
(2003) 10 AHC CK 0083
In the Allahabad High Court
Case No : Writ Petition No.594 of 2003 (M/B)

Pradeep Pattanshelly and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2003) 10 AHC CK 0083

Hon'ble Judges : M.Katju, J and K.S.Rakhra, J

Final Decision : Dismissed

Judgement

M. Katju, J.

1. Heard Sri R.K. Singh and Sri Shashi Prakash Singh, learned counsel for the petitioners and Shri A.K. Singh, learned Govt. Advocate.

2. 33 writ petitioners have filed this writ petition praying for their release from alleged illegal detention. The petitioners have alleged that they were going to pay their homage and darshan of Lord Rama at Ayodhya on 13.10.2003. The petitioners have come from Dharwad, Karnataka in order to visit Ayodhya and pray at the religious place. The petitioners reached Lucknow and purchased railway tickets for Ayodhya on 13.10.2003 and boarded the train. Photocopy of the ticket is Annexure 1. It is alleged in para 5 of the petition that the petitioners were going to Ayodhya peacefully and wanted to offer their prayer in different temples at Ayodhya but they were detained and arrested by the respondents although they have not been informed as to under what provisions of law they have been arrested and detained. It is alleged that the petitioners are lawabiding persons. In para 6 of the petition it is alleged that the petitioners were going to Ayodhya with valid tickets but without any reason they have been kept in detention.

3. Learned government Advocate has informed that initially the petitioners were arrested under 151 CrPC and thereafter they were produced before the

Magistrate who authorized the detention of the petitioner under Section 107/116 CrPC. The learned Magistrate also directed that the petitioners can be released on surety bond of Rs.25,000/ but since they refused they were sent to District Jail, Lucknow.

4. Article 21 of the Constitution no doubt states that no person can be deprived of life and personal liberty except according to the procedure established by law. The word "law" in Article 21 means statutory law. Hence we asked learned Govt. counsel to seek instructions and inform us under which provision the petitioners were detained. He has sought instruction and has informed us that the petitioners have been detained under Sections 151/107/116 CrPC. Thus there is statutory sanction for the petitioners' detention.

5. The right of life and liberty in Article 21 is not an absolute right, and restrictions can be placed on it. Matters relating to Ayodhya are sensitive matters, and hence the judiciary must exercise self restraint in such matters. The maintenance of law and order is the task of the State and the administration. There are various considerations for the administration in these matters and this Court should not ordinarily interfere with administrative decisions in this connection. As Lord Denning has observed:

"The power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive, and the local authorities, have their very own responsibilities and they have the right to make decisions. The Courts should be very wary about interfering and only interfere in extreme cases, that is, cases where it is sure that they have gone wrong in law or they have been utterly unreasonable. Otherwise we would get a conflict between the courts and the government and the authorities, which would be most undesirable. The courts must act very warily in these matter." (see Judging The World by Garry Sturgess and Philip Chubb page 190)

6. In *Dennis v. United States* 341 US 494 (1951) Mr. Justice Frankfurter, the celebrated Judge of U.S. Supreme Court observed:

"The courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures."

7. In *Tata Cellular v. Union of India*. AIR 1996 SC 11 the Supreme Court observed that the modern trend points to judicial restraint in administrative acts. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct administrative decisions. If a review of the administrative decision is permitted it will be substituting its own decision without necessary expertise, which itself may

be fallible.

8. It must be remembered that certain matters are by their very nature such as had better be left to the experts in the field instead of Courts themselves seeking to substitute their own views and perceptions as to what is the best way to deal with a situation. In the present case this Court should not interfere in a matter which relates to the administration which is in the best position to know about the law and order situation.

9. In the words of Chief Justice Neely:

"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

10. The administrative authorities are experts in the field of administration. No Court should therefore strike down an administrative decision solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on an administrative matter, because he can never be justifiably certain that he is right. Judicial humility should therefore prevail over judicial activism in this respect.

11. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, but also fosters that equality by minimizing interbranch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results makes the judiciary a moving target and thus decreases the ability to maintain equality with the cobranches. Restraint stabilizes the judiciary so that it may better function in a system of interbranch equality.

12. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach into the legislative or executive fields, almost inevitably voters, legislators and other elected officials will conclude that the activities of judges should be closely monitored. If judges act like legislators or administrators it follows that judges should be elected like legislators or selected like members of the executive. This is counterproductive. The touchstone of an independent judiciary has been its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

13. In the present case this Court is not in a position to know what law and order problem would arise at Ayodhya and how it should be tackled. It is the

administration, which best knows this problem and its solution. This Court must exercise restraint and should not embarrass the administrative authorities in this connection.

14. Thus there is no force in this petition and it is dismissed accordingly.

(Petition dismissed)