
(2006) 12 AHC CK 0044
In the Allahabad High Court

Jainendra @ Chhotu Singh

APPELLANT

Vs

State of Uttar Pradesh, Additional District Collector/Additional District Magistrate (Protocall), Suprintendent of Police and Station House Officer

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Arms Act, 1959 — Section 25, 27, 29
Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 153, 153B, 294, 302

Citation : (2007) 1 ADJ 135

Hon'ble Judges : Shiv Shanker, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—All the aforesaid matters are related to necessity and requirement of notice u/s 3 of the Uttar Pradesh Control of Goondas Act, 1970. Since the cause of action of the individual cases are uniform in nature, all the aforesaid matters are taken up together for the purpose of disposal by this solitary judgment having binding effect on all the writ petitions, after making scrutiny of the cases individually.

2. The Uttar Pradesh Control of Goondas Act, 1970 (hereinafter referred to as the "Act") was promulgated with an intention for the control and suppression of Goondas with a view to maintenance of the public order.

3. Section 2(a) and (b) of the Act, is as follows:

(a) "District Magistrate" includes an Additional District Magistrate specially empowered by the State Government in that behalf;

(b) "Goonda" means a person who-

(i) either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable u/s 153

or Section 153B or Section 294 of the Indian Penal Code or Chapter XV, Chapter XVI, Chapter XVII or Chapter XXII of the said Code; or

(ii) has been convicted for an offence punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or

(iii) has been convicted not less than thrice for an offence punishable under the U.P. Excise Act, 1910 or the Public Gambling Act, 1987 or Section 25, Section 27 or Section 29 of the Arms Act, 1959; or

(iv) is generally reputed to be a person who is desperate and dangerous to the community; or

(v) has been habitually passing indecent remarks or teasing women or girls; or

(vi) is a tout;

Explanation.- Tout" means a person who-

(a) accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means any public servant or member of Government, Parliament or of State Legislature, to do or forbear to do anything or to show favour or disfavour to any person or to render or attempt to render any service or disservice to any person, with the Central or State Government, Parliament or State Legislature, any local authority, Corporation, Government Company or public servant; or

(b) procures, in consideration of any remuneration moving from any legal practitioner interested in any legal business, or proposes to any legal practitioner or to any person interested in legal business to procure, in consideration of any remuneration moving from either of them, the employment of legal practitioner in such business; or

(c) for the purposes mentioned in explanation (a) or (b), frequents the precincts of civil, criminal or revenue Courts, revenue or other offices, residential colonies or residences or vicinity of the aforesaid or railway or bus stations, landing stages, lodging places or other places of public resort; or

(vii) is a house-grabber.

Explanation.-House-grabber" means a person who takes or attempts to take or aids or abets in taking unauthorised possession or having law-fully entered unlawfully remains in possession, of a building including land, garden, garages or out-houses appurtenant to a building.

4. Scope and ambit of Section 3 of the Act, which is relevant for the purpose of consideration, as also as follows:

(a) that any person is a Goonda; and

3. Externment, etc. of Goondas.-Where it appears to the District Magistrate.--

(a) that any person is a Goonda; and

(b) (i) that his movements or acts in the district or any part thereof are causing, or are calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of an offence referred to in Sub-clause (i) to (iii) of Clause (b) of Section 2, or in the abetment of any such offence; and

(c) that witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property-

the District Magistrate shall by notice in writing inform him of the general nature of the material allegations against him in respect of Clauses (a), (b) and (c) and give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) Thereupon the District Magistrate on being satisfied that the conditions specified in Clauses (a), (b) and (c) of Sub-section (1) exist may by order in writing-

(a) direct him to remove himself outside the area within the limits of his local jurisdiction or such area and any district or districts or any part thereof, contiguous thereto, by such route, if any, and within such time as may be specified in the order and to desist from entering the said area or the area and such contiguous district or districts or part thereof, as the case may be from which he was directed to remove himself until the expiry of such period not exceeding six months as may be specified in the said order;

(b) (i) require such person to notify his movements or to report himself, or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order,

until the expiry of such period, not exceeding six months as may be specified in

the order.

5. According to the petitioner/s, there should not be any mechanical reasoning in the notice. The Act is not punitive but preventive. Therefore, if the notice is defective, all proceedings taken on the basis of such notice are void ab initio. Since the challenge is thrown in respect of the notice to be issued on the part of the District Magistrate being part and parcel of the State infringing the right of the citizens, writ lies challenging the notice. Whenever certain thing is directed by law to do in certain manner, the same has to be done accordingly. The legal notice under preventive law is to be made with the subjective satisfaction of the cause.

6. In Bhupendrakumar Kohli Vs. Oil and Natural Gas Commission, Sabarmati, Ahmedabad, a Full Bench of this High Court considered the point of issuance of notice stating therein general nature of material allegations. Factually in that case the District Magistrate, Ballia, issued a notice to the petitioner therein directing him to appear before him at a particular date and time to give his explanation in writing as to why an order should not be passed against him. The petitioner instead of appearing before the District Magistrate filed the writ petition under Article 226 of the Constitution of India challenging validity of the notice. The question arose before such Bench what does the expression "general nature of material allegations" denote. The expression "material allegations" has not been defined under the Act. According to the dictionarical meaning, the word "material" means important and essential of significance. The word "allegation" means statement or assertion of facts. Thus, the notice u/s 3 (1) of the Act should contain the essential assertions of facts in relation to the matter set out in Clauses (a), (b) and (c) of Sub-section (1) of Section 3 of the Act. It need not to refer any evidence or other particulars or details. The name of witnesses, and persons who may have made complaint against the person against whom action is proposed to be taken or the time, date and place of the offence committed by the person need not be mentioned in the notice. There is a distinction in between "general nature of material allegations" and "particulars of allegations". In the former notice need not give any details of the allegations, instead the requirement of law would be satisfied if the notice contains a general statement of facts, which need not contain any details or particulars.

7. Ultimately it was held by the Full Bench of this Court "In our opinion, it is difficult to uphold the respondents' contention that the list of first information reports of list of cases in which the petitioner was convicted or the list of cases in which the petitioner was acquitted or the list of pending criminal cases against the petitioner is sufficient to meet the requirement of setting out "the general nature of material allegations. The impugned notice is, therefore, not in accordance with Section 3(1) of the Act as it fails to set out general nature of material allegations against the petitioner."

8. In the aforesaid referred case, the learned Standing Counsel urged that on a liberal construction of the notice the material allegations, on the basis of which

action against the petitioner is proposed to be taken, are discernable, and as such the notice is not rendered illegal and proceedings taken against the petitioners are valid. It is true that validity of a notice is generally upheld if it substantially conforms with the requirement of law but while considering the validity of a notice issued u/s 3 of the Act the same considerations can not be applied. As noted earlier, the Act is extraordinary in nature. Its provisions permit serious inroad on the liberty of a citizen as the provisions permit externment of a citizen without a judicial trial.

9. Ultimately following the earlier ratio of the judgment in 1972 ALJ 762 Harsh Narain v. District Magistrate the Full Bench held that executive must strictly comply with the provisions of the Act. Therefore, if a notice issued u/s 3 (1) of the Act is not in accordance with the provisions of the Act and if it fails to comply with the mandatory requirements of setting out "general nature of material allegations", further proceedings initiated in pursuance of that notice would also be rendered illegal. It was further held that the impugned notice issued to the petitioner is fatal to the proceedings taken against him as it failed to comply with the mandatory provisions under the aforesaid section of the Act.

10. The point again arose from the Full Bench of three Judges, as aforesaid, to a Full Bench of five Judges as reported in 1999 (2) JIC 192 (All) (FB) Bhim Sain Tyagi v. State of U.P. through D.M. Mahamaya Nagar. It was held therein that it may be useful to mention that the right of the petitioners to offer explanation would have to depend upon the material allegations consequently, the reasonable opportunity which is afforded by Sub-section (2) of producing his evidence in support of his explanation, which is guaranteed to the petitioner, should not be exercised if the petitioner do not come to know the general nature of material allegations against them. In the administration of criminal law in our country one comes across two very important terms (i) charge and (ii) statement of accused. In fact these two are fundamental requirements of the principles of natural justice which have to be followed before an accused is condemned. One would shudder at the idea that an accused shall have stood condemned when the charge would only narrate that there is an F.I.R. against him registered u/s 302 I.P.C. at a police station or that in the statement of the accused only a question is put to him that an F.I.R. has been lodged against him u/s 302 I.P.C. in a police station and that alone held sufficient compliance of law. For action against a proposed Goonda, the provisions contained u/s 3 of the Act, bereft of the technicalities and broader legal necessities in a trial of an accused under the Criminal Procedure Code, combine not only the "charge" and the "statement of the accused" but also requires his "defence evidence". Thus, the proposed Goonda must get the fullest opportunity to defend himself. Therefore, the general nature of material allegations must be disclosed to him by the District Magistrate.

11. However, before closing the chapter the Full Bench consisting of five Judges of this High Court held that in view of Whirlpool Corporation Vs. Registrar of

Trade Marks, Mumbai and Others, ground of alternative remedy does not affect the jurisdiction of the High Court. Ramji Pandey (supra) is good law. A show cause notice fails to indicate general nature of material allegations may be challenged and on that ground quashed the notice under Article 226 of the Constitution of India with liberty to the respondents to issue a fresh notice in accordance with law.

12. However, in the aforementioned case in the impugned notice the District Magistrate has set out matters as required by Clause (a), (b) and (c) in the prescribed form. The prescribed form as well as the impugned notice both seek to maintain a distinction between the material allegation and the matters set out in Clause (a), (b) and (c).

13. We can not have any doubt nor we can raise any dispute with regard to aforesaid two Full Bench judgments of this High Court consisting of three Judges in Ramji Pandey (supra), which was also held good by another five Judge Bench in Bhim Sain Tyagi (supra). It is to be remembered that if there is no material, the individual petitioner has every right to challenge the notice in the writ jurisdiction of the Court and there is no bar to that extent. But if there is some material, then the notice can not be held to be defective but will be tested on the basis of the factual analysis by the appropriate Magistrate, who called upon to explain and, therefore, in the cases where some materials are available, entertaining writ will be premium to the illegality at the cost of public law and order system. It is to be remembered that protecting the lawful citizens, who are higher in number in the society, is much more important than the accused being lesser in number. It is well known that the alternative remedy is no bar under Article 226 of the Constitution of India. But it is also to be remembered that the High Court in its wisdom controls it on the basis of the individual cases.

14. On the other hand, Mr. Surendra Singh, learned Additional Government Advocate, contended before this Court that in two Division Bench judgments reported in 2002 (2) JIC 469 (All) Gore Lal v. State of U.P. and Ors. and 2002 (2) JIC 548 (All) Rajey @ Raj Kumar v. State of U.P. and Ors. this Court held that the above cases are distinguishable in nature in view of the Supreme Court judgment reported in Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, The Division Bench held that a writ petition against a show cause notice should not be ordinarily entertained. It is premature in nature because a show cause notice by itself does not give rise to a cause of action, as no adverse order has yet been passed. In the concluding portion of the said judgments, it has been held by the Division Bench that "It is well settled that writ jurisdiction is discretionary jurisdiction, and this Court will not ordinarily exercise its jurisdiction against a show cause notice. It is possible that after considering the reply of the petitioner the authority may be satisfied with his explanation.". We have gone through JT 1995 (8) SC 331 (supra), where the Supreme Court held that normally writ court should not entertain the writ petition against a show cause notice issued by a competent statutory authority. However,

exceptions are only available when there is a question of infringement of fundamental right or the issuance of notice is without jurisdiction. The Court ultimately held that "in the event of adverse decision it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in the appropriate cases by invoking the jurisdiction of Article 226 of the Constitution of India."

15. So far as the five Judges Bench of the Allahabad High Court in Bhim Sain Tyagi (supra) is concerned, it has held that the earlier Allahabad Full Bench judgment of three Judges is good law. A show cause notice, which fails to indicate general nature of material allegations, may be challenged and quashed on that ground under Article 226 of the Constitution of India with liberty to the respondents always to issue fresh notice in accordance with law.

16. Therefore, such judgments are not only reflecting correct analysis of law but it has binding effect on us. But if the facts of the question of general nature of material allegations are indicated or reflected in the notice, such case or cases should not be interfered with by the writ court. It is an admitted position what would be the general nature of material allegations, is not defined under the Act. Dictionarically, it is essential of significance. Therefore, if an indication as regards Clause (a), (b) and (c) of Sub-section (1) of Section (3) of the Act is given, the same is sufficient for the purpose of denoting material allegations. Whenever a person is called without any purpose, then it can be said that there is no material for calling. But when someone is called with some material whatever vague it is, it can not be said that there is no material. It is a well settled by now that when there is no material, the Court will interfere, but when there is some material, the Court will not interfere. In case of some material, only the authority, who issued the notice calling upon a person to give reply for the purpose of meeting the point of some material, is able to adjudicate the issue, failing which one can invoke the alternative remedy or remedy under writ jurisdiction. In none of the cases, we find that the indications of case crime either now or before have not been indicated. Language of the notice may not be the language like Court, but substantial indication is there. It ought to be because in all the cases the notices were served after the aforesaid Full Bench judgments but not before. Ramji Pandey (supra) clearly states that no detail requirement is necessary. Therefore, the indication of mind for the purpose of calling is good enough for the purpose of consideration. In Whirlpool Corporation (supra) the Supreme Court did not curtail the power of the High Court in writ jurisdiction but given an indication what would be the cases to be considered by the High Court under Article 226 of the Constitution of India in spite of having alternative remedy, such are as follows:

- i) Violation of principle of natural justice;
- ii) Infringement of any fundamental right;
- iii) Order without jurisdiction;

iv) Vires of the Act, Rules, Regulations, etc are under challenge.

17. In the present case, neither the question of jurisdiction nor the question of vires are challenged. Therefore, no such case is available hereunder. Hence, either it will be case of violation of principle of natural justice or infringement of fundamental right. Again violation of principle of natural justice can not be available here since in accordance with law the concerned Magistrates have given reasonable opportunity to the petitioners for tendering explanation in connection with the notice. If the reply is given, either it can be accepted or it can be rejected. In case it is accepted, then such petitioners can not have any grievance. If it is rejected, either he will approach the forum of alternative remedy or to the writ court in the appropriate cases. Hence, the question of violation of principle of natural justice is also not applicable in the case. Therefore, the only other point i.e. infringement of fundamental right by issuing such notice is applicable or not, is to be considered by this Court.

18. In the instant case, at best the question of personal liberty under Article 21 of the Constitution of India might be the question. But when the law is provided to give opportunity to explain, it means legislature wanted to protect the personal liberty of a person even when several criminal cases including heinous crimes are involved with the individuals, who have made writ petitions herein. In *Lt. Governor, NCT and Others Vs. Ved Prakash @ Vedu*, the Supreme Court has categorically held on several points in the case of externment in the similarly placed situation under a different Act i.e. Delhi Police Act, 1978. The show cause notice involved therein is quoted hereunder for the purpose of satisfaction what would be materials of show cause notice:

That your movement and acts are causing and are calculated to cause alarm, danger and harm to person or property. There are reasonable grounds to believe that you engage or likely to engage in the commission of offence punishable under Chapters XVI, XVII, XXII IPC. Is it a fact that you were not involved in a single isolated incident but indulged in criminal activities since 1982 and continued and dangerous so as to render you being at large in Delhi or in any part thereof is hazardous to the community.

That the witnesses are not willing to come forward to give evidence in public against you by reasons of apprehension on their part as regards the safety of their person or property. There are reasonable grounds to believe that you are likely to engage yourself in the commission of offences like those in para (i) above.

You are likely to be called upon to explain as to why an order for externment out of the limits of the National Capital Territory of Delhi for a period of two years in accordance with the provisions of Section 47 of the Delhi Police Act, 1978 be not passed against you.

19. The show cause notices challenged hereunder issued for the purpose of externment etc. of Goonda under the Uttar Pradesh Control of Goondas Act,

1970 are para materia with such notice. Therefore, that can be a model of notice giving general nature of material allegations. However, the Supreme Court proceeded further on the basis of the reply in connection with the show cause and the order therein. Even from there various other materials can come out to enlighten the issue. The satisfaction of the authority although primarily subjective, should be based on objectivity. But sufficiency of material as such may not be gone into by the writ court unless it is found that in passing the impugned order the authority has failed to take into consideration the relevant facts or had based its decision on irrelevant factors not germane therefor. Mere possibility of another view may not be a ground for interference. The High Court and the Supreme Court would undoubtedly jealously guard the fundamental rights of a citizen. While exercising the jurisdiction rested in them invariably, the courts would make all attempts to uphold the human rights of a proceedee. The fundamental right under Article 21 of the Constitution of India undoubtedly must be safeguarded. But there the statute and the precedents were considered to satisfy the cause when an order was passed in compliance of the notice and reply. However, the Supreme Court further held that the Court must remind itself that the law is not a mere logic but is required to be applied on the basis of its experience. Experience says that as against the show cause a person has every right to give reply saying that the materials are not sufficient for the purpose of calling. It is within the domain of the District Magistrate to consider all aspects of the matter and give his opinion. Reasonable opportunity of tendering an explanation is not bare opportunity. The person concerned will have a right to consult and defend the cause by a counsel of his choice and have an opportunity of examining as well as examining any other witnesses as he wishes to produce in support of his explanation, unless for the reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay. Apart from that, as per Section 6 of the Act any person aggrieved by an order made under Sections 3, 4 or 5 may appeal to the Commissioner within fifteen days from the date of the order. The appellant or his counsel will be entitled to inspect the record which was not disclosed to him at the inquiry, if any, held u/s 3. The Commissioner may either confirm the order, with or without modification, or set it aside, and may, pending disposal of the appeal, stay the operation of the order subject to such terms, if any, as he thinks fit. Therefore, the Act is well guided unless, of course, factual situation like Ramji Pandey (supra) arose. In fact both the Full Bench and the Supreme Court discouraged formal service of notice u/s 3 of the Act. The notice will be backed by some materials which can indicate the criminal activities. Only by virtue of such notice the right of individuals will not adversely affect nor the right under Article 21 of the Constitution of India will be infringed. It will be infringed only when no indications are given in the notice in respect of Clause (a), (b) and (c) of Section 3(1) of the Act or it is not referred. If it is indicated, sufficiency as regards general materials are complied with. Now, it is for the persons, who got the notice, to give reply contradicting such reference and proceed with the matter. Therefore, we can not justify the cause of interference with the show

cause notice. This order is passed not only in conformity with the aforesaid Full Bench judgments ratio of this High Court but also on the sufficiency of materials in the notice.

20. Out of the bunch cases if any writ petition is filed on the part of the complainant to take cognizance by the District Magistrate, the same can be filed before the District Magistrate itself within the fore-corners of the Act for the purpose of taking steps. There is no necessity of interference of the writ court in this regard.

21. In case any order is passed following the notice and reply and the parties feel aggrieved, they can file an appeal u/s 6 of the Act. Therefore, in that case also, no order can be passed by this Court. If any body wants to get the appeal expedited, he can also make prayer before the appropriate authority to such extent.

22. Hence, in view of the above observations, the writ petitions stand dismissed. Interim orders, if any, stand vacated.

23. However, no order is passed as to costs.

Shiv Shanker, J.

24. I agree.