(1988) 10 MP CK 0008

Madhya Pradesh High Court (Gwalior Bench)

Case No: First Appeal No. 38 of 1977

Nagar Palika, Bhind		APPELLANT
	Vs	
M.P. State Road Transport Corporation, Bhopal		RESPONDENT

Date of Decision: Oct. 7, 1988

Acts Referred:

- Madhya Pradesh Rajya Suraksha Tatha Lok Vyavastha Adhiniyam, 1980 - Section 12
- Penal Code, 1860 (IPC) - Section 294, 506

Citation: (1989) MPJR 181 : (1989) MPLJ 214

Hon'ble Judges: T.N. Singh, J

Bench: Single Bench

Advocate: K.N. Gupta, for the Appellant; Arun Mishra, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Y.B. Suryavanshi, J.

The petitioner, Mahabir Prasad Gupta, in this petition under Articles 226/227 of the Constitution of India, has prayed for quashing the orders dated 29-3-1988 (externment orders Annexure-J) passed by the Distt. Magistrate, Surjuga under the M. P. Rajya Suraksha Tatha Lok Vyavastha Adhiniyam, 1980 (hereinafter, called, the Adhiniyam), directing that the petitioner shall not enter the districts of Surguja and its contiguous districts, namely, Raigarh, Bilaspur, Shahdol, Sidhi and Rewa, for a period of one year from the date of service of the order against which, the appeal preferred by the petitioner has been confirmed vide orders dated 28-6-1988 (Annexure-K).

According to the petitioner, he is a permanent resident of Baikunthpur town of Surguja district and owns 2.671 hectares of agricultural land in village Janakpur of Tahsil Baikunthpur and cultivates the same (Rinipustika Annexure-A); that he was also a contractor of two quarry leases for sand, between 1977 and 1980, which he worked up under the agreements of quarry leases and was again granted quarry leases from 1-4-1983 to 31-5-1983 in village Saroli; that, he took seven contracts from the P.W.D. between 12-8-1983 and 2-10-1985 to earn his bread (copies of agreements Annexures-B to H); that, he has also taken construction contracts from the Municipal Council, Baikunthpur; that accordingly, he is a peace-loving citizen, but as he is an active worker of a rival political party all the proceedings against him are politically motivated; that, a case u/s 12 of the Adhiniyam was registered as case No. 1/85 and a show cause notice dated 13-7-1987 (Annexure-I) was issued; that, to prejudice, the respondent No. 2/Collector, the police department mentioned as many as 33 incidents, out of which 25 incidents relate to the years 1954 to 1981; that, out of which only eight incidents relate to the period 1982 to 1986 and six incidents relate to section 294/506, Indian Penal Code, one u/s 110, Criminal Procedure Code and one is the Sanha report by Station Officer, Baikunthpur; that, the petitioner denied the allegations, and submitted, that only four cases were pending against him and three have been filed and no action was taken against him on the basis of Sanha report dated 18-6-1985; and the action was malicious and due to political rivalries; that, he was not afforded a reasonable opportunity to produce evidence in his defence, as no summons were at all issued for the attendance of his defence witnesses and respectable witnesses could not attend the Court; that, in those circumstances the orders passed by the Distt Magistrate dated 29-3-1988 as also the orders passed by the appellate authority dated 26-4-1988 are illegal, and are liable to be quashed.

Learned counsel for the petitioner Shri S. P. Sinha and the learned Govt. Advocate, Shri O. P. Namdeo heard. Record perused.

The main thrust of the arguments canvassed by the learned counsel Shri Sinha relates to three points. First, it is contended that the District Magistrate, as also the appellate authority which confirmed the externment orders, had acted on state materials. The impugned orders have been passed u/s 12(b) which provision reads as follows:

12. Removal of persons about to commit offence. -- Whenever it appears to the District Magistrate:

(a) *** *** ***

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII or u/s 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abetment of any such offence, and when in

the opinion of the District Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property; or

*** *** ***

It is urged, that the long history of previous incidents ranging from the year 1954 appears in the orders which has prejudiced the District Magistrate in passing these orders. We have gone through the record. In the large number of cases, such as items Nos. 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 the cases resulted in acquittals and items Nos. 25, 26, 27 and 28 referred in the show cause notice dated 13-7-1987 are said to be pending. It was urged, that the materials were state. We have perused Jagannath Prasad vs. State of M. P., AIR 1969 M.P. 155, wherein this Court observed as follows:

It will be seen from section 4 of the Act that the activities on the basis of which an order can be made against a person under that provision must be those as existing at the time when the order is proposed to be made. This is clear from the use of the expressions in clauses (a) and (b) of section 4, namely, "movements or acts of any person are causing or calculated to cause", "such person is engaged or is about to be engaged in the commission of an offence", and "when in the opinion of the District Magistrate witnesses are not willing to come forward to give evidence in public against such person". All these expressions connote present time. The provision is not punitive in its nature and a person cannot be externed u/s 4 for his past acts. The power of externment u/s 4 is for the purpose of restraining a person from indulging in activities of the type referred to in clauses (a) and (b) of section 4. Although the past activities of a person may afford a guide as to his behaviour in future, they must be reviewed in the context of the time at which the order u/s 4 is proposed to be made; that past activities must be related to the situation existing at the moment when the District Magistrate makes the order. An order u/s 4 is no doubt based on the opinion and judgment of the District Magistrate, formed by him on the material before him. But the opinion, which the law requires the District Magistrate to form, and the sufficient cause he must have to believe must be as regards the activities of the person intended to be proceeded against at the time when the order is proposed to be made. It is perfectly true that the opinion of the District Magistrate cannot be questioned by the Court; but the opinion must be arrived at on materials placed before him and on a judgment, which he himself must make, that the movements or acts of the person against whom an order is to be made are causing or are calculated to cause alarm, danger etc. or that there are reasonable grounds for believing that such person is engaged in the commission of an offence mentioned in clause (b) of section 4.

It would thus be seen that the "past activities of a person may afford a guide as to his behaviour in future," though the order has to be passed in the context of the time at which it is proposed to be made. The past activities must be related to the

situation existing then when the District Magistrate makes the order. The above authority, therefore, does not lay down the proposition that the past conduct or antecedent history has to be completely ignored or obliterated which indeed to some extent is the guideline. In fact, as regards the past conduct, in Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, , (though it was a case under the National Security Act) their Lordships observed:

The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time, and should have a rational connection with the conclusion that the detention of the person is necessary.

In the instant case, the impugned orders are not coloured by the past conduct and antecedents, i.e. the previous criminal cases. But para 5 of the orders passed by the District Magistrate refers to the habitual course of conduct for the past 30 years and it is further observed that in this context the show cause notice dated 13-7-1987 was given and the reply dated 16-9-1987 was considered, oral and written arguments were heard. The petitioner was represented by an Advocate, and after proper hearing the impugned orders were passed. In para 10, it was observed, that the cases resulted in acquittals because those who lodged reports and were material witnesses turned hostile because they had apprehensions of danger to their lives and limb if they gave evidence against the petitioner. It was also observed that just because the petitioner had been a contractor that does not mean that he was in any way handicapped in continuing his activities complained of, and therefore, action under this Act need not be taken. In para 11 of the impugned orders, the District Magistrate has given his conclusions. Thus, there was material before him to enter upon his satisfaction, which is not justiciable. The appellate authority has also observed that the District Magistrate has been very analytical, and every incident was mentioned in details for drawing his inferences. The appellate authority also concluded that because of apprehensions to the safety of their person or property, the witnesses are not willing to come forward to give evidence against him. Therefore, we are not impressed by the contention that the impugned orders are vitiated because they are on state materials.

The second point is that, in similar circumstances, the authorities have taken a different view in the case of Anwar-ul-Haq (Annexure-L). A cursory perusal of this Annexure shows that his case is quite distinguishable on facts. Indeed, every decision ultimately turns on its own facts, and therefore, it cannot be said that a case of "discrimination" has been made out in case of this petitioner, vis-a-vis, Anwar-ul-Haq in passing the impugned orders Annexure-L.

The third point urged is : that no opportunity was given to the petitioner to adduce evidence. The orders passed by the District Magistrate in sub-para of Para 10 indicate that only one witness Sona Singh was examined on behalf of the petitioner. But his evidence is neither here nor there, because he appears to be completely unaware of the cases and other matters relating to the petitioner. The orders passed by the appellate authority dated 28-6-1988 indicate that this ground was agitated even before that authority (Para 3 Annexure-K). Dealing with this aspect in para 5, it has been stated that the order-sheet dated 5-10-1987 records that many opportunities were given to the petitioner to adduce defence evidence but he was unable to do so; and therefore, the case was thereafter closed. The learned counsel for the petitioner has produced Affidavits of one Tirath Prasad Gupta and Dwarka Prasad Gupta (Annexures M and N) and also that of Jagdish Namdeo and Biharilal Gupta (Annexures D and P). Those deponents have stated to the effect that the petitioner is a contractor which fact is already on record. Their statement "that the petitioner''s release would not be prejudicial to the public order" is only a statement of their opinions. On the other hand, the District Magistrate, according to Para 5 of his orders, had examined 23 witnesses before issuing show-cause notice. In Jagannath Prasad''s (supra) it was contended, that they were examined in absence of the petitioner and he could not cross-examine them. This Court, referring to Gurbachan Singh Vs. The State of Bombay and Another, , in analogous situation, rejected the contention. In respect of an analogous provision, the Supreme Court observed:

The only point which Mr. Umrigar attempts to make in regard to the reasonableness of this procedure is that the suspected person is not allowed to cross-examine the witnesses who deposed against him and on whose evidence that proceedings were started. In our opinion, this by itself would not make the procedure unreasonable having regard to the avowed intention of the legislature in making the enactment. The law is certain and extraordinary one and has been made only to meet those exceptional cases where no witness for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitute a menace to the safety of the public residing therein. This object would be wholly defeated if a right to confront or cross-examine these witnesses was given to the suspect. The power to initiate proceeding under the Act has been vested in a very high and responsible officer and he is expected to act with caution and impartiality while discharging his duties under the Act.

To reiterate, the past antecedents and record has been referred only as a guide for the future for drawing an inference that the witnesses are not coming forward to give evidence against such persons by reason of apprehension as regards their safety of their person or property as provided in sub-clause (b) of section 12 whereas the D. M. passed impugned orders on consideration of material before him. The further contention is that summons were not issued. But sub-clause (2) of Section 15 provides to make the application for the examination of witnesses. The

petitioner was represented by a legal practitioner and no such application seems to have been made. On the other hand what has been referred in the order-sheet mentioned in the orders passed by the appellate authority in Para 5, shows that reasonable opportunity was given. Therefore, these contentions are devoid of any merit.

Lastly, it was contended that almost a period of 8 months had passed and only a short period in the externment orders remains. We do not think this itself could be a ground to allow this petition. Copies of order-sheets have been filed to show that in the pending criminal cases, the trial courts have issued warrants of arrest and forfeitures of surety bonds. It is upto the A.P.P. conducting those cases who should inform the courts about the circumstances in which the petitioner/accused is absent or unable to be present in the Court. Moreover, it is for the sureties concerned to properly place those circumstances before the concerned Courts.

We do not find any grounds for interference. Accordingly, this petition is dismissed. Parties are directed to bear their costs. The outstanding amount of security, if any, be returned to the petitioner.