
(1981) 10 AHC CK 0022
In the Allahabad High Court

Sadanand Tripathi

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-10-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 20
National Security Act, 1980 — Section 3

Citation : (1982) CriLJ 732

Hon'ble Judges : M. Wahajuddin, J;H.N. Seth, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution, Sadanand Tripathi alias Sant Gyaneshwar Sri Sadanand Param Hans, challenges the validity of his detention under the provisions of Section 3, National Security Act, authorised by Sri K. K. Prasad, designating himself as the District Magistrate, Deoria, vide his order dated 23rd June. 1981.

2. Amongst other grounds the petitioner questioned the validity of the order dated 23rd June, 1981 on the ground that Sri K. K. Prasad was not competent to pass that order, as on that day he was not a District Magistrate, envisaged by Section 3, National Security Act

3. Facts relevant for purposes of the aforesaid submission, briefly stated are that, one Sri S. N. Jha was the regular District Magistrate, Deoria, He took earned leave for the period 3rd June, 1981 to 30th June, 1981. The Commissioner, Gorakhpur Division, while sanctioning leave to Sri Jha passed an order dated 29th May, 1981" providing that during the said period the Additional District Magistrate was to look after the work of the district (Annexure 1 to the counter-affidavit of Sri K. K. Prasad). It was in pursuance of aforementioned order that Sri K. K. Prasad took over the charge from Sri Jha on 3rd June, 1981. The order for petitioner's detention was passed by Sri K. K. Prasad on 23rd June, 1981

while he was performing the duties of District Magistrate, Deoria, in pursuance of the Commissioner's order dated 29th May, 1981.

4. After obtaining office report from the Stamp Reporter on 1st Sep. 1981, the petitioner presented this petition before the Court on 2nd Sep., 1981, and impugned the validity of the order of detention passed by Sri K. K. Prasad on the ground already mentioned.

5. The State Government then issued a notification dated 4th Sep.. 1981 which runs thus:

Sri Kirti Keshav Prasad, Additional District Magistrate, Deoria, has been, in Addition to his aforementioned charge, appointed, in place of Sri Subodh Nath Jha who has been sanctioned leave from 3rd June, 1981 to 30th June, 1981 and with effect from the date he assumed charge to the date he was relieved of the same, as Collector, Deoria, as also District Magistrate, Deoria, u/s 20(1) Cr.P.C. 1973.

6. Despite time being granted to the respondents, they were unable to produce before us any order u/s 20(1) Cr.P.C. passed by the State Government, during the period, 3rd June, 1981 and 30th of June, 1981 appointing Sri Kirti Keshav Prasad, as District Magistrate, Deoria.

7. Sequence of events mentioned above clearly shows that as between 3rd, June, 1981 and 30th June, 1981" Sri Kirti Keshav Prasad, Additional District Magistrate, Deoria, had been looking after the work of District Magistrate, Deoria, in pursuance of the order passed by Commissioner, Gorakhpur Division, dated 29th May, 1981 purely in an officiating capacity and without being appointed as a District Magistrate by the State Government in exercise of its powers u/s 20(1) Cr.P.C. In the case of vashistha Narain Karvaria Vs. State of Uttar Pradesh and Others, a Bench of this Court has ruled that an Additional District Magistrate, even though he may, for the time being, be empowered to exercise powers and functions of a District Magistrate, cannot direct detention of a person u/s 3, National Security Act. Accordingly as at the time when he passed the order dated 23rd June, 1981, Sri Kirti Keshav Prasad, Additional District Magistrate, Deoria, had merely been, as laid down in Section 20(3) Cr.P.C. officiating as a District Magistrate, he had no jurisdiction to pass the same and the impugned order was in the eye of law a nullity.

8. learned Counsel for the State, however, contended that when on 4th September, 1981 the State Government issued the notification, in exercise of its powers u/s 20(1) Cr.P.C. and appointed Sri Kirti Keshav Prasad as District Magistrate with effect from the date on which he, as a result of the District Magistrate Sri Subodh Nath Jha proceeding on leave on 3rd June, 1981", assumed charge of the district, it should be taken that he, for purposes of National Security Act as well became and continued to be the District Magistrate till the date he relinquished that office i. e., till 30th June, 1981. The impugned order passed by Sri Kirti Keshav Prasad on 23rd June, 1981 thus acquired validity

and cannot now be questioned on the ground that he was not a District Magistrate on that date.

9. We are unable to accept this submission. It is true that sometimes Government issues appointment letters appointing officials with effect from an anterior date. However, the purpose of such retrospective appointment merely is to confer some service benefits like counting the period prior to that appointment towards service etc., of such appointees. The purpose of retrospective appointment neither is nor can it be to infuse life into an order which does not exist in the eye of law and to thereby validate a detention which from its very inception was invalid and non-existent in the eye of law,

10. learned Counsel appearing for the State has not been able to bring to our notice any case wherein it has been held by any Court that an order which was passed by a person when he was not competent to pass the same, gets validated by his being so appointed with retrospective effect.

11. In the result, the conclusion is inescapable that the order for the petitioner's detention passed on 23rd June, 1981 has throughout continued to be without jurisdiction and the petitioner cannot be kept under detention in pursuance thereof.

12. The petition, therefore, succeeds and is allowed. The respondents are directed not to keep the petitioner under detention in pursuance of the order passed by Sri Kirti Keshav Prasad on 23rd June, 1981 and to release him from custody forthwith unless he is required to be detained under some valid authority.