

(2003) 10 AHC CK 0084

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No.5217 (M/B) of 2003

Samshad Ali

APPELLANT

Vs

State of U.P.and Another

RESPONDENT

Date of Decision: Oct. 16, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Control of Goondas Act, 1970 - Section 3(1)

Hon'ble Judges: Khem Karan, J and G.K.Gupta, J

Final Decision: Allowed

Judgement

1. Heard Sri Surya Kant Singh, the learned counsel for the petitioners and learned counsel for the State on this writ petition. Also perused the contents of the petition, the contents of the impugned show cause notice issued under subsection (1) of Section 3 of Control of Goondas Act, 1970.

2. Since a pure legal question is involved, so the parties' counsel have agreed that this writ petition may be disposed of at this stage without calling for any counter affidavit etc.

3. The petition is for quashing of notice dated 3.3.2003 issued by the District Magistrate, Bahraich under subsection (1) of Section 3 of the Act of 1970. The main ground taken is that notice is ex facie bad for want of mention of general nature of the material allegations and so in view of Five Judges decision of his court in Bhim Sen Tyagi v. State of U.P. reported in 1999 Lucknow Criminal Report Vol.18 page 289 and also in view of a Division Bench decision of this court in Arun Kumar Tiwari v. State of U.P. 2000 (18) LCD page 182, the same deserves to be quashed.

4. The learned counsel for the petitioner has taken the court through the contents of the impugned notice. No doubt this notice does not contain the general nature of the material allegations. The mere mention of crime numbers together with section of penal Statute, is far from compliance of subsection (1) of Section 3 of the Act of

1970. The reason is that in absence of material particulars of the respective offences, the noticee is not in a position to defend himself effectively. It is not known to him as to on what date or at what place or places or at what time he committed the offences punishable under respective penal statute mentioned in the notice. The purpose of notice is to afford an effective opportunity to the person concerned to defend himself in the proceedings. So there is no room for doubt that this notice is ex facie bad for want to the general nature of the material allegations.

5. The learned counsel for the State has submitted that the writ petition for quashing of show cause notice is not maintainable in view of the division bench cases reported in 2002 JIC 469 Gorey Lal v. State.

6. We are of the view that 5 Judges decision of this court in Bhim Sen Tyagi's ease (supra) is clear enough on the point that if the notice issued under subsection (1) of Section 3 of Act of 1970 is ex facie bad, it can be quashed in proceedings under Article 226. Otherwise also there is no point in allowing a public authority to waste time in proceedings with a matter which is bound to fail for want of the requisite valid notice. So with a view to save public time of the concerned authority from being wasted unnecessarily this court has to exercise its power under Article 226 of the Constitution.

7. So this writ petition is allowed and the impugned notice (Annexure No.1) is hereby quashed but with a liberty to the authority concerned to issue fresh notice in accordance with law, if so found advisable.

(Petition allowed)