

(1994) 02 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 626, 627, 673, 674 and 743 of 1994

Dhanapala Ravindra Setty

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 16-02-1994

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3(2)
Constitution of India, 1950 — Article 22(5), 226

Citation : (1994) 2 ALT(Cri) 120 : (1994) 2 APLJ 111 : (1994) CriLJ 3486

Hon'ble Judges : P. Ramakrishnam Raju, J; M.N. Rao, J

Bench : Division Bench

Advocate : Duba Mohan Rao, Duba V. Nagarjuna Babu and G. Chandrasekhar Rao, for the Appellant; A.G., for the Respondent

Judgement

K.N. Rao, J.—Commonalty of questions of law and similarity of facts incline us to dispose of these five writ petitions by this common judgment.

2. Impugned in each of these five writ petitions is the order dated 26-11-1993 passed by the Collector & District Magistrate, Cuddapah under sub-section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers Dacoits Drug Offender Goondas Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No. 1 of 1986), hereinafter referred to as "the Act". In each of these five cases the Collector & District Magistrate was satisfied that each of the Detenus was indulging in activities prejudicial to the maintenance of public order and therefore detention until further orders was necessary. Each of the detenus was supplied with a copy of the grounds of detention :

3. On 27-12-1993, the Advisory Board, constituted under the Act, expressed its opinion that there is sufficient cause for detention of the person concerned. The Government confirmed the orders of detention on 7-1-1994 and fixed the period of detention as one year reckoning from the date of detention.

4. One common ground mentioned by the detaining authority in all the five cases

is that on 20-11-1993 spurious liquor was supplied for public consumption by the concerned detenu in Mydukur town, as a result of which 97 persons were hospitalised and 24 of them died.

In respect of that incident, a crime was registered by the Mydukur police. It is also recited that "chemical analysis revealed that the spurious liquor contained methyl alcohol. This incident has disrupted the public life in large scale and spread panic in the minds of the people."

5. Several contentions are raised by Sri Duba Mohan Rao, learned counsel for the petitioners in support of his plea that the detention orders are unsustainable in law. We feel it unnecessary to advert to all the contentions for the reason that so far as the ground relating to the incident that happened on 20-11-1993 is concerned, the writ petitions must succeed.

6. "Boot-legger" is defined by Clause (b) of Section 2 of the Act as meaning a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing."

7. The categories of persons in respect of whom an order of prevention of detention can be made, are specified in Section 3 of the Act. They are - bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders, and land-grabbers. Sub-section (1) of Section 3 confers power on Government to direct detention of any of the above categories of persons if the Government are satisfied that any of them has acted in any manner prejudicial to the maintenance of public order. The District Magistrate and the Commissioner of Police also are empowered to exercise the powers of the State Government, provided that the power is delegated by the State Government 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. (Vide sub-section (2) of Section 3).

8. Clause (a) of Section 2 says that "acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to adversely, the maintenance of public order. The Explanation to Clause (a) says that public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities, of any of the persons referred to in this clause directly, or

indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health.

9. If consumption of spurious arrack sold by a bootlegger results scale deaths and hospitalisation of the persons who consumed the same, certainly it becomes an act resulting in widespread danger to public health. The essential link between the sale of spurious liquor and the resultant deaths or hospitalisation is the report of the Chemical Analyst disclosing that harmful substance was mixed with the arrack allegedly sold.

10. In the ground relating to the incident that happened on 20-11-1993, it is no doubt stated that the chemical analysis revealed that the spurious liquor contained Methyl alcohol, which is undoubtedly a harmful substance, but the report of the Chemical Analyst was withheld. This is clearly admitted by the learned Advocate-General. If the ground is that the detenu has sold spurious liquor he is entitled to be supplied with a copy of the report of the Chemical analyst, which constitutes a part of the factual material. Article 22(5) of the Constitution ordains that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earlier opportunity of making a representation against the order.

11. "Grounds" include not only the conclusions of facts but also the factual material and the factual inferences drawn from the material. (Vide Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, .

12. Failure on the part of the detaining authority to supply the report of the Chemical analyst to the detenus is a factor which undoubtedly vitiates the detention.

13. The tragedy in Mydukur referred to in the incident relating to 20-11-1993 was not handled by the authorities concerned in an effective manner permitted by law. The sale of arrack is banned statutorily. The enthusiasm shown in creating public awareness about the ban on arrack should match the enthusiasm in implementing the ban successfully in a purposeful manner. If either of the two is absent public interest will undoubtedly suffer. When judicial review is not available on substantial grounds in matters relating to preventive detention, procedural aspects are subjected to strictest possible judicial scrutiny when the power of judicial review is exercised by this Court under Article 226 of the Constitution of India. Of late, too many cases of non-application of mind on the part of the concerned authorities are coming up for judicial review before this Court. We do not want to say anything more on this aspect.

14. For the foregoing reasons, the order impugned in each of the writ petition is quashed and all the five detenus - Dhanapala Kullayya Setty (W.P. No. 627/94), Dhanapala Yugendra Setty (W.P. No. 673/94), Dandu Nagomunaian (W.P. No.

674/94), Dandanapala Jayaputhrudu (W.P. No. 743/94) and Dhanapala Ravindra Setty (W.P. No. 626/94) shall be released forthwith from the District Jail, Musheerabad at Secunderabad, if they are not required in connection with any other case.

15. The writ petitions are accordingly allowed.

16. Petitions allowed.