

(1986) 08 MP CK 0023
In the Madhya Pradesh High Court

Girjashankar Tiwari

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 01-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) CriLJ 1361

Hon'ble Judges : G.G.Sohani, J;B.B.L. Shrivastava, J

Bench : Division Bench

Judgement

G.G. Sohani, J.—This is a petition under Article 226 of the Constitution. The petitioner has averred that on 14-10-1985, he came to know that an order of externment was passed against him. The petitioner contends that he was not given any notice to show cause before the order of externment was passed. In the " return, it is stated that as the petitioner was absconding, a notice was affixed on 10-10-j 1985 to the outer part of the house of the petitioner, calling upon the petitioner to show cause why he should not be externed; that the petitioner was directed to submit his reply on 14-10-1985 and that as the petitioner did not appear on 14-10-1985, the Additional District Magistrate, Indore, passed an order on 14-10-1985 u/s 12 of the M.P. Rajya Suraksha Tatha Lok Vyavastha Adhiniyam, 1981 (hereinafter referred to as "the Act").

2. The learned Counsel for the petitioner contended that the petitioner was not given any reasonable opportunity of tendering an explanation regarding the allegations on the basis of which an order u/s 12 of the Act was proposed to be passed by the Additional District Magistrate. It was urged that no notice was served on the petitioner; that he was hot absconding and that it was only on 14-10-1985 that the petitioner came to know about the order of externment.

3. Having heard learned Counsel for the parties we have come to the conclusion that this petition deserves to be allowed. It has not been disputed and it could not be disputed that before passing an order u/s 12 of the Act against any person, that person should be informed in writing as required by Section 15(1) of

the Act, the general nature of the material allegations against him and should be given a reasonable opportunity to tender an explanation in that behalf. The short question for consideration is whether in the instant case, the provisions of Section 15(1) of the Act were complied with, before passing an order u/s 12 of the Act.

4. On behalf of the respondents it was admitted that the show cause notice was not personally served on the petitioner. Compliance with the provisions of Section 15(1) of the Act is not an empty formality. That is a condition precedent for passing a valid order u/s 12 of the Act. In the instant case, it cannot be held that the petitioner was informed in writing of the general nature of material allegations against him and was given reasonable opportunity of tendering an explanation. Under the circumstances, the , order of externment deserves to be quashed.

5. The petition is, therefore, allowed. The order of externment dt. 14-104985 passed by the Additional District Magistrate, Indore, against the petitioner, is quashed. No order as to costs.