

(1993) 07 GUJ CK 0019
In the Gujarat High Court

Mohanif Abdulbhai Mullick

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Bombay Police Act, 1951 — Section 56, 60, 60(3)
Constitution of India, 1950 — Article 226

Citation : (1994) 2 GLR 1057

Hon'ble Judges : K.R. Vyas, J;K.G. Shah, J

Bench : Division Bench

Judgement

K.G. Shah, J.—Rule. Mr. S.P. Dave, learned A.P.P. waives service of the Rule for the Respondents. In the peculiar facts and circumstances of the case, we have decided to hear the Rule today, and even Mr. S.P. Dave, learned A.P.P. sees reason behind this course being adopted. Therefore, the petition is finally heard today, and shall stand disposed of by this judgment.

2. It is distressing that within the span of one week, we have come across a second matter wherein the order of externment passed by the externing authority has been dealt with by the same Deputy Secretary Mr. J.M. Parmar, acting on behalf of the State Government in the Home Department (Special), wherein it is manifest that the Deputy Secretary, either does not know the way in which the appellate powers conferred upon the Government u/s 60 of the Bombay Police Act have to be exercised, or that he does not understand what he writes in his appellate order. The aforesaid observation of ours will be immediately clear when we narrate the facts of the case.

3. The Deputy Commissioner of Police, Crime Branch, Ahmedabad-respondent No. 3 herein, by his order u/s 56 of the Bombay Police Act, ordered the externment of one Ibrahim alias Chinadada Abdulla Pathan, for a period of two years from the entire area within the jurisdiction of the Police Commissioner, Ahmedabad as also the contiguous areas of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana Districts. The said order is dated March 23, 1993. Appeal u/s

60 of the Bombay Police Act (for short "the Act") was preferred before the State Government. Mr. J.M. Parmar, Deputy Secretary, Home Department (Special), heard the appeal and disposed it of by his order dated June 1, 1993 (Annexure "B" to the petition). The brother of the externnee has moved this petition under Article 226 of the Constitution.

4. The appellate order, Annexure "B" to the petition runs into only two paragraphs. Relying upon the second paragraph of the order, Mr. Sanjanwala, learned Advocate for the petitioner contended that the order betrays total non-application of mind on the part of the appellate authority, and it further betrays the fact that the appellate authority, viz., Mr. J.M. Parmar, Deputy Secretary, Home Department (Special) either does not know the parameters of the powers of the State Government under Sub-section (3) of Section 60 of the Act, or that he does not understand what he writes in his order.

5. Having heard Mr. S.P. Dave, learned A.P.P., who was, we must say in fairness to him, unable to support the order, we are convinced that the submission of Mr. Sanjanwala should be accepted. What the Deputy Secretary has stated in para 2 of the order, when translated into English would be to the following effect:

Having considered the appeal and the oral and written arguments made by Shri J.R. Dave, learned Advocate for the appellant as also the evidentiary material and all the papers regarding externment, I am satisfied that there are not proper and sufficient reasons for passing the order of externment against the said person (externnee). Therefore, as to the appeal as also in the points raised by Shri J.R. Dave, learned Advocate for the appellant have substance therein, the externment order passed against the appellant by the Deputy Commissioner of Police, Crime Branch, Ahmedabad is not worth confirming. Therefore, by virtue of the power vested in me u/s 60(3) of the Act, the period of two years fixed under the order of externment is reduced to a period of one year, and the appeal filed by the appellant is accordingly partially allowed.

Now, a bare reading of the aforesaid order would show that the Deputy Secretary, who decided the appeal does not know the meaning of the expression, "appeal is partially allowed". In the earlier part of paragraph 2, before the final order as aforesaid, he has, in terms unequivocal, found that there are no sufficient and proper reasons for passing the externment order against the appellant. In fact, he has stated that he was satisfied about that. The words in Gujarati, for that purpose, used by him are - "--". He has reiterated that very thing in the next line by saying that in the points raised in the appeal as also in the submissions made by Mr. J.R. Dave, learned Advocate for the appellant, there is substance and therefore, the order of externment is not worth confirming. With this as the categorical finding recorded by the appellate authority, the only course open to him was to allow the appeal fully, and to set aside the externment order. Instead, he partially allowed the appeal and reduced the period of externment from two years to one year, and this he purported to do in exercise of the powers vested in him u/s 60(3) of the Act. We have read and re-read

Section 60(3) of the Act and we do not find therein any such power vested in him, which would, on one hand allow him to say that the order of externment is not worth confirming as there were not sufficient and proper reasons for passing such an Order, and on the other permit him to allow the appeal partially and reduce the period of externment from two years to one year.

6. Sub-section (3) of Section 60 of the Act, in so far as it is relevant, reads as follows:

On receipt of such appeal, the State Government may, after giving reasonable opportunity to the appellant to be heard either personally or by a Pleader, Advocate or Attorney and after such further inquiry, if any, as it may deem necessary, confirm, vary or cancel or set aside the order appealed against, and make its order accordingly.

(Emphasis supplied)

From the reading of Sub-section (3) of Section 60 of the Act, it becomes clear that the authority who hears the appeal can either confirm, vary or cancel or set aside the externment order, and his final order has to be in accordance with his earlier decision either to confirm or to vary or to cancel or to set aside the externment order. If he confirms the externment order, he has to say so in the body of the order and yet, if he is satisfied about such course being adopted, he may reduce the period of externment.

If he varies the externment order, in that case also, he would have power to reduce the period of externment while confirming the basic order of externment. However, if he cancels or sets aside the externment order (decision not to confirm the externment order would be nothing short of saying that he cancels or sets aside the externment order), he would have no jurisdiction to retain the externment order for a period lesser than the period fixed by the externing authority. Once he reaches the conclusion that the externment order is not worth confirming for there are no sufficient and proper reasons for passing the externment order, he would have no jurisdiction to say that the externee shall stand externed for even a day. In the present case, while saying in so many words that there are no proper and sufficient reasons for passing the externment order, and that in the appeal and the submissions of the learned Advocate for the appellant, there is substance, and that the externment order is not worth confirming, he has taken a somersault by directing that the externee shall stand externed for a period of one year instead of for a period of two years. If we may put this very thing little differently, we may say that while holding everything in favour of the externee, and holding that the externment order should not have been passed for there were no sufficient and proper reasons for passing the same and therefore, it is not worth confirming, he acted as if he was showing some extra grace or favour towards the externee, and towards that end, he said that he is reducing the period of externment from two years to one year. We fail to see wherefrom he has derived such power. Even Mr. S.P. Dave learned A.P.P.

as said earlier, was at a loss to argue for the sustentation of the appellate order.

7. As we have said in the opening part of this judgment, within a span of one week, we have come across two matters dealt with by the same Deputy Secretary, Home Department (Special), acting on behalf of the State Government wherein he has shown this type of approach. As, when last week we came across a similar order, that was the first of the type we came across and therefore, we left the matter at that, allowing the writ petition. But now, as we have come across a second matter of the same type within a span of one week, we think, it is our duty to draw the attention of the Chief Secretary, Government of Gujarat, to the facts and circumstances of the case. We, therefore, pass the following order:

8. The petition is allowed. The order of externment passed by the externing authority and the appellate order by which the appellate authority has purported partially to allow the appeal, are both hereby quashed and set aside.

9. We direct the Registry of this Court to send a copy of this judgment to the Chief Secretary, Government of Gujarat, and we would request the Chief Secretary, to take such remedial measures for preventing recurrence of such a thing as he may be advised.

Rule is made absolute accordingly.