
(1981) 07 AHC CK 0045
In the Allahabad High Court

vashistha Narain Karvaria

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-07-1981

Acts Referred:

Constitution of India, 1950 — Article 166, 19
Criminal Procedure Code, 1973 (CrPC) — Section 10, 20
National Security Act, 1980 — Section 3

Citation : (1981) AWC 583 : (1981) CriLJ 1526

Hon'ble Judges : Yashoda Nandan, J; R.B. Lal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Yashoda Nandan, J.—The petitioner who is incarcerated in the Central Prison at Naini, by means of this petition challenges the legality of the order dated 9th February, 1981 passed u/s 3 of the National Security Act, 1980 (hereinafter referred to as the Act) (Act No. 65 of 1980) by Sri Vidya Prakash designating himself as the District Magistrate, Allahabad. Though a number of points have been urged in support of this writ petition, it can be disposed of on the simple ground that on the date when the order of detention was passed by Sri Vidya Prakash, he was not the District Magistrate of Allahabad.

2. During the course of the hearing before us the learned Counsel for the State produced a radiogram message issued by the Chief Secretary to the Government of Uttar Pradesh to Sri S. A. T. Rizvi, District Magistrate, Allahabad, Sri J. N. Pradhan, Commissioner, Allahabad Division, Allahabad. and Sri Madhukar Gupta. Officiating Commissioner, Moradabad Division, as follows:

Sri S. A. T. Rizvi, District Magistrate Allahabad has been promoted to super-time scale and appointed as Officiating Commissioner, Moradabad Division, Moradabad. He may make over charge of his present post to Sri V. P. Singh Additional District Magistrate (Executive) Allahabad who may officiate as District Magistrate, Allahabad till permanent arrangement is made and proceed to

Moradabad to take over charge of his new assignment. On relief by Sri S. A. T. Rizvi Sri Madhukar Gupta will continue as District Magistrate, Moradabad, Signal compliance.

3. It is on the basis of this radiogram message admittedly according to the learned Counsel appearing for the State that Sri V. P. Singh was functioning at the relevant time as District Magistrate, Allahabad. Subsequently, a Notification dated 25th May, 1981 was issued in the U. P. Gazette dated 17th June, 1981 under the signature of the Chief Secretary of the State Government to the effect that Sri V. P. Singh. Additional District Magistrate. Allahabad was being appointed in addition to his own duties as officiating District Magistrate with effect from 18th January to 14th February, 1981, Apart from the radiogram message quoted above and the gazette notification dated 25th May, 1981, it was conceded by the learned Counsel for the State that there was no other order or gazette notification appointing Sri V. P. Singh as the District Magistrate of Allahabad, complying with the requirements of Article 166 of the Constitution. The position that thus emerges is that Sri V. P. Singh during all relevant periods continued to be the Additional District Magistrate, Allahabad, though he was for the time being empowered to exercise the powers of the District Magistrate in addition to his own duties. He never ceased to be the Additional District Magistrate (Executive) Allahabad.

4. Sub-section (2) of Section 3 of the Act empowers the Central Government or the State Government to direct the detention of any person, "if satisfied with respect to such person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order, or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it is necessary to do so."

5. If the conditions mentioned in Sub-section (2) of Section 3 of the Act are satisfied, the State Government is empowered under that provision to direct in writing that during such period as may be specified in the order the District Magistrates and Commissioners of Police may also exercise the powers conferred by Sub-section (2). It has not been contended before us that the District Magistrate of Allahabad had not been empowered by the State Government to pass an order of detention under the Act. It has, however, been urged that Shri V. P. Singh was never appointed District Magistrate in compliance with Section 20 Sub-section (1) of the Code of Criminal Procedure thereafter referred to as the Code) either for the purposes of the Code or for any other laws. Sub-section (1) of Section 20 of the Code gives power to State Government to appoint as many persons as it thinks fit to be Executive Magistrates and to appoint one of them to be the District Magistrate. Under Sub-section (2) the State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate is to have all or any of the powers of a District Magistrate under the Code or under any other law for the time being in force. Sri V. P. Singh was an

Additional District Magistrate at all relevant times, though he was empowered to exercise the powers of the District Magistrate. Sub-section (3) of Section 20 of the Code runs as follows :

Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer, succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

When the radiogram message was issued, the office of the District Magistrate, Allahabad, was vacant. Shri V. P. Singh succeeded temporarily to the executive administration of the district. The orders contemplated by Sub-section (3) of Section 20 of the Code pending which an officer during the vacancy of the office of the District Magistrate succeeds temporarily to the executive administration of a district are orders appointing a District Magistrate u/s 20(1) of the Code. Thus there is no escape from the conclusion that Shri V. P. Singh was not the District Magistrate, Allahabad and was merely an Additional District Magistrate exercising for the time being the powers and was entitled to perform all the duties conferred and imposed on the District Magistrate.

6. Liberty of person is the most prized possession of every individual. World history records instances of heroes who preferred death to life bereft of the liberties enumerated in Article 19 of the Constitution. The Parliament consequently conscious of the fact that an order of detention without trial involves a drastic curtailment of a natural human right constitutionally guaranteed provided indirectly by Sub-section (3) of Section 20 of the Code that no officer below the rank of District Magistrates or Commissioner of Police can be invested with the power to direct detention of a citizen under the Act.

7. In contrast to Sub-section (3) of Section 20 the Maintenance of Internal Security Act, 1971 (hereinafter to be mentioned as the Security Act) by Clause (b) of Sub-section (2) of Section 3 provided for even Additional District Magistrates specially empowered in that behalf by the State Government with jurisdiction to pass orders of detention under Sub-clauses (2) and (3) of Clause (1) of Section 3 of the Security Act. The Security Act was an enactment in pari materia with the Act and a comparison of Section 3 of the two Acts leads, in our opinion, to the inevitable conclusion that an Additional District Magistrate even though he may for the time being be empowered to exercise the powers and functions of a District Magistrate cannot direct the detention of a person u/s 3 of the Act. In the view we are taking, we find considerable support from the decision of the Supreme Court in Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., . The Supreme Court was called upon to decide in that case as to whether where by virtue of a notification u/s 40 of the Defence of India Act, 1960. the Central Government had delegated its powers u/s 29 thereof to District Magistrates, an Additional District Magistrate, could requisition property u/s 29 simply because he had been invested with all powers of the District Magistrate u/

s 10(2) of the Criminal Procedure Code of 1898. It was observed by the Supreme Court while answering that question in the negative that (at p. 806 of Cri LJ):

It is well known that the object of appointing an Additional District Magistrate is to relieve the District Magistrate of some of his duties and that he is subordinate to the District Magistrate to the extent specified in subsection (3) of the Section 10. It is equally well known that the District Magistrate occupies a very, important position in the district and is the head of the Executive there and he exercises powers of superintendence and control over the other Magistrates in the district. Apart from the powers which have been conferred by the Code of Criminal Procedure on him the District Magistrate is also known as the Collector for purposes of revenue laws....

The scheme of Section 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are different and distinct authorities and even though the latter may be empowered under subsection (2) to exercise all or any of the powers of a District Magistrate but by no stretch of reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in Sub-section (1) of Section 10.

Though in the abovementioned decision the Supreme Court was considering Section 10 of the Code of 1898, the reasoning of the decision applies, in our judgment, with equal force to the instant case and to the Code in force at present.

8. For the reasons given, we are unhesitatingly of the opinion that the order of detention of the petitioner was passed by an officer who was not competent to pass it. The petitioner consequently, in our view, is In illegal detention,

9. We, therefore, allow this petition and direct the opposite parties to release the petitioner forthwith unless he is required to be detained in connection with some other case, A certified copy of this order shall be made available to the learned Counsel for the petitioner on payment of the usual charges.