

(1955) 12 PAT CK 0012

In the Patna High Court

Case No : Misc. Judicial Case No. 642 of 1954

Ajablal Mandal and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-12-1955

Acts Referred:

Bihar Maintenance of Public Order (Amendment) Act, 1949 — Section 8(1)
Bihar Maintenance of Public Order (Amendment) Act, 1950 — Section 8(2)
Constitution of India, 1950 — Article 19, 19(1), 19(5), 31(2)

Citation : AIR 1956 Patna 137 : (1956) CriLJ 640

Hon'ble Judges : Ramaswami, J;Imam, J

Bench : Division Bench

Advocate : Jaleshwar Prasad and Shivanugrah Narayan, for the Appellant;
Government Advocate and Basudeva Prasad, for the Respondent

Judgement

Ramaswami, J.—In this case Ajablal Mandal and other petitioners have moved the High Court for grant of a writ in the nature of certiorari under Article 226 of the Constitution for calling up and quashing the order of the State Government No. A/CF/ 2017/54-SS/C-4513 dated 3-4-1954, imposing a collective fine on the inhabitants of certain villages u/s 8(1), Bihar Maintenance of Public Order Act, 1949 (Bihar Act 3 of 1950).

The petitioners have further prayed for grant of a writ of mandamus restraining the respondents from taking any steps to realise the collective fine from the petitioners in pursuance of the order of the State Government.

2. It appears that on 1-3-1954, there was a wrestling match" organised by the villagers of Kamalpur. A crowd of about five thousand people had assembled in order to witness the wrestling match. It is alleged that a dispute arose between two parties in the course of the wrestling match.

There was altercation leading to assault and as a consequence nine persons were killed and thirty-one persons were injured. On the same date at 7-30 p.m. a report was lodged at Nathnagar police station by one Pheku Mian. The matter

was investigated by the police and a charge-sheet was submitted against eighteen persons but not against the petitioners. On 3-4-1954, the State Government made an order u/s 8(1) of Bihar Act 3 of 1950 imposing a collective fine of Rs. 8,605/- on the inhabitants of village Koili Khutaha Gadi Tola and eight other villages. The order of the State Government reads as follows:--

"No. A/CF/2017/54-SS/C-4513. Whereas it appears to the Governor of Bihar that the inhabitants of villages Koili Khutaha-Gaditoia, Gos-saindasapur, Fatehpur, Khobra, Tola Kamalpur, Dogachi, Methurapur, Srisarpur, Hardaspur in P. S. Nathnagar, District Bhagalpur, have been concerned in the commission of offences affecting the public safety and the maintenance of public order and are failing to render all the assistance in their power to apprehend the offenders and are suppressing material evidence of the commission of such offence.

Now therefore, the Governor of Bihar Is pleased in exercise of the powers conferred by Sub-section (1) of Section 8, Bihar Maintenance of Public Order Act, 1949 (Bihar Act 3 of 1950) to impose a collective fine of Rs. 8,605/- only on the inhabitants of the said villages as specified in the schedule given below and in exercise of the powers conferred by Sub-section (2) of the said section to exempt from liability to pay any portion of the fine, Government servants, Government pensioners and Muslim residents of all villages and such inhabitants of those villages as may in the opinion of the District Magistrate, Bhagalpur, have assisted the District authorities in maintaining the peace and apprehending the offenders.

SCHEDULE

1. Koili Khutaha Gaditola 1265/-
2. Gossaindasapur 2675/-
3. Tola Kamalpur Dogachi 537/8/-
4. Mathresapur 702/8/-
5. Srirampur 1632/8/-
6. Fatehpur 880/-
7. Hardaspur 912/8/- "

3. In the second week of November, 1954, the District Magistrate of Bhagalpur issued a demand notice against the petitioners asking them to pay the collective fine by 22-11-1954, failing which the amount would be realised by means of warrant. The demand notices are annexure A series to the application. Annexure A reads as follows:--

"Ba hukum janab jeladhis Mo. Bhagalpur. Notice Banam -- Ajablal Mandal Sakin -- Gossaindasapur Thana - Nathnagar Apko Mo. 160 rupaiya collective fine laga hai.

Isliye apko hukum hota hai ki ap tarikh 22-11-1954.

Isvi ko thik dash baje sabere Dogachi camp me bila uzur rupaiya dakhil kar rashid le lenge. Barna warrant ke zariye talbana ke sath rupaiya wosul kiya jaiga.

Isko sakht takid janenge".

4. It is contended on behalf of the petitioners that the order of the State Government is illegal and void since there were no materials upon which the State Government could reasonably hold that the inhabitants of the villages in question were concerned in the commission of any offence affecting public safety or maintenance of public order, or that the inhabitants failed to render all assistance in their power to apprehend the offenders, or that they were suppressing material evidence of the crime.

It is also contended that Section 8(1) of Bihar Act 3 of 1950 is constitutionally invalid as there has been an infringement of the fundamental right to hold property guaranteed under Article 19(1)(f) of the Constitution. It is argued on behalf of the petitioners that Section 8(1) is also in conflict with Article 31(2) of the Constitution since there is deprivation of property without compensation.

The argument was put forward that Section 8(2) was also constitutionally invalid since an arbitrary or uncontrolled discretion has been vested in the State Government or its delegate to grant exemption to any person or class of inhabitants from liability to pay any portion of the collective fine. It was submitted, therefore, that the statutory provisions enacted under Sections 8(1) and 8(2) of Bihar Act 3 of 1950 were unconstitutional and the order of the State Government imposing collective fine must be quashed by the High Court by grant of a writ in the nature of certiorari or in the nature of mandamus.

5. Cause has been shown by the learned Government Advocate on behalf of the two respondents, the State of Bihar and the District Magistrate of Bhagalpur, against whom notice of the rule had been directed to be given.

6. The main question presented for determination in this case is whether Sections 8(1) and 8(2) of Bihar Act 3 of 1950 are constitutionally valid and operative.

7. It is advisable at this stage to quote in full Section 8 of Bihar Act 3 of 1950 because much of the argument in this case ranged round the language of this statutory provision:--

"8. (1) If it appears to the State Government that the inhabitants of any area are concerned in, or are abetting, the commission of offences prejudicially affecting the maintenance of public order, or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance in their power to discover or apprehend the offender or offenders, or are suppressing material evidence of the commission of such offences, the State Government may, by notification, impose a collective fine on the inhabitants of that area:

Provided that an imposition of a collective fine by any authority to whom the power may have been delegated under this Act may be made by publication of the order imposing the fine in any such manner as such authority may consider best calculated to bring the order to the notice of the inhabitants of the area concerned.

(2) The State Government or any officer empowered in this behalf by the State Government, by general, or special order, may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(3) The District Magistrate, after such inquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

(4) In any such apportionment the District Magistrate may assign a portion of such fine to a Hindu undivided family to be payable by it.

(5) The portion of such fine payable by any person (including a Hindu undivided family) may be recovered:

(a) In the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court, as if such portion were a fine imposed by the District Magistrate acting as a Court:

Provided that the State Government may, in lieu of the rules referred to in Sub-section (2) of Section 386, Cr. P.C., 1898, make rules under this Act regulating the manner in which warrants under el. (a) of Sub-section (1) of the said section of the said Code are to be executed, and for the summary determination of any claims made by any person other than the person liable to pay the fine in respect of any property attached in execution of the warrant; or

(b) as a public demand payable to the Collector.

Explanation -- For the purposes of this section, the expression "inhabitants of an area" includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who, having any house or cutchery for collecting rents within such area themselves or by their agents or servants collect rents from holders or occupiers of land in the area, notwithstanding that they do not actually reside therein".

8. The contention put forward on behalf of the petitioners is that the provisions of Section 8(1) violate the constitutional guarantee under Article 19(1)(f) of the Constitution. It was argued by learned Counsel that the statute was unreasonable from the Procedural and substantive aspect and that it was not, therefore, saved by Article 19(5) of the Constitution.

In my opinion, the argument addressed on behalf of the petitioners is well founded and must prevail. In the first place, the restriction imposed by the statute is unreasonable from the substantive aspect because the statute is

indefinite and vague. It is well established in principle that if a statute imposes a penalty with respect to a certain course of conduct, it must be sufficiently definite so as to give notice to the parties affected as to what conduct is necessary to follow if the penalty was to be avoided.

The constitutional vice in such a statute is that it does not give warning to the accused of what is the nature of the offence and what he is called upon to meet and controvert. The statute must be sufficiently definite also for the important reason that there must be consider of application in the administration of law.

In other words, the language of the statute must be precise and must be sufficiently objective so as to guard against an arbitrary or "ad ho-minem" result on the part of the persons who are called upon to administer the statute. If this important requirement is not satisfied, the statute would be an unreasonable restriction on the constitutional guarantee under Article 19(1)(f) and should not fall within the language of the exception contained in Article 19(5) of the Constitution.

The legal position has been explained by Justice Douglas in "Screws v. United States" (1944) 325 US 91 (A) and by Frankfurter J., in "Joseph Burstyn v. Wilson" (1952) 343 US 495 (B). That is the position in American law and I see no reason to think that the law in India is different so far as this point is concerned.

9. it is necessary, therefore, to examine the provisions of Section 8(1) of Bihar Act 3 of 1950 for finding out if the legal standard of definiteness has been satisfied. It should be noticed that Section 8(1) authorises the State Government to impose a collective fine on the inhabitants of any area

"If it appears to the State Government that the inhabitants of any area are concerned in, or are abetting the commission of offences prejudicially affecting the maintenance of public order or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance in their power to discover or apprehend the offender or offenders". In the first place, the section does not make it clear whether the State Government may impose a collective fine only on the inhabitants of any area actually "concerned in the commission of offences, etc." or whether the State Government may impose the collective fine on the persona who inhabit the area though they are not actually "concerned in the commission of offences etc."

In other words, does the section apply the principle of vicarious liability in the matter of imposing the collective fine? The section is not clear, but if vicarious liability is intended to be imposed, the section may be unreasonable on the ground that such punishment violates the juristic principle that all criminal responsibility is personal, for the maxim "qui facit per alium facit per se" has generally no application in the region of criminal law except where there is proof of express authorisation.

It is true that in the early history of English criminal law the men of the Hundred were fined for murder and robberies committed in the locality, and the Tithing amerced if the Tithing man accused of crime was not produced. But the modern conception of criminal jurisprudence is different and it is now held to be a general principle "that one man should not be penalised for the wrong of another.

10. In the second place, what is the meaning of the phrase, "concerned in the commission of offences prejudicially affecting the maintenance of public order"? Does it mean that the persons affected should have done a criminal act in furtherance of the common intention of all. There is the principle of joint liability laid down in Section 34 of the Indian Penal Code. That section deals with the doing of separate act, similar or diverse, by several persons and if all acts are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself.

But Section 8(1) of Bihar Act 3 of 1950 does not speak of any common intention or any criminal intention even. In my view, the principle of criminal liability laid down in Section 8(1) is much wider in scope than the principle laid down in Section 34, I. P. C. Similarly, what is the meaning of the phrase in Section 8(1) "or are failing to render all the assistance in their power to discover or apprehend the offender or offenders"?

In my opinion, this portion of Section 8(1) is also indefinite and vague. There is a similar provision in the Indian Penal Code embodied in Section 187. That section, however, is sufficiently specific and expressly mentions the various forms of assistance which a public servant may demand and which the citizen is bound to comply with.

Sections 42, 43, 44 and 45, Crl. P. C. also deal with situations in which a person is bound to render assistance to a public servant. But the statutory provision embodied in Section 8(1) is much wider in its scope and less precise. In my opinion the constitutional objection raised by the petitioners on this aspect of the case must be sustained.

11. I shall then deal with the argument of the petitioners that Section 8(1) is unreasonable from the "procedural" aspect. It is clear that Section 8(1) confers authority upon the State Government to Impose a collective fine on the inhabitants of any area.

" "if it appears to the State Government" that the inhabitants of any area are concerned in, or are abetting, the commission of offences.....or are harbouring persons concerned in the commission of such offences etc".

As a matter of construction, it is clear that the section authorises the State Government to impose a collective fine merely on its subjective satisfaction. In other words, the satisfaction of the State Government cannot be made the subject of enquiry in a court of law.

It mean's that the factual existence of the grounds mentioned in Section 8(1)

which is a condition precedent for the imposition of collective fine is not a justiciable issue. Section 22 of Bihar Act 3 of 1950 further provides that

"no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act".

Section 22, therefore, ousts the jurisdiction of the civil court and the persons on whom collective fine is imposed cannot take recourse to a court of law for contesting the validity of the order of the State Government.

12. It is also important to notice that there is no machinery provided u/s 8(1) for ascertaining the guilt of the persons affected. There is no provision for giving notice to the inhabitants of the area to show cause before the order imposing collective fine is passed. There is no provision for giving notice; there is no provision for hearing of the persons affected and there is no charge framed.

In other words, the State Government is given authority to conclusively and finally determine the guilt of the parties affected and to impose the liability of collective fine. There is also no provision for any appeal to any administrative authority from the order imposing the fine or from the order of apportionment.

In fact, the determination of the guilt is made upon the subjective satisfaction of the State Government. In my opinion, the vesting of such an absolute unfettered authority in the State Government is an unreasonable restriction and there is an infringement of the guarantee under Article 19(1)(f) of the Constitution.

13. This view is borne out by the decision of the Supreme Court in *State of Madras Vs. V.G. Row*, . The question which arose for determination in that case was whether Section 15(2)(b), Criminal Law Amendment Act (14 of 1908) as amended by Madras Act, 1950 imposed a restriction on the fundamental right to form association guaranteed by Article 19(1)(e), which was not reasonable within the meaning of Article 19(4).

It was pointed out by the Supreme Court in that case Section 15(2) (b) vested an authority in the executive government to impose restrictions on the fundamental right without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry. It was, therefore, held that the restrictions imposed by Section 15(2)(b) were not reasonable within the meaning of Article 13(4), and, therefore, unconstitutional and void.

It was pointed out by Patanjali Sastri, C.J., who pronounced the opinion for the unanimous court that "the formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights".

14. A similar principle has been enunciated by the Supreme Court in the

subsequent case, *Thakur Raghubir Singh Vs. Court of Wards, Ajmer and Another*, . The question which arose in that case was whether Section 112, Ajmer Tenancy and Land Records Act (42 of 1950) infringed the fundamental right of the landlord guaranteed under Article 19(1)(f) of the Constitution, and was, therefore, void to that extent. Section 112 provided certain penalties for habitual infringement of rights of tenants and read thus:

"If a landlord habitually infringed the rights of a tenant under this Act, he shall, notwithstanding anything in Section 7, Ajmer Government Wards Regulation, 1888 (1 of 1888), be deemed to be a "landlord who is disqualified to manage his own property" within the meaning of Section 6 of the said Regulation and his property shall be liable to be taken under the superintendence of the Court of Wards".

Section 6, Ajmer Government Wards Regulation, 1888 (1 of 1888) provided:

"The Court of Wards may, with the previous sanction of the Chief Commissioner, assume the superintendence of the property of any landholder who is disqualified to manage his own property".

The result of the combined operation of Section 112 of Act 42 of 1950 and of the provisions of Regulation I of 1888 was that the Court of Wards could in its own discretion and on its subjective determination assume the superintendence of the property of a landlord who habitually infringed the rights of his tenants. In these circumstances, it was held by the Supreme Court that Section 112 of Act 42 of 1950 was not saved by Article 19(5) of the Constitution and manifestly infringed the fundamental right of the landlord guaranteed by Article 19(1)(f).

It was observed by the Supreme Court in the course of the judgment that the impugned legislation deprived the landlord of his possession of property for an indefinite period of time merely on the subjective determination of an executive officer, and such a law could on no construction of the word "reasonable" be described as coming within that description because it completely negated the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive.

15. The learned Government Advocate argued that the maintenance of public order was a paramount consideration, and it was necessary that the State Government should be armed with powers of the nature contemplated by Section 8 (1) in order to deal with unruly and subversive elements. Counsel put forward the argument that the provisions of Section 8(1) were hence not unconstitutional.

Counsel based his argument upon the decision of the Supreme Court in *Dr. N.B. Khare Vs. The State of Delhi*, . It was held by a majority of the learned Judges in that case that the subjective satisfaction of the State Government regarding the necessity for the externment of a person, coupled with a reference of the matter to an Advisory Board whose opinion, however, had no binding force, was "reasonable" procedure for restricting the right to move freely conferred by

Article 19(1)(b).

But I think that the present case is essentially different from "Dr. Share's case" (E). The important distinction is that in "Dr. Khare's case" (E) the grounds of externment were based on suspicion and were anticipatory and so they were not amenable to objective determination in a civil court. But in the present case, the grounds mentioned in B. 8(1) for imposition of collective fine are factual and not anticipatory and could be properly tested in an objective manner in a court of law.

It is manifest that the test of reasonableness under Article 19(5) cannot be laid down in an abstract or universal manner. The test must depend upon the "subjectae materies", that is, upon the subject matter of the statute which is challenged in each particular case. The matter has been clearly put by the learned Chief Justice of India in *State of Madras Vs. V.G. Row*, .

"This Court had occasion in *Dr. N.B. Khare Vs. The State of Delhi*, to define the scope of the judicial review under Clause (5) of Article 19 where the phrase "imposing reasonable restrictions on the exercise of the right also occurs, and four out of the five Judges participating in the decision expressed the view . (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised.

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

16. I next proceed to consider the argument of the petitioners that Section 8 (2) of Bihar Act 3 of 1950 confers an arbitrary power on the State Government to grant exemption to any person or body of persons from payment of the collective fine and so it violates the guarantee under Article 19(1)(f) of the Constitution.

(17) Section 8 (2) states:

"The State Government or any officer empowered in this behalf by the State Government, by general or special order, may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine."

It is clear that the section nowhere specifies what are the grounds for granting exemption. No principle or standard has been laid down by the Legislature to guide the State Government or its delegate in the exercise of its discretion. If the

administrative authority acts arbitrarily or with improper motives in granting exemption and so throws the burden of collective fine upon a smaller number of inhabitants, there is no check and mere is no method of obtaining redress by the parties affected.

In my opinion, the power of exemption granted by Section 8(2) is arbitrary or uncontrolled and, therefore, "unreasonable from the procedural aspect. This view is supported by the recent, decision of the Supreme Court in -- Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, . In my opinion, counsel for the petitioners is right in contending that Section 8 (2) also inurings the right guaranteed under Article 19(1)(1) or the Constitution.

18. The learned Government Advocate finally argued, but without much conviction that the collective fine imposed u/s 8 (1) was not a punitive measure Out it was a preventive measure. It was argued that the grounds for taking action u/s 8 (1) were anticipatory and cased on suspicion, and so it was not unreasonable that the imposition of collective fine should be made dependent upon the subjective satisfaction of the State Government. I am unable to accept this argument as right.

I have already said that the grounds mentioned in Section 5 (1) for imposing collective fine are not anticipatory or based on suspicion. I have shown the grounds are factual and could be tested objectively in a court of law. It is obvious in the first place that Section 8 (1) authorises the State Government to impose a fine on the inhabitants of any area for certain reasons. What is the meaning of the word "fine"? According to Stroud's Judicial Dictionary.

"Fine" means a "pecuniary punishment for an offence, or contempt committed against the king. And it is called finis, because it is an end for that offence. And in this case a man is said "facere finem de transgressione, etc., cum rege", to make an end or fine with the king for such a transgression" (Coke upon Littleton, 126 b). In the next place, Section 8 (1) states that the collective fine could be imposed by the State Government

"If it appears to the State Government that the inhabitants of any area are concerned in, or are abetting, the commission of offences prejudicially affecting the maintenance of public order, or are harbouring persons concerned in the commission of such offences, or are suppressing material evidence of the commission of such offences".

Section 8 (1), therefore, requires that the State government must be satisfied that the Inhabitants of any area are concerned in or are abetting the commission of offences. What is the meaning of the word "offence"? The word has been defined in Section 4 (38), Bihar and Orissa General Clauses Act, 1917 to mean "any act or omission made punishable by any law for the time being in force".

It is manifest, therefore, that Section 8 (1) deals with the commission of offences by inhabitants of any area, or harbouring of persons concerned in the

commission of such, offences, or the suppression of material evidence of the commission of such offences by the inhabitants.

All these matters more or less correspond to substantive offences under the Indian Penal Code, and there is no scope for the argument addressed by the learned Government Advocate that Section 8 (1) is preventive in character and not punitive. I think that the submission made by the learned Government Advocate on this point must be rejected.

19. It was further contended on behalf of the petitioners that Article 31(2) of the Constitution has been infringed. It was pointed out by learned Counsel that Bihar Act 3 of 1950 received the assent of the Governor on 4-1-1950, and was published in the Bihar Gazette of the same date. It was contended that the statute was not saved by any provision contained in Article 31(5) of the Constitution.

It was argued that there was no certificate of the President under Article 31(6) and, therefore the statute infringed the provisions of Article 31(2) of the Constitution. It was pointed out on behalf of the petitioners that the exceptions contained in Article 31(5) are exhaustive and not by way of abundant precaution. In support of this proposition, Counsel referred to the decision of the Supreme Court in -- "Dwarkanadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd.", AIR, 1954 SC 119 (G), in which Mahajan J., rejected the argument that the saving Clause 5 of Article 31 was inserted in the Article "ex abundante cautela".

The learned Judge held on the contrary that the saving Clause (5) comprehensively included within its ambit all the powers of the State in exercise of which it could deprive a person of property without payment of compensation, and that all forms of deprivation of property by the State without payment of compensation, have been included within the ambit of the exception clause, while other forms of deprivation which are outside the ambit of the exception clause are inevitably within the mischief of Clause (2) of the Article.

In my opinion, the argument addressed on behalf of the petitioners in this case is right and it must be held that Section 8 (1) also violates the guarantee provided in Article 31 of the Constitution.

20. For the reasons I have expressed, I hold that Sections 8 (1) and 8 (2), Bihar Maintenance of Public Order Act (Bihar Act 3 of 1950), are constitutionally invalid. In my opinion, a writ in the nature of certiorari under Article 226 of the Constitution must be issued for quashing the order of the State Government No. A/CF/2017/54-SS/C-4513, dated 3-4-1954, and also for quashing the notices issued in annexures A (1) to A (5) demanding collective fine from the petitioners.

I further hold that the petitioners must be granted a writ in the nature of mandamus restraining the respondents from taking any action for enforcing the collective fine imposed under the order of the State Government No. A/CF/2017/54-SS/C-4513, dated 3-4-1954. I would accordingly allow this

application with costs. Hearing fee Rs. 100/-.

Imam, J.

21. I agree.