

(1976) 02 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 823 of 1975

Madan Lal Pande

APPELLANT

Vs

District Magistrate, Shajapur and Another

RESPONDENT

Date of Decision : 13-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Detention Order, 1971 — Rule 4, 4(2)

Citation : AIR 1977 MP 37 : (1976) JLJ 572

Hon'ble Judges : J.S. Verma, J;B.R. Dubey, J

Bench : Division Bench

Advocate : R.K. Vijayvargiya, for the Appellant; G.S. Solanki, Dy. G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

Verma, J.—This is a petition under Article 226 of the Constitution of India for a writ of mandamus directing the respondents to classify the petitioner as a detenu in Class 1 in accordance with the Provisions of M. P. Detention Order, 1971.

2. The petitioner has been detained in the Sub Jail, Narsingarh, District Rajgarh as a result of an order dated 27-11-1975 passed by the District Magistrate, Shajapur, respondent No. 1, under the Maintenance of Internal Security Act, 1971. There is no dispute that no order is specifically passed regarding the classification of the petitioner as a detenu on account of which he is presumed to have been placed in Class II in accordance with the proviso under Sub-rule (2) of Rule 4 of the M.P. Detention Order, 1971 and that he is being so treated.

3. The petition alleges that the detenu aged about 57 years, is a Law Graduate of 1945 and has been a practising Advocate of this Court with headquarters at Shajapur, ever since the year 1947. One son of the detenu is also an Advocate like him while the other is an Engineering Graduate. The detenu claims a high social status having been President of the Municipal Council, Shajapur from 1962 to 1964; Chairman of Shajapur District Land Development Bank from 1963 to

1967; Director and Member of the Executive of M. P. State Land Development Bank, Bhopal from 1967 to 1974; Director of District and Development Bank, Shajapur and Shajapur Vipnan Sanstha. In addition the detenu has an irrigated farm of 30 bighas with his own tractor and agricultural appliances. The detenu being aged is a victim of failing eye-sight. The detenu is also a Director for the last six years of a concern publishing a daily newspaper from Indore. It is further alleged that the petitioner on being so detained earlier in the month of July, 1975 was classified as a detenu and placed in Class I, while detained in Bherugarh Central Jail. It is further alleged that in accordance with the directions contained in a circular issued by the Inspector General of Prisons, the Jailor of Sub Jail, Narsingarh, respondent No. 2, can also treat the detenu in Class I since the circular requires all doctors and lawyers etc, to be so treated. None of these facts stated in the petition have been denied in the return filed on behalf of the respondents.

4. The return filed on behalf of the respondents is no doubt unusual. Without controverting any of the averments made in the petition, it has been stated therein that the past activities of such a detenu being against the society, it is neither permissible nor equitable to classify the detenu in the higher class. It is then stated that according to Rules 376 and 430 of the Jail Manual, the detenu cannot be treated as belonging to a superior social status on account of his past activities. It is nowhere stated in the return, nor is it the respondents' case that the detenu has been denied class I, not being found entitled thereto by the authority concerned on consideration of all the relevant facts men-Honed in Sub-rule (1) of Rule 4 of the M.P. Detention Order, 1971.

5. Section 5 of the Maintenance of Internal Security Act, 1971 gives the power for regulating place and conditions of detention of persons detained under that Act. In exercise of this power, the State- Government has made the M- P. Detention Order, 1971, Sub-rule (2) of Rule 1 of the M.P. Detention Order, 1971 lays down that this order shall apply to every detenu who is detained anywhere in Madhya Pradesh under the provisions of the Maintenance of Internal Security Act, 1971, subject only to any direction or order of the Central Government. It is common ground before us that the provisions of this order fully apply to the present detenu. Relevant portion of Rule 4 thereof, is as follows:--

"4. Classification and authority directing the classification-- (1) Detenus shall be divided into two classes, Class I and II, according to the state of their health and their education, status and mode of living before detention.

(2) The classification of each detenu shall be made by the authority directing his detention:

Provided that where no order is specifically passed regarding classification by the authority directing detention of the detenu, he shall be presumed to have been placed in Class II.

(3)

Sub-rule (1) provides for all such detenus to be divided into two classes, Class I and II. This classification is to be made on the basis of their health, education, status and mode of living before detention. Obviously, past activities of the detenu resulting in his detention are not a relevant factor for this classification. Sub-rule (2) imposes this duty of classification of each detenu on the authority directing his detention. There can thus be no doubt from these provisions that a duty is imposed on the authority directing detention of a detenu to also so classify him on the basis of considerations mentioned in Sub-rule (1) of Rule 4 of the M. P. Detention Order 1971. The proviso under Sub-rule (2) only says that in the absence of a specific order regarding classification, the presumption will be that the detenu has been placed in Class II. This presumption does not, however, in any manner minimise the obligation of classification imposed on the authority as already stated. The purpose of this proviso merely is to obviate the necessity of a specific order when the authority on classification places the detenu in Class II. The reason is obvious. No specific order is required to justify giving the lowest category. This, however, cannot mean that the duty expressly cast in the earlier part of the Rule is totally nullified in this indirect manner so as to render the entire provision meaningless. There can, thus, be no doubt that the provision imposes an obligation on the authority to classify each detenu as the result of a positive act and that too on the basis of factors enumerated therein. This duty is to be discharged without any avoidable delay, for obvious reasons. Thus, the imposition of such a duty and the manner of its exercise is beyond doubt from Sub-rule (1) of Rule 4 of the M. P. Detention Order, 1971.

6. The District Magistrate, Shajapur, respondent No. 1, is the authority directing detention of the detenu. There is no affidavit filed by the District Magistrate, Shajapur in reply to the petition and the same has been filed by the Sub-Divisional Officer, Shajapur on behalf of the respondents. The substance of the reply given by the respondents- has already been stated above. In view of such clear provision in the law applicable, to say the least, the stand taken by the District Magistrate, Shajapur is indeed astounding. This stand betrays a total lack of appreciation of the applicable provisions and indicates that the District Magistrate, Shajapur holds the view that he has unfettered powers in the matter and that his action is not controlled by the provisions of the M.P. Detention Order, 1971. It is obviously for this reason, that the District Magistrate, Shajapur totally ignored the mandate contained in Sub-rule (1) of: Rule 4 of the M.P. Detention Order, 1971 and being convinced of its correctness, in spite of this petition, has chosen to take this stand in this proceeding. This stand is clearly unsupportable. Shri Solanki, learned Deputy Government Advocate has, in our opinion rightly, made no attempt to support this extreme position taken by the respondents in view of the undoubted fact that the provisions of the M.P. Detention Order, 1971 apply to the petitioner's case. The result is that there is a clear refusal by the District Magistrate, Shajapur to perform the duty cast on him by Rule 4 of the M.P. Detention Order, 1971 which admittedly governs the petitioner's case.

7. In Halsbury's Laws of England, Third Edition, Volume 11, the settled law

applicable in such a situation is summarised as follows:--

"If public officials or a public body fail to perform any public duty with which they have been charged, an order of mandamus will lie to compel them to carry it out,..... In accordance with this principle a mandamus will issue to government officials in their capacity as public officers exercising executive duties which affect the rights of private persons."

(Para 172, Pages 91-92)

In S. A. de Smith's Judicial Review of Administrative Action, Second Edition, the summary of the settled law is stated as under:--

"Mandamus lies to secure the performance of a public duty, in the performance of which the applicant has a sufficient legal interest."

(Page 561)

"One begins with the elementary proposition that Courts and tribunals have a duty to determine cases within their jurisdiction and properly brought before him, and that courts, tribunals and administrative bodies in general have a duty to exercise their statutory discretion one way or the other when the circumstances calling for the exercise of those discretions arise. Wrongful refusal to exercise jurisdiction or discretion in such circumstances is a breach of duty repressible by an order of mandamus. And refusal to adjudicate or to exercise discretion may be conveyed not only by express words but also by such forms of conduct"

(Page 564)

In H.M. Seervai's Constitutional Law of India. First Edition, the principles applicable in India to such a situation, are stated as under:--

"Mandamus lies against a person holding a public office or against a corporation or inferior court for the enforcement of duties which, under any law for the time being in force, are clearly incumbent upon such person or court in his or its public character or of such corporation in its corporate character".

(Page 658)

"In other words, the State, Public officials, inferior courts and statutory corporations are under a legal obligation not to act contrary to law or without authority of law, or in excess of the authority conferred by law."

(Page 659)

Thus, a direction in the nature of mandamus can be issued against a public official to compel the performance of a public duty imposed upon him by law, even though the decision to be reached on performance of that, duty is within the discretion on the authority.

8. Arbitrariness and capaciousness are the very negation of rule of law, the system which governs us. The executive authorities have to -avoid these pitfalls by constant vigilance. It is more so in the present context of emergency, resulting, of necessity, in curtailment of citizen's rights and conferment of wide powers and discretion in executive authorities. District Magistrate, as head of the district administration, has been, therefore, considered the lowest authority to whom such wide powers could be safely entrusted. It is obvious, that these powers are required to be exercised with great circumspection and with full realisation of their impact on the rights of citizens. It is beyond the scope of a District Magistrate's authority to make a further curtailment of these rights and that too, not only without the authority of law but in clear violation thereof.

9. It would be profitable to quote a passage from the decision in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, which is very apposite in the present context. The relevant passage in Para 14 of the report is as under:--

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey -- "Law of the Constitution" Tenth Edn. Introduction ex). "Law has reached its finest moments", stated Douglas, J. in *United States v. Wunderlich* (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* (1770) 4 Burr 2528 "means sound discretion guided by law. It must be governed by rule not by humour: it must not be arbitrary, vague, and fanciful."

This content of the rule of law has been reiterated by the Supreme Court even thereafter.

10. The above quoted principles are too well known but the facts of this case have compelled us to repeat them once again since the present situation requires their application every day by the authorities invested with such wide powers. We derive some satisfaction from the fact that the District Magistrate, Shajapur is the only one from amongst the several District Magistrates where actions have been challenged before us so far, who has chosen to take such a stand.

11. There being a clear refusal by the District Magistrate, Shajapur to perform the aforesaid obligation imposed upon him by law, a writ of mandamus has to be issued compelling performance of that obligation.

12. As a result of the discussion aforesaid we direct the District Magistrate, Shajapur, the respondent No. 1, to make a classification of the petitioner as a detenu in accordance with the provisions of Rule 4 of the M.P. Detention Order, 1971. Since the performance of this imperative duty has been considerably delayed, we have no doubt that the authority will now preform this legal obligation at an early date. It is, however, not for us to direct that the petitioner on classification be placed in Class I, so that this further direction sought in the petition is refused. Consequently, this petition succeeds and is allowed to the extent stated. A copy of this order be sent to the detenu.