
(2017) 03 AP CK 0003
In the Andhra Pradesh High Court
Case No : 482 of 2017

Mubarak Awad Ali Kaseri

APPELLANT

Vs

The State of Telangana & Ors.

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

[Traffic Offenders and Land Grabbers Act, 1986](#), Section 3(2), Section 8, Section 13, Section 12

Citation : (2017) 03 AP CK 0003

Hon'ble Judges : Suresh Kumar Kait, U.Durga Prasad Rao

Bench : DIVISON BENCH

Advocate : Sri Mohd. Adnan

Judgement

1. Vide the present petition, the petitioner seeks to set aside the impugned order dated 30.07.2016 passed by the 2nd respondent vide SB (i) No.373/PD/S-1/2016 and consequently release the detenu forthwith. The present writ petition is filed by the father of the detenu.

2. Learned counsel appearing on behalf of the petitioner submits that as per Sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Goonda, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act) the operation of order of detention shall be remained in force for a period of three months. The Government alone is conferred with the power to extend the period of three months. Such extension, however, cannot be for a period exceeding three months at a time. Learned counsel submits that under the Act, the Government can detain the detenu maximum for a period of 12 months. He also submits that when the provisions of Section 3 of the Act clearly mandates the authority to pass an order of detention at one time for a period of not exceeding three months, the detention order, which is for a period of 12 months at a stretch, is contrary to the provisions of law.

3. To strengthen his arguments, learned counsel for the petitioner has relied

upon judgment in *Cherukuru Mani v Chief Secretary, Government of Andhra Pradesh and others* .

4. It is pertinent to mention here that relying upon the aforesaid decision and also the judgment of the Apex Court in *T.Devaki v Government of Tamilnadu and others* , a Division Bench of this Court in Writ Petition No.40066 of 2014 has held that the facts of *Cherukuri Manis* case (1 *supra*) is not relevant to the case on hand. It is discussed that in the above cited case, the State Government delegated power to pass detention order for a period of 12 months in stead of three months, which is contrary to the scheme of Section 3 of the Act.

5. In the case on hand, by the detention order dated 30.07.2016, which is confirmed by the State vide order dated 18.10.2016, the detenu is detained for a period of 12 months. The said power has been exercised by the detaining authority pursuant to G.O.Rt.No.2284, General Administration (Spl. Law and Order) Department, dated 18.10.2016.

6. The issue raised in the present petition has been discussed in length in the case of *T. Devaki* (1 *supra*) by Full Bench of the Supreme Court whereby it is held as under: Para8 Placing reliance on Section 3(2) Mr. Garg urged that since the impugned detention order did not specify the period for which the detenu was required to be detained, the order was rendered illegal. On an analysis of Section 3 of the Act as quoted above, we find no merit in the submission. Section 3(1) confers power on the State Government to detain a bootlegger or drug- offender, or forest-offender or goonda or an offender in immoral traffic or a slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Section 3(2) empowers the State Government to delegate its power as conferred on it under sub-section (1) to District Magistrate or a Commissioner of Police, if it is satisfied that the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, make it necessary to delegate the power to them. It further provides that the order of delegation shall be in writing and it shall also specify the period during which the District Magistrate or the Commissioner of Police, are authorised to exercise the powers of the State Government under sub-section (1) of Section 3. Proviso to sub- section (2) lays down that the delegation should not be for an unlimited period, instead it should not be for a period of more than three months. If the State Government is satisfied that it is necessary to extend the period of delegation it may amend its order, extending such period from time to time but at no time the extension shall be for a period of more than three months. Once the State Government's power under Section 3(1) is delegated to the District Magistrate or the Commissioner of Police, they are authorised to exercise that power on the grounds, specified in Section 3(1) of the Act. Neither sub-section (1) nor sub-section (2) of Section 3 of the Act require the detaining authority to specify the period of detention for which a detenu is to be kept under detention. Para9 Section 3(3) requires that where detention is made by the delegate of the State Government, namely, the

District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 8 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in Section 13 of the Act. Section 13 provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time, it may think proper.

7. Section 3 of the Act does not prescribe the period of detention. However, it gives power to Government to delegate the power of detention upon District Magistrate or Commissioner of Police for a period of three months to detain certain persons. It is not in dispute that the power to be delegated by the Government to the District Magistrate or the Commissioner of Police concerned, is for a period of three months and if the Government further wants to give power to the said authority, the Government has to amend the G.O. or issue fresh G.O. by delegating the power for another period of three months. Therefore, as has been discussed and decided by the Division Bench of this Court and the Supreme Court as well, the detenu can be detained for a maximum period of 12 months as is mentioned under Section 13 of the Act, but the power to delegate such a power of detention is only for a period of three months.

8. The issue raised in the present petition is no more *res integra* as has already been decided by catena of decisions of the Supreme Court including *Harpreeth Kaur (Mrs) Harvinder Singh Bedi v State of Maharastra* and another, whereby the Supreme Court held as under: Para33 A plain reading of the Section shows

that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do , make an order of detention against the person concerned. Sub- section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-Section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government as conferred by sub-Section (1). The proviso to sub-Section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails.

9. Keeping in view the issue settled by the Supreme Court and this Court, we find no substance in the arguments advanced by the learned counsel for the petitioner. Moreover, learned counsel for the petitioner has argued that he does not dispute that there are cases registered against the detenu and based on that the Government has power to detain the detenu.

10. We find no merits in this writ petition and the same is accordingly dismissed. Miscellaneous petitions if any pending in this petition, shall stands dismissed.