

(2014) 10 DEL CK 0138
In the Delhi High Court
Case No : W.P.(Crl.) No. 1525 of 2013

Suresh

APPELLANT

Vs

Governor of Delhi

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(d), 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Delhi Excise Act, 2009 — Section 33
Delhi Police Act, 1978 — Section 47, 50, 51, 52, 58
Penal Code, 1860 (IPC) — Section 147, 148, 149, 308, 34
Punjab Excise Act, 1914 — Section 47, 48, 61

Citation : (2014) 4 JCC 2913

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Saroj K. Jha, Advocate for the Appellant; Charu Dalai, Advocate for Saleem Ahmed, St. Counsel (Crl.), Advocate for the Respondent

Judgement

Pratibha Rani, J.—By way Of tills writ petition filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C., Petitioner is seeking quashing of externment order dated 4.6.2013 passed by the Addl. DCP, North-East District and the order dated 24.7.2013 whereby the Lieutenant Governor of Delhi has dismissed his appeal. The Petitioner has sought quashing of the externment order on the following grounds:--

"(i) That the implementation of the externment order may result in harsh consequences to the Petitioner and his family members as they are dependent upon him for their livelihood and would deprive the Petitioner of his fundamental right of free movement as guaranteed under Article 19(1)(d) and personal liberty under Article 21 of the Constitution of India.

(ii) That the externment proceedings by the learned Addl. DCP are against the principle of nature justice as he had relied on certain materials which were not the part of the notice under Section 50 of Delhi Police Act.

(iii) That in the notice, six criminal cases instituted against the Petitioner have been made basis of issuance of notice under Section 50 of D.P. Act whereas in the impugned order, he has relied on as many as sixteen criminal. cases instituted against the Petitioner i.e. ten more cases for which no notice under Section 50 of the Act was given to the Petitioner.

(iv) That during the last five years preceding the notice, only one case was registered under FIR No. 92/2012 at PS Nand Nagri under Section 33 of Delhi Excise Act in which Petitioner is on bail. There is no public witness in this case. Thus, there was no compelling necessity to extern the Petitioner out of the boundary of NCT of Delhi for two years.

(v) That there is no material brought on record to suggest that the Petitioner, is; a habitual offender or his movements or acts are dangerous and hazardous to the community.

(vi) That the impugned externment order has been passed without considering the defence evidence produced by the applicant.

(vii) That the Petitioner is a poor person and he has to take care of his minor children, wife and old aged mother."

2. The writ petitioner has questioned the legality of the order dated 04.06.2013 by Addl. DCP, North East, whereby the petitioner was ordered to be externed from NCT of Delhi for a period of two years as well the order dated 24.7.2013 by Lieutenant Governor of Delhi, whereby the appeal filed by him under Section 51 of Delhi Police Act was also, dismissed.

3. While initiating proceedings for. externment against the writ petitioner, notice under Section 50 of Delhi Police Act was served upon him giving details of six cases registered against him. The particulars and status of the six cases are :

4. The Petitioner filed reply to the "show cause notice. He also produced Mr. Mohan Lal as a witness in his defence.

5. During externment proceedings, opportunity was given to him to seek legal assistance through legal aid counsel as he was not represented by an Advocate. At the stage of arguments, he was represented through a counsel.

6. After considering the material on record, externment order was passed by Addl. DCP after forming the following opinion :

"A close scrutiny of the record clearly indicates that the respondent is a habitual bootlegger and has adopted it as a means of his livelihood and these are sufficient grounds to conclude that he is actively involved in selling illicit liquor. Selling of illicit liquor to the members of the public is detrimental to their health and safety. It may also lead to the commission of crimes. Several times, crimes are committed under the influence or liquor. Number of persons dies every year after consuming illicit liquor. 1 had also been examined SHO/Nand Nagri, Delhi who has deposed about the criminal activities of the respondent. I am of the

view that he is not likely to improve his conduct in future and his presence in the community creates harm and danger to the general well being or the local residents, hence, disturbing the public order. The witnesses are unwilling to depose in public against him because of the apprehension on their part as regards to the safety of that person at the hands of the respondent and his conduct definitely requires stringent view. His successive involvement goes to indicate that he is likely to involve herself in crime in future also."

7. The order passed by Addl. DCP/North East was upheld by Lt. Governor observing that impugned order being fair, there was no reason to interfere with it.

8. Learned counsel for the Petitioner has Contended that neither the Petitioner has been given opportunity to lead defence evidence nor the counsel was provided to the Petitioner by the State. Further, the defence witness produced by the Petitioner was not considered by the Addl. DCP. The principles of natural justice were ignored while passing the externment order as while pronouncing the order of externment, another ten cases were considered of which no notice was given to the Petitioner while issuing show cause notice to him. The Petitioner was declared habitual bootlegger without considering requirement of Section 47 of Delhi Police Act (Explanation), which requires that a person who within a period of one year immediately preceding the commencement of an action under this Section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this Section shall be deemed to have habitually committed that act. Learned counsel for the Petitioner has relied upon Hanuman Rajaram Mhatre v. The State of Maharashtra in Cr. Writ Petition No. 3858/2012 decided on 15.01.2013, Prem Chand (Paniwala) Vs. Union of India (UOI) and Others, , Shammy Vs. Lt. Governor and Others, , Ram Niwas Vs. Commissioner of Police and Others, and Kalyan Khari Vs. State (NCT of Delhi) and Others, in support of his contentions.

9. So far as reliance placed on Prem Chand v. UOI & Ors. (Supra) by learned counsel for the Petitioner is concerned, no mala fide has been attributed to the police officers. There is no force in the contention raised by learned counsel for the Petitioner that he has been ordered to be externed on the basis of 16 cases whereas in the show cause notice, only six cases have been mentioned. Perusal of the order dated 04.06.2013 of Addl. DCP shows that reference to other ten cases are only in the context that despite being externed for a period of six months by order dated 26.04.2005, the Petitioner has not been able to mend his ways. The Petitioner cannot claim ignorance of the cases in which he was facing trial and on the basis of which, he was ordered to be externed for a period of six months in the year 2005. The externment order passed by Addl. DCP further shows that on 30.05.2013, he has produced the defence witness. Apart from that, it is also recorded that Respondent was given several opportunities to defend himself through counsel or to contact the Legal Aid Cell at Karkardooma Court, Delhi. The Petitioner was present with defence counsel, who argued before the Addl. DCP. Thus, it cannot be claimed by the Petitioner that he was not given

fair opportunity to lead defence evidence or to be represented through counsel.

10. Another question raised for consideration is whether on the basis of material available i.e. six cases registered against the present petitioner, out of which five cases have been registered under Excise Act and one case i.e. FIR No. 966/2007 have been registered under Sections 147/ 148/ 149/ 427/ 308/ 34 IPC wherein he was acquitted, could he be externed for a period of two years.

11. It is not necessary to refer to the other decisions i.e. Hanuman Rajaram Mhatre v. The State of Maharashtra (Supra), Shammy v. Lt. Governor & Ors. (Supra), Ram Niwas v. Commissioner of Police & Ors. (Supra) and Kalyan Khari v. State (NCT of Delhi) & Ors. (Supra) relied upon by the writ petitioner for the reason that he cannot get over the decision of Supreme Court in the case of State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo, . In the said report, while examining the scope and ambit of Section 51 of Delhi Police Act and after considering the decision in the case of Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, , it was held as under :

"14. As regards the period, it was held that it is primarily for the externing authority to decide how best the order can be made effective, so as to subserve its real purpose. How long within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 58 it should extend are matters which must depend upon his decision on the nature of the data which the authority is able to collect in the externment proceedings. No general formulation can be made that order of externment must always be restricted to the area to which the illegal activities of the externnee. There can be doubt that the executive order has also to show when questioned that there was application of mind. It is the existence of material and not the sufficiency of material which can be questioned as the satisfaction is primarily subjective somewhat similar to one required to be arrived at by the detaining authority under the preventive detention laws. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. Mere possibility of another view cannot be ground for interference."

12. In the above noted case, while examining the scope of consideration in an administrative order, in exercise of writ jurisdiction, it was further observed:

"21. In other words, to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous " as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

22. These principles have been noted in aforesaid terms in Union of India and another Vs. G. Ganayutham (Dead) by LR., . In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself. (See Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, .

23. Though Section 52 limits the scope of consideration by the Courts, the scope for judicial review in writ jurisdiction is not restricted, subject of course to the parameters indicated supra.

24. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with question mere repetition of the provision would not be sufficient. Reference to be made to some material on record and if that is done the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non.

25. As observed in Gazi Saduddin's case, (supra) satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority."

13. In another case Dheeraj Vs. State (NCT of Delhi), , this Court considered whether involvement in cases under Punjab Excise Act for illegal trafficking and sale of liquor can form basis for externment. It was held :

"5. As already pointed out the order has been assailed primarily on three counts; namely (i) that the basis for issuing notice were five cases under the Excise Act - which according to counsel for the petitioner could not have been the basis of coming to the conclusion that petitioner is desperate or dangerous. We find no merits in this submission. In similar circumstances in the case of Smt. Sahilender Kaur v. Lt. Governor & Ors. Crl.W. No. 1041/2000 decided on 27th April, 2001 this court held that even where a person is involved in excise cases by very nature of their activities is calculated to cause danger to society. It was observed:--

"Illegal trafficking and sale of liquor is, undoubtedly, a menace to the public interest, tranquility, peace and safety. Those who indulge in offenses covered by Section 61 of Punjab Excise Act by very nature of their activities and associations cause ad their acts is calculated to cause danger and harm to the persons and property. Therefore, their acts and movements will fall within the ambit of clause (a) of Section 47. This view finds strength from the provision of Section 48 whereby action for externment could be taken against a person who has been convicted of certain offenses specified in the Section including the offenses u/s. 61 of the Punjab Excise Act as in force in Delhi. Such cases, Therefore, cannot be excluded form the material and evidence available against the person against whom the exterminate order is proposed.

It will be perfectly legal and within the power to the Commissioner of Police and the DCP/Addl. DCP who have been delegated the powers of the Commissioner of Police, to take all the facts and circumstances including the cases covered by the

Punjab Excise Act into consideration. He can pass order of exterminate if adequate credible evidence and material is before him to satisfy him reasonably that the conditions precedent to the passing of the order of externment are in existence."

14. Another contention raised by learned counsel for the Petitioner that though in the show cause notice, only six cases were referred to while passing order of externment for two years, other ten cases have also been taken note of, is no ground to interfere with the impugned order for the reason that with a view to check propensity of the Petitioner and making prognosis of his future conduct, his earlier involvement and the nature of cases in which he was previously involved despite discharge or acquittal can be taken into consideration by the Authority. (Ref. Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another,). This Court cannot sit in appeal over the decision of the concerned authority to reappreciate the material which formed basis of issuance of an externment order against the Petitioner. I find no infirmity in the impugned order and accordingly, the present writ petition is dismissed.