1956 *Present :* T. S. Fernando, J.

A. JOBU NADAR, Petitioner, *and* E. J. GREY (Inspector of Police, Fort), Respondent

S. C. 784—IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE OF A WRIT OF HABEAS CORPUS UNDER SECTION 45 OF THE COURTS ORDINANCE FOR THE PRODUCTION IN COURT OF THE BODY OF PEDRUNADAR VETHANAYAGAM NADAR OF NOS. 161 and 162, MAIN STREET, MINUWANGODA.

Deportation Order—Power of Court to inquire into its reasonableness—Effect of words "deems it to be conducive to the public interest"—Power of Minister to elect between Deportation Order and Removal Order—Immigrants and Emigrants Act, No. 20 of 1948, ss. 28, 31, 45—Amending Act, No. 16 of 1955—Habeas Corpus *Application—Duty of respondent to justify detention.*

When the Minister of Defence and External Affairs makes in good faith a Deportation Order against a person under section 31 of the Immigrants and Emigrants Act on the ground that he deems it to be conducive to the public interest to make such deportation order, it is not open to a Court of law to inquire into the reasonableness of the Order and decide that the Order is invalid because the Court does not deem the making of the Order to be conducive to the public interest.

The Minister may make a Deportation Order under section 31 of the Immigrants and Emigrants Act when he deems it to be conducive to the public interest to make it, notwithstanding that a Removal Order can also be made under section 28 of the Act against the person concerned.

Upon an application for a writ of *habeas corpus*, the production by the respondent of an order, warrant of commitment or other document valid in law justifying the detention that has been challenged is a sufficient answer.

APPLICATION for a writ of *habeas corpus*.

Izadeen Mohamed, with *K. C. Kamalanathan* and *S. C. Crossette-Thambiah*, for the petitioner.

E. F. N. Gratiaen, Q.C., Attorney-General, with *M. Tiruchelvam*, Deputy Solicitor-General, and *H. L. de Silva*, Crown Counsel, for the respondent.

Cur. adv. vult.

September 14, 1956. T. S. FERNANDO, J.—

At the conclusion of the argument in this matter I made order discharging the rule and dismissing the application with costs and indicated that the reasons for that order will be set down later. I now state below the facts relevant to my order and the reasons therefor :—

The petitioner who alleges he is the employer of Pedrunadar Vethanayagam Nadar, an Indian national, seeks the release of the latter from the custody of the respondent who is detaining him under the authority of a deportation Order made by the Minister of Defence and External Affairs under the power vested in him by section 31 of the Immigrants and Emigrants Act, No. 20 of 1948. It is admitted that such a deportation Order has been made. Section 31 referred to above enacts that the

Minister may make a deportation Order "*where the Minister deems it to be conducive to the public interest* to make a deportation Order" against the person mentioned in the Order requiring him to leave Ceylon and to remain thereafter out of Ceylon. Very similar words appear in paragraph 1 of Article 12 of the Aliens Order, 1919, of the United Kingdom under which "the Secretary of State may, *if he deems it to be conducive to the public good*", make a deportation Order requiring an alien to leave and to remain thereafter out of the United Kingdom. This paragraph was the subject of judicial interpretation by Lord Reading, C. J., in the case of *The King v. Inspector of Leman Street Police Station, ex parte Venicoff*[1], who stated that it was not for the Court to pronounce whether the making of the Order was or was not conducive to the public good and that Parliament has expressly empowered the Secretary of State *as an executive officer* to make these orders and has imposed no conditions. Again, in the case of *Point of Ayr Collieries, Ltd. v. Lloyd-George*[2] Lord Greene, M. R., called upon to interpret the following words appearing in regulation 55 (4) of the Defence (General) Regulations,

> "*If it appears to a competent authority* that in the interests of the public safety, the defence of the realm, or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, it is necessary to take control on behalf of His Majesty of the whole or any part of an existing undertaking . . . ."

stated that "if one thing is settled beyond the possibility of dispute, it is that, in construing regulations of this character expressed in this particular form of language, it is for the competent authority to decide as to whether or not a case for the exercise of the powers has arisen." In the course of interpreting very similar words appearing in regulation 51 (1) of the same Regulations, the same learned judge observed in the case of *Carltona, Ltd. v. Commissioners of Works*[3] that "Parliament, which authorises this regulation, commits to the executive the discretion to decide and with that discretion if bona fide exercised no court can interfere. All that the court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith. Apart from that the Courts have no power at all to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction". In the course of an exhaustive examination of several relevant authorities, Choksy, A. J., in the local case of *Sudali Andy Asary v. Vanden Dreesen*[4] which arose over a deportation Order made under the same section 31 of our Immigrants and Emigrants Act, stated that if there has been a competent exercise by the Minister of a lawful authority the Court has no power to go further and say whether the Minister had material before him which a Court of law would consider sufficient for exercising that power. In the light of the above and several other authorities which have considered the meaning of provisions worded in much the same way as the relevant part of section 31 of our Immigrants and Emigrants Act, No. 20 of 1948, it is impossible

[1] *(1920) L. R. 3 K. B. D. 78.*
[2] *(1943) 2 A. E. R. 547.*
[3] *(1943) 2 A. E. R. 564.*
[4] *(1952) 54 N. L. R. 66 at 83.*

to contend today that the Minister of Defence and External Affairs in making a deportation Order under section 31 of the Act is acting in any other capacity than that of an executive officer or that a Court has any power to decide that the Order is invalid because the Court does not deem the making of the Order to be conducive to the public interest. There is no authority in law for the substitution of the decision or discretion of the Court in place of the decision or discretion of the Minister. Learned counsel for the petitioner conceded that, if the Order was one which the Minister had power to make, it was not possible for him, in the present state of the case law, to contend that it was open to the Court to enter upon an inquiry whether the Order was one which should have been made in the circumstances of this case.

Upon an application for a writ of habeas corpus the production by the respondent of an order, warrant of commitment or other document valid in law justifying the detention that has been challenged is a sufficient answer. The question was considered in the case of *R. v. Home Secretary, ex parte Greene*[1] where Goddard, L. J., citing from earlier cases, stated as follows :—

> " If a person committed by order of a court applies for a writ, and on a return, or, in accordance with the modern practice, by an affidavit showing cause, the gaoler produces an order of commitment regular on its face and showing that the prisoner was committed for matter within the authority of the court, the court to which the application for the writ is made, not being a court of error or of appeal, cannot entertain the question whether or not the authority has been properly exercised ".

In the same case, Mackinnon, L. J., stated that " on an application for habeas corpus, the gaoler or other person detaining the applicant must justify the detention. In an ordinary case, that is done by producing a legal order directing it. In this case, that must be a valid order of the Home Secretary issued pursuant to the Order in Council. The production of such an order in proper form would justify the detention, and prima facie would be conclusive ".

Not only has the making of the deportation Order been admitted by the petitioner, but he has actually annexed to his application to this Court a copy of the Order. I would therefore, subject to the examination of an argument addressed by learned counsel that a valid deportation Order could not have been made in the circumstances of this case, have been prepared to say that a sufficient answer to the application appears on its very face. It is however unnecessary to consider this aspect of the matter in view of the affidavit of the Minister of Defence and External Affairs that has been filed in Court on behalf of the respondent in which appears the following averment :—

> " On material placed before me I considered it to be conducive to the public interest to make a deportation Order against P. Vethanayagam Nadar and accordingly made order on 11th July, 1956, by virtue of powers vested in me as Minister of Defence and External Affairs in terms of section 31 (1) (*d*) of the Immigrants and Emigrants Act, No. 20 of 1948. "

[1] *(1941) 3 A. E. R. 104.*

In the face of this affidavit and the admission on behalf of the petitioner referred to above, it seems to me that it is impossible to contend that the detention that has been challenged in this case is unlawful.

Learned counsel for the petitioner has, however, contended that a deportation Order under section 31 of the Act is totally inapplicable in the case of Vethanayagam Nadar. To appreciate the argument it is necessary to state certain relevant facts. It is admitted that Vethanayagam Nadar is neither a Citizen of Ceylon nor a person exempted from the provisions of Part VI of the Act. He is therefore a person to whom Part VI will apply. A temporary residence permit valid for two years had been issued to him on 5th June, 1953 and, although he applied for a renewal of that permit, no renewal was granted. As a result of the amendments to the Act introduced by the Immigrants and Emigrants (Amendment) Act, No. 16 of 1955, the provision of law which conferred the power to issue temporary residence permits has been repealed and such permits can now neither be issued nor renewed. He was requested by the Controller of Immigration to leave Ceylon before the 10th November, 1955. This date was later finally extended till 31st December, 1955. The resulting position was that the stay in Ceylon of Vethanayagam Nadar after 5th June, 1955, or after the date on which the amending Act No. 16 of 1955 came into force or, at any rate, after 31st December, 1955, became illegal and he became liable to be prosecuted for committing an offence punishable under section 45 of the Immigrants and Emigrants Act, No. 20 of 1948. He further became liable to have a removal Order made against him by the Minister acting under the powers vested in the latter by section 28 of the Act. In the state of these facts, learned counsel for the petitioner submitted that every circumstance was present enabling the Minister to make a removal Order under Chapter V of the Act, and he argued that, therefore, the making of a deportation Order under Chapter VI was totally inapplicable in this case. He went on to argue that Chapters V and VI of the Act were mutually exclusive and that as all the circumstances requisite for the making of a removal Order were present, it was the duty of the Minister to make such an Order. As I understood his argument, he went so far as to say that as Vethanayagam Nadar's stay in Ceylon on and after 1st January, 1956, had become illegal, the Minister had no option but to make a removal Order, and therefore the question whether his deportation was conducive to the public interest did not arise at all for the Minister's consideration. I am quite unable to agree with the contentions of learned counsel. While it may be quite correct that a removal Order under Chapter V of the Act could have been made on or after January 1, 1956, in respect of Vethanayagam Nadar, I can find no good reason for reaching the conclusion that the legislature left no discretion in the Minister in regard to the making of a removal Order under section 28. No reason has been advanced why the word " may " appearing in that section should not be given its ordinary meaning. There may well be cases where the Minister chooses not to effect the removal of a person notwithstanding that the person is liable to be removed in terms of the section.

Moreover, what reasons have I to assume that the Minister in making the deportation Order under section 31 of the Act has deemed it to be

conducive to the public interest to deport Vethanayagam Nadar merely *because* he has refused to leave after 31st December, 1955? There is no material in this case for such an assumption by the Court and, as I have already stated, there is no power in the Court to inquire. As Lord Greene, M. R., stated in *Point of Ayr Collieries, Ltd. v. Lloyd-George* (supra), "We do not know the facts, we do not know what matters may have impressed him (the Minister) and what matters of public interest may have made it very desirable to do what he did , . . . There may or may not have been facts of great importance of which the appellants do not know. I do not know; we are not told. There was no need for us to be told". Assuming, as I must, that this deportation Order was made because the Minister deemed it to be conducive to the public interest to make it, it is impossible for me to state that it could not have been made because a removal Order could also have been made against the person concerned. If either kind of Order (removal or deportation) could have been made against Vethanayagam Nadar the Minister is the only authority who had the power to decide which form of Order should actually have been made.

Application dismissed.