1963 *Present :* Sri Skanda Rajah, J.

FAWZIA BEGUM, Petitioner, *and* THE OFFICER IN CHARGE, SLAVE ISLAND POLICE STATION and another, Respondents

*S. C. 865 of 1962—Application for a Mandate in the nature of a Writ of Habeas Corpus in respect of the body of Seyado Ahamed Kabeer in terms of Section 45 of Courts Ordinance*

*Deportation Order—Form—Incapacity of Court of law to question reasonableness of Order—Use of English language for official purpose after December 31, 1960—Permissibility—Immigrants and Emigrants Act (Cap. 351), ss. 6, 28 (2), 28 (5)—Official Language Act No. 33 of 1956—Citizenship Act (Cap. 349), s. 12 (4) (6).*

Where a Deportation Order under section 28 (2) of the Immigrants and Emigrants Act was made on October 12, 1962, in the English language and not in Sinhala—

*Held*, that the Order was valid although it was an official act.

*Held further*, (i) that the Order was valid although it was issued some days after the arrest of the person concerned and did not indicate the particular officer who should make the arrest and detention or the particular ship in which the arrested person should be taken for removal from Ceylon.

(ii) that the reasonableness of a deportation order cannot be questioned in a Court of law.

APPLICATION for a writ of *habeas corpus*.

*R. A. Kannangara*, with *L. C. Seneviratne*, for Petitioner.

*V. S. A. Pullenayegum*, Crown Counsel, with *Ian Wikramanayake*, Crown Counsel, for 1st respondent.

*Cur. adv. vult.*

March 15, 1963. SRI SKANDA RAJAH, J.—

This is an application for a Writ of Habeas Corpus made by one Fawzia Begum in respect of the body of her husband Seyado Ahamed Kabeer.

The following material facts emerge from the affidavits filed :—

On 1st July, 1958, Kabeer applied for a Residence Visa under the provisions of the Immigrants and Emigrants Act and was issued with one which expired on 2nd September, 1959. Thereafter, on 19th December, 1959, he married the petitioner. In September, 1961, he applied to be registered as a Citizen of Ceylon under the provisions of the Citizenship Act on the ground that he was married to a Citizen of Ceylon by descent. This application was refused by the Minister of Defence and External Affairs in

terms of section 12 (4) of the Citizenship Act No. 18 of 1948 as amended by Act No. 13 of 1955. This fact was communicated to the Corpus by letter dated 26th May, 1962, sent by registered post. This letter, further, pointed out that his residence in Ceylon after the expiry of the Residence Visa on 2nd September, 1959, was illegal and that he was given three months' time to leave Ceylon. He, however, failed to do so and was arrested on 5th October, 1962, and is detained at the Slave Island Police Station of which the first respondent, Sub-Inspector Solomonsz, is in charge and is a prescribed officer in terms of Regulation 61 of the Regulations made by the Minister of Defence and External Affairs under section 48 of the Immigrants and Emigrants Act No. 20 of 1948 and published in *Government Gazette* No. 10,896 of the 24th February, 1956. The Permanent Secretary to the Minister of Defence and External Affairs issued the following order on 12th October, 1962 :—

" The Immigrants and Emigrants Act.

Order under Section 28 (2).

Whereas S. A. Kabeer being a person to whom Part V of The Immigrants and Emigrants Act (Chapter 351) applies, has overstayed the period specified in this visa,

Now, therefore, I, Neil Quintus Dias, Permanent Secretary to the Ministry of Defence and External Affairs, being authorised by the Minister of Defence and External Affairs under section 6 of the Immigrants and Emigrants Act (Chapter 351) to exercise, perform, and discharge the powers, duties and functions vested in, or imposed or conferred upon, the said Minister by and under section 28 (2) of the said Act, do by this Order, direct any authorised officer or any police officer not below the rank of Sub-Inspector to arrest, detain, and take on board the first available ship the said S. A. Kabeer and further direct the Master of that ship to remove from Ceylon the said person."

In view of the provisions of section 28 (5) Cap. 351 this order is final and cannot be contested in any Court.

Section 12 (4) of the Citizenship Act (Cap. 349) provides that the Minister may refuse an application for registration on grounds of public policy. Section 12 (6) further provides that the refusal of the Minister under sub-section 4 shall not be contested in any Court. It should be mentioned that an application by way of Certiorari in respect of the Minister's refusal to register this corpus as a Citizen of Ceylon was refused by me.

Such provisions have been construed strictly by the House of Lords, who, by a majority of three to two, thought the words too clear to admit of any exception (*Smith v. East Elloe Rural District Council* [1]).

[1] *(1956) A.C. 736.*

The question for determination is whether at the time this application was made the Corpus was in lawful detention.

It was submitted, on behalf of the petitioner, that each one of the following constitutes an illegality and, therefore, the detention is unlawful :—

1. The deportation order was issued seven days after the arrest.
2. It was not addressed to any particular officer.
3. It does not indicate the particular ship on board which the Corpus was to be taken for removal out of the Island.
4. It was made in English and not in Sinhala, the only official language.

It seems to me that the last of these submissions should receive first consideration ; for, the sustaining of it will eliminate the necessity to consider the others.

Sinhala became the only Official language on and after 1st January, 1961. The order made by the Permanent Secretary (set out above) is an official act. Therefore, it should have been in Sinhala. It being in English is contrary to law is the submission.

The Immigrants and Emigrants Act is in the English language. It is an Act anterior in time to the Official Language Act. The latter Act does not purport to amend any of the provisions of the former. The problem is in reality one of interpreting an enactment which is in English. Therefore, I find it difficult to accept the proposition that an order under an Act in the English language would be invalid if made in that language.

Besides, it cannot be said that the corpus has been prejudiced in any manner by an order made in English, a universal language, with which he is more likely to be acquainted than Sinhala. In my opinion therefore the last objection fails.

As regards objection (1) : Though the arrest may have been unlawful in that it was anterior to the order in question, that order is sufficient lawful authority for detention because it directs any police officer not below the rank of Sub-Inspector " to . . . . detain . . . " the corpus.

As regards objection (2) : I am unable to agree that the order should indicate the particular officer who should make the arrest and/or detain the corpus. To uphold this submission would mean that if Sub-Inspector Solomonsz is transferred to another station the detention would become unlawful.

Nor can I accept submission (3) : To accept it would mean that there should be a ship available every time a non-citizen is arrested under these provisions.

It was submitted that the corpus is a law abiding person and has been in residence in Ceylon from 1941. His deportation will leave his wife destitute in Ceylon. Such a thing is shocking and contrary to natural justice.

This submission can best be answered by quoting The Right Honourable Sir Henry Slesser, P. C., sometime one of Her Majesty's Lords Justices of Appeal, " It shocks the modern conscience little that regulations whereby a Minister may detain a person . . . . . are not challengeable in a Court of law once the potentate has declared that he has acted reasonably; so that the writ of habeas corpus often provides only an occasion to enunciate the impotence of the court and the principle which deters it from action. It may be that the older device of the frank suspension of the Habeas Corpus Acts in times of emergency was a preferable procedure ; at any rate it did not menace the status of the Court as grievously as have certain recent decisions. The dissenting speeches of Lords Atkin and Shaw in internment cases disclose a lingering reluctance in the minority of The House of Lords to declare that a Minister may detain persons, even when British subjects, for reasons not publicly expressed."—The Art of Judgment (1962) at p. 62 under the title " The Jeopardy of the Law ".

For these reasons, I would dismiss this application. Under the circumstances of this case I award no costs.

*Application dismissed.*