

(1964) 11 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 493 of 1964

Amar Singh Rajendra Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-11-1964

Acts Referred:

Defence of India Rules, 1962 — Rule 30, 30(1)

Citation : AIR 1965 MP 126 : (1965) JLJ 292 : (1965) 10 MPLJ 318 : (1965) MPLJ 318

Hon'ble Judges : P.R. Sharma, J;N.M. Golwalker, J

Bench : Division Bench

Advocate : A.P. Sen and K.P. Munshi, for the Appellant; M. Adhikari, General and H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.

By this petition u/s 491 (a) (b) of the Code of Criminal Procedure the petitioner challenges the legality of his brother Santokhsingh's detention

under an order passed by the District Magistrate, Raipur, in exercise of the powers conferred upon him by Clause (b) of Sub-rule (1) of Rule 30

of the Defence of India Rules, 1962 read with the Government of Madhya Pradesh Home Department Order No. 33-4314/I-X(W)62, dated the

20th November, 1962.

Although a number of grounds have been set out in the petition, the only ground which was pressed before us at the time of the hearing, was that

the District Magistrate had not, at any time after the amendment of Rule 30 of the Defence of India Rules under Notification No. G.S. Rule 1818,

dated 28-12-1962, been authorised to exercise on behalf of the State

Government the power to detain any person with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies essential to the life of the community.

It is not disputed that prior to its amendment in December, 1962 the first paragraph of Rule 30 did not contain the words "or the maintenance of supplies and services essential to the life of the community". The power conferred on the State Government by Rule 30(1)(b) as it originally stood was delegated by the State Government on 20-11-1962 to all District Magistrates. The question which arises for consideration is whether the delegation by the State Government of its power under Rule 30(1)(b) of the Defence of India Rules for detaining persons for any of the purposes mentioned in Rule 30, as it stood on the date of the delegation, (i.e. on 20-11-1962) would include within its scope the power to detain any person for preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the life of the community, even though this power was for the first time conferred on the State Government by amendment of Rule 30 of the Defence of India Rules in December, 1962.

The answer to this question depends on whether the delegation of its powers under a particular Rule by the State Government can be deemed to cover the delegation of such powers as might thereafter be brought into existence by amendment of the Rule. The answer to this question was given in the negative by a Division Bench of the Bombay High Court in *Emperor Vs. Rayangouda Lingangouda Patil*, . That case was sought to be distinguished from the one before us, on the ground that the question which arose for consideration in that case related to an entirely new power, which had for the first time been conferred on the Provincial Government by an amendment of Rule 26. Rule 26(5-B)(b) as it formerly stood did not include any Rule in terms giving power to "order any person to appear before any named person, nor did it include any penalty for the breach of such an order, It was contended that such is not the case here. The power to detain a person under Clause (b) of Rule 30(1) of the Defence of India Rules had already been vested by the State Government on the District Magistrates within their respective jurisdictions. It was submitted that all that was done by the amendment of Rule 30 in December, 1962 was to add

one more ground, to those already provided for, on which the detention of a person could be ordered

We are of the opinion that this argument is without any substance. A power must necessarily be circumscribed by the conditions under which and

the grounds on which it can be exercised. The power to order the detention of a person on the grounds mentioned in Rule 30(1) as it stood prior

to the amendment, was necessarily enlarged when Rule 30 was amended in such a manner as to permit the detention of a person on an additional

ground, namely with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies and services essential to the life of

the community. The District Magistrate could, by virtue of the power delegated to them by the State Government under the Notification, dated 20-

11-1962, order detention of any person only on such grounds as were included in the first paragraph of Rule 30, as it stood on the date of

delegation

In short the State Government could by its Notification, dated 20-11-1962 delegate to the District Magistrates, only such power as was vested in

it under Rule 30 on the date of the delegation. By the amendment of Rule 30 of the Defence of India Rules the State Government was for the first

time authorised, to order detention of a person also on the ground that it was necessary to detain him for preventing him from acting in any manner

prejudicial to the maintenance of supplies and services essential to the life of the community. This power could be delegated by the State

Government only after the State Government itself was vested with it

Maxwell has in his book on "The Interpretation of Statutes" (Eleventh Edition) at page 290 observed: "But if a statute is repealed and re-enacted

in a wider form, the old rules, in so far as they are continued, are not thereby enlarged". Reference may be made in support of this observation to

The Canadian Pacific Steamships, Ltd. v. Brayers 1958 AC 485. This principle would apply with even greater force to cases of delegation of

power under a Rule by an order of the Government in the event of that Rule being subsequently amended so as to make it wider in scope.

In the present case what has to be interpreted is the Notification issued by the State Government on 20-11-1962 and not any Rule made under

any enactment. I am in respectful agreement with the principle laid down by the.

Bombay High Court in Emperor Vs. Rayangouda Lingangouda

Patil, , that an order of the Government delegating its powers to the District Magistrates is not an "instrument" within the meaning of Section 8(1) of

the General Clauses Act. The delegation made under such an order could not be deemed to cover the delegation of such powers as might

thereafter be brought into existence for the first time by an amendment of the Rules.

The learned Advocate General sought to extricate himself from this difficulty by adopting an entirely novel line of argument. He contended that

since the unamended Rule 30 of the Defence of India Rules provided for detention of persons for the maintenance of public order, and any

dislocation in the maintenance of supplies essential to the life of the community was likely to result in public disorder the amendment of Rule 30

whereby the words "or the maintenance of supplies and services essential to the life of the community" were added for the first time did not bring

into existence a new power, but merely provided in express terms what was already included within the scope of the unamended Rule.

I am afraid it is not possible to accede to this contention. The words "public order" are virtually synonymous with public peace, safety and

tranquillity. An activity which in its proximate and direct effect has a tendency to disturb public peace, safety or tranquillity could come within the

mischief of Rule 30(1) so as to enable the Central Government or the State Government, or any person to whom the State Government has

delegated its power, to direct his detention under Rule 30(1)(b) of the Defence of India Rules on the ground that such action is necessary for the

maintenance of public order. It is idle to suggest that the activities of a single individual of the nature imputed to the present detenu could possibly

lead to disturbance of public peace, safety or tranquillity. Merely on the ground that if such activities were resorted to by a large number of persons

on an extensive scale public disorder might result, would be no ground for holding that the action of the present petitioner's brother Santokhsingh's

in transporting grain outside the State of Madhya Pradesh had necessarily a tendency to cause a disturbance of public peace, safety or tranquillity.

It will also be pertinent to note that the District Magistrate, Raipur has not even remotely suggested any such ground for the issuance of the

impugned order of detention. The said order is, as already noted above, based on the sole ground that the petitioner's brother's activities were prejudicial to maintenance of essential supplies.

We would, therefore, allow this petition and hold that the District Magistrate, Raipur had no authority to direct detention of the present petitioner's

brother on the grounds mentioned by him in his order inasmuch as the authority to order detention with a view to prevent any person acting in any

manner prejudicial to the maintenance of supplies and services essential to the life of the community had not till then been delegated to the District

Magistrates by the State Government, after the power in tills behalf became vested in the State Government by the amendment of Rule 30 of the

Defence of India Rules in December, 1962. A direction shall, therefore, be issued for the release of the petitioner's brother Santokhsingh from

custody. There shall be no order as to costs.