

(2023) 06 MP CK 0117

In the Madhya Pradesh High Court

Case No : First Appeal No. 860 Of 2011??????????

Suleman

APPELLANT

Vs

District Collector The State Of Madhya Pradesh Govt.

RESPONDENT

Date of Decision : 30-06-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, Order 41 Rule 27
Lok Nayak Jayaprakash Narayan (MISA/DIR Persons Detained For Social Or Political Reasons) Honor Fund Rules, 2008 — Rule 2(Ga)(Gha), 3
Essential Commodities Act, 1955 — Section 3, 7
Maintenance Of Internal Security Act, 1971 — Section 3(1), 3(1)(a)(iii)
Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004 — Section 3, 4

Citation : (2023) 06 MP CK 0117

Hon'ble Judges : Pranay Verma, J

Bench : Single Bench

Advocate : Rishi Agrawal, Vaibhav Bhagwat

Final Decision : Dismissed

Judgement

Pranay Verma, J

1. This appeal under Section 96 of the CPC has been preferred by the plaintiff/appellant against the judgment and decree dated 16.8.2011 passed in Civil Suit No.59-A/2009 by the Additional District Judge, Jhabua whereby his claim for declaration that the order dated 20.5.2009 passed by the Collector, District Jhabua declining to grant him benefits of the Lok Nayak Jayaprakash Narayan (MISA/DIR Persons Detained for Social or Political Reasons) Honor Fund Rules, 2008 (for short the "Rules, 2008") as null and void and for declaration that he is entitled for benefits under the said Rules has been dismissed.

2. As per plaintiff he was Sarpanch of Gram Panchayat, Meghnagar, District Jhabua from 1975 up to 1980. On account of political and social reasons and for him being a member of Bhartiya Lok Dal he was detained from 16.11.1975 up to 22.11.1976 under the Maintenance of Internal Security Act (for short the 'MISA').

As per Rules, 2008 a person detained under the MISA for political or social reasons is entitled for a monthly honor money with effect from 1.4.2008. The plaintiff being so entitled made an application for grant of honor money to him which was rejected by order dated 10.8.2008. Representation by plaintiff against the said order was also dismissed by the State Government by order dated 22.12.2009. The plaintiff then preferred W. P. No.728/2008 before this Court in which a direction was issued to the defendant on 9.2.2009 to conduct enquiry and pass fresh order after affording opportunity of hearing to the plaintiff.

3. In compliance of the said order the defendant again rejected the application of the plaintiff by order dated 20.5.2009 who again preferred W. P. No.3848/2009 before this Court which was disposed off by order dated 19.6.2009 with liberty to plaintiff to institute a Civil Suit before a competent Court observing that disputed questions of fact are required to be adjudicated. The plaintiff has thereafter preferred the instant suit claiming reliefs as above.

4. Plaintiff pleaded that he has never been involved in any anti social activities and instead has been a social worker and an active member of Bhartiya Lok Dal. No criminal case was registered against him between 1968 to 1975 nor was he convicted in any such case. The defendant has held plaintiff not entitled for benefits under the Rules, 2008 merely on account of registration of two cases against him for smuggling which is totally illegal.

5. The claim was contested by the defendant by filing its written statement submitting that in police verification for the relevant period plaintiff was found involved in smuggling of foodgrains and for ensuring that supply of food grains is not effected, on the basis of police and enquiry report the District Magistrate had taken him in custody. Two cases bearing Criminal Case Nos.8/1965 and 147/1967 under Section 3/7 of Essential Commodities Act were registered against plaintiff. He was kept in custody for maintenance of internal security. The application of plaintiff has been rightly rejected as only those persons who were detained for political or social reasons under MISA are entitled for benefits under the Rules, 2008.

6. By the impugned judgment plaintiff's claim has been dismissed by the Trial Court holding that he has not proved that he was under detention from 16.11.1975 up to 22.11.1976 for political or social reasons under MISA. Instead, he was under detention on account of his criminal background though under MISA. He is hence not entitled for benefits under the Rules, 2008 and the order dated 20.5.2009 passed by the defendant is legal.

7. Learned counsel for the plaintiff/appellant has submitted that plaintiff is entitled to the benefits under the Rules, 2008. He was in custody from 16.11.1975 up to 22.11.1976 only on account of him being a political and social worker. He was not detained for any criminal activity. His claim has been illegally dismissed by holding that he is of a criminal background and was involved in cases of smuggling of food grains. He has never been convicted for any offence.

He was given a gun license which he held up to the year 2011. Had he been involved in criminal cases his gun license would not have been renewed. He was held eligible for grant of benefits under the Rules, 2008 by orders passed by the authorities of the defendant themselves. The witnesses examined on behalf of plaintiff have categorically proved that plaintiff was in detention along with them during the relevant period. Their evidence has been disbelieved on wholly irrelevant considerations. The provisions of Rules, 2008 have not been appreciated in proper prospective and there has been gross misreading of the same. It is hence submitted that the appeal be allowed and plaintiff's claim be decreed. Reliance has been placed on the decision of Supreme Court in Kamalbai Sinkar vs. State of Maharashtra & Ors., AIR 2012 SC 2960 and of Andhra Pradesh High Court in K.C. Reddy Ramchandra Reddy vs. Union of India, AIR 2014 (NOC) 608 (A.P.).

8. Per contra, learned counsel for defendant/respondent has submitted that the impugned judgment is perfectly legal the same having been passed upon a correct interpretation of the Rules, 2008. The provisions of Rules, 2008 do not leave any room for doubt that plaintiff does not qualify to be a person who is entitled for benefits thereunder. He was not detained on account of him being a political or a social activist but was detained on account of being involved in criminal activities and for registration of criminal cases against him for smuggling of foodgrains. The witnesses examined by plaintiff have also not proved his case. Mere issuance of gun license in favour of plaintiff would not mean that his detention was only for reason of him being a political or a social activist. It is hence submitted that the appeal deserves to be dismissed.

9. I have heard the learned counsel for the parties and have perused the record.

10. For the purpose of appreciating the controversy involved in this appeal it would be relevant to refer to the relevant provisions of Rules, 2008. Rule 2(Ga) (Gha) and Rule 3 read as under :-

11. Section 3(1) of MISA, 1971, reads as under :-

"Section 3. Power to make orders detaining certain persons.-(1) The Central Government or the State Government may,-

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner pre-judicial to-

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such

person be detained.”

12. A perusal of Section 3(1)(a)(iii) of MISA shows that an order thereunder could have been passed in respect of a person with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. Under the Section there were other eventualities also provided for on account of which a person could have been detained. They were in addition to the contingency as regards maintenance of supplies and services essential to the community. The Rules, 2008 contemplate grant of benefits thereunder to a detainee who was detained under the MISA during the relevant period only for political or social reasons. The Rules have limited their applicability to persons who were detained under the MISA for political or social reasons and have consciously not included in its ambit persons who were detained though under the MISA but not for political or social reasons but for any other reason including for maintenance of supplies and services essential to the community. The Rules have not granted benefit thereunder to all the detainees under the MISA but has confined its application only to those who were detained for political or social reasons.

13. The intention of the Rules, 2008 of not extending the benefits thereunder to persons who had not been detained in jail or police station for political or social reasons is further reaffirmed by the provisions which have been made in the Madhya Pradesh Loktantra Senani Samaan Vidheyak, 2018 which is also aimed at the very same purpose for which the Rules, 2008 were framed i.e payment of honor monthly sum to persons detained under the MISA or DIR Rules, 1971. Section 3 of the Adhinyam has detailed the persons who would be eligible to get the honor money and Section 4 has specifically provided that a person who had been detained in jail or police station for reasons other than political or social reasons shall be ineligible to get honor money. Though such specific exclusion was not there in the Rules, 2008 but there also it was provided that honor money would be paid only to a person who had been detained for political or social reason. Exclusion of persons not detained for such reasons was implied therein which has been expressly provided for in the new Adhinyam of 2018.

14. The documents which have been brought on record by the parties particularly by plaintiff no doubt disclose that he was in detention for the period 16.11.1975 up to 22.11.1976 under the MISA. This is also not disputed by the defendant. The denial of benefits to the plaintiff of the Rules, 2008 is for the reason that he was not detained for political or social reasons but was detained on account of him having been involved in smuggling of food supplies and services. The order dated 16.7.1975 Ex.D/1 passed by the District Magistrate, Jhabua confirming the detention order of plaintiff gave specific details of his criminal activities as regards smuggling of food supplies in which he had been involved in the past on account of which detention order was passed against him. It specifically mentioned that detention of plaintiff is essential under Section 3(1)(a)(iii) of the MISA. Nowhere in the order has it been stated that his detention is

for political or social reason or for any other reason similar thereto. The declaration dated 8.7.1975 Ex.D/2 by the District Magistrate and communication Ex.D/3 made to the State Government are also to the same effect and contained the same facts. The proceedings which were commenced against the plaintiff on the report dated 8.7.1975 Ex. D/5 of the Superintendent of Police, Jhabua were also on the ground of him being involved in smuggling of food supplies and services.

15. From a perusal of the documents brought on record by the parties particularly the defendant it is evident that proceedings under MISA were initiated and taken against plaintiff only on account of him having been involved in smuggling of food supplies and services essential to the community. Though it was observed that he is a worker of Bhartiya Lok Dal but the action which was taken against him was not for that reason but was for the reason as stated above.

16. The witnesses who have been examined on behalf of plaintiff namely PW.2 Yogendra Kumar, PW.3 Banshidhas and PW.4 Masool have merely stated that plaintiff was detained along with them under the MISA. The same are however not in any manner helpful to the plaintiff as the fact that he was detained under the MISA is not in dispute. The dispute is whether such detention was on account of political or social reasons. These witnesses could not state the reason for detention of plaintiff. In any case from the proceedings initiated against the plaintiff available in the form of documents reason for his detention is more than evident hence oral evidence does not benefit him in any manner.

17. As has been rightly observed by the Trial Court in the present suit the legality and validity of the order passed against the plaintiff under the MISA is not the subject matter and its correctness has not to be gone into. The only question for determination is whether detention of plaintiff under MISA was for political or social reasons. The question is not whether the proceedings initiated against him on the allegations of smuggling of food supplies were correct. The burden was squarely upon plaintiff to prove his own case i.e., his detention for political or social reasons which he has failed to do. Various documents brought on record by defendant demonstrate that there were proceedings initiated against plaintiff on allegation of smuggling of food supplies recorded in the Roznamcha but as per rules the Roznamchas have been deleted after a period of three years hence precise details of those proceedings are not available. In any case the same are not of much relevance. Whether any criminal case was registered against plaintiff and whether he was convicted in any of them is wholly irrelevant since a detention order was in fact passed against him and his detention was not for social or political reasons as has correctly been held by the Trial Court. The judgments relied upon by learned counsel for plaintiff do not benefit him in any manner in view of facts of the case.

18. In this appeal the plaintiff has also filed an application under Order 41 Rule 27 of the CPC for taking addition document on record which is an order passed by the defendant granting benefit of the Rules, 2008 to PW.4 Masool. The said

order is in no manner helpful to the plaintiff as the same does not prove that plaintiff was also detained for the reasons as claimed by him.

19. Thus in view of the aforesaid discussion, I do not find that the Trial Court has committed any error in dismissing the claim of plaintiff. The appeal being devoid of merits is hereby dismissed. The parties are directed to bear their own costs throughout.