
(2005) 01 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 19668 and 19669 of 2004

Doddi Sharada and Another

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3, 3(1)

Citation : (2005) 2 ALD(Cri) 60 : (2005) 1 ALD(Cri) 408 : (2005) 2 ALT 244 : (2005) 1 APLJ 328 : (2005) CriLJ 1916 : (2005) 2 RCR(Criminal) 313

Hon'ble Judges : V. Eswaraiah, J;G. Yethirajulu, J;Bilal Nazki, J

Bench : Full Bench

Advocate : G. Sadanand and Satish Kumar Varma, for the Appellant; A.G., for the Respondent

Judgement

Bilal Nazki, J.—These Habeas Corpus petitions are coming before us by virtue of an order of a reference made by a Division Bench on 29-11-2004. The Division Bench expressed inability to follow earlier two Division Bench judgments of this Court in N. Rami Reddy Vs. Govt. of Andhra Pradesh and Others,) and M. Laxmi Bai Vs. Commissioner of Police and Others,).

2. One of the grounds taken in these petitions is that the report of the Chemical Analyst with regard to the seized liquor did not give the percentage of different constituents of the liquor seized, therefore, the order of detention could not be sustained.

3. We are taking W.P.No. 19668 of 2004 for the purpose of referring to the material facts. The detenu, in this case, was detained by virtue of an order passed by the District Magistrate under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act"). It appears that liquor was seized from the detenu on various occasions and various cases were registered against him. In some of the grounds, it was stated by learned

Magistrate that the sample of I.D. Liquor drawn from the contraband seized was sent for chemical analysis and the Government Chemical Examiner reported in his C.E report that the sample was illicitly distilled liquor, unfit for potable purpose. We have seen some of the reports of the Public Analyst, which have been produced by learned Government Pleader appearing for the Advocate-General.

4. One of the reports reads as under

"Prohibition and Excise Department, Andhra Pradesh Laboratory Analysis Report 8944/2001.

The sample (s) of Liquid received with correct and intact from Prohibition and Excise Inspector, Stn. Charminar, in his letter Dis.No. 104/2001-2002, dated 16-8-2001 has/have been tested in this Laboratory with the following results:

S.No.	Description of Sample	%Proof	Spirit	Remarks
Hydrometer	Strength	Degrees		
10236	A colourless liquid with sediment 66.0 U.P. SI.Nos. 10236 and having characteristic odour 10237 are illicitly measuring 120 ml each in 3 sachets distilled liquor unfit kept in a paper cover and sealed. for potable purpose. Cr. No. 104/2001-02 Code No. 103/ CHMR/2001	10237	A colourless liquid with sediment 65.4 U.P. having characteristic odour measuring 120 ml each in 3 sachets kept in a paper cover and sealed. Cr.No. 104/2001-02 Code No. 103/1/ CHMR/2001	

Tests conducted (SI.Nos. 10236 and 10237)

1. For Alcohol: Positive
2. For Acidity : Positive
3. For Fusel Oil and allied Impurities: Positive
4. For Methanol: Negative

Sd/ Government Chemical Examiner of Prohibition and Excise, Regional Prohibition and Excise Laboratory.

Sd/- Chemical Examiner

5. Learned counsel for the petitioners submits that under the column of tests conducted, the report for alcohol, acidity, fusel oil and allied impurities it is stated positive and for methanol it is stated that sample is negative, but it has neither

given the percentage of alcohol nor the percentage of acidity, nor the percentage of fusel oil or allied impurities, therefore, this was an irrelevant report for being taken into consideration by the District Magistrate. Since the grounds were not separable, therefore, on this ground alone, the detention could be quashed. Percentage of different constituents of alcohol is a necessary input to be considered by the detaining authority for reaching to subjective satisfaction as to whether there was imminent danger to public health and as to whether the detention of the person was necessary. In this connection, he relies on the judgments of this Court referred to hereinabove. Before coming to those judgments and the other judgments cited at the bar, it will be necessary to have a look at the Act itself.

Section 2(a) of the Act reads as under:

"(a) "Acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, dacoit, 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 affect adversely, the maintenance of public order"

Explanation to Section 2(a) of the Act reads as under:

"For the purpose of this clause 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."

Section 3 (1) of the Act lays down-that .

"If the Government was satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber 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."

6. So it is necessary to prevent a person from acting in any manner prejudicial to the maintenance of public order.

7. Public order in terms of the Explanation to Section 2(a) of the Act would also include persons who cause harm and danger to public health. Therefore, if the Magistrate is satisfied that the activities of a person are danger to the public health, he is authorized to order detention of such person.

8. The question would be, in order to come to a subjective satisfaction as to whether an activity of a person would cause danger to public health, it would be necessary for that authority to know what was being sold or distributed by a person was fit for human consumption or should he also know what percentage

of the ingredients which it contained were harmful to the human beings in consumption. In our view, the mere production of illicit liquor is danger to public health. But because of the definitions in Section 2 of the Act and then the power u/s 3 of the Act, it would be difficult for a detaining authority to detain a person merely on the ground that such person was dealing with illicit liquor, because he has to satisfy himself that the illicit liquor would cause danger to public health. So mere production, distribution or sale of illicit liquor may not be a relevant ground for a detaining authority to detain a person, but if he is satisfied on the basis of material before him that such illicit liquor would cause danger to public health, then, in our view, the ground would be relevant.

9. Learned counsel for the petitioners has drawn our attention to various judgments on the question of subjective satisfaction, which the authorities under detention laws are required to record.

10. In Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, while dealing with Article 22(5) of the Constitution of India, the Supreme Court noted that there were two facets to this Article and the following observation of the Supreme Court would be profitable.

"It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision that (but also) the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions."

11. In Ayya alias Ayub Vs. State of U.P. and Another, , the Supreme Court held that the non-application of mind by the detaining authority would be a ground for setting aside the detention.

12. Learned counsel for the petitioners relied on another judgment reported in Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, . This judgment laid down that the subjective satisfaction of the detaining authority should be reasonable. In para 5 of the judgment, the Court held that:

"Before deciding the contention raised by the petitioner, it is to be reiterated that the preventive detention is not a punitive act and it is not an alternative to criminal trial under the law. It does not empower the authority to punish a person without trial. Its purpose is to prevent a person from indulging in activities, such as smuggling and/or such other anti-social activities as provided under the preventive detention law."

13. Then it referred to various judgments. In para 21 of the judgment, the Court held that:

"Though, no doubt, the Courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal re-appreciating the materials, yet since an order of detention in prison involves the fundamental right of the citizen, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the respondents as to the decision arrived at and it is open to the Courts to see whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted to and considered."

14. Now coming to the question at hand, we will refer to the two judgments of this Court, first one being N. Rami Reddy Vs. Govt. of Andhra Pradesh and Others, . This judgment relied on the earlier Division Bench judgment of this Court reported in Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool and Ors. 1995 (1) ALT 58 (D.B.) (A.P.). In Boya Chinna Subbarayadu's case, against the detenu, an order of detention was passed on the ground that he was in possession of fermented wash and illicitly distilled liquor. The report of the Government Chemical Examiner for Excise was that it contains the following:-

"The fermented wash referred to in ground No. 1, according to the Chemical Examiner's report "when chemically tested" disclosed:-

1. Test for Ethyl Alcohol ...Positive
2. Test for Sugars ...Positive

With regard to the raid referred to in ground No. 2 the seized liquor according to the Chemical Examiner's report is illicitly distilled liquor and on subjecting the same to the chemical analysis, the test yielded the following:-

1. Test for Ethyl Alcohol ...Positive
2. Test for Fusel Oil ...Positive
3. Test for Acidity ...Positive".

In Para 10 of the judgment, the Court held that:

"From a reading of the relevant paragraphs of the Excise Manual it is clear that the presence of fusel oil in liquor by itself is not injurious to health. Only when fusel oil is separated from the liquor and consumed in large quantities either by human beings or animals, it will prove injurious. What is the permissible level of the fusel oil is not mentioned in the Excise Manual, nor do we get if from the report of the Chemical Examiner. Unless it is stated in the report of the Chemical Examiner that the seized liquor from the premises of the petitioner contained fusel oil in impermissible limits so as to cause grave or widespread danger to life or public health, the detaining authority will not be justified in ordering the

detention on the ground that the detenu is acting in a manner prejudicial to the maintenance of public order."

15. The second judgment being *M. Laxmi Bai Vs. Commissioner of Police and Others*, . This also relied on the earlier judgments and at para 19 of the judgment the Court held that:

"In the earlier judgments of this Court, which were referred supra, It is held that in the absence of a specific allegation that the ID liquor seized from the detenu contained fusil oil or other impurities constituting grave or widespread danger to life or public health, it is not open to the detaining authority to order detention u/s 3 of the Act. But, the detaining authority is not taking note of those observations and making efforts to get a detailed opinion from the chemical analyst to substantiate the wording used in his report as to whether there was certain percentages of fusel oil or other impurities in the I.D. liquor and whether they constitute a grave or widespread danger to life or public health. The detaining authority is not supposed to impose his own opinion regarding the contents of ID liquor. Therefore, he has to rely on the reports of the analyst and when he is relying on such reports sweeping allegation at the end of the grounds of detention generalizing the method being adopted for the manufacturing of ID liquor that if anybody takes ID liquor with certain impurities they affect all the systems in the body, paralyse nervous system, damage digestive system etc., may not be sufficient to bring the detenu within the detention of the word "bootlegger" as defined u/s 2(b) of the Act".

16. Learned counsel for the petitioners also referred to the other judgments, on the subject, from this Court. The judgment reported in *E. Sumathamma Vs. The State of A.P. and Others*, is a Full Bench Judgment and earliest in point of time. The Full Bench was constituted in view of a Division Bench expressing disagreement with respect to law laid down in an earlier judgment reported in *C. Venkataiah v. Commissioner of Police* (1989 (3) ALT 230). In this case, the Division Bench had held that unless the satisfaction of a particular type covered by Section 3(1) of the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 was mentioned in the order of detention, the condition precedent for applicability of Section 3(1) of the Act was not satisfied and consequently, the order would be invalid. Same view had been held by another Division Bench of this Court in a judgment reported in *Shaik Shikinder Vs. The Govt. of A.P. and Others*, . Disagreeing with these two judgments, the matter was referred to the Full Bench. The Court disagreed with the earlier judgments. The allegation against the detenu in the case was that he had in his possession 753 nips of spurious liquor without any valid permits or licences. On that ground, the detaining authority assumed and arrived at the satisfaction that the same would constitute grave and widespread danger to "life and public health". The Full Bench stated that:

"As there is no danger to public health or life if a person stocks genuine liquor, it

cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act."

17. We have no difficulty in agreeing with the principle laid down in this judgment. In the case before the Full Bench, there was no report of any analyst with regard to liquor that had been seized. In our view, while this judgment was later on relied on some errors crept in and the Full Bench had never held that the District Magistrate should also know the percentage of the constituents of the liquor seized.

18. In *K. Chinnappa Reddy v. The District Collector* 1995 (1) ALT 454 (D.B.) (A.P.), there were three reports of the Chemical Examiner. Those reports were reproduced by the Court in its judgment. They are almost similar to each other. We are reproducing one of the reports as under:

"(1) GOVERNMENT OF ANDHRA PRADESH GOVERNMENT REGIONAL EXCISE LABORATORY, CHITTOOR

Form L ANALYSIS REPORT C.E.No.679/93-94

The sample (s) of Liquid/Substance received with seals correct and intact from the Principal District Munsif i/c of Addl. Judl. First Class Magistrate, Kadiri with his letter Dis.No.3016 dated 10-12-1993 has/have been analysed in this Laboratory and the results are as follows:

S.No.	Description of %Proof Spirit of the Sample	Hydrometer Strength	Remarks	Degrees
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Tests: (1) Test for Alcohol : Positive (2) Test for Acidity : Neutral Ph (3) Test for Fusel Oil : Within limits (4) Test for Methanol : Negative Sd/xxx Sd/xxx Laboratory Assistant, 10-12-93, Dt.10-12-1993 Government Chemical Examiner for Excise, Regional Excise Laboratory, Chittoor (A.P.)" 19. This report nowhere states that the sample was unfit for human consumption. Therefore, the Court noted in para 9 as under:				
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"There is nothing in any of the three reports of the Regional Excise Laboratory, Chittoor (A. P.) to show that the seized liquor, if consumed, would result in grave or widespread danger to life or public health."

20. Finally, the Court held that the reports of the Regional Excise Laboratory do not show that the arrack contains any harmful substances. Then it referred to an earlier judgment of this Court in W.P.No. 16671 of 1994, dated 17-10-1994 in which, this Court had held that:

"Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining

authority to order detention u/s 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under Article 22(5) of the Constitution is valid."

21. Learned counsel for the petitioners also relied on a judgment reported in *M. Prema Bai v. Commissioner of Police, Hyderabad* 2002 (2) ALT 487 : 2002 (2) ALD 529 (A.P.). This judgment is not relevant as the Court found that the authority concerned had not placed the information regarding the enlargement of the detenu on bail before the detaining authority.

22. In *N. Rami Reddy's* case (4 supra) the Court held that the percentage of different constituents of the sample must be mentioned by the Chemical Analyst, and the Chemical Examiner's report did not say that the sample was harmful and it contains substances, which would cause grave danger to life or public health. Although the report stated that the sample was unfit for human consumption, but the detention could not be upheld.

23. Learned Advocate-General has relied on a judgment reported in *Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others*, to convey that the sufficiency of the materials available to the detaining authority cannot be subject of scrutiny by the Court and while considering the writ petition of habeas corpus in a matter of detention, the High Court does not sit in appeal over the detention order.

24. He has also referred to the judgment reported in *Kanuji S. Zala Vs. State of Gujarat and Others*, . In para 5, the Supreme Court held that

"What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority."

25. For the same purpose, he has also relied on the judgment reported in *Smt. Phulwari Jagdambaprasad Pathak Vs. Shri R.H. Mendonca and Others*,

26. There is a judgment of this Court also in *B. Vijaya Kumar Vs. Secretary to Government, Government of Andhra Pradesh and Others*, The report of the Chemical Analyst in this judgment is similar to the report in the present case. In this case, the Public Analyst report was "the sample is substandard Indian Liquor in respect of alcoholic strength and it is unfit for human consumption as it contains lime suspended particles."

At para 6, it was observed that:

"The observation that the opinion of the expert should indicate that the liquor would cause widespread danger to life or public health, in terms of the judgment

in Subbarayudu's case, referred to supra *Boya Chinna Subbarayudu Vs. The Collector and District Magistrate, Kurnool and Others*,), was for the reason that no opinion was expressed as to whether the seized liquor was fit for human consumption. When the expert opinion is unambiguous and specific that it is unfit for human consumption, it is implied that the liquor would cause widespread danger to life or public health. It cannot be gainsaid that liquor unfit for human consumption would necessarily cause grave and widespread danger to life or public health if it is allowed to be sold in the State and consumed by the public at large. We are in agreement with the observation made in *Dhanraj's case* (*Dhanraj Singh v. Govt. of A.P. - W.P. No. 22143 of 1996, dated 26-11-1996 (D.B.)*) that if the report is indicative of the fact that illicitly distilled liquor is unfit for human consumption, it impliedly means that consumption of such a liquor would cause danger to life and public health. Following the judgment in *Dhanraj's case*, we are of the view that absence of the words "liquor is dangerous and injurious to the public health" in the report would not militate against the seized liquor, in the instant case, not having the effect of being prejudicial to the maintenance of public order".

At para 7, it was held that:

"From a plain reading of the definition, it is clear that the phrase "acting in any manner prejudicial to the maintenance of public order" takes in its fold the activity of a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land grabber, who is engaged or is making preparation for engaging any of its activities as such which affect adversely or likely to affect adversely the maintenance of public order. The explanation appended to the above definition clarifies that for the purpose of Clause 2(a), "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 person referred to in the said 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. What Mr. Venugopala Rao contends is both in Clause 2(a) as well as in the explanation, the word used is "activities" and in the instant case there is only one act or activity, therefore, neither Clause 2(a) nor explanation would cover the situation. We are afraid we cannot accede to the contention of the learned Counsel. Doing so, would be doing violence to the language of the explanation, for in the explanation, it is clearly mentioned "if any of the activities" and this is to clarify the phrase or the word "activity" used in Clause 2(a). This can only mean that even a single activity of a person referred to in Clause 2(a) would have the effect of acting in any manner prejudicial to the maintenance of public order. Even a single activity which falls within Clause 2(a) would be enough to bring the case within the ambit of Section 3(1) of the Act."

27. In the light of all these judgments, it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the

material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of Explanation to Section 2(a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material for the purpose of arriving at subjective satisfaction. In our view, it is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know as to whether the sample was injurious to health or not. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health.

28. For these reasons, we answer the reference in the terms mentioned hereinabove. Therefore, the writ petitioners are bound to fail on this ground. However, as the writ petitioners have raised some other grounds also, the writ petitions be listed before the Division Bench concerned for appropriate orders.