

(2003) 05 AHC CK 0157

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 19655 of 2003

Raghuraj Pratap Singh
@ Raja Bhaiya

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision: May 7, 2003

Acts Referred:

- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 7(4)

Hon'ble Judges: M.Katju, J and R.S.Tripathi, J

Final Decision: Dismissed

Judgement

1. Heard learned Counsel for the petitioner and the learned Standing Counsel.
2. The petitioner has challenged the impugned order dated 2942003 (Annexure VIII to the writ petition). By the impugned order the State Government has directed that certain criminal cases against the petitioner be transferred under Section 7(4) of the Uttar Pradesh Gangsters and AntiSocial Activities (Prevention) Act,. 1986 from the Court of Special Judge (Gangsters Act), Allahabad to the Court of Special Judge (Gangsters Act), Kanpur Nagar.
3. Learned Counsel for the petitioner has challenged the impugned order relying upon a Full Bench decision of this Court in Ashok Kumar Dixit v. State of U.P. and another, 1987 (24) ACC 164, and has invited our attention to paragraphs 64 and 65 of that decision. It has been observed in paragraph 64 of that decision that the power under Section 7 (4) to transfer cases is not unconstitutional. However, in paragraph 65 it has been observed that this power is exceptional in nature and cannot be exercised on mere humour, whims of fancies. The State Government will have to record reasons.
4. The State Government has relied upon the report of the District Magistrate, Pratapgarh, wherein it has been stated that the petitioner has to be brought from Kanpur to Allahabad on specified dates and this is creating problem of law and

order and security, and traffic is also adversely affected causing difficulties for the general public. In our opinion an order under Section 7 (4) of the Act is an administrative order and not a quasijudicial order. The learned Counsel for the petitioner has relied upon a decision of the Supreme Court in A.K. Kraipak and others v. Union of India and others, AIR 1970 Supreme Court 150, wherein it has been held that the dividing line between administrative and quasijudicial power has become thin. In our opinion though the dividing line between an administrative order and a quasijudicial order has become thin but it has not been totally obliterated. A quasijudicial order affects rights and liabilities, but the impugned order does not do so.

5. Learned Counsel for the petitioner submits that by the order transferring the case under Section 7 (4) from one Special Judge to another Special Judge (Gangsters Act) a lis is involved because certain amenities which will be available at the Naini Jail, Allahabad are not available at the Kanpur Jail. We do not agree. Mere grant or nongrant of amenities in a jail does not create any lis.

6. The learned Counsel for the petitioner has submit that under Section 7 (1) only the Special Court which is at Allahabad has jurisdiction over the case. However, Section 7 (1) has to be read along with Section 7 (4) which gives power to the State Government to transfer cases under the Gangsters Act.

7. The impugned order was passed on the basis of the report of the District Magistrate, Pratapgarh and it is alleged by the petitioner that he did not have any knowledge about the law and order situation at Allahabad or Kanpur. In our opinion, the petitioner was a resident of Pratapgarh and was elected from Kunda Assembly Constituency, Pratapgarh. His activities relating to the criminal cases are alleged to have arisen at Pratapgarh and hence the District Magistrate, Pratapgarh was fully competent to give such a report.

8. Learned Counsel for the petitioner then submitted that the Principal Secretary (Law) could not have validly passed the impugned order under Section 7 (4) and it could be passed only by the Governor. He has relied on Article 166 of the Constitution of India for this purpose.

9. In our opinion the Secretary or even the Deputy Secretary U.P. Government can pass orders on behalf of the Governor under the Rules of Business and Standing Orders. The impugned order, though it has been signed by the Principal Secretary (Law) U.P. Government, has to be deemed as an order of the Governor. As held by the Supreme Court in Samsher Singh v. State of Punjab, AIR 1974 SC 2192 (vide para 35) ♦when a civil servant takes a decision he does not do it as a delegate of his Minister. He does it on behalf of the Government. The officers are the limbs of the Government, and not its delegates..... Constitutionally the act or decision of the official is that of the Minister.

10. In our opinion the order under Section 7 (4) is an Administrative order and it is well settled that the Court has very limited scope of interference in administrative orders. The Court cannot sit in appeal over administrative orders vide *P.K. Misra v. Indian Oil Corporation*, 2002 (4) AWC 3221 (para 11). The Court can only interfere with the administrative orders if they are arbitrary or malafide. In *Om Prakash v. Union of India*, 2001 (2) SCC 386, the Supreme Court referred to the Wednesbury Principle while discussing the scope of judicial review administrative decisions. In *Tata Cellular v. Union of India*, AIR 1996 SC 11, it was held that the scope of such review is limited. In the instant case we do not find any good ground for interference with the impugned order. Moreover, writ is a discretionary remedy, and we are not inclined to exercise our discretion in this case.

11. We do not find any merit in the writ petition and it is dismissed.