Privy Council Appeal No. 39 of 1952

Maurice Roy Musson and another - - - - - - *Appellants*

v.

Thelmo L. Rodriguez - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH JUNE, 1953

Present at the Hearing:

LORD NORMAND
LORD REID
SIR LIONEL LEACH
MR. L. M. D. DE SILVA

[*Delivered by* LORD NORMAND]

This is an appeal *in forma pauperis* from a judgment of the Supreme Court of Trinidad and Tobago dismissing an Appeal from a Magistrate's Order, made under the Immigration (Restriction) Ordinance Chapter 20 No. 2, which directed that the appellants should be removed from the Colony and detained in custody in the meanwhile. The judgment of the Supreme Court was by a majority consisting of Sir Cecil Furness-Smith C.J. and Vincent Brown J. Duke J. dissented. The proceedings were commenced on 26th February 1952 by the respondent, an Immigration officer of the Colony who as complainant swore an information before a Justice of the Peace that each of the appellants "being a prohibited immigrant, and having been ordered to leave the Colony by the 25th instant, did fail to leave the Colony as so ordered as aforesaid contrary to Section 19 Ch. 20 No. 2" and applied for warrants for their arrest. The Justice of the Peace granted the warrants and the appellants were arrested and brought before the magistrate on 1st March to answer the complaint. They pleaded not guilty. Evidence was then taken. On 8th March the complaint was amended on the motion of the Solicitor-General by the addition of an application for an order for the removal of the appellants from the colony in accordance with Section 23 (1) of Chapter 20 No. 2. Further evidence was then taken and on 27th March 1952 the Magistrate made the order, subsequently confirmed by the Supreme Court, against which this Appeal is taken.

Much of the evidence adduced by the Crown before the magistrate was directed to proving that the Governor-in-Council had, in the words of the notices served on the appellants before the commencement of the legal proceedings, deemed the appellants to be undesirable visitors to the Colony and therefore Prohibited Immigrants under Section 4 (1) (*h*) of the Immigration (Restriction) Ordinance Ch. 20 No. 2. These notices required them to depart from the Colony on or before 14th February 1952. Later notices had extended the date from the 14th to the 25th February 1952.

The appellants' counsel took the fundamental objection that oral evidence to prove that the Governor-in-Council made the order alleged was inadmissible. He said further that, if admissible, it was unsatisfactory and did not establish the fact to be proved.

The basis for the whole proceedings that have taken place is Section 4 (as amended) of the Immigration (Restriction) Ordinance Chapter 20 No. 2. The following are the material words. "4. (1) The following persons . . . are prohibited immigrants:—(*h*) any person who from information or advice which in the opinion of the Governor-in-Council is reliable information or advice is deemed by the Governor-in-Council to be an undesirable inhabitant of or visitor to the Colony . . . (3) No appeal shall lie against the decision of the Governor-in-Council in regard to any persons mentioned in paragraphs . . . (*h*) . . . of sub-section (1) of this section unless such appeal be directed to identity only of the person affected by the decision." There are in other sections (among them Section 23) of the Ordinance provisions, for enforcing the removal of prohibited immigrants.

The drastic power given to the Governor-in-Council by Section 4 (1) (*h*) to interfere with personal liberty may be exercised without any antecedent judicial enquiry, and without the persons who are affected having had any opportunity of making representations. It is not subject to any appeal to a court of law or to any form of review at the instance of the affected persons. When such a power is committed to the Governor-in-Council there must be the strictest compliance with the provisions by which it is granted ; it must be clear beyond question that the Governor-in-Council on information or advice which in his opinion was reliable had come to a definitive decision to deem the person an undesirable inhabitant or visitor. It is further necessary that the decision should be in such a form that it can be repeated in the notice served on the person affected and become the foundation of any proceedings for his removal. Counsel for the appellants argued that the only way by which the necessary certainty in so important a transaction could be achieved was by recording the decision in writing and that the only competent mode of proving the decision is by the production of the written decision or a statutory equivalent.

The respondent's counsel pointed out that the Immigration (Restriction) Ordinance contains no provision requiring that the decision shall be recorded in writing, and he argued that parole proof was competent unless expressly excluded. Their Lordships consider that it would be unfortunate if the proof of the decision of the Governor-in-Council under Section 1 (*i*) (*h*) of this Ordinance were to be subject to the uncertainties which attend proof by oral evidence. But it is not necessary to consider whether from the provisions of the Immigration (Restriction) Ordinance alone it should be implied that proof by oral evidence is inadmissible. For in their Lordships' opinion Section 19 of the Interpretation Ordinance (Ch. 1 No. 2) applies to a decision under the Immigration (Restriction) Ordinance Section 4 (*i*) (*h*). Section 19 provides that when power is given to the Governor to make any order or give any direction, it shall be sufficient, unless it is otherwise expressed, for such order or direction to be signified under the hand of the Colonial Secretary A decision by the Governor-in-Council under the Immigration (Restriction) Ordinance Section 4 (*i*) (*h*) is a decision by the Governor within the meaning of Section 19 of the Interpretation Ordinance, for by Section 2 of the Interpretation Ordinance " governor-in-council " is defined as meaning the Governor acting with the advice of the Executive Council but not necessarily in accordance with such advice, and that exactly describes the position of the Governor-in-Council under Section 4 (*i*) (*h*) of the Immigration (Restriction) Ordinance. The respondent's counsel submitted that a decision under Section 4 (*i*) (*h*) is not an " order ", but their Lordships see no reason to restrict the meaning of " order " in the Interpretation Ordinance in this way.

If then Section 19 of the Interpretation Ordinance applies, it carries the plain implication that anything less than a signification of the decision of the Governor-in-Council under the hand of the Colonial Secretary would be insufficient. A writing under the hand of the Colonial Secretary is the appropriate means of publishing the decision so that it may be acted on. Oral proof falls short of the requirements of Section 19 and is

an insufficient mode of proof. Their Lordships do not suggest that it is not competent to prove the decision by producing, for example, a writing under the Governor's hand. But they are in agreement with the judgment of Duke, J., that evidence of the decision of the Governor-in-Council "could only properly be given by way of a written document showing on the face of it, that the decision was arrived at in compliance with the terms of and in accordance with the requirements of Section 4 (*i*) (*h*)". No such written document has been produced by the Crown in this case. Counsel for the respondent put forward the notices served on the appellants as sufficient written evidence. But the serving of the notices was no more than an executive act by a subordinate officer purporting to proceed on a decision of the Governor-in-Council which they did not prove or profess to prove. The notices are not the equivalent of a writing under the hand of the Colonial Secretary signifying in clear terms the decision of the Governor-in-Council made in accordance with the requirements of Section 4 (*i*) (*h*).

The result is that there is no competent proof that the Governor-in-Council came to the alleged decision, and the appeal must succeed.

It thus becomes unnecessary to consider the parole evidence or the criticism to which it has been subjected. It is also unnecessary to consider the propriety of the procedure followed in the Magistrate's Court, or the contention put forward in the appellants' case that the provisions of the Immigration (Restriction) Ordinance are repugnant to the British Nationality Act 1948. These are matters which do not now arise and their Lordships have formed no opinion on them.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed and the judgment of the Supreme Court set aside with costs. The appellants are entitled to their costs in the appeal on the pauper scale.

(19489) Wt. 8267—24 100 7/53 D.L./P1/3

In the Privy Council

MAURICE ROY MUSSON AND ANOTHER

v.

THELMO L. RODRIGUEZ

DELIVERED BY LORD NORMAND

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1953