
(1966) 03 RAJ CK 0002

In the Rajasthan High Court

Case No : Criminal Miscellaneous Jail (Habeas Corpus) Petition No's. 830 of 1965 and 44 of 1966

Manoranjan Mukherjee and Another

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-03-1966

Acts Referred:

Defence of India Act, 1962 — Section 3(15), 3(2)

Defence of India Rules, 1962 — Rule 30(1), 30A(4), 30A(7)

Citation : AIR 1967 Raj 57 : (1967) RLW 492

Hon'ble Judges : V.P. Tyagi, J; I.N. Modi, J

Bench : Division Bench

Advocate : Mangilal and S.K. Goyal and Marudhar Mridul, for Petitioner Ram Singh, for the Appellant; Amrit Raj Mehta, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—These are two habeas corpus writ petitions under Article 226 of the constitution (1) by Manoranjan Mukherjee and (2) by Ramsingh against their detention under Clause (b) of Sub-rule (1) of Rule 30 of the Defence of India Rules, 1962, (hereinafter called the Rules) As certain, common questions of law are raised in these petitions, we proceed to dispose of them together by this judgment.

2. Before we set out these questions, we may state the facts of Manoranjan Mukherjee's case briefly. By his order No. 7 dated the 2nd January, 1965, Manoranjan Mukherjee was ordered to be detained in the Central Jail at Jaipur as a detenu under Clause (b) of Sub-rule (1) of rule 30 of the Rules read with notification No. F. 7/1 (16) Home (A-Gr. I)/63, dated the 4th November, 1963, by the District Magistrate, Jaipur, as the said authority was satisfied with respect to him that with a view to preventing him from acting in any manner prejudicial to the defence of India, civil defence public safety and maintenance of public order,

it was necessary to detain him. This order was confirmed by the State Government by its order No. F. 7/1 (10) Home (A-Gr. 1)/65 dated the 6th February, 1965, under Clause (a) of Sub-rule (6) of Rule 30A of the Rules. Thereafter his case was reviewed by the Reviewing Authority and a continuation of his detention having been recommended by it the same was ordered to be continued by an order of the State Government dated the 24th June, 1965, under Sub-rule (7) of Rule 30A of the Rules. By a subsequent order dated the 14th December, 1965, issued under the signature of the Deputy Home Secretary to the Government, by order of the Governor, the petitioner's detention was ordered to be continued further. As the validity of this order has been the subject-matter of every considerable controversy before us, we reproduce this order in extenso here

"GOVERNMENT OF RAJASTHAN

(Home "A" Department) No. F 7(1) (10) Home (A-Gr. I)/65

Dated Jaipur the

14th Dec., 1965.

ORDER

Whereas Shri Manoranjan Mukherjee s/o Makhan Lal resident of Jhatwara District Jaipur was detained under Rule 30 (1) (b) of the Defence of India Rules, 1962, under District Magistrate, Jaipur's order dated 2-1-1965 confirmed by this Department order of even number dated 6-2-1965.

And whereas on a review last made, it was ordered on 24-6-65 that the said detention order be continued;

Now, therefore, in exercise of the powers conferred by Sub-rule (7) of Rule 30-A of the Defence of India Rules, 1962, the Governor of Rajasthan is pleased to order that the said order of detention of said Shri Manoranjan Mukherjee be continued.

By order of the Governor

(H. S. Rawat)

Deputy Secretary to the Government."

The petitioner moved the present application from jail on the 26th October, 1965, which was received here on the 3rd November, 1965. While the case was pending for hearing, the State Government by its order dated the 8th March, 1966, under the signature of the Home Secretary, by order of the Governor, issued what is called a "corrigendum" to the order dated the 14th December, 1965, which we have reproduced in extenso above. This order reads as follows:

"Corrigendum.

In the last para of the Government order No. K. 7/1(10) Home (A-Gr. I)/65 dated the 14th December, 1965, the words "on further second review" were inadvertently left out whereas as a matter of fact, the second review was made by the State Government on the recommendations of the Reviewing Authority. The Government is, therefore, pleased to order corrigendum of the aforesaid order.

The last para beginning with the words

"Now, therefore . . be continued".

should be read as follows:

"Now, therefore, in exercise of the powers conferred by Sub-rule (7) of Rule 30A of the Defence of India Rules, 1962 Governor, on a further second review, accepted the recommendations of the Reviewing Authority and is pleased to order that the said order of detention of the said Shri Manoranjan Mukherjee be continued.

By order of the Governor,

Sd/-

(Shivshankar)

Home Secretary to Government
of Rajasthan."

The corrigendum was placed on the record before us on the 11th March, 1966.

3. The facts in Ramsingh's case are exactly alike except that his detention was ordered on the 30th December, 1964, by the District Magistrate, Ganganagar. It may also be conveniently pointed out at this stage that the Reviewing Authority under Sub-rule (4) of Rule 30A consists of the Chief Secretary and a member of the Board of Revenue. See Home "A" Department Notification dated the 5th November, 1963, published in the Rajasthan Gazette Extraordinary dated the 7th November, 1963.

4. Now, the contentions raised by the petitioners before us may be summarised as follows:

(1) Rule 30 of the Rules is ultra vires of Clause (15) of Sub-section (2) of Section 3 of the Defence of India Act, 1962 (hereinafter called the Act).

(2) The composition of the Reviewing Authority is illegal being in contravention of the proviso to Sub-rule (4) of Rule 30A of the Rules.

(3) The order of continuation of detention of the petitioner dated the 14th December, 1965, is illegal and consequently his detention thereunder became wholly unauthorised and inoperative, and

(4) the corrigendum issued by the State Government by its order dated the 8th March, 1966, is equally illegal and inoperative and could not validate the petitioners' detention which had already become illegal and in any case it could not be given a retrospective operation.

5. We proceed to dispose of these contentions in the order in which we have set them out above.

6. The contention that Rule 30 of the Rules is ultra vires of the Act was sought to be argued before us in two ways. In the first place, it was contended that Sub-clause (1) of Clause (15) of Section 3(2) of the Act lays down that the Rules made under the Act may provide for the "apprehension and detention" in custody of any person whom the authority empowered by the Rules may consider it necessary to apprehend or detain on grounds appearing to that authority to be reasonable as falling within the mischief of this sub-clause, but Rule 30 (1) (b) makes no provisions for "apprehension" of such a person but merely directs that he be "detained", and that being so, it was contended that the rule is in contravention of Section 3 of the Act. In the second place, it was contended that while Section 3(2) (15) (i) lays down that before a person could be detained thereunder, the authority detaining him, not being lower in rank than that of a District Magistrate, can do so only on grounds appearing to that authority to be reasonable of having acted, acting, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, Rule 30 lays down that a person can be detained thereunder either by the Central Government or by the State Government if it is satisfied with respect to any particular person that his detention is necessary to prevent him from acting in any manner prejudicial to the defence of India and the other things mentioned in the Rules. The contention of learned counsel in this behalf appears to us to be that the requirement of "reasonable grounds" laid down in sub-clause (i) of Clause (15) of Section 3(2) of the Act has not been provided for in Rule 30, and, therefore, that rule over-steps its proper bounds.

7. On a careful and anxious consideration of both these aspects, we have come to the conclusion that there is no force in the contentions raised by the petitioner in this behalf.

8. In the first place we should like to point out that the general power to make rules has been provided for by Sub-section (1) of Section 3 of the Act which reads as follows :

"The Central Government may, by notification in the official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and Civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential

to the life of the community."

This provision makes it plain beyond any manner of doubt that for securing the defence of India and the other purposes mentioned in the section, the Central Government will have the authority to make such rules as appear to it necessary or expedient and quite obviously this power is couched in the widest possible terms. Sub-section (2) then provides that without prejudice to the generality of the powers conferred by Sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the matters enumerated in the 57 clauses mentioned thereunder which includes Clause (15) also to which we have referred above. We entirely fail to understand how Rule 30 (1) (b) can be said to be ultra vires of Section 3 (1) or (2) of the Act, for the only reason that it has made no specific provision for the apprehension of the detenu and that it only directs his detention. Apprehension or no apprehension, Sub-clause (i) of Clause (15) of Section 3 (2) of the Act itself provides for detention and this is what Rule 30 (1) (b) also provides for, and, therefore, we see no merit whatever in the contention that because Rule 30 (1) (b) has only provided for detention and not for apprehension, it is in contravention of Section 3 of the Act. Consequently we overrule this contention.

9. As for the next contention under this head, it appears to us to be equally devoid of force. A careful reading of Sub-clause (i) of Clause (15) would show that it in so many words provides that notwithstanding anything in any other law for the time being in force, rules may be made for the apprehension and detention in custody of any person whom the authority empowered by the Rules to apprehend or detain may consider it necessary to do so provided (inter alia) that that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any one of the prejudicial manners specified earlier in that clause. Rule 30 (1) to our mind is in perfect conformity with this requirement of the section when it lays down that, the Central Government or the State Government may make an order directing a person to be detained where it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and to the other things which are mentioned in this rule as much as in Clause (15) (i) of Section 11 (2) it is necessary so to do. In these circumstances, we are altogether unable to appreciate that in making the kind of provision which has been made by Rule 30 (b) it goes beyond the provision contained in Sub-clause (i) of Clause (15) of Section 3 (2) of the Act. This contention, therefore, also fails and is hereby repelled.

10. This brings us to the next contention relating to the alleged illegal composition of the Reviewing Authority. We shall read the provision contained in Sub-rule (4) of Rule 30 of the Rules at this place in so far as it is material.

" (4) A detention order made by an officer (who shall in no case be lower in rank than that of a District Magistrate) empowered by the State Government or the Administrator shall be reviewed :

(a) in the case of an order made by an officer empowered by the State Govt. by a reviewing authority consisting of any such two officers from among the following officers of that Government, that is to say, the Chief Secretary, a member of the Board of Revenue, a Financial Commissioner and a Commissioner of a Division, as may be specified by that Government by notification in the official Gazette ;

Provided that if there is no Board of Revenue, Financial Commissioner or Commissioner of a Division under the State Government, the reviewing authority shall consist of the Chief Secretary and Secretary to the State Government specified by that Government by notification in the official Gazette."

It was forcefully contended before us that where a State Government has all the four officers namely, the Chief Secretary, a member of the Board of Revenue, a Financial Commissioner and a Commissioner of a Division serving under it, the Reviewing Authority in the case of an order made by a District Magistrate or like authority empowered by the State Government but not below his rank may properly consist of any two of these officers; but where any one of these officers may not be in existence or in the State service, then the proviso inevitably comes into play and the Reviewing Authority in such a case must consist of the Chief Secretary and a Secretary to the State Government as may be specified by it by a notification in the official Gazette. It was further submitted in this connection that as there was no Commissioner or even a Financial Commissioner serving under this State at the relevant time, the Government notification to which we have referred above and by which the Chief Secretary and a Member of the Board of Revenue were constituted as the Reviewing Authority, was in contravention of the proviso in question, and, therefore, this authority was illegally constituted and so there was no warrant for the continuation of the detention of the petitioners in law.

11. It was argued on the other hand by the learned Deputy Government Advocate that that was not the correct import of the proviso and that what it really meant was that the Reviewing Authority must consist of the Chief Secretary and a Secretary of the State Government specified by it in the manner prescribed. Only where there was neither a Board of Revenue nor a Financial Commissioner nor a Commissioner of a Division serving under the State Government or, to put it more pointedly, that if any two of these were available in the service of the State for such appointment, the proviso would not be attracted.

12. The question is what is the true intent of the proviso? With all respect, we do desire to point out that the language of the proviso is by no means as clear or happy as we should have liked it to be, and perhaps it would be correct to say that it can possibly be read in more than one way. In view of this ambiguity, we have carefully pondered what must have been the true intent of the rule-making authority.

13. Now, we have no doubt that the main rule makes an explicit provision that where a State Government has the Chief Secretary and a Member of the Board of Revenue and a Financial Commissioner and a Commissioner of a Division serving under it, then it may select any of these two officers and appoint them as Reviewing Authority for the purpose in view. So far there is no trouble. The further question is: what is to happen if any one of the above mentioned three posts (other than that of the Chief Secretary) may not be in existence in a State but one or the other two of them only may be there? Could it have been the intention of the rule making authority in such a situation that while all the four officers namely the Chief Secretary, a member of the Board of Revenue, a Financial Commissioner and a Commissioner of a Division, may be available for such service to the State in which case it could and should appoint any one of these two as a Reviewing Authority, but if one of them, say, the Board of Revenue, may not be available for such appointment but the Financial Commissioner or a Commissioner of a Division may be available, then, despite that, the Reviewing Authority could not for example consist of the Chief Secretary and any one of the remaining officers but it must necessarily be constituted by the Chief Secretary and another secretary to the State Government specified by it. ?

14. On having given our anxious consideration to the rival interpretations put forward for our consideration, we have not felt persuaded to accept the last mentioned interpretation to be in accordance with the probable intention of the framers of the Rules; and it seems to us that the true intention underlying the proviso is that the Reviewing Authority must consist of the Chief Secretary and another Secretary only where no one of the other officers specified in the Rule is available for such appointment. In other words, the proviso in our opinion, requires that only in those situations where none of these namely the Board of Revenue, a Financial Commissioner or a Commissioner of a Division in the State Government, may be available for such appointment, then only the Reviewing Authority must consist of the Chief Secretary and a Secretary to the State Government specified by it, but otherwise it may well consist of any of the other two officers.

15. If this is the correct meaning to be put on the proviso to Rule 30-A (4) on a balance of all the relevant considerations, as we think it is, then we are unable to hold that the composition of the Reviewing Authority with which we are called upon to deal was in any manner illegal. Admittedly there was and is a Board of Revenue at all material times, and that being so, the said authority could well consist of the Chief Secretary and a Member of the Board of Revenue: and if we may venture to say so, with all respect, a Reviewing Authority where it can be so constituted inspires far greater public confidence than if it were to be composed only of the Chief Secretary and another Secretary to the Government. In this view of the matter, we hold that there is no force in this contention.

16. This brings us to the order of continuance of detention of the petitioner

dated, the 14th December, 1965, and that seems to raise, in our opinion, a formidable question. We have already quoted this order in extenso and need not reproduce it over again. The gist of that order is that the detainee had been ordered to be detained under Rule 30 (1) (b) of the Rules by an order of the District Magistrate, Jaipur, dated the 2nd January, 1965, and that the said detention was confirmed by the State Government by its order dated the 6th February, 1965. It further goes on to state that on the review last made which obviously means a review immediately prior to the 24th June, his detention was ordered to be continued by the order dated the 24th June, 1965, and, therefore, the Governor of Rajasthan was pleased to order that the said order of detention of the petitioner be continued. This takes us to the order of the 24th June, 1965.

After referring to the original order of detention and the confirmation thereof, it was stated in this order that the order of his detention had been reviewed and as a result thereof the Governor of Rajasthan was pleased to order that his order of detention be continued. It would thus transpire from a reading of both these orders that the second order of continuance dated the 14th December, 1965, was based on a review which had been made prior to the 24th June, 1965, as a result of which the first order of continuance had already come to be passed. The question is : could the second order of continuance of detention had been founded on a review which fell to be made prior to the first order of continuance of detention ? We do not think that that could be. A fresh order of continuance of detention, in our opinion, could only follow if at all on a fresh review. Otherwise the provision made under the Rules for a review of the order from time to time as provided Sub-rule (7) of Rule 30-A would be meaningless. In fact any other course appears to us to be utterly negated by the scheme of Rule 30-A. That being so, we have no manner of doubt in coming to the conclusion that the order dated the 14th December, 1965, as it stood was illegal and inoperative in law.

17. The only further question which remains to consider is whether the conclusion at which we have arrived above is adversely affected by the so-called corrigendum which the State Government thought fit to issue in these cases. We have reproduced above the wording of this corrigendum and a careful perusal of it, to our mind, does not amount merely to the correction of a typographical error or anything of that kind but amounts to something far more serious. It says that there was a second review of the petitioner's detention order after the 24th June, 1965, and that the Reviewing Authority had recommended the continuance of the detention of the petitioner and that the Governor was pleased to accept the said recommendation and therefore, that detention be continued. An affidavit in support of the corrigendum has been, curiously enough, sworn by a Deputy Superintendent of Police in each of these two cases, and along with the affidavit a copy of the proceedings which took place in the Secretariat in this behalf has also been put in.

Now, we are extremely doubtful if it would be proper for us to take this additional material into consideration in adjudging the validity of the order of the 14th

December, 1965. For it seems to us to be well established at this date that in order to determine the validity of an order of detention under the Defence of India Rules, the Courts can only look at the order itself and not at what happened behind the order and which led to it. See *Ram Manohar Lohia v. State of Bihar*, Writ Petn. No. 79 of 1965 decided by the Supreme Court on 7-9-1965 : *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, and *Radha Vallabh v. Union of India*, decided by this Court on 29-11-1965, in Cri. Misc. Writ No. 405 of 1965 (reported as *Ghasi Ram and Others Vs. State and Others*, in this connection, the reason being that it was not competent for the Courts to inquire into the grounds on which the order of detention was based and that if an order of detention was on the fact of it valid, the Court was bound to stay its hands and uphold the order. As pointed out by us in *Radha Vallabh's* case, Cri. Misc. Writ No. 405 of 1965, D/-29-11-1965 (reported as *Ghasi Ram and Others Vs. State and Others*, it seems to be equally well settled, however, that there are a few exceptions to this rule. Thus it has been held that a detention can be challenged on the ground that it is in violation of the mandatory provisions of the Act or the Rules on the ground that the detaining authority had no competence to order the detention or again on the ground that, the detention had been ordered mala fide.

18. These principles, in our opinion, would equally apply, in so far as they are applicable, to an order of continuance of detention. Normally and as a rule, if it is shown to the Court that an order continuing the detention is bad for some fundamental reason such as the breach of the provisions contained in Rule 30-A. Such a plea can be taken and will have to be considered primarily on the basis of the order of continuance of detention itself. Viewed at from this angle, we do not see that there is any escape from the conclusion that the order dated the 14th December, 1965, was bad for a fundamental reason, to wit, that it was based on a review which had already spent its force. The inevitable result of this, in our opinion, was that the further detention of the petitioners became wholly illegal with effect from that date, and, that being so, the only further question that arises is whether such illegal detention can be validated by a subsequent order of correction like the one the State Government was reduced to the necessity of issuing in these cases. In our considered judgment by an order of notification of this nature which affected the personal liberty of a citizen--one of the fundamental rights under our Constitution,--the petitioners' detention which had become absolutely illegal on and from the 14th December, 1965, could not be made legal or valid with retrospective effect.

19. The result is that we allow these applications and hold that the detention of the two petitioners for the reasons mentioned above is illegal, and, therefore, we direct them to be released forthwith.