
(1999) 12 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1218/99

Jokhu alias Shivnarayan

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 — Section 5, 8(1), 9

Citation : (2000) 1 MPHT 554

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : A.H. Khan, for the Appellant; Amit Agrawal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—The challenge in this petition filed under Articles 226/227 of the Constitution of India is to an order dated 24-12-1998 (Annex. P-1) passed by District Magistrate, Ujjain, whereby order of externment was passed against the petitioner and an appellate order dated 12-8-99 passed by State (Annex. P-2) rejecting appeal filed by the petitioner and affirming the order of competent Authority. To appreciate the grievance raised by the petitioner, few facts need mention.

2. Superintendent of Police, Ujjain, filed a report u/s 5 (a) & (b) of M.P. Rajya Suraksha Adhiniyam, 1990 (for short, "the Act") with the District Magistrate, Ujjain, complaining that petitioner is indulging in criminal activities and is also involved in several offences. It was, therefore, concluded that as a result of petitioner's indulging in continuous criminal activities, the life of a general public at large is in danger. This led to issuance of show cause notice to petitioner as required u/s 8 (1) of the Act as to why the petitioner be not externed. The petitioner filed reply to show cause contending inter alia that he has been acquitted in most of the criminal cases and other cases are all politically

motivated. The District Magistrate by its order dated 24-12-98 passed order directing externment of the petitioner. He was asked not to reside or visit the districts viz; Dewas, Ratlam, Shajapur, Mandsaur, Dhar, Indore and Neemuch. The petitioner felt aggrieved filed appeal to State u/s 9 of the Act. This appeal was dismissed by order dated 12-8-1999 in following words in Hindi:--

mijks? fo"k; esa vkids ek;/e ls fnukad 20&1&99 dks izLrqr vihy esa vihykaV vFkkWfjVh }kjk dysDVj mTtSu ds vkns"k fnukad 24&12&98 dks ;Fkkor j[kk x;k gS rFkk vihy fujLr dh xbZ gSA

It is this order which is under challenge in this petition.

3. Notice was issued to State. Return is filed.

4. The main submission of Shri Khan, learned counsel for the petitioner was that if the order of District Magistrate was bad, the order of State in appeal was worst. It was his submission that the appellate Court while disposing of an appeal did not assign any reason except to state that appeal is dismissed. In his submission, unreasoned appellate order is never sustainable and the same has to be quashed. He also made attempt to assail the legality of orders on facts. The State counsel supported the impugned orders as they are on record.

5. Having heard the counsel, I am of the considered view that impugned appellate order dated 12-08-1999 (Annex. P-2) passed by State deserves to be quashed as it did not contain any reason much less sufficient one. It is a settled principle of Law that every order passed by an authority exercising powers under statute which affects citizen's right must be supported with reasons and indeed adequate one. The necessity of assigning reasons becomes more, when the order is adverse to a party. A person who is being penalised by the authority under the Act is entitled to know the reasons as to why and on what basis he is being penalised. Absence of reasons lead to an inference of non-application of mind by an authority passing an order. Their Lordships of Supreme Court in *Shri Pragdas Umar Vaishya v. Union of India* and Ors. (1967 Vol. 12 MPLJ 868), had an occasion to comment on the importance of giving reasoning by an authority passing an order. The observation of Their Lordships in this case must always be kept in mind while passing an order.

"In our view, the procedure followed by the High Court was irregular, it is not for the High Court to give reasons which the Government might have, but has not chosen to give in support of its conclusion. Since no reasons were given in support of the order passed by the Central Government, the order was ex facie defective, and the defect could not be remedied by looking into the file maintained by the Government and constructing the reasons in support of that order. The reasons in support of the order had to be recorded and disclosed to the parties concerned by the Central Government; the reasons could not be gathered from the "notings" made in files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal, and an effective challenge

against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order."

6. Keeping aforesaid well settled principles in mind, I have no hesitation in quashing the order passed by State dated 12-8-99 (Annex. P-2) as it did not contain any reasons at all.

7. Petition is accordingly allowed. The State (appellate authority) is directed to decide the appeal on its merit by giving an opportunity to the petitioner of hearing. Needless to emphasis, the appellate authority while passing the final order disposing of an appeal would assign the reasons in accordance with law. The appeal be decided within one month from the date of production of this order before the Appellate Authority.

8. I have not expressed any opinion on merits and demerits of the case. The Appellate Authority should decide the appeal uninfluenced by any of my observations strictly according to law and keeping in view the observations of Supreme Court while deciding the appeal *supra*.