
(2000) 06 AHC CK 0011

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition Nos. 19352 and 24505 of 2000

Gaurav; Dharmendra Rastogi @ Chhotu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226

National Security Act, 1980 — Section 3(1)(2), 3(1)(3)

Citation : (2000) 06 AHC CK 0011

Hon'ble Judges : Palok Basu, J and R.K.Agrawal, J

Final Decision : Allowed

Judgement

Palok Basu, J.—The petition of Gaurav was admitted by a Division Bench of this Court on 2542000 whereas the petition filed by Dharmendra Rastogi alias Chhotu was entertained by a Division Bench of this Court on 2352000, when the time for exchange of the affidavits was granted and it was directed that the petition should come up even during the summer vacations because the detention order was likely to expire on 2862000. In both the matters the detention orders have been passed under National Security Act [hereinafter referred to as the Act] on 2961999 by the Chief Development Officer, Meerut, purporting to act as District Magistrate, Meerut, within the meaning of the Act. Since the grounds are common and challenge is extended to the detention order primarily because the District Magistrate has not passed the said orders, the matters have been heard together.

2. Sri Arvind Vashishth, learned Counsel for the petitioners assisted by Sri Shekhar Yadav has been heard at substantial length. Sri J. Lai has espoused for the Union of India in the writ petition of Dharmendra Rastogi whereas Sri K.N. Pandey has appeared for the Union of India in the writ petition of Gaurav.

3. Since the affidavits have been exchanged, both the writ petitions are heard on merits.

4. The principal contention advanced by Sri Arvind Vashishth on behalf of the

petitioners is that in the instant cases the detention orders are wrong and illegal because on 29/6/1999 the Officer passing the detention order namely, Sri Mahesh Chand, was not the District Magistrate, within the meaning of the Act, and therefore, the continued detention is also illegal. Other grounds were also argued by him, but for the purposes of deciding these two petitions the discussion on the first point itself is required. The Court proceeds to examine the said argument at the very outset.

5. Under Section 3 of the Act, primarily the Central Government or the State Government may pass the detention order. Subsection (3) thereof carved out the specific power/jurisdiction of a District Magistrate or a Commissioner of Police to pass such an order of detention subject to approval of the State Government. The expression "District Magistrate" is not defined in the Act. The General Clauses Act also does not define a District Magistrate, though it defines the word "Executive Magistrate". Section 20 of the Criminal Procedure Code 1973 deals with Executive Magistrate and subsection (2) thereof refers to the power of the State Government to ask any Additional District Magistrate to act as a District Magistrate under the circumstance as may be necessary. Subsection (1) thereof empowers the State Government to appoint as many Executive Magistrates as necessary permitting the State Government to appoint one of them to be the District Magistrate. Subsection (3) of the aforesaid Act specifically provides that in the absence of the District Magistrate if an Officer discharges temporarily the functions of the executive administration of the District, such action shall be taken to be which the District Magistrate may perform under the Code (emphasis by the Court).

6. In the instant case, three relevant dates are as follows:

(I) 29/6/1999 The regular District Magistrate applies for and goes on leave;

(II) 29/6/1999 the Chief Development Officer (Sri Mahesh Chand) is authorised to act as District Magistrate by the State Government as per the averments made in para 1 of the counter affidavit filed by Sri Mahesh Chand;

(III) 29/6/1999 the two detention orders passed are by Sri Mahesh Chand purporting to act as District Magistrate within the meaning of the Act.

7. Before proceeding further the extract of above mentioned affidavits by Sri Mahesh Chand as in para 1 of the affidavit, should be reproduced (translation by Court):

"That at present, the deponent is posted as Chief Development Officer in Meerut, and had been authorised to pass an order on 29/6/1999 under Section 3(3) of National Security Act, 1980 in this case. The deponent is well conversant with the facts and circumstances of the case and is in a position to file the counter affidavit."

8. In view of what has been stated in the paragraph 1, Sri Mahesh Chand admits that he was authorised to pass the order of detention and does not say that he

was the District Magistrate on 29.6.1999.

9. Coming to the counteraffidavit filed by the State Government through Sri R.A. Khan, Under Secretary, Home and Confidential Department, U.P., Lucknow, it is not denied that the District Magistrate was on leave on the aforesaid date of the passing of the detention orders and all the averments made in paragraph Nos. 2 to 5 thereof are explaining the dates within which the representation remained pending and ultimately decided by the State Government and the other one which was forwarded to the Central Government.

10. The counteraffidavit filed by the Central Government also does not touch the issue about the aforesaid Sri Mahesh Chand being a District Magistrate within the meaning of the Act. It may be pointed out that the affidavits filed by the Union of India do not comply with the full requirement of verification swearing clauses. Sri K.N. Pandey, learned Standing Counsel has filed an affidavit, which discloses that the counteraffidavits on behalf of the Union of India have been filed as received from Delhi. No further decision on this matter is necessary any more because of the fact that much may depend on the affidavits which have already been filed on behalf of the State and the Detaining Officer.

11. Liberty of a citizen is of paramount importance and can be done away with strictly, only in accordance with law. The Act provides only two officers by name, who may issue detention order which too shall be subject to the approval of the State Government and those two officers are the District Magistrate and the Police Commissioner. Even the Additional District Magistrate, who may be discharging the functions of District Magistrate in a given case with the help of subsections (2) and (3) of Section 20 of the Code of Criminal Procedure will never become the District Magistrate within the meaning of the Act. The reason is that the Additional District Magistrate can discharge the functions of the District Magistrate only in so far as the posers of the Code of Criminal Procedure are concerned. The power to pass a detention order under Section 3 of the Act is over and above the power specially and specifically conferred upon a District Magistrate by the National Security Act. No laxity in this case can be permissible because preposterous results may be the outcome. Satisfaction of an individual Officer, who examines the dossier the papers submitted by the police or the other necessary documents, is necessary for coming to the conclusion that detaining is imperative. This may differ from person to person. In the instant case admittedly, all the proceedings for passing of the detention orders were practically over by 27.6.1999 when the regular District Magistrate went on leave and Sri Mahesh Chand, the Chief Development Officer took over the duties of the District Magistrate. It is nowhere stated in any of the affidavits that Sri Mahesh Chand, who admittedly was working as a Chief Development Officer, was appointed as Additional District Magistrate within the meaning of subsection (2) of Section 20 of the Code of Criminal Procedure. Again, the appointment letter of Mahesh Chand could have been filed by the respondents to indicate the nature of duties specifically on Sri Mahesh Chand as a regular appointee in the State

Cadre. That apart, A.D.M's powers would be deemed to be conferred on Sri Mahesh Chand during the intervening period between 2761999 and 29699 and that being the matter, these averments can not confer upon Shri Mahesh Chand, the powers of District Magistrate exercisable under the Act.

12. In view of what has been stated above, the self proclaimed claim of Mahesh Chand that he was authorised to pass a detention order within the meaning of Section 3 (3) of the Act, is too loud a proclamation to be accepted by the Court.

13. There are three decisions which support the view that an Additional District Magistrate is not empowered to pass an order, as it is.

14. In Vashistha Narain Karvaria reported in 1981 Cr. L.J. 1526, it has been held that an Additional District Magistrate, even though he may for the time being be empowered to exercise the powers and functions of a District Magistrate cannot direct the detention of a person under Section 3 of the Act.

15. In Sadanand Tripathi v. State of U.P. and others, reported in 1981 A.C.R. (Vol.5) page 452 it has been held that an Additional District Magistrate officiating as District Magistrate has no jurisdiction to pass order of detention under Section 3 of the National Security Act.

16. In Vir Abhimanyu v. Superintendent Jail and others reported in 1985 U.P. Criminal Rulings 232, it has been held that the Officer not having the powers of permanent District Magistrate on the date he passed detention order should be held to be lacking jurisdiction to pass such an order and, therefore, the detention order in such a case was bad ab initio.

17. In view of what has been discussed above, Sri Mahesh Chand could not have passed the two detention orders in the instant cases as District Magistrate and, therefore, the continued detention of both the petitioners for one year each is illegal.

18. In the result both the writ petitions succeed and are allowed. The detention orders dated 2961999 passed in both the cases against the petitioners Gaurav and Dharmendra Rastogi alias Chhotu are quashed. Both the petitioners shall be released forthwith. Petition allowed.