

(1993) 04 GUJ CK 0003
In the Gujarat High Court

Case No : Spl. Criminal Application No's. 1787, 1804, 1825 and 1964 of 1992

Dadmahammad alias Dadu Fakirmahammad Makrani,	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 26-04-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 20, 20(1), 20(3)
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3, 3(2)

Citation : (1995) CriLJ 334 : (1993) 2 GLR 1767

Hon'ble Judges : N.J. Pandya, J;B.S. Kapadia, J

Bench : Division Bench

Advocate : A.R. Thakkar, for P.M. Thakkar, for the Appellant; M.R. Rawal, APP, for the Respondent

Final Decision : Allowed

Judgement

Kapadia, J.—The petitioners in the aforesaid petitions are the detenus against whom the detention orders respectively dated 13-11-1992, 5-11-1992, 7-11-1992 and 13-11-1992 are passed. The said orders have been passed by Shri D.P. Patel against the petitioners u/s 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short PASA Act). In these cases, it is not necessary to state the facts of each case, about the material on which the detaining authority has relied on and other factors considered by him before arriving at the subjective satisfaction for detaining the petitioners, because, the point which is urged by us is that Shri D.P. Patel, who has passed the orders, was not the District Magistrate specially empowered to do so and that, therefore, the orders passed by him are bad and illegal. Mr. A.R. Thakkar the learned Advocate appearing for the petitioners submits that Shri D.P. Patel at the relevant time was not the District Magistrate, but was a Residential Deputy Collector and the orders passed by him in the aforesaid matters as District Magistrate are bad in law and without any authority. This point is raised by the petitioners in each of the aforesaid petitions. In the first petition, Rule was issued on 29th December 1992. No affidavit-in-reply has been filed. Mr. M.R. Rawal, the learned APP appearing

for the respondents submits that though Shri D.P. Patel was a Residential Deputy Collector at the relevant time he was in charge of the District Magistrate and when he is in charge as such, he can exercise the powers of the District Magistrate as per Section 20(3) of the Code of Criminal Procedure.

2. To appreciate this submission, first of all, it would be necessary to consider the provisions of Section 3 of PASA Act. Sub-sections (1) and (2) of Section 3 read as under:

3(1) The State Government may if satisfied with respect to any person 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 State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in subsection (1) exercise the powers conferred by the said sub-section.

It is, therefore, clear that the power for detention vests in the State Government and this power can be delegated in the prevailing circumstances or the circumstances likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate. There is no definition of "District Magistrate" given in the PASA Act. The power of the District Magistrate appointed can be found in Section 20 of the Code of Criminal Procedure. Section 20(1) reads as under:

Section 20(1): In every District and in every Metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

It is clear from the above provision that the State Government may appoint any one of the Executive Magistrates to be the District Magistrate. If Shri D.P. Patel was appointed as District Magistrate, particularly when his power to pass the detention order has been challenged, then it could have been pointed out to the Court by placing a copy of the letter appointing him as District Magistrate by the State Government or by placing a copy of the Government Gazette in which such appointment is published. When that is not done, it can be safely concluded that the Resident Deputy Collector Shri D.P. Patel was acting as the District Magistrate. In that event Sub-section (3) of Section 20 of Cr. P.C. would come into operation. But reading of the said Sub-section (3) makes it clear that, when any Officer succeeds temporarily to the executive administration of the District, such Officer shall, pending the orders of the State Government exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate. So, by virtue of Sub-section (3), a person who acts as in charge District Magistrate would be entitled to perform his duties as

District Magistrate under the Code. But that would not empower that Officer to act as District Magistrate specially empowered as required under Sub-section (2) of Section 3 of PASA Act.

3. A Government Notification dated 28th May, 1985 is placed before us which clearly provides that the Government of Gujarat hereby directs that each of the District Magistrates specified in the said schedule may also, if satisfied as provided in Sub-section (1) of the said Section 3, exercise within the local limits of his jurisdiction the powers conferred by the said Sub-section (1). So, unless he becomes the District Magistrate, he cannot exercise the powers under Sub-section (2) of Section 3 of PASA Act as the specially authorised District Magistrate.

4. In that view of the matter, Sub-section (3) of Section 20 of the Criminal Procedure Code cannot help the respondents in justifying the order passed by the Resident Deputy Collector, who was acting at the relevant time, as District Magistrate of Panchmahal.

5. Mr. M.R. Rawal further submits that these orders are of emergent nature inasmuch as these orders are for the purpose of preventing the activities prejudicial to the maintenance of public order. He submits that it is further necessary that the incumbent on the post of District Magistrate should exercise the powers. This submission though at the first blush appears to be attractive, it cannot be accepted because these powers are in fact, to be exercised by the State Government itself as provided in Section 3(1). However, as there are many Districts in the State, it would be very difficult to know about the circumstances prevailing or likely to prevail in each area of the District for the Government immediately and, therefore, the District Magistrate of each District is specially authorised to exercise the powers. These powers are to be exercised not ordinarily but after arriving at a subjective satisfaction that the activities are in any manner prejudicial to the maintenance of the public order. Even while delegating the powers to the District Magistrates or the Police Commissioners as the case may be, the State Government is required to consider the circumstances prevailing or likely to prevail in any area. When the emergent circumstances develop, there will not be total vacuum as in absence of any District Magistrate duly empowered for exercise of such powers, the State Government itself can exercise the power. Under the circumstances, this argument of the LAPP that the person in charge of the District Magistrate should exercise the powers cannot be accepted.

6. In that view of the matter, we are of the opinion that the arguments advanced on behalf of the respondents by Mr. M.R. Rawal cannot be accepted and there is substance in the contention raised on behalf of the. detenus and we hold that Shri D.P. Patel, the Resident Deputy Collector, who was at the relevant time in charge of the District Magistrate, Panchmahal (Godhra) had no powers u/s 3(2) to pass the impugned orders of detention and the aforesaid orders passed by him are without authority and are required to be quashed and set aside.

7. In the result, the petitions are allowed. The impugned detention orders are quashed and set aside. The detenus are ordered to be set at liberty forthwith, if not required for any other purpose. Rule is made absolute.