
(1965) 09 KAR CK 0017
In the Karnataka High Court
Case No : Criminal Petition No. 332 of 1965

N.K. Upadhyaya

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 21-09-1965

Acts Referred:

Defence of India Rules, 1962 — Rule 3 (15) (i), 30, 30A (8)

Citation : AIR 1966 Kar 202 : (1966) CriLJ 924 : (1965) 2 MysLJ 630

Hon'ble Judges : M. Sadasivayya, J;K.R. Gopivallabha Iyengar, J

Bench : Division Bench

Judgement

(1) The petitioner is detained in the District Prison, Bijapur under the orders of detention dated 30-12-1964 passed by the Deputy Commissioner Bijapur, the second respondent is this petition, under Rule 30 of the Defence of India Rules, 1962(hereinafter referred to as the Rules). The order of detention is passed by the second respondent in exercise of the powers, delegated in him by the Government of Mysore under Notification No. HD 221 SST 62 dated 20-8-1963 in exercise of the powers conferred on them by sub-section (2) of S. 40 of the Defence of India Act 1962(Central Act No. 51 of 1962). The order of detention is marked Exhibit "1" in this case. This order was confirmed by the State Government in exercise of the powers conferred on them by clause (a) of sub-rule (6) of R. 30-A, on the basis of the recommendation made by the Reviewing Authority constituted by Notification No. HD 221 SST 62 dated 20-8-1963. This order of confirmation is marked Exhibit "6" is dated 15-3-1965. In exercise of the powers conferred by sub-rule (7) of R. 30-A of the Rules, the Government of Mysore directed the continuance of the order of detention dated 30-12-1964. A copy of this order is marked Exhibit "7". The petitioner complains that his detention is arbitrary, capricious, mala fide and contrary to the provisions of the Defence of India Act and the Rules made thereunder.

(2) To appreciate the contentions of Sri. K. Subba Rao, the learned counsel for the petitioner, it is necessary to set out the orders passed by the first and second

respondents against the petitioner. The order of detention dated 30-12-1964 reads as follows:--

No.POL-CD-SR-1

Bijapur 30-12-1964

ORDER

Whereas the Deputy Commissioner, Bijapur is satisfied from the report of the Superintendent of Police, Bijapur with respect to the person known as Shri Nandikuru Narayana Krishna Upadhyaya son of Nandikuru Janardhanayya leader and Secretary to the District leftist Communist Party of Bijapur. Bijapur District that with a view to preventing him from acting in a manner prejudicial to the Defence of India and the maintenance of peaceful conditions and a public order, it is necessary to make the following order:

Now, therefore in exercise of the powers delegated to the Deputy Commissioner under Government Notification No. HD 221 SST 62 dated 20-3-1968, the Deputy Commissioner, Bijapur hereby directs under Rule 30 of the Defence of India Rules, 1962 that the said Shri. Nandikuru Narayana Krishna Upadhyaya son of Nandikuru Janardhanayya he detained.

Sd/- H. Maharudraya

30/12

Deputy Commissioner, Bijapur"

The order of confirmation Exhibit "6" is as follows:--

Government of Mysore

No. HD 5 SWM. 65(J)

Mysore Government Secretariat

Home Department

Vidhana Soudha, Bangalore

Dated 15-3-1965.

ORDER

Whereas the Deputy Commissioner, Bijapur District has passed O. No. POL/CD/SR-1 dated 30-12-1964, directing under Clause (b) of sub-rule (1) and sub-rule (4) of R. 30 of the Defence of India Rules 1962 that Shri N.K. Upadhyaya, S/o N. Janardhanayya be detained in the Bijapur District Prison, Bijapur.

Whereas the Reviewing Authority constituted by a Notification No. HD 221 SST 62 dated 20-8-1963 has, after taking into account all the circumstances of the case recommended to the State Government that the said detention Order be

confirmed; and

Whereas the Government has carefully considered the circumstances of the case in the light of the said recommendation.

Now, therefore in exercise of the powers conferred by Clause (a) of sub-rule (6) of R. 30-A of the said Rules, the Government of Mysore hereby confirms the order of detention dated 30-12-1964 made by the Deputy Commissioner, Bijapur District in respect of the aforesaid Shri N.K. Upadhyaya

By order and in the name of the Governor of Mysore

Sd/- G.S. Telang 15-365. Under Secretary to Government Home Department."

The order directing the continuance of the order of detention is as follows:

Government of Mysore

Mysore Government Secretariat

Home Department

Vidhana Soudha, Bangalore

Dated 2-6-1965.

No.HD.5 SWM 65(c)

ORDER

Whereas the Deputy Commissioner, Bijapur District has passed O. No. POL/CD/SR-1 dated 30-12-1964 under Clause (b) of Sub-rule (1) and sub-rule (4) of rule 30 under the Defence of India Rules (1962) that Shri N.K. Upadhyaya S/o Shri N. Janardhanayya be detained in the Bijapur District prison, Bijapur.

Whereas the Government of Mysore has by its O. No. HD 5 SWM 65(J) dated 15-3-1965 confirmed the said order of detention under Clause (a) of sub-rule (6) of R.30-A of the said Rules.

Whereas the Reviewing Authority constituted by Notification No. HD 221 SST 62 dated 20-8-1963 under Clause (a) of sub-rule (4) of the said R. 30 A has reviewed the aforesaid detention order dated 30-12-1964 which was confirmed by the State Government by the aforesaid Order dated 15-3-1965 and has recommended that the detention of Shri. N.K. Upadhyaya be continued.

Now, therefore in exercise of the powers conferred by sub-rule (7) of the said R. 30-A the Government of Mysore hereby directs that the Orders of detention date 30-12-1964 made by the Deputy Commissioner, Bijapur District in respect of Shri N.K. Upadhyaya shall be confirmed.

By Order and in the name of the Governor of Mysore

Sd/- G.S. Telang Under Secretary to Government Home Department

The Notification delegation the powers of the State Government under Rule 30 of the Rules) a copy of which is marked Exhibit "2" is as follows:

"Government Notification No. HD 221

SST 62 Dated 20-8-1963.

NOTIFICATION

No. HD 221, SST.62. dated Bangalore, the 20-8-1963.

(Sravana 29, Saka Era 1885)

In exercise of the powers conferred by Sub-section (2) of S.40 of the Defence of India Act, 1962(Central Act No. 51 of 1962), the Government of Mysore hereby delegates to the Deputy Commissioner of each District, within his respective jurisdiction, the powers and duties conferred and imposed on the State Government under R. 30 of the Defence of India Rules 1962.

By Order and in the name of the Governor of Mysore.

Sd/- B.S. Srikantiah, Secretary to Government Home Department."

The validity of these order pertaining to the detention of the petitioner is challenged by the petitioner's counsel Sri. K. Subba Rao on several grounds. The averment in the affidavit filed by the petitioner in support of his petition is that 24 hours after he was arrested the order of the detention was served on him. Sri Subba Rao submits that the petitioner was arrested in the early hours of 30-12-1964 and the detention order was served on him on 31-12-1964, after the expiry of 24 hours after his arrest. In view of this, he submits that by the time the order of detention was served on the petitioner. According to him no order of detention could validly be passed who is illegally detained until he is released from the illegal detention. The averment of the petitioner that he was arrested on 30-12-1964 is denied by the second respondent in his counter affidavit it is stated that the petitioner was taken to custody at 5 A.M. on 31-12-1964 as per his order dated 30-12-1964 made by him under R. 30(1)(b)(i.e. Exhibit "I"). This statement is based on the report made to him by the Superintendent of Police, Bijapur. The petitioner's counsel submitted that no value should be attached to above statement in the absence of a sworn statement by the Officer arresting the petitioner. But, our attention is drawn by the learned Advocate-General to Exhibit "3" a communication dated 1-1-1965 from the petitioner to the second respondent, in which he says that he is detained under the orders passed by the second respondent on 30-12-1964, without the order of detention. The fact that the Officer effecting the arrest has not filed any affidavit repudiating the petitioner's averment, does not detract from averment made by the second respondent which is based on the report of the Officer effecting the arrest. We are unable to accept the petitioner's statement that he was arrested in the early hours of 30-12-1964 and not in the early hours of 31-12-1964 as mentioned by the Deputy Commissioner. In view of this conclusion, the contention of Sri Subba

Rao that the detention of the petitioner under Exhibit "1" while he was already under illegal detention is not valid does not arise for consideration. However, we may state that as held in *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, , it would be an empty formality to allow the petitioner to come out of jail on 31-12-1964 immediately after the expiry of 24 hours from the time of his arrest., and again arrest him under the orders of detention. The decisions reported in *Rameshwar Shaw Vs. District Magistrate, Burdwan and Another*, and *Makhan Singh Tarsikka Vs. The State of Punjab*, , relied upon by the petitioner have been referred to and distinguished in *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, . The scope of the former two decisions has been explained by the Supreme Court. The decisions relied upon by the petitioner do not apply to the facts of the present case and the distinction pointed out in *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, applies to this case also.

(3-4) It is next pointed out by Sri. K. Subba Rao, the learned counsel for the petitioner, that the order of detention (Exhibit "1") mentions the name of the petitioner detenu as Nandikur Narayana Krishna Upadhyaya) In view of this, Sri Subba Rao contends that the report of the Superintendent of Police on the basis of which the Deputy Commissioner, Bijapur, is satisfied, relates only to Nandikuru Narayana Krishna Upadhyaya and not to the petitioner; and it is urged that in any event this indicates that necessary amount of care and attention has not been bestowed by the Detaining Authority before he satisfied himself that with a view to prevent the petitioner from acting in any manner prejudicial to the Defence of India and the maintenance of peaceful conditions and public order it was necessary to make the order of detention. The same error, it is contended by Sri Subba Rao, vitiates the order of confirmation Exhibit "6" and the order of continuance Exhibit "7".

(5) It would be necessary first to consider if there could be any doubt regarding the identity of the detenu mentioned in Exhibit "1"; whether it refers to the petitioner or to any other person. It must be pointed out that the petitioner does not specifically allege that there is any mistake in the identity and that the is not the person referred to in Exhibit "1". In paragraph-7 of his affidavit, to which our attention is drawn, he states as follows:

"I further state that my name is Nandikuru Krishna Upadhyaya but in the detention order it is stated that the person ordered to be detained is Shri Nandikuru Narayana Krishna Upadhyaya. Hence, the detention order is vague and indefinite and there is a possibility that the second respondent might have acted on vague and incorrect reports."

If the petitioner had any doubt that he was not the person intended to be detained, it would not be unreasonable to expect that he would have made a definite averment to that effect. His complaint is that the order of detention is vague and indefinite and there is a possibility of the second respondent having acted upon vague and incorrect reports. These allegations refer more to the fact

of satisfaction on the part of the second respondent than to the question of identity. In paragraph 9 of the counter affidavit, the allegations of the petitioner in paragraph 7 of his affidavit arbitration denied and it is specifically mentioned that there is no vagueness as to the identity of person sought to be detained. The learned Advocate-General also points out that in Exhibit "3" dated 1-1-1965 the petitioner does not state that he is not the person referred to in the order of detention; on the other hand he states that under the order of detention issued by the second respondent viz., Exhibit "1" he has been detained. The petitioner further states that the reasons mentioned therein in respect of his detention are not bases on facts. He states that he never acted in a manner prejudicial to the Defence of India and that he and his friends have been helping the second respondent in that task and the same is personally known to the second respondent. It must be noticed that in exhibit "1" the name of the detenu is Shri Nandikuru Narayana Krishna Upadhyaya son of Nandikuru Janardhanayya. The detenu is said to be the leader and Secretary of the District Leftist Communist Party of Bijapur. It is not disputed that the name of the father of the petitioner is Janardhanayya and that the petitioner is the Secretary of the Commissioner Party of India, Bijapur District Committee. It is denied that the petitioner is the Secretary of the Leftist Communist Part of the District of Bijapur as mentioned in the order of detention. It is not disputed by the Advocate-General that there may be an error in the order of detention inasmuch as the word "Narayana" is included while giving the name of the petitioner in Exhibit "1", but he submits that it is not such as would lead to any mistake in identity, in the circumstances of this case. The name of the father and the party-office held by the petitioner give a sufficient indication as to the identity of the person who was to be detained. If the petitioner had felt any doubt that he was not the person mentioned in Exhibit "1", it is inconceivable that he would have failed to point out this fact in Exhibit "3" or made a specific averment in the affidavit by him. The circumstance that the petitioner is personally known to the second respondent does not admit of my mistake being committed by him regarding the identity of the petitioner. Therefore, we are satisfied that there could be no doubt as to the identity of the person referred to in Exhibit "1" and that it refers to the petitioner. The said error is an immaterial one.

(6) In view of the fact there is an error in giving the name of the detenu however immaterial it might be, Sri Subba Rao contends that it is indicative of the fact that necessary amount of care and attention has not been bestowed in the examination and consideration of the material placed before the second respondent before he was satisfied as set out in Exhibit "1". In support of this contention, strong reliance is placed on the decision of this Court reported in (1965) 3 Law Represent. 385 M. Vasukumar v. State of Mysore. In the said case, reference is made to the decision reported in Emperor Vs. Purshottam Trikamdas, and it is observed that the Bombay High Court laid down that it is incumbent on the authority directing the detention of a person to apply all possible care and attention to the materials placed before it before making the order of detention

and even a slight error or evidence of carelessness would tend to show that the necessary amount of care and attention had not been bestowed in the examination and consideration of such materials by such authority. The observation was made by this Court while dealing with an order of detention which did not show that it was with a view to prevent the petitioner from acting in the manner specified in R. 30, that the order of detention had been made. It was not a case relating to an immaterial error in mentioning the name of the detenu, not affecting the identity of the detenu. The above said observation must be considered with reference to the context and the circumstances, in which it was made. Reference may be made in this connection to the decision reported in *Godavari Shamrao Parulekar Vs. State of Maharashtra and Others*, , according to which what is required under R. 30 is that the order of detention must in substance show that it is necessary to detain a person with a view to prevent him from acting in any manner prejudicial to the Defence of India, etc. So, it follows that what is to be looked into is really the substance of the order. The question of identity of the person intended to be detained is a question of fact, depending upon the peculiar circumstances of the particular case. When there could be no doubt in this case that the person intended to be detained is no other than the petitioner and the error is an immaterial one, it cannot be held that the detention order is vitiated by want of necessary care and attention in the examination and consideration of the relevant materials by the concerned authority. Therefore, we are unable to infer that the second respondent has not bestowed the requisite care and attention before passing the order of detention.

(7) It must be noticed that while not expressing any doubt in Exhibit "3" as to the identity of the person referred to in Exhibit "1", the petitioner gave his address as N.K. Upadhyaya detenu, District Prison, Bijapur. Same is the description he gave in Exhibit "4" a letter addressed by him to the Chief Minister and also in Exhibit "5" dated 10-6-1965 addressed to the Under-Secretary to Government, Home Department, Bangalore. In Exhibits "6" and "7", the order of confirmation and the order for continuance of the order of detention himself has been mentioned and these orders are with reference to the person referred to in Exhibit "1". We are unable to accept the contention that the orders Exs. "6" and "7" are in any manner vitiated.

(8) Sri Subba Rao complains that in S. 40(2) of the Act there is no policy laid down controlling the exercise of the power of delegation vested in the State Government and that even a constable can be vested with the power of detention. It must be mentioned that the validity of any of the provisions of the Act or the Rules has not been challenged in this case. Section 40(2) of the Defence of India Act, 1962 reads as follows:-

"Section 40(2)--The State Government may by order direct that any power of duty which by this Act or by any rule made under this Act is conferred or imposed on the Central Government has been directed under sub-s. (1) to be exercised or discharged by the State Government shall in such circumstances

and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority not being (except in the case of a Union territory) an officer or authority subordinate to the Central Government."

This section must be read along with the provisions of S. 3(15)(i) of the Defence of India Act, 1962 which provides that the authority empowered to detain should not be lower in rank than that of a District Magistrate. The provisions of R. 30-A(4) also give the indication that an order of detention should be made by an officer who in no case is lower in rank than that of a District Magistrate. Therefore, it cannot be said that there is no guidance in the Act or Rules, as to the exercise of the power delegated under S. 40(2) of the Defence of India Act. The officer or the authority specifically in Executed. "2" and who is to exercise the power conferred by S. 40(2), is of the Rules. There is, therefore, no substance in the contention that the delegation made under Executed. "2" is invalid. Sri Subba Rao further contends that the delegation made under Executed. "6" under Clause (a) of sub-r (6) of R. 30-A of the Rules and the order of continuance under sub-r. (7) of R. 30-A are made without taking into consideration any material relating to the petitioner subsequent to the order of detention under Ex. "1" in particular, it is complained that the authorities concerned have not taken into consideration the representations made by the petitioner. It is, therefore, contended that the review made by the authorities is illusory. The learned counsel further submits that the mental attitude of the detenu subsequent to the order of detention (in respect of matters relevant to his detention) must be taken into consideration by the Reviewing Authority. While reviewing cases, the subsequent mental attitude of the detenu may be taken into consideration by the Reviewing Authority. There is no reason to think that in this case any representation made by the petitioner to the Reviewing Authority has not been taken into consideration by it. What is required is the subjective satisfaction of the concerned authorities. In this connection reference may be made to the judgment, dated 1-6-1965 of the Supreme Court in W.P. No. 43 of 1965: (reported in *Sadhu Singh Vs. Delhi Administration*, . The provisions of R. 30(1) and R. 30-A(6)(a) and 30-A(7) of the Rules. The observation of the Supreme Court are as follows:

"Rule 30(1) has been enacted as an emergency measure: It authorises the appropriate Government or the Administrator, or authorities empowered by the Government or the Administrator, with a view to prevent a person from citing to the detriment of public order and safety, to detain him without trial. However shocking it may appear that a person may be detained without a trial or without being even informed of the specific grounds on which such action is deemed necessary, in the larger interests of the specific grounds on which such interests of the security of the State such as maintenance of peaceful conditions in the country, public order, conduct of military operations, etc the Parliament has thought it necessary when a grave emergency arose to invest the appropriate Government and the Administrative with that power. Validity of the statute which

invests the executive with these drastic powers has been upheld by this Court, and that is no longer R.30, and confirmation of the order of detention are not subject to judicial review, for the order of detention without trial is pre-eminently an executive act. The subjective satisfaction of the detaining authority is a condition of the making of the order, and if that condition is shown to exist, the Courts have no power to enquire into the sufficiency of materials on which the order is made or the propriety or expediency of making the order. It is the satisfaction of the prescribed authority which is determinative of the validity. That, however, does not exclude the Courts power to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of prescribed conditions precedent to the exercise of power, or into a plea that the order was made mala fide or for a collateral purpose. That however, is not judicial review of the order.

If jurisdiction of the Court to enter upon a judicial review of the order of detention and its confirmation is excluded, it is difficult to appreciate the grounds on which it may legitimately be urged that the decision to continue detention upon review of the order of detention may suit be regarded as subject to judicial review. By Clause (6) of R. 30-A power is conferred upon the Administrator to review the detention at intervals of not more than six months. This provision has apparently been made for ensuring that detention of a person may not continue longer than is necessary for effectuating the purpose for which it was originally made. It invests the Administrator, subject to the restriction imposed, with power to review the order of detention from time to time and to decide whether the order should be continued or cancelled. Making of an order of detention proceeds upon the subjective satisfaction of the prescribed authority in the light of circumstances placed before him, or coming to his knowledge, that it is necessary to detain the person concerned with a view to preventing him from acting in any manner prejudicial to the Defence of India and Civil Defence, the public safety, the maintenance of public order etc. If that order is purely executive, and not open to review by the Courts, a review of those very circumstances on which the order was made in the light of the circumstances since the date of that order cannot but be regarded as an executive order. Satisfaction of the authority under R. 30(1) proceeding upon facts and circumstances which justifies him in making an order of detention and the satisfaction upon review of those very facts and circumstances in the light of circumstances, which came into existence since the order of detention, are the result of an executive determination and are not subject to judicial review.

It was, however, argued that even if this Court cannot review the determination of the authority, the Court is entitled to inquire whether the authority before making the order brought to bear upon it a judicial approach, that is whether the authority gave an opportunity to the detenu to make a representation against the action proposed to be taken in regard to him, and if it appears that he failed to do so, a writ of Certiorari may issue and the order may be discharged by the issue of an appropriate writ.

There is no such safeguard prescribed by the statute, it is also not implicit in the scheme of the statute. A writ of Certiorari lies wherever a body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority; it does not lie to remove or adjudicate upon the order which is of an administrative or ministerial nature."

Later on, the Supreme Court proceeds to observe thus:--

"Rule 30-A(8) requires the Administrator in review at intervals of not more than six upon such review whether the order be continued or cancelled. That only imports that the Administrator after reviewing the material circumstances has to decide whether the detention of the detainee should be continued or cancelled. Undoubtedly, in reviewing the order of detention, the Administrator would be taking into account all the relevant circumstances existing at the time when the order was made, the subsequent developments which have a bearing on the detention of the detainee and the representation, if any, made by the detainee. But the rule contemplates review of the detention order and in the exercise of a power to review a condition of a judicial approach is not implied."

(9) For the reasons above stated, we are satisfied that the impugned orders are all valid. The contentions advanced in support of the petition fail and we find no reasons to interfere with the order of detention passed against the petitioner. The petition is, therefore dismissed.

(10) Petition dismissed