1964 *Present :* **Sri Skanda Rajah, J.**

S. SELLAMUTTU, Petitioner, *and* V. F. SOLOMONS (Officer-in-charge, Police Station, Slave Island, Colombo), Respondent

S. C. 839 and 840—Applications for Writs of Habeas Corpus in respect of T. Ramasamy and T. Perumal

Habeas corpus—*Immigrants and Emigrants Act (Cap. 351)—Sections 6, 8, 13 (1), 14, 28 (2) (5), 54 (1)—Removal orders—Procedure—Difference between " visa " and " endorsement "—Meaning and effect of words " shall be final and shall not be contested in any court "*.

Under the Immigrants and Emigrants Act a " visa " is quite different from an " endorsement ". Therefore, a " removal order " issued under section 28 (2) (c) of the Act stating that a person " has overstayed the period specified in his visa/endorsement " is invalid because it has not deleted one or the other of the two words " visa " and " endorsement ".

The finality conferred by section 28 (5) which provides that " Any order made under this section shall be final and shall not be contested in any court " does not attach to a " removal order " which is not in accordance with law and is *ex facie* bad.

Observations on the questionable procedure adopted sometimes by officers of the Immigration and Emigration Department of recording alleged " confessions " of detainees who are in police custody.

APPLICATIONS for writs of *habeas corpus* in respect of two persons against whom " removal orders " had been issued under the Immigrants and Emigrants Act.

M. Tiruchelvam, Q.C., with *T. W. Rajaratnam* and *S. Sittampalam*, for the Petitioner.

H. L. de Silva, Crown Counsel, for the Respondents.

July 21, 1964. SRI SKANDA RAJAH, J.—

These two applications are by the same person, in respect of two brothers and were argued together.

At the conclusion of the argument on 16.1.64 Crown Counsel handed to this Court a written summary of his submissions with the citations and a copy of same to learned Queen's Counsel, who, thereupon, desired to do the same. Time was granted for that purpose. But soon thereafter he fell ill and, in consequence, his written summary took a long time in coming. Thereafter, I spent considerable time in examining the numerous authorities. It then struck me that a short, but important, point had escaped the notice of both counsel and I decided to hear them on it. I have heard them today.

These applications were made in consequence of the arrest of the corpus in No. 840 on 7.9.62 and that of the corpus in No. 839 on 13.9.62.

Certain other relevant dates, which are common to both applications, may usefully be set down :

22.9.1962 : R4, the " removal orders " were signed by the acting Permanent Secretary, who had been authorized by the Minister under section 6 of the Immigrants and Emigrants Act, Cap. 351, to make such an order under section 28 of the Act.

13.11.1962 : These applications were filed in this Court.

14.11.1962 : This Court made order directing the Magistrate, Colombo, to inquire and report.

19.11.1962 : Notice was served on the respondent requiring him to produce the corpus before the Magistrate, Colombo, for inquiry on 24.11.62.

23.11.1962 : The police, in whose custody they were and to which they were to return, produced them before Mr. Wijeratne, Assistant Controller, Department of Immigration and Emigration, who proceeded to record their statements in which they are alleged to have " confessed ".

R4, the " removal order ", was made under section 28 (2) : " Where the Minister (Authorized Officer) is *satisfied* that a person to whom this Part applies—

(*c*) has overstayed the period specified in the *visa* or *endorsement.*"

Finality for the " removal order" is claimed under section 28 (5) : " Any order made under this section *shall be final and shall not be contested in any Court.*"

The meaning and effect of the word "final" in similar legislation was considered in *Re Gilmore's application* [1]. At p. 806 said Denning, L. J., " . . . . on looking . . . . . into the old books I find it very well settled that the remedy by certiorari is never taken away by any statute except by the most clear and explicit words. The

[1] *(1957) 1 A. E. R. 796.*

word "final" is not enough. That only means "without appeal". It does not mean "without recourse to certiorari". It makes the decision *final on the facts, but not on the law.*"

In the course of the judgment he quoted his own words in *Taylor v. National Assistance Board*[1], "The remedy is not excluded by the fact that the determination of the board is by statute made "final". Parliament gives the impress of *finality to the decisions* of the board *only on the condition that they are reached in accordance with the law.*"

The relevant portion of the "removal order" R4 reads, "Whereas T. Ramasamy (T. Perumal) being a person to whom Part V of the Immigrants and Emigrants Act (Cap. 351), applies, has overstayed the period specified in his visa/endorsement*."

There is a corresponding* (asterisk) at the foot of the "removal order" which instructs the person who signs it to "delete whichever is inapplicable". He had to delete the word "endorsement" if he was "*satisfied*" that the period referred to was specified in the visa or the word "visa" if that period was specified in the "endorsement".

The omission to delete one of these words in R4 raises two questions :

(1) Is a "visa" different from "endorsement"?

(2) If so, what is the effect of such omission?

The Interpretation section 54 (1) states : "*endorsement*" means an endorsement granted under Part III of the Act.

"*Visa*" means a visa granted under regulations made under this Act.

"*Authorized officer*" means any person appointed under section 4 to be or to act as an authorized officer.

Endorsement :

Section 8 : This Part (Part III) shall apply to every person seeking entry into or entering Ceylon unless—

(*a*) he is a citizen of Ceylon ;

Section 13 (1) : "An endorsement under this Part *by an authorized officer* shall be required of a person to whom this Part applies in every case where, on his arrival by ship at any place in Ceylon such person desires to enter Ceylon and to remain therein *for any period* or purpose whatsoever.

(2) : Every endorsement granted *by an authorized officer* under this Part to any person—

(*a*) shall be signed by such officer ;

(*b*) shall be in the prescribed form ; and

(*c*) shall, *if such person is not the holder of a visa,* specify the the period for which and the terms and conditions subject to which such person may enter and remain in Ceylon.

[1] *(1957) 1 A. E. R. 183 at 185.*

In the Immigrants and Emigrants Regulation, 1956 :

Endorsements under Part III of the Act :

27. Every endorsement under Part III of the Act shall be substantially in such one of the Forms G to G2 as set out in the first schedule hereto, as may be appropriate to the case.

It will be observed thst (i) these Forms are very brief; (ii) the endorsement is made in the passport and sometimes in the visa ; (iii) made at the port of entry into Ceylon ; (iv) made *by an authorized officer* ; (v) there is no counterfoil.

In section 13 (1) an upper limit regarding the period is not placed in the case of an endorsement as has been done in the case of a visa (vide : section 14 *infra*).

No application is necessary to have an endorsement made.

Visa :

Section 14. (1) : " A visa may be granted by the *prescribed authority* for such period, not exceeding two years, as may be specified in the visa.

(2) : A visa may, *with the approval of the Minister*, be granted by the *prescribed authority* for such period, exceeding two years but not exceeding five years, as may be specified in the visa.

(3) : The period specified in any visa may be entered by the *prescribed authority* from time to time, for such period and subject to such conditions as may be prescribed, upon application made to that authority in that behalf. Where the authority which granted the visa obtained, by reason of sub-section (2) of this section, the approval of the Minister before making the grant, such authority shall before extending the visa *obtain in like manner the approval of the Minister*.

Regulation 4 : Visa issued under these regulations shall be of the following classes—

(*a*) Residence Visas.
(*b*) Visit Visas.
(*c*) Transit Visas.

Regulation 5 : Enumerates persons who shall be a *prescribed authority* for the purpose of granting, issuing or extending visas.

It will be observed that a *prescribed authority* is quite different from *authorized officer*.

Regulation 6 : Prescribes Forms A to E on which Applications for the three classes of visas should be made. In these applications the number of the passports should be given.

Regulation 19 : Prescribes that visas shall be substantially in Forms D or D1, E or E1, F or F1.

It will be observed that a visa in Form D, E, or F : (i) carries a photograph of its holder ; (ii) gives the number of the passport ; (iii) has a counterfoil ; (iv) has a serial number ; (v) is signed by the *prescribed authority* ; (vi) is obtained outside Ceylon by a person before he enters Ceylon ; (vii) " Arrival endorsements " and " Departure endorsements " can be made on it by an authorized officer.

Forms D1, E1, and F1 are in respect of visas endorsed in a passport by a *prescribed authority* before entry into Ceylon.

The foregoing would show that a " visa " is quite different from an " endorsement ".

Therefore, the authorized officer had to decide one of two questions before signing R4 : (i) whether the corpus had overstayed the period specified in a *visa* or (ii) overstayed the period specified in an endorsement.

Apparently the material at his disposal was insufficient for him to be satisfied as to which of these two the corpus had violated. That was why he did not delete one or the other of the two words *visa and endorsement.* In short, he appears to have been doubtful as to whether the corpus was the holder of a *visa* or an *endorsement.*

If the material was sufficient, he did not direct his mind at all to these questions. Therefore, it cannot be said that he was " *satisfied* " as to which of the two breaches specified in R4 the corpus was guilty of.

For these reasons, I would hold that : (i) the decision of the authorized officer was not reached in accordance with the law ; and (ii) the " removal order " is ex facie bad.

For each of these two reasons the finality, if any, sought to be conferred by section 28 (5) does not attach to the " removal order " R4, in each one of these cases.

In habeas corpus application No. 23 of 1964 : S. C. Minutes of 25.3.1964, this court has held that the finality conferred by section 28 (5) does not attach to a " removal order " which is ex facie bad.

The " removal order " being bad the only conclusion to be reached is that the corpus in each of these applications is in illegal custody. Therefore, I would grant these applications and order their immediate release.

The petitioner is entitled to costs fixed at Rs. 210 in respect of each application.

In ordinary circumstances there would be nothing more to add. But in more than one case it has been noticed that after obtaining a " deportation order " or " removal order " either on suspicion or on insufficient material—perhaps, moved by an excessive zeal to get rid of people—the officers of the Immigration and Emigration Department adopt the questionable procedure of recording alleged " confessions " of detainees who are in police custody. In these applications too this procedure has come to light and it calls for comment.

If the material before the authorized officer was sufficient to " satisfy " him as required by section 28 (2) what was the necessity to record alleged " confessions " by these men after the service of notice to produce these men before the Magistrate for inquiry into these applications ?

In these cases, they have, undoubtedly, made an Additional Magistrate of Colombo believe that, even if it is true that these men made these statements, they made them voluntarily. The Magistrate did not stop to consider that these men were in police custody for over two months and they had to return to that custody immediately after their statements were recorded. Under these circumstances they would have been in great fear of what might befall them if they did not answer " yes " to whatever was asked. The police may have been temporarily absent while the statements were being recorded. But, for all practical purposes they were still in police custody.

The Additional Magistrate did not approach these statements in the correct way. The burden was on the respondent to prove that the alleged confessions were made voluntarily. Unless this burden was satisfactorily discharged by the respondent the confessions would be inadmissible as evidence against these men. But the approach of the Magistrate was on the basis that the burden was on these men who were in police custody accused of violating the provisions of the Immigrants and Emigrants Act to show that there was " inducement, threat, or promise " in order to shut out these confessions.

It is not even remotely possible that these men would have made such " confessions " specially after these applications had been filed. The Magistrate did not consider this aspect at all.

The Additional Magistrate's finding can be explained only on the basis of lack of experience on his part. This court has more then once pointed out that, " Richness of experiences in Court is a sine qua non for success on the Bench." (S. C. 287/64 : M. C. Kuliyapitiya 18097—S. C. Minutes of 23.6.64).

Applications allowed.