
(2000) 12 MP CK 0021
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5962 of 2000

Harish Arora

APPELLANT

Vs

District Magistrate, Shahdol and others

RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 144(4), 144(5), 144(6)

Citation : (2001) 2 MPHT 24 : (2001) 2 MPLJ 197

Hon'ble Judges : Mr. Dipak Misra, J

Bench : Single Bench

Advocate : Shri P.N. Pathak, for the Appellant; Shri Alok Agrawal, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court the petitioner has prayed for issue of writ of Certiorari for quashment of orders contained in Annexures P-13 to P-17.

The facts as have been unfolded are that the petitioner is engaged in the business of Coal Trading and Coal Transportation under valid delivery orders issued by the authorities of the South Eastern Coalfields Limited, Bilaspur. It is putforth that he deals in his own name and transports coals for various undertakings under valid delivery orders to various far off places throughout India. Copies of authority for Transport of coal by Shipra Industries, Shivam Coal Brigget Uday, Tripti Industries and Adhunik Brigget Industry have been brought on record as Annexures P-3 to P-6. For transporting Transit Passes are issued by the Mining Officer, Shahdol. As per arrangement the coal is to be lifted from the Coal Mines thereafter to be transported to various far off places. It is setforth in the petition that due to shortage of transport facilities like trucks the petitioner has to make arrangement for temporary storage and dumping of the coal before

it reaches its proper destination. There are number of coal mines near Burhar Town and approximately 1000 tonnes of coal are lifted from various coalfields everyday. For lifting of coal the trucks are required to wait in queue for several days at times. In order to ensure timely lifting of coal the petitioner has engaged number of dumpers for short distance transport of coal. The petitioner has 3,282 hectare area of plot in village Piparia Patwari Halka No. 29, Kotma, District Shahdol which is situated at a distance of 35 kms. away from Burhar. There is no coalmine around this plot nor is there any possibility of surface coalmining around the said area. The Sone river belt where surface coal mining is apprehended is nearly 45 kms. away from this plot. As pleaded by the petitioner for smooth and convenient running of his coal trading and transportation business he has to temporarily dump and store the coal on this plot before trucks for their transportation to proper destination could be arranged. It is averred that the Government of India, Ministry of Coal for the purpose of control and regulation of sale of coal from different mines/collieries has framed Colliery Control Order. There are provisions for allotment of coal. The person who is allotted coal is required to maintain a record containing particulars i.e. quantity of coal allotted of each grade and size, quantity consumed of each grade and size and the purpose for which it is consumed. Thus there are various guidelines to control the same. While the petitioner was smoothly carrying his trading the respondent No. 1 under certain apprehension started issuing prohibitory orders u/s 144 of Code of Criminal Procedure for imposing restrictions on dumping, storage and transport of the coal. As it resulted in hardship to genuine and legal coal traders they represented to the State Government, and eventually, a resolution was brought as contained in Annexure P-11 on 21-11-1995 which stipulates that instead of passing prohibitory orders, flying squad may be constituted to check illegal trade in coal. In spite of aforesaid resolution the prohibitory orders were continued to be passed by the respondent No. 1. Being dissatisfied the petitioner approached this Court assailing the aforesaid prohibitory orders in W.P. No. 670/96. This Court by order dated 12-3-96 directed for stay of operation of impugned prohibitory orders. As life of prohibitory order which was stayed by this Court was for two months, the District Magistrate continued to pass the same orders. The said orders have been brought on record as Annexures P-13 to P-17 and prayer has been made for quashment of the same. It is averred in the writ petition that provision of Section 144 of the Code of Criminal Procedure is for meeting the emergency Situation and law and order, therefore, permanent or semi-permanent orders cannot be passed to affect the rights of a citizen. That apart various other grounds have been taken showing the bonafides of the petitioner.

I have heard Mr. P.N. Pathak, learned counsel for the petitioner, and Mr. Ashok Agrawal learned Panel Lawyer for the State. It is submitted by Mr. Pathak that the orders passed vide Annexures P-13 to P-17 do clearly exposit that the same are passed in stereotyped manner without applying his mind. It is further submission that provision enshrined u/s 144 of Cr.P.C. is not to be taken recourse

to in a factual matrix of this nature. In support of his contention he has placed reliance on the decision rendered in the case of Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, .

Resisting the aforesaid submission Mr. Ashok Agrawal, learned Panel Lawyer, has submitted that as the theft in coal and law and order situation required to be controlled the District Magistrate has no option but to issue orders which have been issued. It is also urged by him that unless the order of the present nature is passed there will be chaos in the area.

To appreciate the rival submissions raised at the Bar it is apposite to refer to Section 144 of the Code of Criminal Procedure which reads as under:--

"144. (1) In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this Section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this Section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to

sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing."

On an objective reading of the aforesaid provision it becomes quite clear that the order passed by a Magistrate can remain in force for a period of two months but the same can be extended at the instance of the State Government if circumstances so warrant upto a period of six months. It is well settled in law that an order u/s 144 is passed to meet a situation of emergency and it cannot be passed in repeated manner to avoid happening of a particular apprehended situation.

In case of Acharya Jagdishwaranand (supra) a three Judge Bench of the Apex Court ruled thus:--

"The proviso to sub-section (4) of Section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order u/s 144 to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as Section 107 or Section 145 of the Code, when individual disputes are raised. If repetitive orders are made it would clearly amount to abuse of the power conferred by Section 144. The nature of the order u/s 144 is intended to meet emergent situation and the order u/s 144 is not intended to be either permanent or semi-permanent in character."

From the aforesaid enunciation of law it is graphically clear that an order u/s 144 of the Code cannot be passed to earn the status of permanent or semi-permanent in character. On a proper scrutiny of the orders passed by the District Magistrate it is graphically clear that the orders are semi-permanent in nature. If orders are scrutinised on the anvil of Acharya Jagdishwaranand Avadhuta (supra) the same do not withstand close scrutiny.

Resultantly, the orders passed vide Annexures P-13 to P-17 are quashed. However, it is open to the District Magistrate to proceed in accordance with law to meet the situation. It is hereby made clear that the District Magistrate before taking recourse to Section 144, Cr.P.C. shall keep in view, the ratio laid down by the Apex Court and do the needful.

The writ petition is allowed without any order as to costs.

Writ Petition allowed.