
(1997) 04 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Appeal No. 26648 of 1997, in C.M.W.P. No. 8389 of 1985

Ghanshyam Raj Narain Dubey

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1997) 04 AHC CK 0091

Hon'ble Judges : Binod Kumar Roy, J and N.S.Gupta, J

Final Decision : Disposed Of

Judgement

B.K. Roy and N.S. Gupta, JJ.—This order disposes of Civil Misc. Application No. 26648 of 1997 by which a prayer has been made to recall bur order dated 941997 dismissing Writ Petition No. 8389 of 1985 in which the prayer of the petitioner was to quash the order of his detention dated 2951985 passed by Government of Maharashtra by grant of a writ of certiorari and command the Respondents not to arrest/detain him and/or to pass such order which may be deemed fit and proper in the circumstances of the case.

2. The petitioner asserted, inter alia, that he is a permanent resident of village Suriyawan in the District of Varanasi of our State where he owns his residential house and about 50 Acres of land besides a cold storage, Ice factory, and shops; that he is a peaceful citizen; and that he is a businessman of repute having his business and property in Bombay also which is being earned on by his other partners and Manager; that he is an Income Tax Payee; that he also keeps on visiting Bombay in connection with his business; that there is a political party known as Shiv Sena in the State of Maharashtra which gained majority in the last Elections of the Municipal Corporation, Bombay; that the petitioner is an active worker of All India Congress Party (I); that Shiv Sena launched an agitation that Maharashtra is for Maharashtrians and declared that the NorthIndians should vacate Bombay and close down their business establishments in Bombay and in

respect of that policy the then Chief Minister of Bombay also gave a similar statement; that the administration of Maharashtra in general and that of Bombay in particular also supports the stand of Shiv Sena; that the influential leaders of Shiv Sena in Bombay forced the local administration to anyhow harass the petitioner; that the petitioner feeling danger to his life left Bombay for his village on 551985 and is supervising his business in his village in the State of Uttar Pradesh; that on 1861985 when the petitioner was not at this home in village Suriyawan, District Varanasi, the police officials of P.S. Suriyawan, District Varanasi (Uttar Pradesh) alongwith some other police officials of Bombay came to his house to arrest him on the ground that he is wanted in Bombay; that the petitioner is a permanent resident of the State of Uttar Pradesh and the Respondents are illegally trying to arrest him and unless this Court safeguards the life and liberty of the petitioner, he may be done to death, and hence this writ petition.

3. In the counter affidavit and its supplementary filed on behalf of Respondent Nos. 5 to 9 it has been stated, inter alia, that the petitioner is required under the provisions of Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers and Drug Offenders Act 1981; that the petitioner is a resident of Bombay, where the impugned order of his detention has been passed; that the entire cause of action has arisen within the jurisdiction of High Court of Judicature at Bombay and, therefore, this Court has no jurisdiction to try and entertain this writ petition; that the petitioner has taken his education in Daulat High School, Daulat Nagar, Borivali, East Bombay, has his ration card bearing No. 545887 which was renewed on 651981, all his children are taking education in Hemraj School at Borivali, East Bombay; the petitioner has three flour Mills situated at Borivali; that his name appears in the Electoral roll of the year 1983 of the Municipal Election Ward No. 128 Dashisar, and this, it is clear that he is a permanent resident of Dashisar, Bombay, who is involved in several criminal cases at Bombay, that it is denied that he is a business man of Uttar Pradesh or a permanent resident of village Suriyawan, District Varanasi, Uttar Pradesh though he sometimes visits Varanasi also; that the petitioner is a hardened criminal wanted in several criminal cases and such a person can hardly be member of the Congress (I) party; that Shiv Sena has not launched any move as asserted by him and the entire assertion is false; that no influential leader of Shiv Sena ever force to arrest the petitioner and never lodged any complaint with the police; that Shiv Sena has not started any agitation in Bombay against the people of North India; that the petitioner is a slumlord, as defined under the Act aforementioned, and his detention order was rightly passed, who, however, slipped away from the territory of the State of Maharashtra and hence in order to avoid his arrest has created false pleas; that there is no danger to the life, liberty or property of the petitioner, and that only to avoid his arrest he had come up with false allegations.

4. We had dismissed the writ petition vide our order dated 941997. The relevant part of our order reads thus:

".....Sr L.K. Dwivedi, learned Counsel appearing on behalf of the petitioner prays to adjourn this case on following grounds: (i) This case was filed through Sri N.C. Upadhyay who is no more. The other Counsel through whom this writ petition was filed, namely, Sri K.C. Agarwal is also no more. Thereafter Sri Bahuguna was engaged but he was elevated to the Bench and thereafter transferred to Bombay High Court hence there is no one to argue this case, (ii) A letter by registered post was sent to the petitioner to give him instructions so that he could argue this case or this case could be argued by anyone else, (iii) The State of Maharashtra filed Transfer petition (Criminal) No. 25 of 1987 before the Supreme Court in which stay was granted by the Supreme Court while hearing an application for ex parte stay. The learned Counsel, however, is not aware as to what happened thereafter but in support of his submission the learned Counsel showed us some papers.

In our view none .of the submissions made above have any substance to stand. This case was also filed by Sri L.K. Dwivedi, learned Counsel stands making the motion. Sri N.C. Upadhyay and Sri K.C. Agrawal had died long time back. Sri Bahuguna was elevated long time ago. The worst is that about A months ago on 821985 Sri L.K. Dwivedi himself got this case passed over when it was placed on the ground that he is ill, which is apparent from the note dated 8295 which reads thus:

"Passed over on the illness slip of Mr. L.K. Dwivedi, Adv."

There is nothing on the record or with the learned Counsel for the petitioner to show that the Apex Court finally stayed the further proceedings of this case. In fact had there been any stay, in that event there was no occasion for the learned Counsel for the petitioner to make prayer for adjournment of this case on the ground of illness when it was listed on 821995.

In the aforementioned backdrop we are constrained to reject the prayer for adjournment made by Sri L.K. Dwivedi in this case which is pending under heading for admission for the last 12 years by now.

Sri L.K. Dwivedi does not press this writ petition for want of instructions, it is accordingly dismissed."

5. Now we are requested to exercise our inherent powers to recall the order aforementioned dismissing the writ petition on the grounds, inter alia, that while the petitioner was in Bombay, in connection with his business he received information on 941997 from the members of family that his case has been dismissed for want of instructions and that he is highly interested in its disposal on merits; that he apprehends that the dismissal of his writ petition may be cashed on by the members of Shiv Sena and he shall be harassed and detained; that he has been a member of Legislative Council of the State of Maharashtra from 1990 to 1996 and is an active member and leader of Association of North Indians (Uttar Pradeshiya Mahasangh) at Bombay; and that he contacted Sri Sunil Ambwani and engaged him to argue the matter on merits.

6. Mr. Sunil Ambwani, learned Counsel appearing on behalf of the petitioner, yesterday had contended as follows:

True it is that this writ petition had remained pending before this Court for about 12 years, the delay in its disposal was caused on account of a transfer petition filed by the State of Maharashtra before the Apex Court in which interim order were passed staying further proceedings of this case, which was ultimately dismissed and thereafter the petitioner not being aware of the fact that his case is going to be listed soon, could not give instructions to his Counsel and it would be in the interest of justice to hear him on merits and dispose of the writ petition accordingly.

7. When we pointed out to the learned Counsel Mr. Ambwani yesterday that inherent powers can be resorted to by us provided there appears to be a sufficient cause and failure of justice but in view of the fact that no cause of action had arisen within the territorial jurisdiction of this Court thereby we lacked jurisdiction to entertain this writ petition and thereby there is no question of failure of justice, Mr. Ambwani prayed for adjournment and that is how the case is again before us today.

8. Today Mr. Ambwani proceeded further to contend as follows: (i) In view of the decision of the Apex Court in *Oil and Natural Gas Commission v. Utpal Kumar Basa and others*, (1994) 4 S.C.C. 711 interpreting Article 226 of the Constitution we have territorial jurisdiction to grant the reliefs prayed for by the petitioner. The State of Maharashtra had gone up before the Apex Court for transfer of this constitution we have territorial jurisdiction to grant the reliefs prayed for by the petitioner. The State of Maharashtra had gone up before the Apex Court for transfer of this constitutional proceedings from this Court to Bombay High Court taking into account the factum of lack of territorial jurisdiction of this Court before Apex Court in Transfer Petition (Criminal) No. 25 of 1987, which was dismissed vide order dated 15/7/1994 keeping in mind that this Court has territorial jurisdiction to entertain the writ petition and thus, it cannot now be held that we lack territorial jurisdiction, (ii) Since 12 years have passed and the operation of the impugned order having remained under suspension for these long years, it would be in the interest of justice to hold that the impugned order has become infructuous. (iii) The detention order does not mention as to for what period it has to remain operative and in view of the decision of the Apex Court in *Commissioner of Police v. Gurbux Anand Ram Biryani* 1988 (Suppl) S.C.C. 568 it is liable to be quashed, (iv) Alternatively the petitioner the permitted to make a representation before the State of Maharashtra that because of the aforementioned reason the impugned order be rescinded or to move the Bombay High Court.

9. Manifold submissions were made by Sri Jagdish Tiwari, learned Addl. Government Advocate appearing on behalf of the State of U.P. Respondent No. 2, as well as Sri U.N. Sharma, learned Counsel appearing on behalf of the Union of India, which we do not consider expedient to record. One of the submissions of

Mr. Tiwari was that now the Apex Court has laid down in *Suresh Bhojraj Chelani v. State of Maharashtra*, A.I.R. 1983 S.C. 181 that it is not necessary for the detaining authority to mention the specific period in the initial order of detention.

10. Two questions crop up for our adjudication: (i) Whether this Court had got territorial jurisdiction to quash the impugned order of detention of the petitioner and grant appropriate reliefs as claimed for by him. (ii) Whether it is a fit case in which this Court should resort to its inherent powers to restore back the aforementioned writ petition.

11. We are of the firm view that this Court lacked territorial jurisdiction to quash the impugned order of detention and the cause of action had arisen within the territorial jurisdiction of Bombay High Court. The decision in *O.N.G.C. (supra)* relied upon by Mr. Ambwani, has followed *State of Rajasthan v. M/s Swaika Properties*, A.I.R. 1985 S.C. 1289 and *Aligarh Muslim University v. Vinay Engineering Enterprises*, (1994) 4 S.C.C. 710 and is against the Petitioner. This conclusion of ours follows from a bare perusal of paragraph 12 of the judgment, which reads thus:

"Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was not necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of S.L. Nos. 1006566 of 1993, *Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd.*, this Court observed:

"We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction."

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction, the arbitrator was appointed

at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcuttabased firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression against ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but it we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

Apart from the aforementioned three decisions, the ratio decidendi laid down in *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow v. State of U.P. & Others*, (1995) 4 S.C.C. 738 also reiterated our view.

12. We have gone through the Transfer petition filed by Respondents Nos. 5 to 8 before the Apex Court. It nowhere recites that this Court lacked jurisdiction in entertaining the writ petition filed by the petitioner. Transfer was sought for on the grounds that the Respondent No. 1 is very much needed by the Bombay police in a number of cases, and that it will not be possible to expedite the hearing of the writ petition which was filed by misleading the Court; and that if the case is transferred to Bombay it will be convenient to both sides. The order of the Apex Court dated 15/7/1994 passed in Transfer Petition of the State of Maharashtra reads thus:

"Heard learned Counsel for the parties. We are not satisfied that it is a fit case for transfer. The transfer petition is dismissed. Interim stay granted shall stand vacated."

Time and again the Apex Court has reiterated that an order dismissing summarily a Special Leave Petition does not constitute law vide (i) *M/s. Rup Diamonds and others v. Union of India and others* (1989) 2 S.C.C. 356; (ii) *Late Nawab Sir Mir Osman Ali Khan v. Commissioner of Wealth Tax, Hyderabad* ; 1986 (Suppl) S.C.C. 700, (iii) *Supreme Court Employees' Welfare Association v. Union of India and another* ; (1989) 4 S.C.C. 1872 (iv) *Om Prakash Gargi v. State of Punjab and others*; (1996) 2 S.C.C. 399, and (v) *State of Manipur v. Thingujan Brojen Meetei* A.I.R. 1996 S.C. 2124, the order of summary dismissal of the transfer application by the Apex Court shows only this much that their Lordships were not satisfied that it was a fit case for transfer. We do not find what is suggested to by Mr. Ambwani.

13. We do not feel persuaded in view of the stand taken by the respondent Nos.

5 to 8 that there is no danger to the life, liberty or properties of the petitioner in paragraph 16 of the counteraffidavit dated 18/1/1985 to which nothing has been replied by the petitioner in paragraph 15 of his rejoinder affidavit dated 13/1/1987, to hold that the Bombay police is/was going to murder the petitioner while taking him from his village to Bombay so as to confer a limited jurisdiction on ourselves commanding the Respondents to give a breathing time for few days so that he could move the Bombay High Court. True it is that before the Hon'ble Supreme Court there was no plea of Respondent Nos. 5 to 8 that this Court lacked territorial jurisdiction but that will be of no help to the petitioner as we are required to be satisfied of our jurisdiction. It is needless to emphasise that right to life, as guaranteed under Article 21 of the Constitution includes a dignified life and handcuffing is permissible only now in rarest of rare cases.

14. It is a settled law that inherent powers can be exercised by the Court to do substantial justice. The order passed by the Apex Court while dismissing the Transfer Petition of the State of Maharashtra on 15/7/1994 categorically shows that the learned Counsel for the petitioner was also heard and the stay granted by it was vacated. There is a difference between "Recall" and "Restoration". Prayer for Recall of an order can be made if the applicant shows that there was a mistake of the Court while passing its order. While making a prayer for restoration, the applicant must show the sufficiency of cause of his default and the Court may exercise its discretion in accepting that cause. In the former, the Court has to invoke the doctrine *actus curie neminem gravabit* (acts of Court prejudices none) whereas in the latter the defaulting party has to show the bona fides and failure of justice. Nothing has been stated as to what prevented the petitioner in not giving his instructions to his learned Counsel after 15/7/1994, the day on which the Transfer Petition of the State of Maharashtra was dismissed, till 9/4/1997. It is also a well known maxim that law helps only those who are vigilant.

15. Be that as it may, we have heard Mr. Ambwani on merits but for the reasons stated as above, we do not find the writ petition as maintainable before this Court. Accordingly, we rejected the prayer for recall of our order dated 9/4/1997.

16. Before parting, it is needless to clarify that it will still be open for the petitioner to move either the Maharashtra Government and/or the Hon'ble High Court of Judicature at Bombay for the redressal of his grievances provided he makes out valid grounds in support thereof.