

Foreigners Act, 1946

An Act to confer upon the Central Government certain powers in respect of foreigners.

Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and their departure there from;

It is hereby enacted as follows:

1. Short title and extent. —

(1) This Act may be called the Foreigners Act, 1946.

(2) It extends to the whole of India.

2. Definitions. —

In this Act, —

(a) *foreigner* means a person who is not a citizen of India;

(b) *prescribed* means prescribed by orders made under this Act;

(c) *specified* means specified by direction of a prescribed authority.

3. Power to make orders. —

(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure there from or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner —

(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein;

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

- (e) shall comply with such conditions as may be prescribed or specified
- (i) requiring him to reside in a particular place;
 - (ii) imposing any restrictions on his movements;
 - (iii) requiring him to furnish such proof of his identify and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
 - (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
 - (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
 - (vi) prohibiting him from association with persons of a prescribed or specified description;
 - (vii) prohibiting him from engaging in activities of a prescribed or specified description;
 - (viii) prohibiting him from using or possessing prescribed or specified articles;
 - (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;
- (f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or prescribed or specified restrictions or conditions;
- (g) shall be arrested and detained or confined;

and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under Clause (e) for Clause (f) of sub-section (2).

3-A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases. —

(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to —

- (a) the citizens of any such Commonwealth country as may be so specified; or
- (b) any other individual foreigner or class or description of foreigner.

(2) A copy of every orders made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.

4. Internees. —

(1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under Clause (g) of sub-section (2) of Section 3, directing that he be detained are confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.]

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under Clause (e) of sub-section (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of number of foreigners, shall while residing therein be subject to such condition as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

(3) No person shall —

(a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbor an escaped internee or person on parole, or

(b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in India where internment or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the dispatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.

5. Change of name. —

(1) No foreigner who was in India on the date on which this Act came into force shall, while in India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in India on the date on which this Act came into force, thereafter enters India sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which the Act came into force there were substituted a reference to the date on which he first enters India thereafter.

(4) For the purposes of this section —

- (a) the expression name includes a surname, and
- (b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use —

- (a) of any name in pursuance of a license or permission granted by the Central Government; or
- (b) by any married woman, of her husband's name,

Comments

Section 5 contemplates that a foreigner while in India shall not change or use any name other than the name by which he was known previously without the permission of the Central Government. If a foreigner has lawfully changed his name and comes to this country it cannot be said he is committing an offence under Section 5(3). (AIR 1968 Madras 349)

6. Obligations of masters of vessels, etc. —

(1) The master of any vessel landing or embarking at a port in India passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in India passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) If any foreigner enters India and contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passengers from a port or place in India to any destination outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefore at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a port or place at which the vessel

or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under Section 3 not to remain in India and for his dependents, if any, traveling with him.

[(6) For the purposes of this section —

(a) *master of a vessel* and *pilot of any aircraft* shall include any person authorized by such master or pilot as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(b) *passenger* means any person not being a *bona fide* member of the crew, traveling or seeking to travel on a vessel or aircraft.

7. Obligation of hotel keepers and others to furnish particulars. —

(1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodation in such premises, as may be prescribed.

Explanation. — The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorized in this behalf by the District Magistrate.

(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under this control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.

7-A. Power to control places frequented by foreigners. —

(1) The prescribed authority may, subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners —

(a) to close such premises either entirely or during specified periods, or

(b) to use or permit the use of such premises only under such conditions as may be specified, or

(c) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes except with the previous permission in writing of the prescribed authority and in accordance with any condition which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central Government; and the decision of the Central Government in the matter shall be final.

8. Determination of nationality. —

(1) When a foreigner is recognized as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality, if any, is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.

Comment

A married woman acquires the domicile of her husband on marriage and capable of acquiring a new domicile by re-marriage after divorce. (*State of Bihar v. Amar Singh*, AIR 1955 S.C. 282).

9. Burden of proof. —

If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus the proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872, (1 of 1972) lie upon such person.

10. Power to exempt from application of Act. —

Repealed by the Foreigners Laws (Amendment) Act, (11 of 1957).

11. Power to give effect to orders, directions, etc. —

(1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

12. Power to delegate authority. —

Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorize, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorization, be deemed to be the authority upon which such power is conferred by or under this Act.

13. Attempts, etc., to contravene the provisions of this Act, etc. —

(1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention..

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves India in contravention of any order made under, or direction given in pursuance of, Section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

14. Penalties. —

If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of Clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

Comments

Petitioner, a Pakistani national had entered India unauthorisedly via Bangladesh without any valid passport, visa and he had not informed any authority about his entry and stay in India and not got himself registered as a citizen of India. He has clearly contravened cl. 3(1) and cl. 7(2) of Foreigners Act, 1948 and committed offence under Sections 13 and 14 of the Foreigners Act (*Mohd. Anwar v. State of Bihar* 1992 Cr. L.J. 48).

15. Protection to persons acting under this Act. —

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

16. Application of other laws not barred. —

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939 (16 of 1939) the Indian Passport Act, 1920 (34 of 1920) and of any other enactment for the time being in force.

17. Repeals. —

[*Repealed by the Repealing and Amending Act, 1950 (35 of 1950)*]