

(1982) 12 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 1009 of 1981

Abhimanya Kalita

APPELLANT

Vs

Deputy Commissioner & Ors.

RESPONDENT

Date of Decision : 17-12-1982

Acts Referred:

Citation : (1983) 2 GLR 101

Hon'ble Judges : K.N.Saikia, J and T.N.Singh, J

Bench : Division Bench

Advocate : Usha Baruah, J.M.Choudhury, B.M.Goswami, Advocates appearing for Parties

Judgement

Saikia, J.—The petitioner, hitherto a Lower Division Clerk and resident of Bomdila, West Kameng District. Arunachal Pradesh impugns the order dated 5.9.81 externing him from that district with immediate effect holding that his stay in the district was not at all desirable in the interest of peace and tranquility of the locality of Bomdila.

2. While the petitioner was at Bomdila, on receipt of a written complaint on 13.8.81 from one L. Gyamtsola at Bomdila Police Station a criminal case was registered against him and four other persons under sections 448/323/34 IPC and after chargesheet and summary trial held by the learned Deputy Commissioner herself the petitioner was convicted under section 507 IPC and sentenced to undergo simple imprisonment for 28 days. The alleged occurrence took place on 6.8.81 and the petitioner was arrested on 9.8.81 and on 2.9.81 he was sent to the custody of the Quarter Guard of the C.R.P. and till 9.9.81 he was under their custody. This means that on 5.9.81 when the conviction as well as the externment orders were passed he was still in custody. The order has been passed under Clause 1 of the Chin Hills Regulation of 1896 which provides:

"Where the Superintendent of the Deputy Commissioner of any area specified in the Schedule is satisfied that the presence of any person not being a native of

such area is injurious to the peace or good administration of the area, he may, for reasons to be recorded in writing order such person to leave the area within a given time".

3. It may be noted that the Chin Hills Regulation was made under the Government of India Act, 1870 (13th August, 1896) and it was printed in Burma Code in 1910 Edn. page 284. By notification No. 784 dated 9th October, 1911 in exercise of powers conferred by section 5 of the Scheduled Districts Act, 1874 (XIV of 1874), the Lieutenant Governor Eastern Bengal and Assam, with the previous sanction of the Governor General in Council, was pleased to extend sections 22, 23, 38(2) and 40 of the Chin Hills Regulation, 1896 (Regulation V of 1896), to the areas specified in the Schedule thereto annexed, in the restricted and modified forms in four clauses as set out in the notification. The modified Regulation is to be found in the Assam Code, 1956 Vol. 1 at page 268 to 269 with the following Schedule :

SCHEDULE

"The North Cachar subdivision of the Cachar district, the Garo Hills, Khasi and Jaintia Hills, the Dibrugarh Frontier Tract in the Lakhimpur district, the Naga Hills, the Mikir Hills tracts in the Nowgong and Sibsagar districts and the Lushai Hills district."

The Dibrugarh Frontier Tract and the Country of Sarkari Nagas having been included in the Sadiya Frontier Tract and the Lakhimpur Frontier Tract, all references to those areas were omitted in later notifications.

The Regulation was extended to North Frontier Agency by Notification No. 4962 dated 18.8.1916 published in the Assam Gazette dated 30.8.1916 Part II page 1339. It is admitted by both parties that the Regulation is applicable in this case.

4. Mr. J. M. Choudhury, learned Counsel appearing for the petitioner submits, inter alia, that the impugned order is bad in law on the grounds : (i) that no reason whatsoever has been recorded (ii) that before passing the order of externment which has affected petitioner's personal liberty no opportunity whatsoever was given to him and (iii) Clause 1 of the Chin Hills Regulation (shortly the "Regulation") itself is ultravires the Article 19(d) and (e), and for that matter, Article 31 of the Constitution of India.

5. On perusal of the impugned order it is clear that the petitioner having been convicted in the criminal case under section 507 IPC, the learned Deputy Commissioner who tried him concluded that the petitioner's further stay in the district was not at all desirable in the interest of peace and tranquility of the locality of Bomdila.

6. Mr. B. M. Goswami, learned Standing Counsel for Arunachal Pradesh refers us to the affidavit in opposition filed on behalf of the Deputy Commissioner, West Kameng District, Bomdila by Shri N. C. Rai, Extra Assistant Commissioner who

was deputed by the Deputy Commissioner for affirming the same. It states that in the criminal case the petitioner appeared and pleaded guilty whereupon the learned Deputy Commissioner convicted him and on the same day passed the impugned externment order. From the tenor of the order, as well as from the affidavit, it is clear that the criminal conviction in that case ipso facto led to the conclusion that the further stay of the petitioner at Bomdila was not at all desirable. Thus, the reason for the externment order appears from the record itself the adequacy or otherwise of the reason, of course, is entirely a different matter.

7. As regards the opportunity of being heard in defence Shri Goswami fairly concedes that so far as the conclusion that the petitioner's further stay was not desirable was concerned, he was not given any opportunity of being heard, which is also the sub mission of Shri Choudhury. There can be no doubt that the fundamental rights of the petitioner under Article 19 (1) (d) and (e) were clearly affected by the impugned orders inasmuch as the petitioner who had been living at Bomdila since 1968 with his father and bretheren and himself serving as Lower Division Clerk, was externed from that district. Considering the nature of the civil rights involved, the action of externment by the impugned order must be categorised as drastic action, and after all the stride made towards natural justice, there can hardly be any dispute as to the proposition that such an action is to be taken after giving the petitioner a reasonable opportunity of being beard. As authorities will show, the courts took their stand even centuries ago on the broad principle that bodies entrusted with legal power could not validly exercise its power without first hearing the person who was going to suffer. Ever since the first hearing in the human history was given by God to Adam and Eve in the Garden of Eden, the craving for justice in the form of fair hearing has been implanted in the human bosom; and the courts apply this principle very widely to administrative and judicial acts and to the acts of individual authorities as well as the acts of collective bodies or committees. The hypothesis on which the courts built up their jurisdiction was that duty to give every victim a fair hearing was just as much a canon of good legal procedure as of good administration. Where an order is passed by an authority after giving the sufferer a reasonable hearing, and within his proper sphere, the court may not control its substance, but it can at least control the preliminary procedure so as to require fair consideration of rival sides of the case. This is conducive to justice as also to good administration. This is also in conformity with the accepted conons of human fights as adopted under the European Conversion of Human Rights and Fundamental Freedoms of 1950, "In the determination of his civil rights and obligations or of any criminal charge against him, every one is entitled to a fair and public hearing within a reasonable time by an independent and impartial Tribunal established by law". It is in line with the Universal Declaration of Human Rights. It is applicable to Administrative Tribunals as well as to authorities entrusted to take decision affecting civil rights; though more certainly to Tribunals of a more formal kind. This principle has even been applied to the cases

of deportation of aliens and undesirable persons. This proposition has not been disputed by Shri Goswami who has very fairly pointed out the decisions in the Chairman, Board of Mining Examination and Chief Inspector of Mining vs. Rajme, AIR 1977 SC 965, Malak Singh vs. State of Punjab AIR 1981 SC 760, M/s Laxmi khandsari vs. State of U.P., AIR 1981 SC 873 and that of Swadeshi Cotton Mills vs. Union of India AIR 1981 SC 818. Shri Choudhury also relied on Mohinder Singh Gill vs. The Chief Election Commissioner, AIR 1978 SC 851; Smti Maneka Gandhi vs. Union of India, AIR 1978 SC 597, Prem Chand vs. Union of India, AIR 1981 SC 613 as well as M/S Wire Netting Stores vs. The Delhi Development Authority, 1969 (3) SCC 415. We were also referred to the judgments in Civil Rule No. 366/73 dated 16.9.74 (Wasir Lama vs. The Deputy Commissioner Kameng District, Bomdila) and Civil Rule No. 22/76 dated 22nd September/76 (Wasir Lama vs. Union Territory of Arunachal Pradesh) All these decisions support the aforesaid proposition as to need for giving a fair hearing to the sufferer.

8. This being position in law, and admittedly no opportunity for hearing having been given to the petitioner before passing the impugned order affecting his civil rights this order has to be set aside, which we hereby do. While setting aside the order we should not be understood not to have appreciated the objects of applying the Regulation to that sensitive frontier tract of the Country; and our order will not stand on the way of the authorities in taking action according to law, if it is so advised.

9. As regards vires, the development of Frontier Tracts administration shows that since about 1870 all legislative enactments had been provided with a clause showing precisely how and where they were to operate. But some enactments were not specific and to obviate the difficulty two Acts the Scheduled Districts Act (XIV of 1874), and the Law Local Extent Act (XV of 1874) were passed. The latter Act was designed to specify the laws which were in force in India generally except in certain backward tracts which were described as "scheduled districts". The Scheduled District Act gave power to Government to declare by notification in the Gazette what laws were in force in such districts, and to extend to them any enactments in force elsewhere which it might seem desirable to bring into operation. The whole of Assam, including Sythet was classed as a scheduled district, and all doubts as to what laws were, and what laws were not in force, had been removed by a series of notifications under the Scheduled Districts Act. The effect of these notifications had been to place the plains of Assam in much the same legal position as other parts of India. The inhabitants of hilly tracts, however, were not yet suited for the elaborate legal rules laid down in the procedure codes and other similar enactments, and they had to be governed in a "simple and more personal manner" than those of the more advanced district. It was, therefore, provided by the Frontier Tracts Regulation 11 of 1830, that the operation of unsuitable laws might be barred in all the hill districts including the Dibrugarh Frontier Tract in Lakhimpur. A simple system of administering justice in civil and criminal matters had been prescribed by rules framed under the Scheduled Districts Act. In these tracts, the Head of the Local Government was

the Chief Appellate authority and the High Court possessed no jurisdiction except in criminal cases against European British subjects; the Deputy Commissioner exercised the combined powers of Judges and District Magistrates and the Assistant and Extra Assistant Commissioners the powers of Magistrates and Munsiffs.

10. It was under the above set up that the Chin Hills Regulation, 1896, which was applicable to the Chin of the Chin. Hills District of Burma, and which provided, as was observed in *Maung vs. Nang Tom*, AIR 1925 Rangoon 140, that this Regulation applied to Chins in the Chin Hills, and that the law as regards persons other than Chins in the Chin Hills was that in force in Upper Burma, which was also observed in the *King vs. Yoo Ngoon*, AIR 1941 Rangoon 332. It was under the above circumstances that the aforesaid sections of the Chin Hills Regulation were made applicable to the North East Frontier Tracts; and it may be unsafe to take the view that the situation has materially changed now so as to take the Clause 1 of the Regulation outside the pale of reasonable restrictions envisaged in Article 19 (5) of the Constitution of India. As we are setting aside the impugned order on another ground, we do not like to pursue the question of vires of clause 1 of the Regulation.

11. We also consider the provisions in Clause 3 of the Regulation which provides that the State Government may revise any order passed under Clause 1. Despite the availability of this alternative remedy, we have quashed the order as it was passed in flagrant violation of the principle of natural justice rendering the order void and as such, alternative remedy is no bar as was ruled in *M/S. Baburam Prakash Chandra Maheswari vs. Antarim Zila Parishad*, AIR 1969 SC 556 read with *M/S. WireNetting Stores vs. The Delhi Development Authority*, 1969 (3) SCC 415 where not giving any opportunity to the petitioner to show against his proposed eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1958., S. 4. was held to be violative of the principles of natural justice and the order was set aside.

12. In the result, this application is allowed and the Rule made absolute, but under the circumstances, we make no order as to costs.