

Shivarathri Sharath Kumar Vs State of A.P. and Others

Court: Andhra Pradesh High Court

Date of Decision: May 30, 2006

Acts Referred: Constitution of India, 1950 " Article 22

Citation: (2006) 4 ALT 299

Hon'ble Judges: L. Narasimha Reddy, J; D. Appa Rao, J

Bench: Division Bench

Advocate: M. Venkanna, for the Appellant; A.G. and A. Satyaprasad, Special G.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The Collector and District Magistrate, Karimnagar District, the 2nd respondent herein, passed an order dated

25-03-2006, directing detention of the petitioner u/s 3(2) of the A.P. Prevention of Dangerous Activities of Boot-Leggers, Dacoits, Drug-

Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for short "the Act"), alleging that the petitioner is indulging in acts

of selling illicit liquor, which is injurious to health. It is alleged that the petitioner is a bootlegger as defined u/s 2(b) of the Act. Reference is made to

three cases, which were registered against the petitioner. The order of detention passed by the 2nd respondent was approved by the 1st

respondent through order in G.O. Rt. No. 1749, dated 29-03-2006. During the pendency of the writ petition, the 2nd respondent issued G.O.Rt.

No. 2601, dated 19-05-2006, extending the period of detention upto 12 months, from the date of detention.

2. Learned Counsel for the petitioner submits that, except that three cases were registered against the petitioner, with false allegations, there is no

concrete evidence or material to suggest that the petitioner had indulged in activities of a boot-legger. He contends that the order of detention and

subsequent extension were issued in a mechanical manner, without application of mind. One of the contentions advanced on behalf of the petitioner

is that the order of extension issued in G.O.Rt. No. 2601, dated 19-05-2006 is contrary to the proviso to Sub-section (2) of Section 3 of the Act,

and on that ground alone, the order of detention is liable to be set aside. He has urged several other grounds also.

3. Sri A. Satyaprasad, learned Special Government Pleader submits that though the petitioner was not convicted in any case, the circumstances

that gave rise to the registration of cases, clearly indicates that the petitioner is a habitual boot-legger and recourse to the ordinary criminal law did

not deter from undertaking such activities. As regards the extension of period of detention, he submits that once the Advisory Board renders its

opinion and does not find fault with the order of detention, it would be competent for the Government to extend the period of detention, up to the

maximum, stipulated under the Act. He contends that the Act does not contemplate any independent exercise of discretion or application of mind,

in the context of extension of period, and the facts that constituted the basis for detention, would hold good for extension also.

4. Both the learned Counsel have relied upon several judgments in support of their respective contentions.

5. Of the various contentions urged by the learned Counsel for the petitioner, we are of the view that the one, touching upon the procedure,

adopted by the Government in extending the period of detention, becomes relevant and central for disposal of this writ petition.

6. Section 3 of the Act empowers the detention of certain category of persons, as defined under the Act. Apart from conferring of power, the

section regulates the manner of passing the orders of detention as well as their duration. It is beneficial to extract the same.

Section-3: Power to make orders detaining certain persons:- (1) The Government may, if satisfied with respect to any bootlegger: dacoit, drug-

offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the

maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate

or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period

as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise

the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months,

but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any

period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the Government

together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such

order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

7. The State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention.

The only difference is that the order of detention passed by the Government would remain in force, for a period of three months, in the first

instance; whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12

days. The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard. Sub-

section (3) makes this aspect very clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months.

8. Proviso to Sub-section (2) of Section 3 is clear in its purport, as to the operation of the order of detention from time to time. An order of

detention would, in the first instance, be in force for a period of three months. The Government alone is conferred with the power to extend the

period, beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. It means that, if the

Government intends to detain an individual under the Act, for the maximum period of 12 months, there must be an initial order of detention for a

period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression ""extend such period

from time to time by any period not exceeding three months at any one time"" assumes significance in this regard.

9. The requirement to pass orders of extension from time to time in the manner referred to above, has got its own significance. It must be

remembered that restriction of initial period of detention to three months, is nothing but implementation of the mandate contained in Clause (4)(a) of

Article 22 of the Constitution of India. It reads as under:

Clause 4: No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported

before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by

Parliament under Sub-clause (b) of Clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under Sub-clauses (a) and (b) of Clause (7).

10. The Government acquires power to extend the period of detention beyond three months, only after it receives a report from the Advisory

Board. Placing reliance upon Clause 4(a) of Article 22, learned Special Government Pleader submits that the report received from an Advisory

Board would empower the Government to extend the period of detention beyond three months, which can be up to the maximum period, under

the Act.

11. It is difficult to accept this contention. Receipt of report from the Advisory Board would, at the most, relieve the Government of its incapacity

to extend the period of detention beyond three months. However, it does not extricate the Government, from its obligation to comply with the

proviso to Sub-section (2) of Section 3 of the Act. When the Legislature mandated that the order of extension of detention must not exceed three

months at any one time, the Government cannot extend the period of detention up to the maximum period of 12 months, in one stroke.

12. There is a definite purpose underlying the requirement to pass orders of extension in a staggered manner. Detention of a person without trial,

per se, amounts to denial of civil rights to him. It is only under extraordinary circumstances, that Government can have recourse to such detention.

Even if there existed any basis for the initial detention of the person, the desirability and the necessity to continue the detention must be reviewed

from time to time. If the circumstances disclose that the initial detention had already acted as a deterrent for the detenu, or that he is otherwise

incapacitated from continuing the same activities, the Government may not feel the necessity of continuing the detention. It must not be forgotten

that by undertaking reviews of such a nature, the Government is not doing any favour to the detenu. At the most, it would be examining as to how

far it would be desirable to deny to the detenu, the rights which the other citizens are entitled to. If, in the ultimate analysis, an order of detention is

not extended, the maximum that can happen is that the detenu is restored to his civil rights, and not conferred with any benefit.

13. There is another angle from which the matter needs to be examined. It is settled principle that, where law requires a particular thing to be done,

in a particular manner, it shall be done in that manner, or not at all. The implementing agency cannot boast to itself, the procedure which does not

accord with law, or deviate from the prescribed procedure. In Gujarat Electricity Board Vs. Girdharlal Motilal and Another, , the Supreme Court

observed,

It must be remembered that the provisions in question empower the State Electricity Board to interfere with the property rights of the licensee.

Therefore such a power will have to be strictly construed. The legislature has prescribed a mode for the exercising of that power and hence that

power can be exercised only in that manner and in no other manner. [See AIR 1936 253 (Privy Council) and Ballabhdas Agarwala Vs. J.C.

Chakravarty, .

14. This is a principle which governs the exercise of the administrative power of the State. Its application, in the field of criminal law, or preventive

detention, is bound to be much more stringent. The reason is that, in the realm of interpretation of statutes, the minor latitudes that are available,

while interpreting or enforcing enactments of civil law; are not available as regards the provisions of criminal law. The interpretation, in such cases,

is required to be strict, and the object must be to extend the benefit of any doubt or ambiguity to a citizen.

15. In the instant case, proviso to Sub-section (2) of Section 3 of the Act is very clear in its ambit and does not leave any scope for doubt. When

the provision mandates that the State can extend the period of detention for a period, not exceeding three months, at any onetime, the impugned

order, which extended the period of detention, straightaway, to the maximum period of 12 months, cannot be sustained in law. Para 4 of the

G.O.Rt. No. 2601, dated 19-05-2006, reads as under:

NOW, THEREFORE, after due consideration of the report of the Advisory Board and the material available on record, Government, in exercise

of the powers conferred under Sub-section (1) of Section-12 read with Section-13 of the said Act, hereby confirm the said Order of Detention

and direct that the detention of detenu, Sri Shivaratri Sattaiah, S/o. Venkataiah be continued for a maximum period of 12 months from the date of

his detention, i.e. 25-03-2006.

16. The extension of period of detention is patently illegal, and contrary to Section 3(2) of the Act.

17. Further, even where the extension of period of detention otherwise accords with the relevant provisions, the order of extension must disclose

that the Government applied its mind in the matter of extension. The order must also reflect that the Government was satisfied, that extension of

detention is necessary. Though the Government may not be placed under obligation, to explain the manner in which it arrived at the satisfaction, or

the factors that led to the extension of detention, satisfaction, as a matter of fact, must exist and it must be discernible from the order, extending

period of detention. In fact, that is the mandate of the proviso itself. It refers not only the existence of satisfaction, but also the necessity to extend

the period of detention. None of these ingredients are present, in the order, through which the detention of the petitioner was extended.

18. In view of our conclusion on the aspect referred to above, we do not feel it necessary to deal with contentions advanced on behalf of the

petitioner.

19. The writ petition is allowed, and the order in G.O.Rt. No. 2601, dated 19-05-2006, extending the period of detention of the petitioner is set

aside. The petitioner shall be set at liberty forthwith.

20. There shall be no order as to costs.