
(1948) 05 AHC CK 0020
In the Allahabad High Court

Shri 1008 Swami Hariharananda Saraswati	APPELLANT
Vs	
The Superintendent, Central Jail	RESPONDENT

Date of Decision : 05-05-1948

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 491

Citation : AIR 1948 All 435 : (1948) 18 AWR 228

Hon'ble Judges : Wanchoo, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Wanchoo, J.—This is an application by Swami Hariharanand Saraswati alias Karpatriji u/s 491, Criminal P.C., against an order of de-detention passed against him by the District Magistrate of Benares on 19-2-1948.

2. The order was passed u/s 8(1)(a), U.P. Maintenance of Public Order (Temporary) Act, No. IV of 1947, under the powers delegated to the District Magistrates in these provinces by a Notification of the Provincial Government on 1-8-1917. The relevant portion of the order, is in these terms:

Whereas I am satisfied with respect to Hariharanand Saraawati alias Karpatriji that with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of public order, it is necessary to make an order directing that the said Karpatriji be detained.... I...direct that the said Karpatriji be detained in the custody of the Superintendent, Central Jail, Benares, for a period not exceeding six months with effect from 19-2- 1948....

3. On 21-2-1948, the District Magistrate prepared the grounds and particulars to be communicated to the applicant and those grounds and particulars, which led to his detention, were communicated to the applicant on 23-2-1948 The relevant part of the notice u/s 5 of the Act is in the following terms:

Whereas yon have been making speeches in other districts which are likely to be

an incitement to acts of violence and disturbance of the public tranquillity, and whereas I am satisfied that you Hariharanand Saraswati alias Karpatriji are likely to make such objectionable speeches or act in a manner that is likely to cause breach of the peace or endanger public safety, in Benares.

4. Prima facie, therefore, the provisions of U.P. Act iv of 1947 have been complied with in this case. It has, however, been urged on behalf of the applicant that, for various reasons with which I shall deal one by one, the detention of the applicant is illegal or, at any rate, improper and the applicant should be ordered to be released u/s 491, Criminal P.C.

5. The first point that has been urged is that the delegation by the Provincial Government u/s 11 of the Act of its own power u/s 3(1)(a), to the District Magistrates was ultra vires inasmuch as the Provincial Government did not divest itself of its power to act u/s 3(1)(a). The Notification in question delegating the power to the District Magistrates in these provinces shows that the powers of the Provincial Government u/s 3 (1)(a), were also being conferred on the District Magistrates. The contention is that Section 11 does not provide that the Provincial Government can reserve to itself the power while delegating it to an authority subordinate to it. An exactly similar argument was raised before this Court in Daya Shanker Malaviya Vs. Emperor, and it was negatived by me. I need not, therefore, reiterate the reasons which led me to come to the conclusion that there was nothing in the words of Section 11 of the Act which could lead to the inference that before the Provincial Government could delegate its power u/s 3(1) (a) to the District Magistrates, it must divest itself of that power. It is now being urged that there is nothing in that section which shows that the Provincial Government can keep the power in itself and at the same time delegate it to an authority subordinate to it. There is no doubt that the words of Section 11 say nothing one way or the other on this point. But at the same time, there is no rule of law or of natural justice which requires that before an authority which has the power to delegate can delegate its function to another, it must divest itself completely of the power so delegated. Learned Counsel for the applicant, however, in this connection, relied upon the case in Blackpool Corporation v. Loker (1948) All. E.R. 85. That case was dealing with the powers delegated by the Minister for Health to the Blackpool Corporation under Regulation 51 (1)(5) of the Defence (General) Regulations, 1939. The passage on which reliance was placed appears at page 96 and is as follows:

In any area of Local Government, where the Minister had by his legislation transferred such powers to the local authority, he for the time being divested himself of those powers, and out of the extremely wide executive powers, which the primary delegated legislation contained in Regulation 51(1) had conferred on him to be exercised at his discretion, retained only those powers which in his sub-delegated legislation he had expressly or impliedly reserved for himself.

6. This passage, in my opinion, does not support the view put forward on behalf of the applicant, namely, that there can be no delegation of power to a

subordinate authority without the authority delegating the power divesting itself completely of that power. I lay particular emphasis on the words "retained only those powers which in his sub-delegated legislation he had expressly or impliedly reserved for himself." These words clearly mean that when an authority which has power to delegate, delegates its power to a subordinate authority it reserves such powers to itself which it either expressly reserves or must be held to have impliedly reserved for itself. In a further passage at page 97, the learned Judge observes as follows while dealing with the question whether the Minister of Health had power to act or not:

The view of the Judge (i.e. of the trial Court) that, by the letters of July 29 and August 20, the Minister of Health himself requisitioned and thereby came into possession is wrong on the grounds: (a) that he had, not in his sub-delegated legislation reserved power so to act: (b)....

This would also show that the authority delegating the power can reserve the power to itself. The argument, therefore, on behalf of the applicant that the authority delegating the power must divest itself of that power before it can delegate that power, must be negated. Therefore, when the Provincial Government delegated its power to the District Magistrates and used the word "also" in the Notification delegating the power it was certainly reserving to itself the power to act, if necessary. But this would not result in the delegation to the District Magistrates being ultra vires. There is no force, therefore, in this point and the order cannot be challenged on the ground that the power u/s 3(1)(a) had not been validly delegated by the Provincial Government.

7. The second point that has been urged is that the order in question is a fraud upon the Act and that the District Magistrate was not really satisfied that the detention of the applicant was necessary and that the order was passed for some ulterior object. It has been argued in support of this point that the applicant had made no speech in Benares and had called off his movement soon after the death of Mahatma Gandhi and that, therefore, the District Magistrate when he said that he was satisfied that there was necessity for the detention of the applicant was really committing a fraud upon the Act. I am, however, not prepared to accept this argument. The District Magistrate has stated in so many words that he was satisfied. The fact that the applicant had made no speech in Benares would not affect the question of the satisfaction of the District Magistrate. The grounds which he supplied to the applicant clearly show that his satisfaction was bona fide and the order dated 19-2-1948, cannot by any means, be called a fraud upon the Act.

8. The third point that has been urged is that the extension of Act 4IV. of 1947 by a resolution of the Legislature is ultra vires. This point was raised in this Court in Cri. Misc. No. 222 of; Gauri Nandan Upadhyaya Vs. Rex, and it was held that Section 1, Sub-section (4) of the Act providing the method by which the Act was to be extended was intra vires of the Legislature and as such, the Act was validly extended by a resolution of both the Houses of the Provincial Legislature in

accordance with the provisions of Section 1, Sub-section (4) of the Act. There is no force, therefore, in this point either.

9. The fourth point that has been urged is that the Government of India Act authorises the Provincial Legislature to legislate for preventive detention and not for arbitrary detention. It has been urged that this Act is a piece of legislation providing for arbitrary detention and, therefore ultra vires of the Provincial Legislature. In particular, it has been urged that Sections 3 and 6 of this Act are ultra vires because they provide for arbitrary detention. In support of this contention, two things have been pointed out. It has been first urged that the Act provides u/s 5 that the detenu will be supplied with the reasons for his detention sic he has been detained. It is said that this means that the Act provides for arbitrary detention and not for preventive detention and, as such is ultra vires of the Provincial Legislature. In this connection, reference has been made to the case in *Christie v. Leachinsky* (1947) 1947 A.C. 573. That was a case of damages for false imprisonment. Leachinsky had been arrested without warrant and was informed that he was being arrested on a charge of "unlawful possession" under the Liverpool Corporation Act, 1921. It was found that the arrest on the charge of unlawful possession standing by itself was unlawful imprisonment. The arrest was, however, tried to be justified on the ground that the police suspected larceny or felonious receiving, though they had not informed the applicant that they suspected this and had actually informed him that they were taking him in custody for "unlawful possession." It was in these circumstances that their Lordships observed as follows:

So must a policeman arresting without warrant on suspicion state at the time (unless the party is already acquainted with it), on what charge the arrest is being made or at least inform him of the facts which are said to constitute a crime on his part. Even if circumstances exist which may excuse this, it is still his duty to give the information at the first reasonable opportunity after the arrest. The exigency of the situation which justifies or demands arrest without a warrant cannot justify or demand either a refusal to state the reason of arrest or a misstatement of the reason.

10. In the first place, this case can hardly be pressed in service where, the question is whether this Act passed is intra vires of the powers of the legislature inasmuch as the decision of it depends on whether that Act provides for preventive detention or is a piece of legislation providing for arbitrary detention. The common law of England on which this conclusion of their Lordships is based does not prevail in India so far as the matter of arrests is concerned. In this country, arrests by police are provided for by the Code of Criminal Procedure and whether a police officer has to inform a person, before taking him into custody without warrant, the reasons for doing so depends upon what has been provided for in the Code of Criminal Procedure. But in the case of arrests based on orders of detention passed under Act 4 [IV] of 1947, line order of detention is there or, at any rate, should be there before the arrest takes place under this Act. A police

officer when arresting person for the purpose of detention under this Act will obviously inform him that he is being arrested for detention u/s 3(1)(a) of U.P. Act 4 IV. of 1947 and that information is sufficient for the time being. It cannot, by any means, be held that this Act is one for arbitrary detention merely because Section 5 provides that the reasons for detention would be supplied as soon as may be after the order for arrest. It has been urged that if the Act had provided that the reasons for detention should be supplied to the applicant at the very moment of his arrest, it would not have been a legislation providing for arbitrary detention. I cannot, however, understand how the mere fact, that the Act provides that the reasons for detention should be" supplied as soon as possible after the arrest, would not make it a piece of legislation providing for arbitrary detention, particularly when the order of detention u/s 3(1)(a), is passed or, at any rate, should be passed before the detention and the persons arrested in consequence of the order must, as a general rule, be informed by the police after making the arrest that he was being arrested for detention under this Act.

11. As a matter of fact an analysis of the provisions of Sections 3 and 5 of this Act will show that it is a legislation providing for preventive detention and not arbitrary detention. Section 3 provides in the first place, that the authority passing the order of detention should be satisfied before the order is passed that the person going to be detained is likely to act in a manner prejudicial to the public safety or the maintenance of public order or communal harmony. This shows that even before the order u/s 3(1)(a) is passed, the authority passing the order has to satisfy himself with the necessity for passing the order and cannot pass it arbitrarily without satisfying itself that it is necessary, for reasons mentioned in Section 3(1), to detain the person concerned. In the second places son after the order is passed it is the duty of the authority passing the order to supply the detenu with grounds on which the order against him has been made and such other particulars as may, in the opinion of such officer or authority, be sufficient to enable him to make a representation against the order. Further such person may at any time after he has been supplied with the grounds and particulars make a representation in writing to such authority against the order. Such person has also to be informed that he has the right to make such a representation. It seems that by an oversight Section 5, did not provide that the authority concerned would consider the representation and pass such further order as is proper. But there is no doubt that the intention of the Act seems to be that the authority to which the representation is made will consider it and decide whether the detention should continue or the person detained should be released. This seems to me to be clearly implied by the language of Section 4, which says that

An order made u/s 3 by the Provincial Government shall, unless revoked earlier, remain in force for a period of six months from the date of order.

This revocation is obviously provided after considering the representation made by a detenu.

12. The next Argument, in this connection, is that Section 5, leaves the supplying of particulars in the sole discretion of the authority making the order and this is sufficient to show that the Act is a piece of legislation for arbitrary detention. I cannot agree with this argument, for after all somebody has to be satisfied whether the particulars which are being supplied to the detenu are sufficient to enable him to make a representation. It seems to me that the authority making the order is the best person to decide whether the particulars which it is going to supply to the detenu are sufficient for him to make a representation. The materials on which the order is based are known only to the authority making the order and naturally, therefore, it is for it to supply such particulars as may be sufficient for the purpose of making a representation. I am, therefore, of opinion that the Act is not a piece of legislation for arbitrary detention.

13. The last point that has been urged on behalf of the applicant is that Section 5 of the Act has not been complied with and therefore, further detention of the applicant is improper and he should be ordered to be released. In this connection, reference was made to a Full Bench case of the Patna High Court, reported in Murat Patwa Vs. Province of Bihar, . Their Lordships of the Patna High Court laid down in that case that the provisions of Section 4 of the Bihar, Act, which correspond to the provisions of Section 5, of the U.P. Act, IV of 1947, were mandatory and absolute. As to the effect of non-compliance with the mandatory provisions of Section 4 of the Bihar Act, their Lordships said that "the detention would become illegal if the grounds for his detention are not communicated to the detenu within a reasonable time. I respectfully agree with this view and, if I may say so, this is the view which has been taken in this Court ever since applications u/s 491, Criminal P.C., began to be made against orders of detention passed under U.P. Act, IV of 1947. 14. Section 5 provides for two things. In the first place, it provides that the authority making the order shall communicate to the person affected. There by, the grounds on which the order against him had been made. This direction in the section is absolute and the grounds must be supplied to the detenu. Besides supplying these grounds, the authority concerned shall communicate such other particulars as may, in the opinion of such officer or authority, be sufficient to enable him to make a representation against the order. It is contended on behalf of the applicant that in this case neither the grounds, nor the particulars have been supplied to the applicant and, therefore, Section 5 has not been complied with and he should be released.

15. In this connection, reliance was placed on two cases of the Bombay High Court. The first case is a Division Bench case in In re Krishnaji Gopal Brahme 35 AIR 1948 Bom. 360. In that case a distinction was drawn between grounds and particulars as mentioned in Section 3 of the Bombay Act, which corresponds to Section 5 of U.P. Act, IV of 1947. Their Lordships observed as follows in this connection:

The section draws a distinction between the grounds and the particulars. With regard to the latter the section makes the authority the sole judge of their

sufficiency or otherwise to enable the detenu to make a representation. The whole object of the section is to convey to the detenu the conclusion which the authority has drawn from the facts placed before it and such other particulars as would, in its opinion, be sufficient to enable the detenu to make representation. Although they may not be exhaustive, the grounds and the particulars should be sufficiently precise, so as to make it possible for the detenu to make representation, and, if possible, remove any misapprehension on the part of the authority.

16. Their Lordships then proceeded to consider the grounds and particulars supplied in that particular case and, holding that they were no grounds as required by the Bombay Act, ordered the release of the petitioner.

17. The other Bombay case is the Full Bench case in *In Re: Rajdhar Kalu Patil*, . Therein was held as follows:

Under Section 3, Bombay Public Security Measures Act, 1947, it is incumbent upon the Government, after an order of detention is made, to communicate to the person affected by the order the grounds on which the order has been made in order to enable him to make a representation to the Provincial Government against the order. The grounds furnished must be clear, precise and accurate; and must be such as to make it clear to the person detained what he is charged with and what has moved the Government to deprive him of his liberty. Grounds which are vague and indefinite and which contain no particulars whatever are no grounds at all within the meaning of Section 3.

18. Their Lordships then went on to consider the three grounds that had been supplied to the detenu in this case. They held that two of the grounds were vague and indefinite. As to the third ground which was as follows : "That you threaten public peace and tranquillity of the Amalner town by using violent method, they held that it was a good ground and the application was dismissed. The view of this Court, in this connection, was laid down by Malik J. (now C.J.) in *Emperor Vs. Sumer Singh*, and has been consistently followed. His Lordship, while dealing with Section 5 of the Act, observed as follows:

The object behind the section was that if the person arrested is supplied with the information giving the cause for his arrest, he may be able to satisfy the district authorities that the information received by them, against him was incorrect and he should be released. The section was introduced for the protection of the public.... The law contemplates that the District Magistrate should apply his mind to the case and analyse the nature of the information received by him and give notice of that to the accused so that he may be able to submit an explanation.

His Lordship then went on to consider the grounds supplied in that case which were as follows:

That you during the last few days have been responsible for the communal disturbances in Cawnpore city -and for attempting to bring law and order into

contempt and introducing conditions in which breaches of peace cannot be avoided.

It was considered that these grounds did not give the particulars sufficiently and the District Magistrate was directed to supply the particulars within a certain time.

19. A consideration of these authorities will show that all Courts are agreed as to the principles governing the application of Section 5 of U.P. Act IV of 1947 and similar provisions in similar Acts in other provinces and each case has to be considered on the merits of the grounds and particulars supplied in that case. Where this; Court has gone a little further and has held that where the grounds are there, but the particulars are not so definite, the District Magistrate may I be ordered to supply the particulars within a reasonable time. It may be added that what was considered insufficient in particulars in Emperor Vs. Sumer Singh, would perhaps have been considered sufficient in the Bombay High Court on the analogy of the grounds accepted in In Re: Rajdhar Kalu Patil, .

20. Coming to the grounds and particulars supplied in the present case, it is obvious that the grounds for detention have been set out with sufficient clarity in the notice, dated 21st February 1948. That notice has been attacked for the reason that it does not mention the dates of the speeches made in other districts and also the information that led the District Magistrate of Benares to believe that the applicant would act in a similar manner in Benares. So far as the latter is concerned, it was in my opinion, unnecessary for the District Magistrate of Benares to set out the information which led him to believe that the applicant was likely to act in a similar manner in Benares. That would not have, in any way, helped the applicant in making the representation. As for the first contention, it would perhaps have been advisable to inform the applicant as to when and where he had made those speeches. But considering that the speeches had been made by the applicant himself, it did not require very much particularisation to make him understand what speeches must have been meant. After all, reference could only have been to the recent speeches of the applicant made, say, within the last six months or so. Common sense would have shown that the reference could not have been to speeches, say, made by the applicant twenty or thirty years ago. I am, therefore, of opinion that though it might perhaps have been more advisable to have been little more precise in the notice and to have mentioned the period of time within which the speeches had been made and some of the places where they had been made, the grounds and particulars supplied in this case were sufficiently clear, precise and accurate for the purposes of Section 5 of the Act. Under these circumstances, the continued detention of the applicant cannot be held to be improper for the reason that there has not been sufficient compliance with Section 5 of the Act. I may add that where a detenu feels that the particulars supplied to him by the authority detaining him are, in the opinion of the detenu, insufficient for him to make a representation, there is nothing to prevent the detenu from asking the authority concerned to supply him with sufficient particulars. If the authority concerned

even then fails to supply him grounds and particulars which would be sufficient for the purposes of Section 5, it may then be possible for the detenu to make out a case for release for non-compliance with the mandatory provisions of Section 5 of the Act. The application is hereby rejected.