

(1974) 11 DEL CK 0016

In the Delhi High Court

Case No : Criminal Writ Appeal No. 20 of 1974

Avtar Singh alias Tari

APPELLANT

Vs

Delhi Administration and Another

RESPONDENT

Date of Decision : 22-11-1974

Acts Referred:

Citation : (1975) ILR Delhi 525

Hon'ble Judges : V.D. Misra, J; Jagjit Singh, J

Bench : Division Bench

Advocate : A.L. Joshi and T.D. Ahluwalia, for the Appellant;

Judgement

V.D. Mishra, J.

(1) Whether an Additional District Magistrate of Delhi, who has been invested with all the powers of a District Magistrate under the Code of Criminal Procedure and under any other law for the time being in force u/s 10(2) of the Code, can pass orders of externment u/s 56 of the Bombay Police Act, 1951 (No. Xxii of 1951), as extended to Delhi? is the question which falls for decision in the two criminal writs Nos. 20 and 23 of 1974.

(2) The relevant facts of the two petitions may now be noted. Avtar Singh alias Tari is the petitioner in Criminal Writ No. 20 of 1974. He was served with a notice dated June 21, 1974 (Annexure -1) issued by Shri Navin Chawla, Additional District Magistrate (South), Delhi, calling upon him to show cause why proceedings under clauses (a) and (b) of Section 56 of the Bombay Police Act, 1951, as extended to Delhi, should not be taken against him and he be not extended from the limits of the Union Territory of Delhi for a period of two years since "his movements or acts are causing alarm or calculated to cause alarm or danger or harm to the person and property to the people", and since there were reasonable grounds for believing that you are engaged or are about to engage in the commission of offences involving force or violence or offences punishable under Chapters Xvi and Xvii of Indian Penal Code or in the abetment of any such

offence". The details of the cases in which the petitioner was convicted and those pending trial were also mentioned. It was also alleged that "witnesses were not willing to come forward to give evidence in public against you by reason of apprehension on their part as regards the safety of their person and property". The petitioner with his counsel duly appeared before Shri Navin Chawla on -Tune 28, 1974, and asked for an adjournment to submit his written Explanation. The learned Additional District Magistrate adjourned the case to July 12, 1974. However, on the date neither the petitioner nor his counsel appeared and the learned Additional District Magistrate decided to proceed ex-parte. After recording evidence, orders were passed on July 29, 1974, directing the petitioner to remove himself outside the limits of the Union Territory of Delhi for a period of two years within seven days from the date of the service of the order. On August 22, 1974, the petitioner filed the present writ petition challenging the jurisdiction of the Additional District Magistrate to pass the order and also assailing the order on the ground that the learned Additional District Magistrate could not direct the petitioner to remove himself from the whole of the Union Territory of Delhi.

(3) Rajinder alias Raju is the petitioner in Criminal Writ No. 23 of 1974. Shri Ashok Pradhan, Additional District Magistrate (Central) Delhi, served a notice (Annexure "A") on the petitioner under clauses (a) and (b) of Section 56 of the Bombay Police Act, 1951, as extended to Delhi, calling upon him to show cause why he should not be externed from the limits of the Union Territory of Delhi for a period of two years. The allegations made in this notice are that "you are a desperate and dangerous person and your acts and movements are causing or calculated to cause alarm, danger and harm to the residents of Delhi as is evident from the fact that you were challenged in the following cases". The details of the cases in which the petitioner was convicted or acquitted and those pending trial were also given. It was also alleged that "your activities clearly indicate that you are still and likely to engage in the commission of crime of theft and offences involving force and violence and the witnesses are not willing to come forward to depose against you by reason of apprehension as regards the safety of their person and property". The petitioner duly appeared before the learned Additional District Magistrate and raised preliminary objections vide Annexure "A" dated July 29, 1974, challenging the jurisdiction of the learned Additional District Magistrate and the relevancy of the grounds mentioned in the notice. By an order dated August 20, 1974 (Annexure C) the learned Additional District Magistrate dismissed both the objections and fixed August 22, 1974, for the evidence to be produced by the State. The petitioner filed the present writ petition on September 12, 1974, challenging the jurisdiction of the learned Additional District Magistrate to issue the notice.

(4) The petitioners contend that an Additional District Magistrate, despite his having been invested with all the powers of a District Magistrate u/s 10(2) of the Code of Criminal Procedure, has no jurisdiction to pass any order of externment u/s 56 of the Bombay Police Act, 1951, as extended to Delhi. This section is in the following terms :

"REMOVAL of persons about to commit offence. Whenever it shall appear to the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the Chief Commissioner in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (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 Chapters Xii, Xvi or Xvii of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer 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 (e) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction by such route and within such time as the said officer may prescribe and not to enter or return to the said area from which he was directed to remove himself."

The section shows that the legislature was satisfied that (1) the District Magistrate and (2) Sub-Divisional Magistrate specially empowered by the Chief Commissioner (now the Administrator) were sufficiently responsible officers to take a subjective decision on the question of externment. It is true that an Additional District Magistrate is subordinate to a District Magistrate and cannot by any stretch of reasoning be called the District Magistrate, but he is higher in rank to a Sub-Divisional Magistrate. Section 10(2) of the Code of Criminal Procedure provides for the conferment of the powers of the District Magistrate under the Code or under any other law for the time being in force on an Additional District Magistrate. Can it be said that it was the intention of the legislature not to confer powers u/s 56 of the Bombay Police Act on an Additional District Magistrate ?

(5) In support of their contention that an Additional District Magistrate cannot exercise powers u/s 56 of the Bombay Police Act, the learned counsel for the petitioners rely on Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., . In that case an Additional District Magistrate, who had been invested with all the powers of a District Magistrate u/s 10(2) of the Code of Criminal Procedure, had proceeded to make an order requisitioning a shop u/s 29(1) of the defense of India Act, 1962, which empowers the Central Government and the State Government to requisition any immovable property. The Central Government had duly delegated its powers u/s 29 to "All Collectors, District Magistrates and Deputy Commissioners in the States and all Political officers in Nefa". It was noticed by their Lordships of the Supreme Court that District Magistrate occupies a very important position in the district since he is the head of the executive exercising powers of superintendence and control over other magistrates in the

district, and though an Additional District Magistrate can similarly exercise all or any of the powers of a District Magistrate if the State Government makes a direction u/s 10(2) of the Code of Criminal Procedure, yet the two are different and distinct authorities. After approving the decision of the Nagpur High Court in AIR 1944 84 (Nagpur) , their Lordships proceeded to summarize the reasons given by the High Court thus : These reasons may be summarised as follows :

"(I)Very wide, almost autocratic, powers are conferred on the Government in the matter of detention and Therefore they must be exercised with a due sense of responsibility and circumspection by an officer of a certain status and experience;"

"(II)when the Government delegates its power to an officer or authority subordinate to it, it is not unreasonable to assume that it fully considers the fitness of the delegate before making the order in respect of delegation;"

"(III)the Additional District Magistrate who is invested with the powers of a District Magistrate does not thereby attain the status of a District Magistrate as there can be only one person in the district who can be a District Magistrate and"

"(IV)the Government when it conferred the power on the District Magistrate conferred it on the officer actually holding the office of the District Magistrate and no one else."

This judgment shows that since the power had been delegated only to a District Magistrate, who was considered to be an officer of a certain status and experience, an Additional District Magistrate, who was a person subordinate to the (District Magistrate, could not exercise the power. In the instant case, as already pointed out, the legislature found not only the District Magistrate but also a Sub-Divisional Magistrate, who could be specially empowered by the Chief Commissioner, as competent and responsible officer to pass orders of externment. Moreover, Section 157A of the Bombay Police Act as extended to Delhi provides that in the event of the office of magistrate becoming vacant any officer holding charge of that post or succeeding, either temporarily or permanently, to his office, shall be competent to exercise all the powers conferred by the Act on such Magistrate. In my opinion, it was not the intendment of the legislature to exclude an Additional District Magistrate who had been invested with all the powers of a District Magistrate u/s 10(2) of the Code of Criminal Procedure by the State Government and who though subordinate to the District Magistrate, is admittedly a higher officer than a Sub-Divisional Magistrate.

(6) It is contended that a specially empowered Sub-Divisional Magistrate is more responsible than an Additional District Magistrate because the former is specially picked out by the authority. This contention does not seem to have any force. An Additional District Magistrate will always be a person senior to each and every Sub- Divisional Magistrate. Moreover, an Additional District Magistrate does not come to exercise powers u/s 56 of the Bombay Police Act as extended to Delhi

unless the requisite authority has specifically conferred powers on him u/s 10(2) of the Code of Criminal Procedure. It may be noticed that the authority which specially empowers a Sub-Divisional Magistrate u/s 56 of the Bombay Police Act as extended to Delhi, and the authority which confers powers of a District Magistrate on an Additional District Magistrate u/s 10(2) of the Code is the same. It cannot thus be said that a specially empowered Sub-Divisional Magistrate is in any manner more competent and responsible than such an Additional District Magistrate. In my opinion an Additional District Magistrate, who has been invested with powers of the District Magistrate u/s 10(2) of the Code of Criminal Procedure, can exercise powers u/s 56 of the Bombay Police Act as extended to Delhi.

(7) Another contention advanced by the petitioners is that since the definition of "competent authority" was amended to include Additional District Magistrate, the legislature would have similarly amended Section 56 of the Bombay Police Act if the intention was to authorise Additional District Magistrate to pass orders of externment. Section 2(3) of the Bombay Police Act defined "competent authority", in relation to certain areas, to mean "the District Magistrate or the District Superintendent, or the Additional Superintendent when specially empowered in that behalf by the State Government". While extending the Act to Delhi, Section 2(3) was amended by substituting " "competent authority" means the District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or the District Superintendent specially empowered in that behalf by the Chief Commissioner". The Act was conferring powers on "competent authority" and not a District Magistrate and so an Additional District Magistrate invested with the powers of a District Magistrate under any other law for the time being in force" u/s 10(2) of the Code of Criminal Procedure, could not be said to have the powers of "competent authority" unless Additional District Magistrate was specifically mentioned in the definition. Moreover, by including Additional District Magistrate in that definition an Additional District Magistrate not invested with the powers of a District Magistrate u/s 10(2) of the Code of Criminal Procedure could also exercise the powers of "competent authority". In these circumstances the amendment of definition of "competent authority" does not in any manner reflect the intention of the legislature about Section 56 of the Act.

(8) The notification appointing Shri Navin Chawla and Shri Ashok Pardhan as Additional District Magistrate shows that they were appointed for the whole of the Metropolitan area of Delhi under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974). They could thus order the externment of the petitioner from the whole of the Union Territory of Delhi.

(9) The next contention of the petitioners is that since some of the convictions and/or acquittals mentioned in the notices are too remote and irrelevant, the notices should be held illegal and quashed. This contention is based on the Supreme Court decisions reported in *Biram Chand Vs. State of Uttar Pradesh and Others*, , *Sri Nagen Murmu Vs. The State of West Bengal*, , and *Mintu Bhakta Vs.*

The State of West Bengal, , which were given in capes arising out of detention orders passed under the Preventive Detention Act and the Maintenance of Internal Security Act (1971). Under these Acts the detaining authority does not pass any speaking order giving reasons of detention and so it is not possible to find out as to what weighed with the authority in passing the order of detention. It is only when grounds of detention are served on a detenu that reasons of detention are conveyed to him, and this detenu gets an opportunity to make a representation to the Government to induce the authorities to take a view in his favor. Before this opportunity could be said to be real and effective, it is necessary that that grounds must be clear and definite. If one of the grounds is non-existent or irrelevant or is not available under the law, the entire detention order becomes bad "since it is not possible to predicate as to whether the detaining authority would have made an order for detention even in the absence of non-existent or irrelevant ground". It has thus been held that "the authority, Therefore, has to be careful enough to see that only relevant and valid grounds are selected having a nexus with the object of order of detention" [Biram Chand's case (supra)]. However, under the scheme of the Bombay Police Act as extended to Delhi, no order of externment can be passed unless a show cause notice has been served and a reasonable opportunity of being heard has been given to a person. The requisite authority is required to pass a speaking order containing the reasons for passing the order. In other words, even if one of the grounds mentioned in the show cause notice happens to be non-existent or irrelevant or not available under the law, the show cause notice is not liable to be struck down since it cannot be assumed that the requisite authority will take such a ground into consideration at the time of passing the final order. Moreover, the final order is "to be passed after taking into consideration the evidence produced for and against the proposed externment before the requisite authority against which an appeal lies to a higher authority. The final order will show if the non-existent or irrelevant ground is the very basis of the order or the requisite authority would have passed the order for externment even in its absence. Thus the decisions relied upon by the petitioners cannot be of any help to them.

(10) The result, Therefore, is that both the petitions fail and are dismissed.