

(1950) 10 MP CK 0006
In the Madhya Pradesh High Court

Govind Prasad Srivastava and Another	APPELLANT
Vs	
The State of Bhopal	RESPONDENT

Date of Decision : 04-10-1950

Acts Referred:

Constitution of India, 1950 — Article 132, 133, 134, 139, 225
Judicial Commissioners Courts (Declaration as High Courts) Act, 1950 — Section 5, 6

Citation : (1952) CriLJ 660

Hon'ble Judges : Tribeni Sahai Misra, A.J.C.

Bench : Single Bench

Judgement

Tribeni Saran, Addl. J.C.

1. This order disposes of two petitions made by Govind Prasad Shrivastava and Balkrishan Gupta for the issue of the writs of Habeas Corpus under Article 226, Constitution of India. The applicants were arrested and detained by means of warrants issued by the Chief Commissioner, Bhopal, under the Preventive Detention Act 1950.

2. The preliminary objection raised by the Government advocate relates to the jurisdiction of this Court in respect of the applications. His argument is that Article 226 is only meant to lay down the powers which the High Courts could exercise, only if they possessed those powers; in other words, if a High Court does not already possess the powers specified in Article 226 of the Constitution, the aforesaid Article does not empower it to exercise them and there is no remedy for the applicants except to go to the Supreme Court under Article 32(1) for the enforcement of fundamental right.

3. The learned Government Advocate has cited Anant Bhaskar v. State AIR (37) 1959 Mad B. 60; in which the majority of the learned Judges held the view:

Unlike Article 32 of the Constitution, Article 226 does not provide for any remedy which, apart from the existing law, could be available to a person for enforcement of any of the rights dealt with in Part III of the Constitution, i.e.

fundamental rights. Article 226 must be read subject to Article 32(3).

Article 226 only mentions some of the powers which. If law made by Parliament or other legislature so provides, may be exercised by the High Courts under the circumstances and conditions prescribed by such law. But so long as this is act done, the powers conferred by Article 226 must remain ineffective except in so far as they can be exercised under the existing law.

The cornerstone of the abovementioned ruling is the distinction drawn by the learned Judges between the meaning of the words "jurisdiction", and "power". "Jurisdiction", according to the view taken by the learned Judges, is the authority conferred upon a tribunal to determine a matter, while "powers" are the means by which effect is given by the Courts to its determination. With this distinction in view, they quoted Article 225 of the Constitution which lays down that the jurisdiction of and the law to be administered in any existing High Court and the respective powers of the Judges, thereof in relation to the administration of justice, shall be the same as immediately before the commencement of the Constitution.

4. But while quoting the aforesaid Article, the most important part of it was lost sight of and it is "subject to the provisions of this Constitution." If the Article had not been armed with these words, the interpretation put upon it, in my opinion, would have been exactly what the learned Judges were pleased to put. But keeping in mind the absented expression, it will have to be accepted that it has changed the whole picture of the Article. Reading Article 226 along with Article 225, with special emphasis on the words "subject to the provisions of this Constitution", I should find that the jurisdiction of existing High Courts as exercised immediately before the commencement of this Constitution has lost its rigidity.

5. Jurisdiction, as is generally understood and ?yen recognized in law, has two meanings:

- (1) legal authority or the extent of power;
- (2) area over which such authority or power extends.

It will, therefore, be seen that the two meanings of the same word have a totally different concept and are not to be confused. The sense in which the word is used is to be governed by the context. With the greatest respect to the learned Judges, I fail to read in the meaning of the word "jurisdiction," as used in both the Articles, anything suggesting that there is any difference between the High Court's authority or power, as has been so ably made out in the ruling, except that the word "jurisdiction" in Article 225 can have both the meanings ascribed to the term and it is merely in order to avoid confusion that the word "powers" has been deliberately used in respect of the Judges.

6. The expression "subject to the provisions of this Constitution" with which Article 225 begins, implies not only the abridgment but also the expansion of the

jurisdiction of any existing High Court. Article 226 is clearly an instance of the latter and Article 230 of both.

7. If, therefore, the distinction between the words "jurisdiction" and "power" is removed, there is no room left for holding that even if power has been conferred upon High Courts for any purpose, it cannot be invoked unless the Court has jurisdiction in respect of the matter for which the power is to be exercised.

8. Sir Maurice Gwyer in *In the matter of C.P. & Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938* 1939 F.C.R. 18 : AIR (26) 1939 F.C. 1 has very ably and lucidly laid down the principles to be observed in interpreting a Constitution and the Indian Constitution is no exception. The learned Judge says:

A Constitution is to be interpreted in the same manner as any other statute, viz. by reference to its terms and language and these alone. A Constitution is not to be construed in a narrow and pedantic sense. The ordinary rules apply though their application is of necessity conditioned by the subject matter of the enactment itself. A "broad and liberal" spirit should inspire those who interpret the Constitution but they are not free "to stretch or pervert" the language of the enactment in the interests of legal or constitutional theory," A constitution of Government is a living and organic thing which of all instruments has the greatest claim to be construed "at res magis valeat quam pereat."

9. This illuminating exposition of the principles governing the interpretation of a constitution introduces great elasticity therein and enables the Judges to do away with the wooden expounding of the provisions thereof. It is not disputed that any particular provision may be open to more, than one construction but it is only the logical one and the one that naturally flows from it which has to be accepted. For this purpose, it is often necessary to enter the mind of the framers of the Constitution, and to achieve this it is dangerous to import anything not inherently present in it. Article 226, as worded, means nothing more or less than that the High Courts are invested with jurisdiction "in all matters" to issue an order, direction or a writ as mentioned in the Article. It has been argued by the learned Government Advocate that if it had been the intention of the Constitution makers to confer such powers on the High Courts for immediate use, Article 83(3) of the Constitution would not have found a place in it. This Article reads as follows:

Without prejudice to the powers conferred on the Supreme Court by Clause (1) and (2), Parliament may, by law, empower any other Court to exercise, within the local limits of its jurisdiction, any of the powers exercisable by the Supreme Court under Clause (2).

But if this sub-clause is read along with Article 247, no doubt is left as to its object. Article 247 says:

Parliament may, by law, provide for the establishment of any additional Courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

10. By "any other Court" can only be meant any Court other than a High Court, because when the High Courts have already been invested with powers under Article 226, the above words could not manifestly refer to a High Court.

11. The other argument of the learned Government Advocate is that Article 32 prescribes that the responsibility of giving redress in cases of, breach of Constitution rests solely with the Supreme Court and this is borne out by the fact that this Article is placed in the very core of Part III. The position of this Article in the Constitution seems only to have been affected by convenience. The same can be said of the place at which Article 226 has been put. The mere fact that both these Articles are separated from each other is not enough to raise a conclusion that it is only Article 32 which is exclusively concerned with the constitutional remedies.

12. I think there is no difficulty in conceding that the words "Notwithstanding anything in Article 32" occurring in the beginning of Article 226 are not redundant. They have a special significance and cannot be ignored. They only mean that in spite of the provisions of Article 32, every High Court shall be empowered to issue the writs of the sort specified in the Article. If it had been the intention of the framers of the Constitution to subject the exercise of this power to any future legislation by the Parliament, there could be no difficulty in finding suitable words for the same but the Article, as drafted, does not contain even the remotest suggestion that such was their purpose. I fail to find any legal authority for introducing words which may give it a totally different shape, nor is it permissible to rob it of the object for which such wide powers have been conferred upon the High Courts.

13. It is obvious that if the power to issue high prerogative writs had been confined to the Supreme Court, the distant places in the country would have been deprived of the benefit flowing from it. The independence of India would have been of no consequence to its citizens living in a remote corner of a country, if a legal stranglehold had been exerted upon the constitutional remedies by pinning them down to place beyond their reach. Independence would have had no significance for them if they had been robbed of the feeling of being independent. It was absolutely necessary that they should have been made to experience that feeling in every fibre of their being and in every cell of their body and mind, otherwise it would have been proper to tell them frankly that their constitutional remedy had been prescribed in the Constitution but they were powerless to achieve it. Such an action would have endowed the new organization, the Republic of India, with little more than the sterility of creating barren aspirations in the mind of its citizens. Obviously, this could never have been the intention of the framers of the Constitution and, in my opinion, every High Court now possesses the power to issue the directions, orders or writs specified in Article 226.

14. But it is not enough to hold that all the High Courts possess such powers. The issue requires further treatment and unless the extent of the powers of the

High Courts is decided, the position will not be clarified. In this connection the learned Counsel for the applicants has cited, *Bagaram Taloule v. The State of Bihar* AIR (37) 1950 pat. 387, in which the learned Judges have taken the view:

Article 226 contemplates the use of writs and directions for purposes other than the enforcement of the fundamental rights. At the same time, the words for any other purpose¹ in the Article can hardly mean that a High Court can issue writs for any purpose it pleases. The correct interpretation is that the words mean "for the enforcement of any legal right and the performance of any legal duty." To that extent the words must be used "*Ejusdem Generis*" which is the ordinary principle of construction.

15. The reason for this view as given in the ruling is:

Article 32, which is the corresponding provision for the Supreme Court, does not contain these words but speaks merely of the enforcement of "any of the rights conferred by this Part", and that is obviously because the original jurisdiction of the Supreme Court extends only to the enforcement of the fundamental rights and this view receives confirmation from the terms of Article 139, which says : "The Parliament may, by law, confer on the Supreme Court power to issue directions, orders and writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for any purpose other than mentioned in Clause (2) of Article 32.

16. The learned Judges have come to the conclusion that Article 226 contemplates the issue of writs and directions even for purposes other than the enforcement of fundamental rights, although they have held that the words can hardly mean that a High Court can issue writs for any purpose it pleases, and have expressed the opinion that the correct interpretation is that the words mean "for the enforcement of any legal right and the performance of any legal duty" and to that extent the words must be read "*ejusdem generis*" which is the ordinary principle of construction.

17. I feel very hesitant to differ from the exposition of the Article in question as made by such able Judges but the depth of my conviction is my only excuse for striking a dissenting note. The only point, however, on which I venture to differ from the learned Judges is whether, as they have held, the words "for any other purpose" mean for the enforcement of any legal right and the performance of any legal duty. In my opinion, this interpretation is very wide and exceeds the spirit of Article 226. If any doubt exists about the view taken by me, Article 139 clears it. I cannot conceive that the Constitution makers, while withholding from the Supreme Court powers to issue directions, orders or writs including the high prerogative writs mentioned in Article 32(2) for any purpose other than those mentioned in the aforesaid clause, would have considered it proper to confer such extremely wide powers on the High Courts. I should think that the words "any other purpose" mean nothing more than "any other purpose ancillary to the enforcement of any of rights conferred by Part III". I am inclined to read the

phrase "for the enforcement of any of the rights conferred by Part in" with special emphasis on the word "enforcement" and if this is done for the interpretation of the words "any other purpose," I believe the position will be perfectly clarified so as to mean that the words "any other purpose" cannot be divested from the word "enforcement" with which they are inextricably bound. Moreover, the use of the conjunctive word "and" between the two phrases mentioned above further support a this view. If the intention had been different, the disjunctive word "or" should have been used so as to extend the sphere of the jurisdiction of the High Courts as covering any purpose not even remotely connected with the enforcement of any of the rights conferred by part in. But as I have mentioned above, in view of the provisions of Article 139, nothing could be farther from the mind of the framers of the Constitution than to give unlimited powers to the High Courts in the matter of issuing directions, orders or writs for any purpose whatsoever. To give the Supreme Court limited powers in this respect and for the rest subject it to further legislation while conferring unlimited powers on High Courts is a factor which cannot be ignored. Keeping all the aspects into consideration, I believe, I am bound to hold that the words "any other purpose" mean that the purpose must be ancillary to the enforcement of the rights conferred by part. III of the Constitution.

18. So much for the powers of the High Courts. But this does not dispose of one other objection raised by the learned Government Advocate. He had urged that when the High Courts did not possess power to issue the high prerogative writs, the Judicial Commissioner's Court, which was not even a High Court, could not be treated on a higher level. This objection is related to his preliminary objection that the High Court did not possess the power to issue such writs but that point having now been decided, this requires very little comment. By means of Section 5, Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950, every Judicial Commissioner's Court in Part (C) State has been declared to be a High Court for the purpose of Articles 132, 133 and 134 of the Constitution, Section 6 of the Act lays down that the provisions of Chap. v, Part. VI of the Constitution shall in their application to Judicial Commissioner's Court have effect subject to the exceptions and modifications specified in the said Section, Articles 235 and 226 of the Constitution have been omitted from the exceptions and modification to which Section 6 of the Act has been subjected which means that so far as the issue of the high prerogative writs or directions or orders mentioned in the aforesaid Article is concerned, a Judicial Commissioner's Court has been treated on the same level as other High Courts. As such, this contention of the learned Government Advocate must also be overruled.

19. I now deal with the applications on their merits. The grounds of detention supplied to both the applicants are exactly similar and they are:

(1) That you have been inciting the labourers of the New Bhopal Textiles Ltd. to make an illegal demand for an extra half hour recess in the evening for "Iftar" during the month of Ramzan.

(2) That you have been meriting the same labourers to take this extra half an hour illegally, as a result of which many of them took this extra recess illegally.

(3) That in this manner you, in fact, caused an illegal strike in the Mills every day for half an hour.

(4) That you have been inciting the same labourers to take an extra halt hour recess illegally on Friday alter-noon for prayers.

(5) That you have in these days by inciting Muslim-labourers to put forth communal and sectarial demands-caused a cleavage between Hindu and Muslim labourers on communal lines which is likely to lead to a breach of the peace.

(6) That instead of advising labourer to make their representation against the declarations of one month's bonus by the Management in a peaceful manner, you have been inciting them to hold demonstrations which were likely to lead to a breach of peace.

(7) That though you have not declared yourself to be a Communist, you have, by the above methods, been trying to create chaos and confusion and to submit the existing order by violent and illegal means.

You are further informed that you have a right to-make a representation to me in writing against this-order.

Chief Commissioner 14.7.1950.

20. Both the detenus have denied the allegations made against them.

21. It is well settled that the grounds must not be vague and indefinite and for the purpose-of judging by that standard, it will have to be seen whether they fulfil this requirement. Of course, as has been held in Ghulam Hussain v. Rex AIR (36) 1949 Oudh 20, it is not open for the Court to determine the sufficiency of the reasons which induce the detaining authority to issue the order of detention nor to investigate into the evidence upon which the authority was satisfied that it was necessary to detain the person concerned against whom such an order is made. The satisfaction required under the section must be the satisfaction of the authority issuing the order but the learned Judges say that such authority must be reasonably satisfied that the detention of the person is necessary for the security of the State or the maintenance of public order or communal harmony and the Court in the exercise of its powers will be competent to determine whether such an order could have been made by a person acting reasonably and if it is found that the authority did not apply its mind in passing the order, it will sot it aside. Paras one to four of the grounds for detention by themselves do not at all come within the ambit of the Preventive Detention Act. It is only para five which has attempted to bring it within the mischief of Section 3(1)(a)(ii) of the Act but the preceding paragraphs can be called the cause and para five the effect. What I am concerned with is whether the ground for detention, as laid down in paras one to four, show that the mind of the detaining authority was

reasonably applied in framing the detention order and whether para five can be the logical consequence of the activities of the detainees as stated in the preceding paragraphs. In my opinion, a demand cannot be called illegal simply because it is fantastic. In *In re Adati Appalaswamy* AIR (29) 1942 Mad. 785, the learned Judge expressed the view that:

strikes and lock outs, though clumsy and injurious are the only means to decide these matters. The calling of strikes is not illegal.

In this case evidently the stage has not reached a point when such observation of a general nature might be called for but it can be said without fear of contradiction that a demand of the workers for an extra half hour recess in the evening for "Iftar" during the month of Ramzan or for prayer on Friday afternoons can in no way be called illegal, however improper in the eyes of the Management it may be. It is quite a different thing that the Management of the Mill might not have found it possible to grant the recess claimed. I do not also see how the detenus by inciting the Muslim labourers to put forth such communal and auctorial demand could cause a cleavage between the Hindu and Muslim labourers on communal lines. At the utmost it could only agitate the Hindus to make a similar demand for their prayers. By any stretch of imagination I am unable to see how such demands on behalf of one sect could lead to breach of the peace.

22. The learned Counsel for the applicants has raised objection to the use of the expression "breach of the peace" in the grounds of detention. He has urged that these words do not find place in the Preventive Detention Act, which has used the words "the maintenance of public order". He makes a distinction between the words "peace" and "public order". Indeed the omission of the word "public" before "peace" has restricted the sense but in order to read the mind of the detaining authority, it is enough to assume that what he actually meant was the public peace and not the peace of an individual. "Public order", as the Supreme Court has held in *Remesh Thappar v. The State of Madras* AIR (37) 1950 S.C. 124 at p. 127:

is an expression of wide connotation and signifies the state of tranquility prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted.

This definition shows that "public peace" is covered by the expression "public order." I had to make the position in this respect clear because the same expression "breach of the peace" has been used in para six of the grounds of detention.

23. Turning to para six, I find that the assertion is quite vague. The whole scheme of this paragraph revolves on the word "demonstrations." "Demonstrations," as will be readily admitted, may be of various kinds. One can demonstrate by taking out processions, by raising slogans and even by a hunger strike at or near the place concerned. There are also other methods too

numerous to mention and simply the use of the word "demonstration" does not disclose to the detenu what is actually meant to be conveyed to him and if he is precluded from making an effective representation to the detaining authority, the whole purpose of Section 7, Preventive Detention Act is frustrated. In this case I am constrained to hold that the word "demonstrations" is quite vague and still less does it show as to how they were likely to lead to a breach of peace. I do not lay so much emphasis upon the use of the unauthorised word "peace" instead of "public order," for the warrant of detention has been drawn up according to the language used in the Act which is enough to remove any doubt on that account, as I do on the vagueness of this ground of detention.

24. Ground No. 7 would have been quite sufficient to declare the detention order valid, had it not been for the fact that the whole effect of the grounds of detention has been marred by the use of the words "by the above methods." These words have obviously limited the detenus' methods to those specified in the foregoing paragraphs but they do not certainly lead one to the conclusion that the methods of the detenus were violent. This conclusion is not warranted by the premise. To satisfy the requirement of Section 3(1)(a)(ii) of the Act, the premise and the conclusion both must; fall within the four corners of its provisions.

25. The learned Counsel for the applicants has invited my attention to two cases which have been decided by the Supreme Court and the Bombay High Court. They are so recent that they have not yet been reported in any authorised journal and for this reason alone I cannot cite them on an authoritative basis. But inasmuch as they have been published in two leading newspapers of India, the Hindustan Times of 11.9.1950 and the Times of India of 10.8.1950, I am simply referring to the news as being of particular interest in this case.

26. Sardar Sohan Singh Josh, a prominent leader of Punjab, was ordered to be released by the Supreme Court after a detention of about 2½ years. One of the grounds of his detention was that he had attempted to organise an armed revolution of Kisans to attend the Communist Party Congress. This ground was held by the Hon^{ble} Mr. Mahajan to be absolutely vague.

27. In the other case, the Bombay High Court ordered the release of Mrs. Parbati Bai Shankar Bhoir, Joint Secretary of the Bombay Girni Kamgar Union (Red Flag) who was arrested in March 1949, and kept under detention first under the Bombay Public Security Measures Act and subsequently under the Preventive Detention Act. The ground supplied to the detenu was that she was engaged in organising acts involving violence and disorder with a view to bring about an illegal general strike of workers in Greater Bombay and that she was likely to continue to do the same.

28. If the reports are correct, as I have every reason to presume they are, the grounds of detention in this case do not even touch a fringe of the grounds for the detention of the aforesaid detenus in seriousness.

29. The learned Counsel for the applicants has cited many rulings of various High Courts but as the Security Acts prior to the inauguration of the Constitution generally laid stress not only on grounds but also on particulars, the rulings cannot be treated as prescribing a general rule such as to make it applicable to the Act under which the detention orders are now made. The omission of the word "particulars" in the Preventive Detention Act is not accidental but deliberate and decidedly it has widened the scope of the detaining authority's discretion. He is not now required to supply the detenu with the particulars of his activities. But the elimination of the necessity of mentioning particulars does not take away from the detaining authority the responsibility of not leaving the grounds vague and indefinite. They must also be such as to enable the detenu to make an effective representation to him. If the aforesaid conditions are not fulfilled, as I find in this case, the grounds of detention cannot be called good "and the detenus are entitled to be released.

30. The applicants are ordered to be released unless they are required to undergo their trial in connection with any other offence.