

(1972) 04 SC CK 0003
In the Supreme Court Of India
Case No : Criminal A. No. 236 of 1969

Naraindas Indurkhya

APPELLANT

Vs

State M.P.

RESPONDENT

Date of Decision : 27-04-1972

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Criminal Law (Amendment) Act, 1961 — Section 2, 3(2), 4, 4(1), 5
Criminal Procedure Code, 1898 (CrPC) — Section 99A, 99A(1), 99B, 99C, 99D
Penal Code, 1860 (IPC) &md

Citation : (1973) J LJ 112

Hon'ble Judges : P. Jaganmohan Reddy, J;G.K. Mitter, J

Bench : Division Bench

Advocate : Ram Punjawani and P.C. Bharati, of J.B. Dadachanji and Company, for the Appellant; R.P. Kapur and I.N. Shroff for State, for the Respondent

Final Decision : Allowed

Judgement

G.K. Mitter, J.—This appeal by special leave from a judgment and order of the High Court of Madhya Pradesh dismissing the writ petition of the Appellant challenging the order of the State Government u/s 5 of the Criminal Law Amendment Act (Act 23 of 1961) forfeiting the copies of a book published by the Appellant u/s 4(1) of the Act, can be disposed of on the short ground that the order did not disclose the grounds of the opinion formed by the State Government.

2. The Criminal Law (Amendment) Act, 1961 (hereinafter referred to as the 'Act') empowered the state Governments by Section 4 to make order declaring any newspaper or book as defined in the Press and Registration of Books Act, 1867 or any other document wherever printed, to be forfeited to the Government if it appeared to the Government that the said book etc. questioned the territorial integrity or frontiers of India in a manner which was or was likely to be prejudicial to the interests of the safety or security of India. The relevant provisions of the Act are as follows :

Section 2. Whoever by words either spoken or written, or by signs, or by visible representation or otherwise, questions the territorial integrity or frontiers of India in a manner which is, or is likely to be prejudicial to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or which both.

4. (1) Where any newspaper or books as defined in the Press and Registration of Books Act, 1867, or any other document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable u/s 2 or Sub-section (2) of Section 3, the State Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to the Government, and thereupon any police officer may seize the same wherever found and any Magistrate may, by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any copy of such book or other document may be or may be reasonably suspected to be.

XX XX XX

5. (1) Any person having any interest in any newspaper, book or other document in respect of which an order of forfeiture has been made u/s 4 may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document in respect of which the order was made did not contain any matter of such a nature as is referred to in Sub-section (1) of Section 4.

(2) The provisions of Sections 99-C to 99-F of the Code of Criminal Procedure, 1898, shall apply in relation to an application under Sub-section (1) as they apply in relation to an application u/s 99-B of that Code and the reference in Section 99-D to seditious or other matter of such a nature as is referred to in Sub-section (1) of Section 99-A of that Code shall be construed as reference to any matter of such a nature as is referred to in Sub-section (1) of Section 4 of this Act.

(3) No order passed or action taken u/s 4 shall be called in question in any Court otherwise than in accordance with the provisions of this section.

The Appellant who was admittedly the proprietor of the Narmada Printing Works, Jabalpur had published a book under the name and style of 'Madhyamic Bhoogol (Part I for Classes IX and X) written by C.P. Saxena. On 1st July, 1967 the State Government passed the order which is impugned in this case ;

Whereas the books specified in the Schedule below question the territorial integrity and frontiers of India in a manner which is likely to be prejudicial to the interest of the safety and security of India;

And whereas it appears to the State Government that the said three books

contain matter the publication of which is punishable u/s 2 of the Criminal Law Amendment Act, 1961 (No. 23 of 1961);

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 4 of the Act, the State Government hereby declares every copy of the said three books and all other documents containing copies, reprint and reproduction of the said books to be forfeited in favour of the Government.

The Second item in the Schedule relates to the Appellant's publication. From the communication of the Deputy Secretary to the Government of Madhya Pradesh dated 5th August 1967 it would appear that the State Government took objection to Pages 138, 147 and 149 of the said book as containing wrong maps. According to the said communication :

These books contain maps of India, part of India, maps of countries adjacent to India and maps of Asia. All these maps involve the external boundary of India which has been found to be grossly incorrect. Besides this the Island territories of Laccadive, Minicoy and Amindivi Islands' which form an integral part of India are omitted altogether from every map of India. In some of the maps the territory of Bhutan has been omitted while in other Indo-Pakistan boundary is ignored.

The communication refers not only to the publication with which we are concerned in this case but also two other publications both of which appear to be books on Geography for School students. The Appellant filed his writ petition on August 29, 1967 before the High Court challenging the order of the 1st July 1967 inter alia on the ground that the grounds for the opinion of the State Government which had to be given in terms of Section 4 of the Act were nonexistent in the order. He, therefore, filed the petition within two months of the date of the order forfeiting the book in terms of Section 5 of the Act.

3. In the counter affidavit of the State the stand taken was that the State Government was not bound to place details of information on the basis of which its satisfaction was arrived at. Reference was however made in the counter affidavit to a communication of the Director of Map publication to the Director of Public Instructions dated 21st March 1967 in which it was stated with regard to all the three alleged offending books that--

they contain maps of India, part of India, maps of countries adjacent to India and maps of Asia. All these maps involve the external boundary of India which has been found to be grossly incorrect. Besides this, the Island territories of, Laccadive, Minicoy and Amindivi Islands' which form an integral part of India are omitted altogether from every map of India. In some of the maps the territory of Bhutan has been omitted while in other Indo-Pakistan boundary is ignored.

4. The High Court of Madhya Pradesh took the view that the impugned order could not be said to have omitted to state the grounds for the opinion of the State Government. According to the High Court--

the grounds on which the said opinion was based were that the books contained matter which questioned the territorial integrity and frontiers of India in a manner which is likely to be prejudicial to the interest of the safety and security of India.

5. In our view the High Court had clearly gone wrong in this view of the law on the subject. According to the Oxford Dictionary the meaning of the word 'ground' in this connection must be "base, foundation, motive, valid reason." What the State Government did in this case in the opening paragraph of the order was merely to quote a portion of the words of Section 2 namely, that the books "questioned the territorial integrity and frontiers of India in a manner which is likely to be prejudicial to the interest of the safety or security of India." The order gives no indication of the facts or the statements or the representations contained in the book which according to the State Government offended Section 2. In the order itself there is no reference to any map or any text in the book which would come within the mischief of the said section. A book may contain matter questioning the territorial integrity and frontiers of India in many ways one of which may be a wrong map which does not show the proper boundaries of India, either by omitting a portion of the Indian territory therefrom or by depicting a portion of what is really Indian territory as belonging to some other State. A book may also come within the mischief of Section 2 if there is any express reference in the text containing suggestions based on historical or political or other reasons that some portion of what is generally known to the public as Indian territory is not so.

6. There is a considerable body of statutory provisions which enable the State to curtail the liberty of the subject in the interest of the security of the State or forfeit books and documents when in the opinion of the Government, they promote class hatred, religious intolerance, disaffection against the State etc. In all such cases, instances of some whereof are given below the State Government has to give the grounds of its opinion. Clearly the grounds must be distinguished from the opinion. Grounds of the opinion must mean the conclusion of facts on which the opinion is based. There can be no conclusion of fact which has no reference to or is not *ex facie* based on any fact.

7. The provisions of the Act have a close parallel in Section 99-A of the Code of Criminal Procedure, 1898 in which a large number of matters are mentioned which according to the Government may lead it to form the opinion that the publication offended the said section. There are also decisions under the Indian Press Act which illustrate what the grounds in a case like this must be. In *re Mahomed Ali* ILR 41 Cal 466 : AIR 1914 Cal 242, a case of an order of forfeiture of a pamphlet under the Press Act of 1910, the order of Government went to show that the pamphlet "Come over to Macedonia and help us" contained words of the nature described in Section 4, Sub-section (1) of the Indian Press Act, 1910 inasmuch as they are likely to bring into hatred or contempt, certain classes of His Majesty's subjects in British India. According to Jenkins, C.J. (p.

476) :

Those responsible for this Act foresaw this, and so they specifically provided that the forfeiting notification should state the grounds of the Local Government's opinion. But when we turn to the notification no such grounds are stated ; nothing in the nature of a fact is set forth, there is merely a citation of those words of the section which are invoked.....

But the repetition of an opinion cannot be its grounds and yet that is all that the notification furnishes in the shape of ground. This is obviously in sufficient and not a compliance with the terms of the Act.

According to the other learned Judge Stephen, J. (p. 487) :

The ground of an opinion must in this case, if not always, be a fact or facts, and no fact is disclosed merely by a specific relation of the elements that the law requires to be present in order for legal consequences to follow.

8. In *Arun Ranjan Ghose v. State of West Bengal* (1955) 59 Cal WN 495, a case under Sections 99-A and 99-D of the Code of Criminal Procedure it was stated by Chakravarti, C.J. (p. 497) :

It is useful to consider here what is meant by grounds of opinion. The formation of an opinion by Government is undoubtedly the ground for the action taken by them, but the grounds for the opinion are obviously different. The opinion, after it has been formed, furnishes a ground to Government for taking action contemplated, but the grounds on which the opinion itself is formed are and must be other grounds. Those grounds must necessarily be the import or the effect or the tendency of matters contained in the offending publication, either as a whole or in portions of it, as illustrated by passages which Government may choose.

9. In *Harnam Das Vs. State of Uttar Pradesh*, the order u/s 99A of the Code of Criminal Procedure which was made went to show that the State Government declared the books forfeited on the ground that the said book contained matter the publication of which was punishable u/s 153A and 295A of the Penal Code. The two sections of the Indian Penal Code have little in common inasmuch as Section 153A relates to an offence of promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India and Section 295A relates to an offence maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious belief of that class. The order which was considered by the Court in that case gave no indication which formed the reason for Government taking the view that the books should be forfeited. The Court held that the order did not, as it should have, state the grounds of opinion. It is not known which communities were alienated from each other or whose religious beliefs were wounded.

10. We may also refer to Article 22(5) of the Constitution which lays down that when any person is detained in pursuance of an order made under any law

providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of, making a representation against the order. In, considering the question as to what the grounds of detention meant when an order under Preventive Detention Act was made this Court said in Naresh Chandra Ganguli Vs. The State of West Bengal and Others,

...the grounds for making an order of detention, which have to be communicated to the detainee as soon as practicable, are conclusions of facts.....and those conclusions of facts have to be communicated to the detainee as soon as may be.

11. We may also refer to the judgment of this Court in The State of Bombay Vs. Atma Ram Sridhar Vaidya, a case under the Preventive Detention Act. Kania, C.J. said (page 178) :

By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts.... These conclusions are the "grounds" and they must be supplied.

12. All the above decisions in our opinion clearly show what the requirements of the Criminal Law Amendment Act are and it appears to us that the State Government merely gave its opinion and not the grounds for its opinion: As such the judgment of the High Court must be set aside and the order of Government dated July 1, 1967 must be quashed The Appellant will be entitled to return of all the books forfeited.