

(1958) 01 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 274 of 1955

Dulal Samanta

APPELLANT

Vs

The District Magistrate, Howrah and Others

RESPONDENT

Date of Decision : 13-01-1958

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(5), 19(6), 23
Criminal Procedure Code, 1898 (CrPC) — Section 107, 114
Police Act, 1861 — Section 1, 17, 19

Citation : AIR 1958 Cal 365 : (1958) 1 CALLT 271

Hon'ble Judges : P.B. Mukherji, J

Bench : Single Bench

Advocate : Sachindra Chandra Das Gupta and Nagendra Mohan Saha, for the Appellant; Nirmal Chandra Chakravarty and D.N. Basu, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukherji, J.—This is an application under Article 226 of the Constitution. The petitioner is Dulal Samanta. He asks for a writ of mandamus restraining the operation of the order dated 28-7-1954, by which the District Magistrate of Howrah informed him:

"You are hereby appointed special Police Officer u/s XVII of the Police Act (Act V of 1861) for a period of 6 months from date in respect of the place mentioned in the schedule given below". The schedule which follows mentions the place of duty as from Chengail bridge to Kalsapa Railway Bridge, Uluberia P. S.

2. As will be seen this period of six months expired in January, 1955. The petition to this Court under Article 226 of the Constitution was made on 25-1-1955 and a Rule was obtained on that date. This was about three days before the expiry of the period of six months for which the petitioner was appointed as a special police officer. Since then the time has long expired. From that point of view there is no utility of this application today. The reason why the application is being pursued today is that certain prosecutions were launched under the Police Act

and those prosecutions are now pending against the petitioner. If he succeeds in this Rule, then those prosecutions would fall. One should have thought that the prosecutions should have been before the Magistrate dealing with these proceedings and, if unsuccessful there to move this High Court by way of criminal revision and not by an application under Article 226 of the Constitution.

3. The short facts of this case may be stated here for a better appreciation of the points involved in this application. The petitioner is a resident of village Dasbhaga in Ulubcria in the district of Howrah where he cultivates 2 1/2 bighas of land a part of which is used as a Pan Baroj. According to him the income from the land is not enough and he, therefore, works as a day labourer by selling green vegetables. The petitioner's family consists of six members and he is said to be the only adult male earning member. In March 1954 the District Magistrate of Howrah served a notice upon him appointing him a special police officer u/s 17 of the Police Act for a period of three months from that date to watch the railway track of the Eastern Railway from Chengail bridge to Kalsapa railway bridge and to report to the officer in charge of Ulu-beria police station. It is said that the petitioner protested because he had to perform duty every day from 8 P. M. to 10 P. M. and 10 P. M. to 4 A. M. on alternative days. He complained that this adversely affected his health and he, therefore, asked for exemption from police duty by his applications dated the 15th April and the 5th May 1954. To complete his story he says that his wife was ailing and required nursing. The District Magistrate referred his applications for exemption to the Superintendent of Police, Howrah, who by his order dated 27-11-1954 rejected his prayer and said that the officer in charge should take action u/s 19 of the Police Act in case the petitioner failed to perform his duty. According to the petitioner he was not exempted and his duty continued for a period of three months but he admits that he made one default for which he was prosecuted and fined within that period.

4. Thereafter on 28-7-1954 a fresh order u/s 17 of the Police Act was issued by the District Magistrate for identical duties to be performed for a period of six months. It is needless to add that such service is unpaid and without any remuneration. It is one of the Civic burdens of Citizenship. It is this particular order against which the petition has been moved when almost all the time for duty had expired except three days. But within that time the petitioner failed to perform his duties and made defaults as a result of which 8 prosecution cases had already been started u/s 19 of the Police Act, one such prosecution was fixed for hearing on 27th, four on the 29th and three on 31st January 1955. It was just before these prosecutions came to be heard that this application was made to this Court. The petitioner says that he has been threatened with 20 other prosecution cases for default in the discharge of duty under the Police Act as a special police officer.

5. The complaint of the petitioner against the order of the 28-7-1954 appointing him as a special police officer under the Police Act may be analysed under different heads. It is said in the first instance that this compulsory conscription

interferes with the petitioner's liberty to carry on his Own occupation and business and is, therefore, an undue restraint upon the fundamental right guaranteed by the Constitution. In other words, he says that this conscription is in violation of Article 19(1)(g) of the Constitution and not justified by reasonableness under Sub-clause (6) of that Article of the Constitution, Secondly, he complains that this is "forced labour" and claims protection under Article 23 of the Constitution which prohibits traffic in human beings and bogar and other similar forms of forced labour. Thirdly, he contends that the requisite conditions u/s 17 of the Police Act under which his appointment was made did not exist in the locality and, therefore, his appointment as a special police officer under that Act was ultra vires the statute.

6. There is also the allegation in this petition that the conscription for police service interferes also with his right of free movement in India under Article 19(1) (d) of the Constitution and that it also interferes with his personal liberty under Article 21 of the Constitution.

7. On an analysis of these objections it will be found that they may be classified under three different topics. The first relates to statutory conditions under the Police Act not being satisfied so that the appointment is illegal and ultra vires the statute. The second relates to the Police Act being itself ultra vires the Constitution and the thud relates to the question of unconstitutionality under Articles 19, 21 and 23 of the Constitution.

8. Before proceeding to decide these questions it will be proper to refer to the affidavit of Shri S. Mulli"ck, the District Magistrate, on behalf of the respondent Government and who in fact made the order appointing the petitioner to be a special police officer under the Police Act. In describing the facts and circumstances in which the applicant came to be appointed as a member of the Special Police, Howrah, he says that the Superintendent of Police, Howrah, sent a list recommending the appointment of as many as 176 persons as members of the Special Police of the district of Howrah u/s 17 of the Police Act. In the Memo. No. 2257-E dated 3-3-54 the Superintendent of Police recommended the appointment on the ground that the police force ordinarily employed for the preservation of peace in the locality mentioned in the schedule was not adequate and accordingly the appointments recommended by him were necessary besides being reasonable for maintenance of peace and tranquillity of the areas mentioned in that list. The name of the petitioner along with many others was included for the appointment as special police officers and he was to perform his duty under the Uluberia Police station, it is said that accordingly the respondent accorded his approval to the- appointment of the petitioner by his office Memo. No. 1075 (176) G dated 17-3-54 for a period of three months. Subsequently the applicant applied on 5-5-54 praying for exemption from duty of a Special Police Officer. This application was sent to the Superintendent of Police. Howrah, for a report under the District Magistrate's order. His application was then sent to the officer in charge of the Uluberia police station for enquiry and report. The officer

in charge of the Uluberia police station reported that the petitioner was "a notorious railway criminal"" and he was appointed as a Special Police Officer to perform duty between Chengail bridge and Kalsapa railway bridge with the Chengail police force. He was performing the duty. The report also said that the petitioner was an active young man and he performed duty at night. The report also said that the petitioner was at liberty to perform any work during the day time and there was no reason to exempt him from police duty. Accordingly the applicant's prayer for exemption was rejected by the District Magistrate on that report. As the term of the appointment of the applicant expired on 17-6-54 the Superintendent of Police, Howrah, submitted fresh recommendations of reappointment of those persons for a further period of six months. On the basis of this recommendation District Magistrate approved the proposal by his office Memo. No. 3548 (176-G) dated 28-7-54 and accordingly the applicant was reappointed along with others under the said order for a further period of six months.

9. Speaking on the petitioner's application dated 15-4-1954 for exemption from police duty the District Magistrate's affidavit shows that this application along with seven other applications received from different persons was forwarded to the Superintendent of Police, Howrah. Of those applications the Superintendent of Police considered the case of one Kalu Mia favourably because he had submitted a medical certificate from the Assistant Surgeon of the Howrah General Hospital and, therefore, Kalu Mia was exempted from performing his duty. The petitioner, it is said, submitted no medical certificate about his alleged ill health or even that of his wife.

10. It is said in the affidavit of the District Magistrate that the petitioner failed to perform his duty as a Special Police Officer and, therefore, rendered himself liable to the penalty imposed under the Police Act, 1861. He was prosecuted and convicted on 8-12-54 and fined Rs. 5/- in default to undergo rigorous imprisonment for seven days, by a Second Class Magistrate of Uluberia. It is the further case of the District Magistrate in his affidavit that as the term of these appointments expired on 16-6-54 and as the disturbed conditions of the areas concerned justifying the said appointments still persisted the Superintendent of Police, Howrah, sent fresh recommendations for re-appointment of these persons for a further period of six months. It is on the basis of these recommendations that the respondent approved the appointment of the applicant along with others on 28-7-1954. It is said by the District Magistrate in his affidavit that the applicant was found absent from duty on eight occasions between 2-12-54 and 20-12-54 and eight prosecution cases u/s 19 of the Police Act, 1861, were started against him for absence from duty on different dates. The next fact which is stated in the affidavit of the District Magistrate is that the petitioner lives within a mile and a half from the nearest area of disturbance. As many as 176 persons including the petitioner were appointed as Special Police Officers and there was no question of any discrimination against anybody. It is said by the Magistrate in his affidavit that in 1953 the total number of wagon breaking cases

reported from the old Bengal Nagpur Railway falling within the Howrah district were 79 and no specific cases could be started for want of sufficient data in respect of other 220 cases. There were five cases of rioting arising out of such crimes and the local patrol party employed for duty to prevent such tampering with railway wagons had to resort to thing in three such cases. In the same area there were 70 railway thefts of other categories. The area covering this section extends up to the 35th mile from Howrah Station including the Chengail area wherein the services of the petitioner & others have been requisitioned for the maintenance of the public peace and order to supplement the police force ordinarily employed there. Accordingly the District Magistrate justified his appointment under the Police Act on those considerations and facts.

11. I shall take up first the objections to this appointment under the statute. The appointments have been made u/s 17 of the Police Act of 1861 (Act V of 1861). Before actually discussing requirements of Section 17 of that Act under which the appointment is made a broad conspectus of the statute is necessary. The preamble of the Police Act says that it was expedient "to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime"; The peculiarity of this Act is that u/s 46 it did not come into operation by its own effect. Section 46 provides that this Act shall not by its own operation take effect in any Presidency, State or place, but the State Government by "an order being published in the official gazette may extend the whole or any part of the Act to any Presidency, State or place and the whole or such portion of the Act as shall be specified in such order shall thereupon take effect in such Presidency, State or place. It provides also that when the whole or any part of the Act shall have been so extended, the State Government may from time to time by notification in the official gazette make rules consistent with this Act to regulate the procedure to be followed by Magistrate and police officers in the discharge of any duty imposed upon them by or under this Act. There are various provisions in the Act and it is only necessary to mention the relevant provisions for the purpose of this application. The Act gives power to employ additional police officers at the cost of individuals u/s 13 of the Act, to appoint additional force in the neighbourhood of railway and other works u/s 14 of the Act, to quarter additional Police in disturbed or dangerous districts and to appoint special police officers u/s 17 of the Act. The necessary notification in this case relating to Burdwan and Rajshahi Division within which the area falls has been produced before this Court. This Notification is No. 1871 dated 11-4-1862 (published in the Calcutta Gazette of 1862, page 1382) and is to be found at page 85 of Volume II of the Bengal Local Statutory Rules and Orders 1924. The Burdwan Division mentioned there expressly includes Burdwan, Hooghly and Howrah.

12. Section 17 of the Police Act provides:

"When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for its

preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace was occurred, or is apprehended, it shall be lawful for any police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police officers may require to act as special police officers for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application".

It is plain on the language of that section that power to appoint special police officers is circumscribed by certain conditions. The first is whether there is actual or apprehended (a) any unlawful assembly Or (b) riot or (c) disturbance of the peace. It is significant that not all crimes are mentioned nor all offences, but only three are specified by name and they being unlawful assembly, riot and disturbance of the peace. The second condition under this section is that the police force ordinarily employed for preserving the peace is not sufficient. The third condition is that the appointment is limited to the residents of the neighbourhood where the unlawful assembly or riot or disturbance of the peace has occurred or is apprehended. The fourth condition is that such appointment is thought to be necessary for the preservation of peace and for the protection of the inhabitants and the security of property in the particular place. When these conditions exist a police officer not below the rank of an Inspector has to make an application to the nearest Magistrate to appoint as many of the residents of the neighbourhood as such police officer thinks necessary. The application is to be made to the Magistrate who may not comply with the application if he sees cause to the contrary, but if he does not, then he has no other option but to comply with the application made to him for making the residents special police officers u/s 17.

13. Now, the first objection of the applicant on this section is that the main reason why special police officers were appointed in this locality was that there were a large number of railway wagon breaking cases and railway thefts. It is contended that they are not the crimes and offences for which special police officers are intended to be appointed u/s 17 of the Act. It is clear that petty cases of offences or even serious crimes such as murder by themselves would not be enough justification for appointing special police officers u/s 17 of the Act. The three offences mentioned in Section 17 of unlawful assembly, riot and disturbance of the peace appear to indicate that such appointment of police officers should be made only when and where the public peace or tranquillity is threatened or disturbed. Therefore, the crimes or offences must be of such a nature that public peace or tranquillity is threatened. The offences specified in that section of unlawful assembly, riot or disturbance of the peace seem to indicate that construction. On the affidavits it cannot be denied that there was disturbance of the peace. In fact, paragraph 18 of the District Magistrate's affidavit shows that there were five cases of rioting arising out of a large number of wagon breaking cases and in fact the local patrol party employed for duty to

prevent such tampering with the railway wagons had even to resort to firing in three such cases. On those facts I am satisfied that the condition of "disturbance of the peace" as specified in Section 17 of the Act existed to justify the appointment of special police officers. I need only add that rioting is a specific offence mentioned in Section 17 of the Act. The fact here is that there were five rioting cases leading to firing. Therefore one of the conditions of the Statute is satisfied in this case.

14. The second objection on this section is a mere important one. Now, it is being said on behalf of the respondents and even alleged in the affidavit in opposition that the petitioner is "a notorious railway criminal". Now, if that be so, the question arises whether u/s 17 of the Police Act a notorious railway criminal can himself be appointed as a special police officer. The preamble of the statute says that the Act was necessary to reorganise the police and to make it a more efficient instrument for prevention and detection of crime. If criminals were to be appointed as special police officers under the Act, then far from being efficient instrument for prevention & detection of crime, it may result in widespread dissemination and encouragement of crimes. I have very little doubt in my mind that the cause of the Act is not served by appointing undesirable persons as special police officers u/s 17 of the Act.

15. The matter, however, requires more than a passing reference. It is necessary at this stage to notice three cases: Gopinath Paryah and Others Vs. The Empress (A), Beni Madhab Singh Vs. The Emperor (B) & Radhakanta Lal Vs. The Emperor (C). In Gopinath Paryah's case (A) a Division Bench of this Court comes to the conclusion that the only legitimate object for appointing special police u/s 17 of the Police Act is to strengthen the ordinary police force by the addition of suitable persons to their number when the ordinary force finds itself too few to meet an emergency. It was there held that in a case of dispute as to proprietary rights it was an abuse of the law and an act of oppression to appoint an active man on one side as special constable under this Act in order to prevent from asserting their alleged rights and so to give an advantage to the opposite party. In Beni Madhab Singh's case (B) the statutory condition of Section 17 of the Police Act was emphasised to show that the circumstances to justify the appointment of a special police officer would be disturbance of the peace and the inadequacy of the ordinary police force. It was held there that in the absence of such circumstances an order u/s 17 of the Police Act was improper and there should be no conviction of persons appointed special constables for disobedience of the same. In that case what was attempted to be done was to appoint the petitioner as a special constable because the police thought that they were concerned with a dispute relating to certain lands and which dispute was likely to lead to a breach of the peace. A Division Bench of Rampini & Sharfuddin JJ. quashed the convictions u/s 19 of the Act, In Radhakanta Lal's case (C) a Division Bench of the same Judges emphasised that the disturbance of the peace and inadequacy of the ordinary police force are necessary conditions for invoking Section 17 of the Police Act The Court held that the appointment of the petitioner in that case

as a special constable was unnecessary and inexpedient and that the petitioner should not be prosecuted u/s 19 of the Police Act for his refusal to act in accordance with such appointment. In that case the petitioner had a dispute about property with a lady named Najima Begum, who, he alleged was the mistress of his father then dead. The Court came to the conclusion that it was entirely that dispute and not any riot or general disturbance of the peace which led to his being appointed a special constable. In fact, the Court proceeded to say that if the Magistrate apprehended that the petitioner was about to commit a breach of the peace, he could have instituted proceedings against him u/s 107 Cr. P. C., but the orders appointing him a special constable were entirely unnecessary and inexpedient. The Court set aside the order for prosecution in that case although the prosecution was launched u/s 19 of the Police Act.

16. It remains for me to notice one other case, the case of Pardip Singh v. King-Emperor, reported in 20 C .W. N. 835: (AIR 1916 Cal 263)(D). In that case the facts are interesting. The petitioners lived in four villages adjoining two ferries. The ferry farmers complained that there had been riotous disturbances over their use of the ferry and in consequence proceedings were instituted against thirteen of the petitioners u/s 107 of the Code of Criminal Procedure for the purpose of binding them down to keep the peace. During the pendency of those proceedings the ferry farmers again complained that the villagers did not allow them to ply the ferry and prayed that certain persons named by them should be made special constables. The names given included the names of the petitioners. The District Magistrate directed the District Superintendent of Police to depute an Inspector to enquire into the matter intimating at the same time his willingness to appoint special constables. The Inspector reported that the disturbances had been due to the enhancement of the ferry tolls and he recommended that the persons named by the ferry farmers should be appointed as special constables. In other words, these who were bound clown u/s 107 Cr. P. C. to be of good behaviour were appointed as special constables. The Division Bench of Sharfuddin and Chapman JJ. in that case came to the conclusion that

"the only legitimate object of appointing special constables is to strengthen the ordinary police force by the addition of suitable persons".

17. At the other extremity is the case of Kulo Singh and Others Vs. Emperor, (E). Macpherson J. in that case comes to the conclusion that it is certainly not a disqualification u/s 17 of the Police Act that a resident of the neighbourhood is influential or respected. Neither is it necessarily a disqualification that he is of mature years, judgment and discretion. There was the plea of old age in that case the allegation being that persons of 60, 65, 70, 75, 80 and 85 years of age were appointed as special constables. It was there said that that was an objection which could be taken before the Magistrate and not in revision before the High Court. The importance of this case, however, lies in the fact that it was contended in that case that the appointment of the petitioners as special constables was not warranted by Section 17 of Police Act on the ground that the

petitioners were neck-deep in the anti-Government movement so that they could reasonably be called upon to perform functions contrary, to the policy which they had been advocating and generally that the Magistrate's order being made with an object that was illegal in particular in respect of five of them who being old men were unfit to be made special constable so that their appointment must have been punitive, the prosecution had no basis in law. In fact the argument was:

"that the whole of the community to which the petitioners belong residing within the locality are engaged in the present political movement which has resulted in wholesale resignations of choukidars and extensive propaganda for non-payment of Choukidari tax".

In fact, Babhans who were regarded as the most terrorising people in the sub-division of Begusaral were in that case attempted to be enrolled as special police officers u/s 17 of the Act. In that case the appointments were upheld on the ground that there was no real proof that the appointment was at all punitive or improper or made with unjustified motive and it was found on the fact that prima facie it was a straightforward effort to secure the assistance of leading and influential men whose authority was likely to be respected by the villagers in the preservation of peace.

18. The reason why I have referred in detail to these cases is not only because they were cited at the bar but also to elucidate the more important question concerning the class of persons who are primarily intended to be appointed special police officers u/s 17 of the Police Act. The express statutory requirement is that he has to be a resident of the locality in which the disturbance has occurred or is threatened. A non-resident, therefore, clearly is not a proper person to be appointed special police officer u/s 17 of the Act, But then the I question remains what kind of a non-resident (resident?) should he be? Can he be a person who is a criminal himself or can he be a person who by reason of physical and mental infirmity is incapable of discharging the duties expected of him under the Act? The Calcutta cases to which I have drawn, attention seem to be of the view that the person appointed must be a suitable person. I do not consider that a criminal is a suitable person. Appointments of criminals to be special police officers under the Police Act in my opinion do not make either for efficiency or even serve the primary object of reducing the crimes mentioned in Section 17 of the Act. It may gravely imperil the morale of the people and the police alike.

19. The question then is of the application of that rule to the facts of this case. It leads to a situation which is not without humour in the present case. The affidavit of the District Magistrate said that the report showed that the petitioner was "a notorious railway criminal". In the affidavit in reply the petitioner naturally has vehemently disputed that report. In fact, he has said that

"the quotation of the report of the Officer-in-charge Uluberia describing your

petitioner as a notorious railway criminal is not only hearsay but a mere opinion without any foundation of truth; there had never been any conviction against your petitioner for any such alleged offence to justify the said unwarranted report".

If I accept the District Magistrate's version that the petitioner is a notorious railway criminal, then I should hold that his appointment as a special police officer was not the appointment of a suitable person u/s 17 of the Act and must, therefore, be set aside. If I accept the applicant's own version about himself, then I must hold that he is quite an honest citizen who carries on a lawful avocation and as such, his appointment as a police officer u/s 17 of the Act being a resident of the locality was justified. Mr. Das Gupta appearing on behalf of the applicant has contended before me that as the Government has appointed the applicant on the basis that he was a notorious railway criminal, the appointment must in any event be set aside because the basis of the Government's decision is wrong. I am unable to accept that submission. The Government may be right in the assertion that it makes. In this case it is an excessive assertion beyond doubt. Obviously there is no conviction against the applicant. All that was a suspicion that some how or other the applicant was involved in the railway wagon-breaking cases but the prosecution launched against him on that ground did not succeed. If the Government appoints the petitioner although mistakenly describing him to be a criminal who in fact is not found to be a criminal, then I do not think that appointment was bad. After all, what Section 17 requires is that a suitable person should be appointed as special police officer and so long as he is in fact suitable, the appointment cannot be bad on the ground that the Government proceeded on a different basis or a mistaken view of that fact I shall, therefore, take the applicant at his own words and hold on that ground that his appointment cannot be challenged.

20. Reference has been made to the Police Regulations. Regulation 674 (a) (i) provides:

"Special police officers should be appointed u/s 17 of the Police Act, 1861, only to meet cases of sudden emergency and, therefore, only for the time during which the special cause of disturbance exists, e. g. during a religious festival or during the existence of a flood which may lead men to cut an embankment which it is essential to preserve.

(ii) Special police officers should not be appointed when there are disputes regarding rights in land which have to be settled in the civil courts. In such cases, if the locality is in a disturbed or dangerous condition and if the ordinary preventive sections of the Code of Criminal Procedure are found to be insufficient for the maintenance of peace, it may be necessary to appoint additional police u/s 15, but not special police u/s 17 of the Police Act, 1861".

21. On the basis of this Regulation it has been urged that special police officers can only be appointed where there is (1) a religious festival or (2) existence of a

flood. That is obviously quite an untenable argument. Those two instances are illustrative under Rega. 674. They cannot either enlarge or cut! down the statutory conditions laid down in Section 17 of the Police Act. Those conditions are quite clear and they are where there is an unlawful assembly or riot or disturbance of the Peace either happening or threatened. The mention, therefore, in Regulation 674 of a religious festival or flood does not in the least alter or affect the construction of Section 17 of the statute.

22. Regulation 675 (a) provides:

"The Provincial Government has a right to call on any resident in the immediate neighbourhood to assist the police in the discharge of their legitimate duty of preserving the public peace when any breach of it is threatened; but it is not right to appoint the ring leaders of contentious factions as special police officers for the purpose of humiliating them in the eyes of their neighbours. It would, however, be reasonable so to appoint them during a time of excitement on the ground that it is desirable to select leading and influential men whose authority is likely to be respected by, .the mass of the population because their presence, while employed in patrolling the streets or on other duties assigned to them by the police in matters of watch and ward, would show that they were engaged not in fomenting the disturbance but in using their influence to repress them." This Regulation is really in the nature of an instruction to the police for themselves. They represent the effect of some of the decisions of the Courts to which I have already made a reference.

23. Before leaving the consideration of Section 17 of the Police Act it is necessary to mention one other feature. It must be recalled that in 1861 when the Police Act came into force there was no Criminal Procedure Code and no provision like the present Section 107 or Section 144 of the Code of Criminal Procedure. It is, therefore, necessary that a liberal and broad construction should be given to the meaning of the words "disturbance of peace"" appearing in Section 17 of the Act. The Court should not be too astute to conceive limitations on the idea of "disturbance of peace" but must remain unfettered to decide on the facts of each case and determine whether in a particular case, disturbance of peace as commonly or ordinarily understood has taken place or is apprehended.

24. This disposes of the question of construction of the Police Act and the objections based thereupon to the present order.

25. The next objection is that the appointment of the applicant as a special police officer u/s 17 of the Police Act is ultra vires the Constitution on the ground that police is no longer a Central Subject but a State subject. This argument requires some elaboration. It is contended that entries 1 and 2 in State List 2 of the Seventh Schedule of the Constitution, "public order" and "police" are State subjects for legislation. Therefore, it is contended that the subject matter of the Police Act can no longer be a subject for Parliamentary legislation but can only be a subject for State legislation. The Police Act, 1861, was a Central Act at a time

when there was really no division of legislative powers and lists according to States. On this branch of the argument it is conceded that the Police Act, 1861, is a good and valid law with continuing force under Article 372(1) of the Constitution. The exact point which is made under this argument is that although the Police Act, 1861, continues in force Under Article 372(1) of the Act, no appointment now after the Constitution came into force could be made u/s 17 of the Police Act. In short, the argument is that Section 17 of the Police Act, 1861, is only an enabling section which empowers respective authorities mentioned therein to appoint special police officers and any act by such authorities like the Inspector or the Magistrate under that section done after the Constitution came into force would be in conflict with the Constitution. It is difficult to appreciate this branch of the argument, but in order to do justice to the contention raised before me I shall try to analyse it. Mr. Das Gupta appearing for the applicant has argued "hat the grantor of the power u/s 17 of the Police Act, 1861, was the Central Government. That grantor has now ceased to exist or has lost capacity. Therefore, he says that the grantees u/s 17 of the Act could no longer act became the original grantor, the Central Government could not act.

26. This argument suffers from all the defects of a mixed metaphor and a confused analogy. A statute is not to be regarded as a deed or document of grant. So long as a statute of competent authority and validity creates an institution and so long as the statute itself remains effective, the subsequent disappearance of the original legislative authority does not make the statute ipso facto inoperative. It is still less so when the Constitution by Article 372(1) expressly provides for the continuance of laws existing at the time of passing of the Constitution. A Statute is perpetual unless it is expressly or by necessary implication made temporary. Although this is a principle of statutory construction, the importation of the notion of a grant of authority from a grantor equally justifies the conclusion. A donor at the time of the gift or grant, if he has a good capacity to give the grantee, the power to do something, then the subsequent disqualification of the donor after the grant, e.g. death or insolvency does not ipso facto detract from the power of the grantee although the exercise of such power by the grantee takes place subsequent to the disqualification of the original "grantor unless of course there is express provision to the contrary by the very terms of the grant. I am, therefore, of the opinion that the order appointing the petitioner as a special police officer u/s 17 of the Police Act 1861, although made on 28-7-1954, long after the Constitution of India came into effect it was a valid appointment although made by the Superintendent of Police and the District Magistrate subsequent to the Constitution because at the time when the Police Act was passed full powers had already been granted to these authorities like the Superintendent of Police and the District Magistrate to make these appointments and the force and validity of the Police Act are continued by Article 372(1) of the Constitution.

27. It now remains to deal with the constitutional objections that the applicant has raised to his order of appointment. The first objection on this ground is that

it interferes with his ordinary livelihood and avocation in life. The main complaint of the applicant is on the ground of the hours of work. It is necessary to recall that hours are not provided in the order of appointment. The actual direction about the hours of appointment are not the subject matter against which the present complaint in the petition is made. The present objection is against the order of appointment itself. Therefore, this argument cannot be upheld. Besides, the hours of work are such, being always after 5 P. M. or at night, they cannot be said to interfere unreasonably with the right of the applicant to practise or carry on any occupation, trade or business under Article 19(1)(g) of the Constitution. The fundamental right of a citizen to practise or carry on trade or occupations is always subject to reasonable restrictions under Sub-clause (6) of that Article. It permits operation of any existing law in so far as it imposes in the interest of the general public reasonable restrictions on the exercise of the said right. In a democratic state it is a worthy obligation of a resident of a locality to be called up for service as a special police officer to help in removing the threat or breach of the peace of the locality in which he resides. It is a civic obligation of every citizen to discharge this duty to the State which gives him security, protection and opportunity. It cannot be said to be an unreasonable restriction on the citizen's right to carry on his trade or business. On similar grounds and for similar reasons I do not consider this conscription to interfere with the other fundamental right of the citizen to move freely throughout the territory of India under Article 19(1)(d) of the Constitution on which ground also a complaint is made in the petition. That right of free movement is also qualified by Sub-clause (5) of that Article which permits operation of any existing law in so far as it imposes reasonable restrictions on the exercise of such right. I should, therefore, hold that both under Article 19(1)(d) and Article 19(1)(g) of the Constitution this order u/s 17 of the Police Act by which the authorities are empowered to conscript the voluntary service of the residents to become special police officers are justified under the meaning and doctrine of reasonable restrictions.

28. It was then argued on behalf of the applicant that this conscription is a kind of forced labour. It is urged that no remuneration is paid for such service. Because no remuneration is paid and because the service is compulsory and cannot be avoided except on the pain of the penalty of prosecution u/s 19 of the Police Act it is said to be forced labour. Now, Article 23(1) of the Constitution provides:

"Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

Conscription for police or military service cannot in my opinion be considered as either (1) traffic in human beings or (2) begar. Whether it is a similar form of forced labour within the meaning of that constitutional prohibition remains to be analysed. The words "other similar forms of forced labour" should in my view be construed ejusdem generis. The kind of forced labour that is contemplated in the

constitutional prohibition has to be something in the nature of either traffic in human beings or begar. I cannot persuade myself to come to the conclusion that the conscription for police service or military service can come under either. For the purpose of illustration, Chamba Paid Forced Labour Act is a land of forced labour within the meaning of such constitutional prohibition and can be cited and the authority for that purpose is the *The State Vs. Jorawar*, . Were it permissible to hold that such conscription is a kind of similar form of forced labour within the meaning of the constitutional prohibition contained in Article 23(1) of the Constitution, I would then hold that this forced labour of conscription is permitted by Sub-article (2) of Article 23, of the Constitution, which provides:

"Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them".

29. This conscription for police service is I interpret as a kind of compulsory service for public purposes, within the meaning of Sub-article (2) of Article 23 of the Constitution and, therefore, justified.

30. Finally, on this constitutional branch Mr. Das Gupta argued that the whole of the Police Act, 1861, is ultra vires the Constitution. In support of his argument he relied upon the Constitutional distribution of legislative powers as appearing in Chapter I, Part XI of the Constitution and specially in Article 246 of the Constitution. The old familiar argument is that Entries 1 and 2 make public order and police, which are said to be the subject matter of Police Act, 1861. State subjects and within only the competence of the State Legislature and, therefore, Parliament has no authority and the Central Government no longer possesses any authority to give effect to the Police Act, 1861. The argument, in my opinion, has no substance. I shall state the reasons briefly.

31. The first reason is that the Police Act of 1861 was an existing law at the time when the Constitution came into force. Therefore, it is valid and justified under the express provisions of Article 372(1) of the Constitution. Article 372(1) of the Constitution provides as follows:

"Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority".

32. It was contended that although under this provision of the Constitution the Police Act of 1861 continued in force, still it could only do so Subject to the other provisions in the Constitution. It was then argued that the other provisions in the Constitution militated against its continuance. The argument was developed by saying that such other provisions in the Constitution which militate against the Police Act, 1861, were the provisions contained in Article 23 and Article 246 of the Constitution. I have already dealt with Article 23. I need only add that Article

372(1) says that all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed or amended by a competent legislature or other competent authority. No competent legislature or competent authority has either altered, repealed or amended the Police Act of 1861. Therefore, it continues in force. Explanation I of Article 372 of the Constitution interprets the expression "law in force" which would clearly include Police Act of 1861.

33. But the more fundamental objection to this argument is that Article 246 of the Constitution and in fact Chapter I, Part XI only deal with the distribution of legislative powers and do not affect the validity of existing statutes when such distribution of legislative powers was not in existence.

34. Malik, C. J. in the case of Sagar Mal and Others Vs. The State, says that Article 246 of the Constitution distributes the legislative powers between the Parliament of the Union and the State Legislatures. It has nothing to do with the laws already made and if those laws are not contrary to any provisions of the Constitution, it cannot be said that those laws are not valid. The words "subject to the other provisions of this Constitution" in Article 372 do not mean that laws which had been passed by the Central Legislature before 26-1-50, automatically ceases to have effect because the subject was now being made a State subject. Again, in the case of State Vs. Yash Pal P.S.I., , Kapur J., as he then was, of the Punjab High Court comes to the conclusion

"All laws which were in force in the territory of India upon the commencement of the Constitution continued to remain in force under Article 372(1) and Article 246 does not apply to any Act which was already in existence. The Police Act which was passed in 1861 at a time when there was no representative Government in India, remained in force at the commencement of the Constitution and its constitutionality cannot therefore be challenged on the ground that it being a Central Act is not a valid Act in the State of Punjab after the Constitution".

These two cases of Allahabad and Punjab appear to answer this particular objection of the applicant on this ground. I find myself respectfully to be in complete agreement with the views expressed both by the Allahabad High Court and by the Punjab High Court on this point.

35. This disposes of all the objections taken to the order of appointment. All the objections fail.

36. For these reasons I discharge the Rule and dismiss the application. Interim order, if any, is vacated. I, however, make no order as to costs.