



The Calcutta Gazette

Extraordinary

Published by Authority

THURSDAY, AUGUST 31, 1939.

PART I

Orders and Notifications by the Governor of Bengal, the High Court,
Government Treasury, etc.

GOVERNMENT OF BENGAL

HOME DEPARTMENT.

(Political.)

NOTIFICATION.

No. 4616P.—31st August 1939.—The following from the *Gazette of India, Extraordinary*, dated Saturday, the 26th August 1939, is published for general information.

E. N. BLANDY,
Chief Secy. to the Govt. of Bengal.

GOVERNMENT OF INDIA

HOME DEPARTMENT.

ORDINANCE No. I of 1939.

AN

ORDINANCE

TO

provide for the imposition of restrictions on foreigners.

WHEREAS an emergency has arisen which makes it necessary to provide for the imposition of restrictions on the entry of foreigners into British India, their presence therein and their departure therefrom:

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act as set out in the Ninth Schedule to the Government of India Act,

26 Geo. 5,
Ch. 2.

1935, the Governor General is pleased to make and promulgate the following Ordinance:—

Short title,
extent and
commencement.

1. (1) This Ordinance may be called the Foreigners Ordinance, 1939.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance—

(a) "foreigner" has the meaning assigned to it in the Foreigners Act, 1864, except that it does not include—

(i) any ruler or subject of any Indian State; or

(ii) any native of the tribal areas.

(b) "prescribed" means prescribed by orders made under this Ordinance;

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

Power to make
orders.

3. (1) The Central Government may, by order, make provision, either generally 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 British India or their departure therefrom or their presence or continued presence therein;

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

(a) shall not enter British India, or shall enter British 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 British 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 British India or in any prescribed area therein;

(d) shall remove himself to, and remain in, such area in British 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 identity 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 hand-writing and signature to such authority and at such time and place as may be prescribed or specified;

(v) prohibiting him from association with persons of a prescribed or specified description;

(vi) prohibiting him from engaging in activities of a prescribed or specified description;

- (vii) prohibiting him from using or possessing prescribed or specified articles; or
- (viii) 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 all prescribed or specified restrictions or conditions; or
- (g) shall be arrested and detained or confined; and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Ordinance.

Internees.

4. (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 or 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 determine.

(2) No person shall—

- (a) knowingly assist an internee to escape from custody or knowingly harbour an escaped internee; or
- (b) give an escaped internee any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee.

(3) The Central Government may by order provide for regulating access to, and the conduct of persons in, places in British India where internees are detained and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees therein of such articles as may be prescribed.

(4) No proceedings shall be taken by virtue of sub-section (2) or sub-section (3) against any person in respect of any act done by him when he is himself an internee.

Change of name.

5. (1) No foreigner who is in British India on the date on which this Ordinance came into force shall, while in British 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 Ordinance 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 British India on the date on which the Ordinance came into force, thereafter enters British India, sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Ordinance came into force there were substituted a reference to the date on which he first enters British 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 Royal licence;
- or
- (b) by any married woman, of her husband's name.

Obligations of masters of vessels, etc.

6. 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 Ordinance or any order made thereunder, enter, with such assistance as he may think fit, any vessel or aircraft at any port or place in British India and may—

(a) direct the master of the vessel or the pilot of the aircraft, as the case may be,—

(i) before any passenger disembarks, or before the vessel or aircraft leaves such port or place, as the case may be, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, or who have signified their intention of departing from British India on board such vessel or aircraft, setting out the ports or places at which they embarked, the ports or places of their disembarkation or intended disembarkation, and such other particulars as may be prescribed, and

(ii) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India; and

(b) if any foreigner seeking to enter British India on board such vessel or aircraft does not give satisfactory reasons for entering British India, either—

(i) refuse to allow such foreigner to disembark from such vessel or aircraft, or

(ii) place him under such restraint as may be prescribed or specified.

Burden of proof.

7. If any question arises with reference to this Ordinance 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 of 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, lie upon such person. I of 1872.

Power to exempt from application of Ordinance.

8. The Central Government may, by order, declare that any or all of the provisions of this Ordinance or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to and in relation to any individual foreigner or any class or description of foreigner.

Power to give effect to orders, directions, etc.

9. (1) Any authority empowered by or under or in pursuance of the provisions of this Ordinance to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Ordinance, 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 provisions of this Ordinance 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.

Power to delegate authority.

10. 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 Ordinance or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, 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 authorisation, be deemed to be the authority upon which such power is conferred by or under this Ordinance.

Attempts etc. to contravene the provisions of this Ordinance etc.

11. (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 Ordinance 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 Ordinance.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Ordinance 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 British 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 Ordinance.

Penalties.

12. If any person contravenes the provisions of this Ordinance or of any order made thereunder, or any direction given in pursuance of this Ordinance or such order, 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.

Protection to persons acting under this Ordinance.

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

Application of other laws not barred.

14. The provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864, the Registration of Foreigners Act, 1939, and of any other enactment for the time being in force.

III of 1864.
XVI of
1939.

LINLITHGOW,

Viceroy and Governor-General.

SIMLA;

The 26th August 1939.

HOME DEPARTMENT.

(POLITICAL.)

Order under the Foreigners Ordinance.

No. 21/84/39, dated 26th August 1939.

In exercise of the powers conferred by section 3 of the Foreigners Ordinance, 1939, the Central Government is pleased to make the following Order:—

- Short title, commencement and extent. **1.** (1) This Order may be called the Foreigners Order, 1939.
- (2) It shall come into force at once.
- (3) It extends to the whole of British India including those excluded and partially excluded areas to which the Foreigners Ordinance, 1939, has been, or may hereafter be, applied by notification under sub-section (1) of section 92 of the Government of India Act, 1935.
- Definition. **2.** In this Order "Registration Officer" means a Registration Officer as defined in the Registration of Foreigners Rules, 1939.
- Civil authority. **3.** The Central Government may appoint civil authorities for the purposes of this Order for such areas as it thinks fit.
- Restrictions on arrival in, and departure from, British India. **4.** (1) Notwithstanding anything contained in the Indian Passport Act, 1920, or in the rules made there- **XXXIV of 1920.**
under, the civil authority may prohibit the entry of any foreigner into British India.
- (2) No foreigner shall depart from British India without the permission of the civil authority for the port or other place of departure.
- Restriction on place of residence. **5.** (1) No foreigner shall, without the permission of the civil authority, visit, or reside in, any prohibited place as defined in the Indian Official Secrets Act, 1923. **XIX of 1923.**
- (2) Where any foreigner is, on the commencement of this Order, residing in any prohibited place and is not permitted to continue to reside there, he shall, within such time as may be specified by the civil authority, remove himself from such place.
- Restrictions on employment. **6.** No foreigner shall, without the permission in writing of the civil authority, enter any premises relating to, or be employed in, or in connexion with—
- (a) any undertaking for the supply to Government or to the public of light, petroleum, power or water, or
- (b) any other undertaking which may be specified in this behalf by the Central Government.

E. CONRAN-SMITH,

Secy. to the Govt. of India.