

(1984) 10 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1543 of 1984

Kankar Mujare

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 17-10-1984

Acts Referred:

Madhya Pradesh Rajya Suraksha Tatha Lok Vyavastha Adhiniyam, 1980 — Section 12

Citation : (1985) JLJ 217 : (1985) MPLJ 194

Hon'ble Judges : Gulab C. Gupta, J;C.P. Sen, J

Bench : Division Bench

Advocate : J.P. Dube and B.P. Sharma, for the Appellant; M.V. Tamaskar for State, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

The petitioner, Shri Kankar Mujare claiming to be social and political worker and a student leader feels aggrieved by the order of externment dated 17-4-1984 passed by respondent No. 2 (Annexure 18) as affirmed by the appellate order dated 28-7-1984 (Annexure R-4) passed by respondent No. 1 and seeks a writ of certiorari for quashing the same, by filing this petition under Articles 226 and 227 of the Constitution of India.

It appears that earlier proceedings were initiated against the petitioner under the M.P. Maintenance of Public Order Adhiniyam, 1965 but before those proceedings could conclude the said Act was replaced by M.P. Rajya Suraksha Tatha Lok Vyavastha Adhiniyam, 1980 (hereinafter referred to as "the Act"). As a result of the repeal of the 1965 Act earlier proceedings were dropped and fresh proceedings were started under the Act. A show cause notice dated 15-4-1982 (Annexure 6) was served on the petitioner requiring his explanation on incidents stated therein and also to show cause why an order u/s 12 of the Act be not passed against him. The petitioner submitted a reply to the said notice on

7-6-1982 (Annexure 7) denying the charges and alleging mala fides and political rivalry against him. The petitioner also submitted a list of 23 witnesses whom he wanted to examine in his defence. On receipt of this reply the following order was passed by the respondent No. 2 in the order sheet of the case:--

This order sheet would show that though the petitioner was to examine 10 witnesses only, no reason for such an order was stated. Order-sheets further show that on next date i.e. 22-6-1982 the petitioner could not examine witnesses as his Advocate had fallen sick. On that date, however, the A.P.P. appeared against the petitioner, filed documents and prayed for examination of few witnesses which was allowed. Witnesses against the petitioner were examined on 6-7-1982 and 20-11-1982. On 20-11-1982 the respondent District Magistrate felt the necessity of issuing an additional show cause notice which was done on 4-12-1982 vide Annexure 8. On 22-12-1982 the petitioner prayed for certain documents and also the copies of statements of witnesses. This request was turned down on 22-12-1982 on the ground that it was not necessary to disclose the source of information. On 4-1-1983 the petitioner was directed to keep his 3 witnesses present on the next date of hearing i. e. 17-1-1983. It appears that the petitioner paid P.F. for examination of 3 witnesses and two of them were actually served. In spite of it. none of the 3 witnesses were present in the Court. The petitioner, therefore, made a request for issuance of fresh process, which was refused by order dated 17-1-1983, passed in the order sheet itself. This order-sheet does not contain any reason why issuance of fresh process was refused. However, on that date witnesses mentioned at serial Nos. 1, 2, 3,4, 5, 10, 11 and 13 were considered unnecessary and their examination was not permitted on the ground that they live at places like Delhi, Bhopal and Nagpur and their examination was likely to cause delay. The case was thereafter fixed for evidence on 3-2-1983. On 3-2-1983 the petitioner was directed to pay P.F. within 3 days and the case was adjourned to 14-2-1983. Surprisingly on that date the A.P.P. examined 2 more witnesses and expressed his desire to examine 2 further witnesses which was permitted. The proceedings, thereafter, continued on 21-3-1983 and 13-4-1983. On 2-5-1983 the petitioner was directed to keep his 3 witnesses present in accordance with earlier order. On 18-5-1983 the petitioner examined 2 witnesses and was directed to keep 2 more witnesses present on 31-5-1983. On 31-5-1983 an application for adjournment was given on behalf of the petitioner as he had fallen sick. A medical certificate was also filed. In spite of it, his defence was closed. The order-sheet dated 31-5-1983 does not show whether his application for adjournment was accepted or not, after this date of hearing the Presiding Officer appears to have been transferred and hence proceedings were adjourned from time to time. On 19-10-1983 when the new incumbent had taken the charge of the office, the case was taken up for hearing when P.P. sought permission to examine witnesses in support of some additional complaints, which was again permitted. The witnesses for the prosecution were ultimately examined on 1-2-1984 and fresh show cause notice was directed to be issued against the petitioner. This show cause notice was

issued on 2-2-1984 (Annexure 9). The petitioner submitted his reply on 24-2-1984 (Annexure 10). He also submitted a list of 15 witnesses whom he wanted to examine in support of his defence (Annexure P-11). On 2-3-1984 when the case was taken up, the petitioner's counsel wanted to examine witnesses which was granted and the case was adjourned to 15-3-1984. On 15-3-1984 the petitioner examined 3 witnesses and prayed for time for examination of more witnesses which was refused and the case was closed for arguments. After the arguments, the impugned order was passed. The impugned order has the effect of externing the petitioner from Balaghat and the adjoining districts of Seoni, Mandla, Rajnandgaon, Bhandara and Nagpur from the date of this order. It may be mentioned that Bhandara and Nagpur are districts of Maharashtra and hence beyond the jurisdiction of respondent No. 2. The petitioner, thereafter, appears to have filed an appeal and also prayed for stay of the order. The stay was refused on 17-5-1984. Since the appeal remained pending. The present petition was filed in June, 1984. During the pendency of the petition the appeal was decided by the respondent State confirming the externment order but by deleting Bhandara and Nagpur districts from the same.

The impugned orders are challenged mainly on the following 3 grounds: (1) that the petitioner had been denied the opportunity of examining witnesses as available to him u/s 15 (2) of the Act and hence the impugned order is bad; (2) the petitioner was denied copies of documents and hence had no reasonable opportunity of tendering explanation regarding the charges, and (3) the impugned orders are politically motivated. Shri Tamaskar, learned Deputy Advocate General denied the aforesaid allegations and submitted that the petitioner had full opportunity of examining witnesses, law does not require copies of documents to be given, that denial is protected u/s 26 of the Act and that there is no factual base for allegation of political rivalry.

In our opinion, the petition deserves to be allowed on the ground that the petitioner had been denied opportunity of examining witnesses without recording any reason in writing as required by section 15 (2) of the Act and hence it is not necessary to examine other allegations made by him. The factual part of the matter has been stated earlier. Order-sheets clearly show that he was not permitted to examine all his witnesses and no reason for such an order was recorded. The sequence of incidents narrated earlier also shows that the case against the petitioner had not been placed before the respondent No. 2 at the same time, but had been placed in 3 instalments. The petitioner was entitled to examine witnesses against all the charges contained in the 3 show cause notices. The last show cause notice was given to him on 2-2-1984 and he submitted his reply on 24 2-1984. His request to examine witnesses was turned down on 15-3-1984. It cannot be said that the proceedings were prolonged or delayed because of anything done by the petitioner. It is also not the case of the respondents that the application for examination of witnesses was made for purposes of vexation. It is, therefore, clear that though the petitioner submitted names of 23 witnesses in the first list submitted by him and 15 witnesses in the

second list, he was permitted to examine only 2 witnesses on 18-5-1983 and 3 witnesses on 15-3-1984. In between these two dates witnesses for the prosecution were examined against the petitioner. It is also clear that while disallowing examination of the witnesses from the first list no reason whatsoever was recorded anywhere in the order-sheet. Indeed, a perusal of externment order passed by respondent No. 2 shows that the learned District Magistrate did not look into the order-sheet and wrongly observed that the petitioner was permitted to examine all the witnesses mentioned in his first list. (See para. 16). Order dated 31-5-1983 refusing to grant adjournment on the ground of sickness, which was supported by medical certificate, also appears to be without any justification. Since this has the effect of denying the petitioner, his right to examine witnesses, a reasoned order was required to be passed. Apparently, the order gives no reasons nor does it say that the petitioner was not sick and his application was intended to delay proceedings. The question, therefore, is whether this introduces an infirmity in the impugned order sufficient to vitiate the same.

The provisions of the Act have to be appreciated in the context of Article 21 of the Constitution which mandates deprivation of personal liberty only according to procedure established by law. The procedure prescribed u/s 15 of the Act is, therefore, the procedure required to be followed before depriving the petitioner of his personal liberty. It is not disputed that freedom to move freely throughout the territory of India is a part of petitioner's personal liberty guaranteed to him under Article 19 of the Constitution. In this context, the provisions of section 15(2) will have to be strictly followed. Under the circumstances, even if 2 interpretations were possible the Court would prefer the one which ensures enjoyment of personal liberty by the citizen. This position of law remains undoubted and settled by a long series of decisions of this Court and the Supreme Court. Indeed, the law establishing the procedure resulting in deprivation of personal liberty has itself to be fair and reasonable so that it does not contravene any of the fundamental rights of the petitioner.

The strict interpretation of the provision appears to be implied in the wordings, of section 15 (2) of the Act which reads as under:--

If such person makes an application for the examination of any witness produced by him, the District Magistrate shall grant such application and examine such witnesses unless for reason to be recorded in writing, the District Magistrate is of opinion that such application is made for the purpose of vexation or delay.

The use of the word "shall" raises a presumption that the provision is imperative. It is the settled principle of interpretation that the use of the word "shall" raises a presumption that the particular provision is mandatory. It is, however, true that this presumption is rebuttable and a contrary decision may be reached by referring to the object and scope of the enactment and the consequences flowing from such construction. It is, therefore, clear that unless the context or the intention otherwise demands the use of the word "shall" will be accepted as

making the provision mandatory. (See *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, and *Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others*, . Nothing has been brought to our notice in the instant case and indeed there is nothing to show that use of the word "shall" imposes any other except the mandatory obligation. Read in the context of Article 21 of the Constitution it leaves no doubt in our mind that the requirement of recording reasons is the mandatory requirement of law and its breach would vitiate the resultant order. Since this mandatory requirement is wanting in the instant case the resultant impugned order must be held to be vitiated.

The requirement of giving reasons while passing an order having adverse consequences upon the rights and liberty of a citizen appears to be a part of principles of natural justice and is recognised as such even in the administrative law. In those cases where appeals are provided the requirement has been held to be mandatory. (See *Bharat Raja Vs. The Union of India (UOI) and Others*, and *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, A Full Bench of this Court considered the matter in *Rana Natwar Singh v. State of M.P. and Others* 1980 M P L J 729 and held that where the statute or rules, expressly or implied, require giving reasons the authority or tribunal was under a legal obligation to do so and failure to perform this duty would vitiate the order. The Supreme Court in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, and *Union of India (UOI) Vs. H.P. Chothia and Others*, while dealing with service jurisprudence in the context of statutory rules, held that such a requirement was mandatory. It may even be stated that in the context of Supreme Court judgments in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the requirement of giving reasons is in itself, a guarantee against arbitrary action and an order which gives no reasons may be violating the mandate of Article 14 read with Article 21 of the Constitution.

The petition consequently succeeds and is allowed. The impugned order dated 17-4-1984, passed by respondent No. 2 u/s 12 of the Act and the appellate order dated 28-7-1984, passed by respondent No. 1 are quashed. No orders as to costs. Outstanding amount of security deposit, if any, shall be refunded to the petitioner.