days from the date of receipt of such application providing a fair opportunity of being heard to the aggrieved/parties/persons/accused.
4. The aggrieved person/ accused shall submit his address, mobile phone and e-mail number to the Commission so that the Commission can communicate with them for any assistance and co-operation if required for the purposes of inquiry and/or investigation and they may appear before the Commission following the reasonable timeframe given by the Commission.

5. The aggrieved person/accused shall appear before the Commission if asked for to appear before it on the stipulated date fixed by the Commission failing which the matter will be dealt with in accordance with law.”

The High Court Division also directed the writ respondents with whom the passport of the writ petitioner is lying to return the passport to him so that he can continue his studies going abroad and to allow him to go abroad without any hindrance. Against the said judgment and order, the Commission has preferred instant Civil Petition for Leave to Appeal No.1523 of 2021.

Mr. A.M. Aminuddin, learned Attorney General appeared on behalf of the petitioner in Civil Petitions for Leave to Appeal No.1009 of 2021, 1184 of 2021, 1340 of 2021 and 1523 of 2021 (He did not appear in Civil Petition for Leave to Appeal No.605 of 2020 since he appeared on behalf of the writ petitioner in Writ Petition No.13300 of 2019 in the High Court Division). Mr. A.M. Fazlul Haque appeared on behalf of the petitioner in Civil Petition for Leave to Appeal No.1523 of 2021. Mr. Khurshed Alam Khan, learned Advocate appeared for the petitioner in all the civil petitions.

On the other hand, Mr. Mohammad Arsadur Rouf, learned Advocate appeared for the writ petitioner respondent in Civil Petition for Leave to Appeal No.605 of 2020, Mr. Probir Neogi, learned Senior Counsel appeared for the writ petitioner-respondent No.1 in Civil Petition for Leave to Appeal No.1009 of 2021. Mr. A.M. Mahbubuddin, learned Advocate appeared for the respondent No.1 in Civil Petition for Leave to Appeal No.1184 of 2021, Mr. Ruhul Quddus, learned Advocate appeared for the

respondent No.1 in Civil Petition for Leave to Appeal No.1340 of 2021 and Mr. Murad Reza, learned Advocate appeared on behalf of the respondent No.1 in Civil Petition for Leave to Appeal No.1523 of 2021.

The submissions of the learned Attorney General, Mr. Khurshed Alam Khan and Mr. A.K.M. Fazlul Haque, learned Advocates are identical. They submit that the right of freedom of movement as guaranteed under Article 36 of the Constitution is not absolute right and said provision provides specifically that subject to any reasonable restriction imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh. They submit that in view of the words, “subject to any reasonable restriction imposed by law in the public interest”, clearly permitted the Government/Commission to impose some restrictions on the movement which are legitimate. In their submissions, learned Attorney General and Advocates for the petitioner relied upon the preamble of Anti-Corruption Commission Act and Sections 17 and 19 of the Anti-Corruption Commission Act. They submit that in order to restrain/obstruct any citizen to leave and re-enter Bangladesh the Commission is authorized to pass necessary order or orders otherwise the object of the Act should be frustrated.

On the other hand, all the learned Counsel who appear for the writ petitioner-respondents submit that in view of the provision of Article 36 of the Constitution reasonable restrictions may be imposed to leave and re-enter Bangladesh but the same must be made by law and for public interest, which are absent in all the impugned orders. There is no provision in Anti Corruption Commission Act authorising the Commission to impose any

embargo to move freely throughout Bangladesh and to reside and settle in any place therein and to leave and re-enter in Bangladesh. In absence of specific law, imposition of impugned embargoes upon the writ petitioner respondents were bad in law. They drew our attention to Article 13(1) and (2) of the Universal Declaration of Human Rights adopted by the United Nations in December, 1948 which run as follows:

“Article 13(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country including his own, and to return to his country.”

They lastly submit that the impugned orders restraining the writ petitioners to leave Bangladesh were bad in law.

Freedom of movement, mobility right, or the right to travel is a human right concept encompassing the right of individuals to travel from place to place within the territory of a country and to leave the country and return to it (wikipedia). In 13th Century England, the *Magna Carta* guaranteed local and foreign merchants the right, subject to some exceptions, to ‘go away from England, come to England, stay and go through England.’ In Australia O’ Connor J. said in *Potter V. Minahan* [(1908)7 CLR 277], that a citizen of Australia is entitled to ‘depart from and re-enter Australia as he pleases without let or hindrance unless some law of the Australian Community has in that respect decreed the contrary’. Freedom of movement is included in the compendious term “personal liberty”. Freedom of movement is widely considered to be one of the most basic human rights and the same is in the last analysis the essence of personal liberty. However, this right is not absolute. Indeed, freedom is

emancipatory in a number of senses. The concept is that the specified right of a citizen is controlled by necessary restrictions in the public interest. No extrinsic aid is needed to interpret the words used in Article 36 of the Constitution which, in our opinion, are not ambiguous. Expression ‘to reasonable restrictions imposed by law’ must mean restrictions prescribed by the law of the State. The term law in the general sense means law enacted by the legislature. Article 36 of the Constitution provides that no person shall be deprived of his right to travel unless the same is restricted reasonably imposed by any law in the public interest. The executive instructions without having the sanction of any statutory power cannot be construed as law. An executive order without the support of valid law depriving a person of his personal liberty cannot be held valid. Learned Attorney General and other Counsel for the leave petitioners relied upon the following provisions of the Anti-Corruption Commission Act. Section 17 runs as follows:

“কমিশনের কার্যাবলি । - কমিশন নিম্নবর্ণিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে, যথাঃ

১৭। কমিশন নিম্নবর্ণিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে, যথা:-

- (ক) তফসিলে উল্লিখিত অপরাধসমূহের অনুসন্ধান ও তদন্ত পরিচালনা;
- (খ) অনুচ্ছেদ (ক) এর অধীন অনুসন্ধান ও তদন্ত পরিচালনার ভিত্তিতে এই আইনের অধীন মামলা দায়ের ও পরিচালনা;
- (গ) দুর্নীতি সম্পর্কিত কোন অভিযোগ স্বউদ্যোগে বা ক্ষতিগ্রস্ত ব্যক্তি বা তাহার পক্ষে অন্য কোন ব্যক্তি কর্তৃক দাখিলকৃত আবেদনের ভিত্তিতে অনুসন্ধান;
- (ঘ) দুর্নীতি দমন বিষয়ে আইন দ্বারা কমিশনকে অর্পিত যে কোন দায়িত্ব পালন করা;
- (ঙ) দুর্নীতি প্রতিরোধের জন্য কোন আইনের অধীন স্বীকৃত ব্যবস্থাদি পর্যালোচনা এবং কার্যকর বাস্তবায়নের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;

- (চ) দুর্নীতি প্রতিরোধের বিষয়ে গবেষণা পরিকল্পনা তৈরী করা এবং গবেষণালব্ধ ফলাফলের ভিত্তিতে করণীয় সম্পর্কে রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;
- (ছ) দুর্নীতি প্রতিরোধের লক্ষ্য সততা ও নিষ্ঠাবোধ সৃষ্টি করা এবং দুর্নীতির বিরুদ্ধে গণসচেতনতা গড়িয়া তোলার ব্যবস্থা করা;
- (জ) কমিশনের কার্যাবলী বা দায়িত্বের মধ্যে পড়ে এমন সকল বিষয়ের উপর সেমিনার, সিম্পোজিয়াম, কর্মশালা ইত্যাদি অনুষ্ঠানের ব্যবস্থা করা;
- (ঝ) আর্থ-সামাজিক অবস্থার প্রেক্ষিতে বাংলাদেশে বিদ্যমান বিভিন্ন প্রকার দুর্নীতির উৎস চিহ্নিত করা এবং তদনুসারে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করা;
- (ঞ) দুর্নীতির অনুসন্ধান, তদন্ত, মামলা দায়ের এবং উক্তরূপ অনুসন্ধান, তদন্ত ও মামলা দায়েরের ক্ষেত্রে কমিশনের অনুমোদন পদ্ধতি নির্ধারণ করা; এবং
- (ট) দুর্নীতি প্রতিরোধের জন্য প্রয়োজনীয় বিবেচিত অন্য যে কোন কার্য সম্পাদন করা।

Section 19 runs as follows:

অনুসন্ধান বা তদন্তকার্যে কমিশনের বিশেষ ক্ষমতা ।

১৯। (১) দুর্নীতি সম্পর্কিত কোন অভিযোগের অনুসন্ধান বা তদন্তের ক্ষেত্রে,

কমিশনের নিম্নরূপ ক্ষমতা থাকিবে, যথা:-

(ক) [সাক্ষীর প্রতি নোটিশ] জারী ও উপস্থিতি নিশ্চিতকরণ এবং [***] সাক্ষীকে জিজ্ঞাসাবাদ করা;

(খ) কোন দলিল উদ্ঘাটন এবং উপস্থাপন করা;

(গ) সাক্ষ্য গ্রহণ;

(ঘ) কোন আদালত বা অফিস হইতে পাবলিক রেকর্ড বা উহার অনুলিপি তলব করা;

(ঙ) সাক্ষীর জিজ্ঞাসাবাদ এবং দলিল পরীক্ষা করার জন্য [নোটিশ] জারী করা; এবং

(চ) এই আইনের উদ্দেশ্য পূরণকল্পে, নির্ধারিত অন্য যে কোন বিষয়।

(২) কমিশন, যে কোন ব্যক্তিকে অনুসন্ধান বা তদন্ত সংশ্লিষ্ট বিষয়ে কোন তথ্য সরবরাহ করিবার জন্য নির্দেশ দিতে পারিবে এবং অনুরূপভাবে নির্দেশিত ব্যক্তি তাহার হেফাজতে রক্ষিত উক্ত তথ্য সরবরাহ করিতে বাধ্য থাকিবেন।

(৩) কোন কমিশনার বা কমিশন হইতে বৈধ ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে উপ-ধারা (১) এর অধীন ক্ষমতা প্রয়োগে কোন ব্যক্তি বাধা প্রদান করিলে বা উক্ত উপ-ধারার অধীন প্রদত্ত কোন নির্দেশ ইচ্ছাকৃতভাবে কোন ব্যক্তি অমান্য করিলে উহা দণ্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনুর্ধ্ব ৩ (তিন) বর্ষ পর্যন্ত যে কোন মেয়াদের কারাদণ্ড বা অর্থদণ্ড বা উভয় প্রকার দণ্ডে দণ্ডনীয় হইবেন।

Learned Attorney General specifically drawing our attention to the preamble and provisions of Section 17(Ta) and 19(Cha) of the Act, submits that object of the Act is to curb corruption in the country and to resist corrupt practice. With an object to implement the ultimate goal, the Commission can take steps so that corrupt people could not leave the country for avoiding legal action/actions brought or to be brought against him.

The freedom of movement is subject to reasonable restrictions owing to the rationale that for the society in an orderly manner, people cannot exercise their rights in such a manner which is injurious to the society as a whole because if it is done, it will lead to complete chaos and destroy the basic prerequisite needed for the enjoyment of civil liberties. The rationale behind incorporating reasonable restrictions has been discussed to a great extent in the case of A.K. Gopalan V. State of Madras (AIR 1950 SC 27). It was observed that reasonable restrictions are imposed on the enjoyment of fundamental rights due to the fact that in certain circumstances, individual liberty has to be subordinated to certain other larger interests of the society.

The freedom to travel, like all other freedom couched in universal terms, however, has never remained absolute untrammelled in any state or society. The right of free movement whether within the country or across its frontier, either in going out or coming in is a personal liberty and the

same is not intended to bear the narrow interpretation of freedom from physical restraint. The right to travel abroad cannot be deprived unless reasonable restriction is imposed by law in the public interest. Such restriction must be by law and must be reasonably needed in the public interest [Shapiro V. Thompsos (1969)394 US 618]. Freedom of movement is basic in our scheme of values. Freedom of travel is indeed an important aspect of the citizen's liberty. William Blackstone characterized the right to leave as part of the common law right to personal liberty. No person can be deprived of his right to go abroad unless appropriate authority exercising its lawful power imposed restriction upon him. If a person's fundamental right under Article 36 is infringed, the State can rely upon a law to sustain the action.

All rights in an organized society are relative rather than absolute. With respect to the ambit of reasonable restrictions, the legislative view of what constitute reasonable restriction shall not be conclusive and final and that it shall be subjected to supervision by the Court. It is the duty of the Court to see whether the individual crosses the "*Lakshman Rekha*" that is carved out by law is dealt appropriately (Dharmendra Kirthal V. State of U.P., AIR 2013 SC 2569). Most basic rule while testing whether a law falls within the ambit of reasonable restriction is that no general or abstract rule shall be adopted for the application of all cases. Reasonable implies intelligent care and the deliberation. The legislation which arbitrarily or expressively invests the right cannot be set to contend the quality of reasonableness and unless it strikes a proper balance between the freedom guarantee. The restrictions imposed shall have a direct or proximate nexus

with the object which the legislature seeks to achieve and the restriction so imposed must not be excessive of the said object.

Freedom of movement as envisaged in our Constitution is not absolute meaning thereby that the same is subject to certain limitation. Despite the long standing ideal of free movement, it has in practice always been subject to state restrictions. The right to leave one's country has never been considered as absolute right. The requirement of restriction to be reasonable means that the High Court Division has the power to Judge the reasonableness of restrictions in question. The reasonableness demands proper balancing of the fundamental rights of the people. It is the judiciary which has to finally judge the reasonableness of restriction. The restriction can be imposed by law only not an executive order (Chintanmon Rao V. State of Madhya Pradesh AIR 1951 SC 118).

Under Article 36 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the country which can not be abridged or denied arbitrarily on mere liking disliking without any specific law authorizing lawful justification for this purpose. The reasonableness is to be determined by an objective standard and not subjective one.

The extent to which this right would be exercised may be limited by the law promulgated by the legislatures. Parliament may by law impose restrictions on such freedom in the public interest and the said law can be made by virtue of any entry with respect whereof parliament has power to make a law. The right to freedom of movement includes the right to move freely within a country for those who are lawfully within the country. The right to leave any country and the right to enter a country of which he is a

citizen such right may be restricted in certain circumstances. Considering the need to maintain a balance between the freedom of the individual and the general welfare of the community, reasonable restrictions may be imposed on the enjoyment of the right by or under the authority of law. Indian Supreme Court in the case of Maneka Gandhi Vs. Union of India reported in AIR 1978 (SC) 597 held, by majority, that it must be “right and just and fair and not arbitrary, fanciful or oppressive; otherwise, it should be no procedure at all and the requirement of Article 21 would not be satisfied.” By a law a reasonable restriction may be put on the movement of a citizen or he may even be externed from one place of the country, but he can not be externed from the country. In the case of Razendrum Vs. R.K. Mishra reported in (2010) 1 SSC page 457 it was observed that detention by Airport intelligence authorities of an air passenger travelling with huge amount of cash is not violative of the freedom of movement as the right of any person to carry money is subject to verification or seizure by intelligence authority to ensure that the said money is not intended for illegal activities. The possession and enjoyment of all rights, as was observed by the Supreme Court of America in Jacobson V. Massachusetts, (1904)197 U.S.643 are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community.

In the case of M.H. Devendrappa vs. The Karnataka SSI Corporation reported in AIR 1998 SC 1064, it was observed that fundamental freedom are not necessarily mutually supportive; some restrictions on one right may be necessary to protect other rights in a given situation and proper exercise of rights may have, implicit in them, certain restrictions.

For this the rights must be harmoniously construed so that they are properly promoted with the minimum of such implied and necessary restrictions.

The provision provided in Article 36 safeguard the right to go abroad against executive interference which is not supported by law; and law here means 'inacted law.' No person can be deprived of his right to go abroad unless there is a law made by the State for so depriving him and the deprivation is effected strictly in accordance with law. In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law. In an organized society, there can be no absolute liberty without social control. Liberty is not unbridled licence. Some restrictions on freedom of movement are legitimate if imposed for limited purposes in a fair and non-discriminatory manner. Limitations on the freedom is justified but the limits must generally be reasonable, prescribed by law, and demonstrably justified in a free and democratic society. It was what Edmund Burke called "regulated Freedom". Freedoms if absolute would always be detrimental to the smooth functioning of the society as the individual interests of all individuals would be prioritised. The State can truncate the enjoyment of the freedoms through law. The protection of the collective is the bone marrow and that is why liberty in a civilized society cannot be absolute. There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The language of Article 36, clearly indicates that the protection it secures is limited one. In no case may a person be arbitrarily deprived of the right to enter his or her own country, and that there are few, if any, circumstances in which deprivation of the right to enter a person's own country could be considered reasonable. Legislation which arbitrarily

or excessively invades the right cannot be a proper balance between the freedom guaranteed and the general welfare.

With the discussion made above, it is observed:-

1. The fundamental right guaranteed under Article 36 of the Constitution is non-absolute right. The right to leave one's country has therefore never been considered an absolute right. The right may be restricted in certain circumstances.
2. Article 36 of the Constitution permits imposition of restrictions. However, such restrictions must be by way of the law enacted and must be reasonably needed in the public interest.
3. Without backing of law imposition of restriction on the freedom of movement by an executive order will be unconstitutional.
4. The legislative view of what constitute reasonable restriction shall not be conclusive and final and that it shall be subjected to supervision by the Court.
5. A restriction in order to be referred to as reasonable shall not be arbitrary and shall not be beyond what is required in the interest of the public. The restriction imposed shall have a direct or proximate nexus with the object sought to be achieved by the law.
6. Freedoms if absolute would always be detrimental to smooth functioning of the society. Reasonableness demands proper balancing.

7. The right to leave the country and to possess a passport may be restricted, most notably if the person's presence is required due to their having been charged with a criminal offence. However, merely because a person is involved in a criminal case, he is not denude of his fundamental rights.

8. Restriction may be imposed on travel in order to prevent exit from the country by persons who leave quickly to avoid due process of law. However, this would be subject to confirmation by the appropriate Court within a period of 3 working days.

With the observations made above, all the petitions are disposed of.

C.J.

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The 27th September, 2021.

M.N.S./words-4803/