
(1974) 04 DEL CK 0024

In the Delhi High Court

Case No : Criminal Writ Appeal No. 7 of 1974

Vijay Kumar

APPELLANT

Vs

Delhi Administration and Another

RESPONDENT

Date of Decision : 09-04-1974

Acts Referred:

Citation : (1974) ILR Delhi 265

Hon'ble Judges : Prithvi Raj, J; Jagjit Singh, J

Bench : Division Bench

Advocate : Charanjit Talwar, M.R. Chawla and D.C. Mathur, for the Appellant;

Judgement

Jagjit Singh, J.

(1) By this judgment five writ petitions (Nos. 7, 8, 162, 176 and 177 of 1974) are being disposed of. In all these cases the question involved is as to whether the present Sub-Divisional Magistrates in Delhi can be regarded to have been specially empowered for purposes of sections 56 and 57 of the Bombay Police Act, 1951, as applicable to the Union Territory of Delhi. In three of the petitions the question regarding the extent of their jurisdiction for passing orders of externment under the said provisions was as well raised.

(2) It is necessary to state certain facts. As it was proposed to take action against Suraj Pal alias Kau and Vijay Kumar under sections 56 and 57 of the Bombay Police Act, 1951 as extended with certain modifications to the Union Territory of Delhi (hereinafter called "the Act"), Shri P. N. Gupta, Sub-Divisional Magistrate, Kamla Market, issued notices u/s 59 of the Act. Notice issued to Suraj Pal was dated November 24, 1973 and the notice given to Vijay Kumar was issued on November 26, 1973. By those notices they were informed the general nature of the material allegations against them and it was intimated to them that November 30, 1973 had been fixed for receiving their Explanation and of hearing them and their witnesses, if any, regarding the allegations that their movements were causing or calculated to cause alarm, danger or harm to persons or

property and that there were reasonable grounds for believing that they were engaged or about to engage in the commission of offences involving force or violence or offences punishable under Chapter Xii, Xvi or Xvii of the Indian Penal Code, or in the abetment of any such offences and that witnesses were not willing to come forward in evidence in public against them by reason of apprehensions on their part as regards the safety of their person or property.

(3) Admittedly so far no final orders have been passed against Vijay Kumar and Suraj Pal and the proceedings are still pending before the Sub-Divisional Magistrate who had issued notices to them. In the petitions filed by them (Nos. 7 and 8) they have, Therefore, prayed for quashing the notices dated the 24th and the 26th November, 1973 and the consequent proceedings. The main ground taken is that the Sub-Divisional Magistrates dealing with the cases under sections 56 and 57 of the Act cannot be regarded to be "specially empowered". It was also averred that after the separation of judiciary from executive in the Union Territory of Delhi no such proceedings could be started by Sub-Divisional Magistrates or any other Executive Magistrates. This latter plea was, however, given up at the time of arguments.

(4) Against Om Parkash, Kailash alias Kasha and Giarsa Ram orders have already been passed u/s 56 of the Act by Shri H. A. Arfi, Sub-Divisional Magistrate, Patel Nagar, directing each one of them to remove himself within seven days from the date of the order outside the limits of the Union Territory of Delhi via Faridabad for a period of two years. Each one of them was further directed not to return or enter the area of the Union Territory of Delhi within the said period of two years without permission in writing of the District Magistrate, Delhi, except for attending courts in pending cases on the dates of hearing. The orders against Om Parkash and Kailash were made on January 31, 1974 and the order against Giarsa Ram is dated February 5, 1974.

(5) Petition Nos. 162, 176 and 177 are on behalf of Om Parkash, Giarsa Ram and Kailash and seek to challenge the validity of the orders of externment passed against them. They have not only asked for quashing the externment orders dated January 31, 1974 and February 5, 1974 but have also prayed for a declaration that the Sub-Divisional Magistrate concerned was not competent to exercise powers u/s 56 of the Act and further that the provisions of section 56 of the Act are void being "derogatory to the provisions of Articles 19 and 256 of the Constitution of India."

(6) At this stage it may be mentioned that by S.R.O. 1223 dated April 12, 1957, issued in exercise of powers conferred by section 2 of the Union Territories (Laws) Act, 1950, the Central Government extended to the Union Territory of Delhi sections 1, 2, 33 and 131 of the Bombay Police Act, 1951 (Bombay Act No. 22 of 1951), as then in force in the State of Bombay subject to certain modifications- These modifications, inter alia, included omission of clauses (2), (3), (4), (5), (6), (7), (11) and (16) of section 2. On September 2, 1965 by the Ministry of Home Affairs Notification G.S.R. 1298, again in exercise of powers

conferred by section 2 of the Union Territories (Laws) Act, 1950 and in continuation of S.R.O. 1223 dated April 12, 1957 the Central Government further extended to the Union Territory of Delhi clauses (3), (6), and (11) of section 2, clause (db) of sub-section (1) of section 33, and sections 55, 56, 57, 58, 59, 60, 61, 62, 63, 63AA, 71, 72, 79, 80, 110, 111, 112, 113, 117, 141, 142, 143, 151, 155, 156, 157, 157A, 158, 159, 160 and 163 of the Bombay Police Act, 1951 (Bombay Act Xxii of 1951) as then in force in the State of Maharashtra, subject to certain modifications.

(7) Section 55 of the Act contains provisions regarding powers of District Magistrate, Sub-Divisional Magistrate and specially empowered District Superintendent for ordering dispersal of gangs and bodies of persons or ordering any member of such gang or body to remove himself outside the area within the local limits of the jurisdiction of the officer making the order. For purposes of the present case, however, it is not necessary to reproduce that section.

(8) Section 56 of the Act under which the Sub-Divisional Magistrate, Patel Nagar, passed orders against Om Parkash, Giarsa Ram and Kailash reads as under :

"56. Whenever it shall appear to the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the Chief Commissioner in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter Xii, Xvi or Xvii of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction by such route and within such time as the said officer may prescribe and not to enter or return to the said area from which he was directed to remove himself."

THE next section of the Act, section 57, is in the following terms:

"57. If a person has been convicted

(A) of an offence under Chapter Ii, Xvi or Xvii of the Indian Penal Code (XLV of 1860), or

(B) twice of an offence u/s 6 or section 11 of the Bombay Prevention of Begging Act, 1959 (Bombay Act X of 1960) as extended to Delhi, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of

1956), or

(C) thrice of an offence within a period of three years under the Delhi Gambling Act, 1955 (Delhi Act IX of 1955) or under the Punjab Excise Act, 1914, (Punjab Act I of 1914), as extended to Delhi:

THE District Magistrate or the sub-Divisional Magistrate specially empowered by the Chief Commissioner in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself.

Explanation. For the purpose of this section an offence similar to that for which a person was convicted shall mean

(I) in the case of a person convicted of an offence mentioned in clause (a), an offence under any of the Chapter of the Indian Penal Code (XIV of 1860) mentioned in that clause, and

(II) in the case of a person convicted of an offence mentioned in clauses (b) and (c), an offence falling under the provisions of the Acts mentioned respectively in the said clauses."

(9) u/s 58 of the Act a direction made under sections 55, 56 or 57 not to enter any particular area can be for such period as may be specified but in no case is to exceed a period of two years from the date on which it is made. Section 59 provides for hearing to be given before action is taken under sections 55, 56 or 57. Before an order is made under sections 55, 56 or 57 against any person, the officer acting under any of the said sections or any officer above the rank of Inspector authorised by that officer is required to inform the person in writing of the general nature of the material allegations against him and to give him a reasonable opportunity of tendering an Explanation regarding them. If such person wishes to examine any witnesses, he has to be given an opportunity of adducing evidence. Such person has also the right to file a written statement and to appear in the proceedings through an advocate or attorney for the purpose of tendering his Explanation and adducing evidence. The authority or the officer has the power to require such person to appear before him and to take security for attendance during the inquiry. If the person "fails to pass the security bond as required or fails to appear before the officer or authority during the inquiry", it is lawful for the officer or authority to proceed with the inquiry and thereon such order as was proposed to be passed against him may be passed. Of course the order of externment u/s 56 or 57 of the Act can be passed only by the District Magistrate or a Sub-Divisional Magistrate specially empowered by the Chief Commissioner (now the Lt.-Governor) in that behalf.

(10) u/s 60 of the Act a person aggrieved by an order made u/s 55, 56 or 57 has

the right to file an appeal to the Chief Commissioner (now the Lt.-Governor) within thirty days from the date of the order. Section 61 makes the orders passed under sections 55, 56 or 57 or by the Chief Commissioner (now the Lt.-Governor) u/s 60 final and not liable to be called in question in any court except on the ground that the authority making the order or any officer authorised by him had not followed the procedure laid down in section 59 or that there was no material before the authority concerned upon which it could have passed its order or on the ground that the said authority was not of opinion that witnesses were unwilling to come forward to give evidence in public against the person in respect of whom an order was made u/s 56.

(11) There is another provision of the Act which requires to be referred to. u/s 63AA the Chief Commissioner or any officer especially empowered by the Chief Commissioner in that behalf may, in like circumstances and in like manner, exercise the powers exercisable by the District Magistrate, Sub-Divisional Magistrate or District Superintendent specially empowered by the Chief Commissioner in that behalf, as the case may be, under sections 55, 56 or 57.

(12) It may have been noticed that action can be taken u/s 56 or section 57 of the Act by the District Magistrate or a Sub-Divisional Magistrate "specially empowered by the Chief Commissioner in that behalf". Of course u/s 63AA the Chief Commissioner or any officer specially empowered by the Chief Commissioner in that behalf may, in like circumstances and in like manner, exercise the powers exercisable by the District Magistrate or a Sub-Divisional Magistrate specially empowered by the Chief Commissioner in that behalf u/s 56 or 57 of the Act.

(13) As action was proposed to be taken under sections 56 or 57 of the Act by the Sub-Divisional Magistrate, Kamla Market, against Suraj Pal and Vijay Kumar and externment orders were passed under provisions of section 56 of the Act by the Sub-Divisional Magistrate Patel Nagar, against Om Parkash, Kailash and Giansa Ram, it has to be considered whether the said Sub-Divisional Magistrates, Sarvshri P. N. Gupta and H. A. Arfi, can be regarded to have been specially empowered for purposes of sections 56 and 57 of the Act. On behalf of the respondents reliance was placed on a notification of the Chief Commissioner, Delhi, for showing that all the Sub-Divisional Magistrates in the Union territory of Delhi functioning on April 15, 1966 and their successors have to be regarded to have been specially empowered for purposes of sections 55, 56 and 57 of the Act. It was, however, not disputed that no particular Sub-Divisional Magistrate has been specially empowered by name or by virtue of office and that Shri P. N. Gupta and Shri H. R. Arfi were not Sub-Divisional Magistrates on the date of issue of the Chief Commissioner's notification. The notification of the Chief Commissioner, dated April 15, 1966, was as follows :

"NO.F. 2(296)/62-Home (ii). The Chief Commissioner, Delhi is pleased to specially empower the officers specified in column 2 of the table below to exercise the powers conferred by the sections of the Bombay Police Act, 1951, as extended to

the Union Territory of Delhi, mentioned against each in column 3 thereof and to direct that in the exercise of these powers the local limits of the jurisdiction of each such officer shall be the whole of the Union Territory of Delhi.

Table S1. No, Designation of Provisions of the Bombay police officers act 1951 as extended to the Union Territory of Delhi under which powers exercisable 1 2 3 1 All District Superintendents Section 55 of police, 2 All Sub-Divisional Magistrates Section 55, 56 and 57. By order sd/-00 (VINOD Kumar SETH) Under Secretary (Home) Delhi Administration Delhi"

(14) Thus the Chief Commissioner, Delhi, had purported to empower all Sub-Divisional Magistrates in the Union territory of Delhi for purposes of sections 55, 56 and 57 of the Act and had directed that in the exercise of those powers "the local limits of the jurisdiction of each such officer shall be the whole of the Union Territory of Delhi".

(15) According to Shri Charanjit Talwar and Shri C. P. Wig, learned counsel for the petitioners, as the Chief Commissioner had purported to empower all Sub-Divisional Magistrates in the Union territory of Delhi, without any exception, it was a case of general conferment of power and no Sub-Divisional Magistrate became specially empowered for purposes of sections 56 and 57 of the Act. It was, Therefore, contended that action taken or proceedings started u/s 56 and/or section 57 of the Act by two of the Sub-Divisional Magistrates in the Union territory of Delhi were illegal due to total lack of jurisdiction on their part. Another submission made was that even if as a result of the aforementioned notification of the Chief Commissioner all the Sub-Divisional Magistrates functioning in the Union territory of Delhi can somehow be regarded to have been specially empowered for purposes of sections 56 and 57 still the power of each of the Sub-Divisional Magistrates for passing an order of externment being limited to "the area within the local limits of his jurisdiction", the orders made by Shri H. A. Arfi directing Om Parkash, Kailash and Garsa Ram to remove themselves outside the limits of the Union territory of Delhi were illegal and beyond his jurisdiction.

(16) In *Sindhi Lohana Chaithram Vs. The State of Gujarat*, the matter which came up for consideration before their Lordships of the Supreme Court was whether Shri S. M. Pandya, Deputy Superintendent of Police, Porbandar, was specially empowered to issue a search warrant u/s 6(1)(i) of the Bombay Prevention of Gambling Act, 1887. Under that provision a search warrant could be issued by a Deputy Superintendent of Police "especially empowered" by the State Government in that behalf. The Saurashtra Government had by a notification dated January 22, 1955 empowered specially certain Assistant Superintendents and Deputy Superintendents of Police, including the Deputy Superintendent of Police Porbandar, to authorise by issue of special warrant in each case a police officer not below the rank of a Sub-Inspector of Police to do the various things necessary in order to raid a house where the police officers suspected gambling to be carried on and which house, room or place was

suspected as. being used as a common gambling house. The view taken in *Emperor v. Udho* AIR 1943 Sind 107 that the expression "specially empowered" meant specially empowered by name and not by virtue of his office was not approved by the Supreme Court. Agreeing with the view taken in *Emperor v. Savalaram Kashinath Joshi and other* AIR 1948 Bom 156 it was laid down that where power is conferred "on a person by name or by virtue of his office, the individual designated by name or as the holder of the office for the time being is empowered specially". It was also mentioned that in the case of *Allaga Pillai v. Emperor* AIR 1924 Mad 256 it had been rightly held that an authorisation of the second class Magistrate of Thirumangalam to try certain cases was a special empowering of the person holding that office by virtue of his office within the meaning of section 39(1) of the Code of Criminal Procedure, 1898, which provided that in conferring powers under the Code "the State Government may, by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles". Shri Pandya as the holder of the office of the Deputy Superintendent of Police Porbandar was, Therefore, considered to have been specially empowered u/s 6 of the Bombay Prevention of Gambling Act by the notification of the Saurashtra Government dated January 22, 1955. No opinion, was, however, expressed on the question whether a notification empowering all Magistrates of a certain class to try certain cases can be said to empower specially every Magistrate of that class to try those cases. The conflict on that point was, however, noted and in that connection reference was made to *Mahomad Kasim v. Emperor* AIR 1915 Mad 1159 and the *State of Mysore v. Kashambi* 1963 (2) Cr.L.J. 226.

(17) Thus in the case of *Choithram Parasram* (supra) the Supreme Court approved the decision of the Bombay High Court in *Emperor v. Savalaram Kashinath Joshi and others* AIR 1948 Bom 156 by observing that the Bombay High Court had rightly held that a notification authorising the Deputy Superintendent of Police of the Poona city to issue a search warrant u/s 6 of the Bombay prevention of Gambling Act specially empowered the holder of that office by virtue of his office to issue the warrant.

(18) Prior to the year 1926 a warrant u/s 6 of the Bombay Prevention of Gambling Act could be issued only by a Magistrate of the First Class or a District Superintendent or an Assistant Superintendent "empowered by Government in this behalf." By the amending Act (5) of 1926 the words "Assistant or Deputy Superintendent" were substituted for the words "Assistant Superintendent". By notification dated August 23, 1928 Assistant Superintendents and Deputy Superintendents at six specified places including the Poona city were by virtue of their office empowered to issue warrants u/s 6. The amending Act I of 1936 replaced the old section by an entirely new one and the relevant change affected was that the word "empowered" was altered to "specially empowered". The warrant whose validity came up to be considered by the Bombay High Court in the case of *Emperor v. Savalaram Kashinath Joshi and others* AIR 1948 Bom 156 was issued by Mr. Crone, Deputy Superintendent of Police, Poona city, on

November 11, 1944. After referring to section 25 of the Bombay General Clauses Act, 1904, which was in the same terms as section 24 of the General Clauses Act, 1897, it was held by Lokur, J., with whom Stone, C.J., agreed, that as the notification of the year 1928 did not contain anything inconsistent with the new section 6 substituted by Bombay Act 1 of 1936 it was still in force and that the Government could appoint any Assistant or Deputy Superintendent to exercise the functions of issuing a warrant u/s 6 of the Bombay Prevention of Gambling Act not only by name but also by virtue of office. It was also remarked that when a class of officials is invested with powers to try certain offences or to do certain functions, it would appear that they are "Generally empowered", but if any persons are so empowered by name or in virtue of their offices they are said to be "specially empowered". On that basis it was considered that Mr. Crone though not empowered by name could yet be regarded to be "specially empowered" in virtue of holding a particular office, namely, that of the Deputy Superintendent of Police, Poona city. The learned Judge while commenting upon the observations of David, C.J. in *Emperor v. Udho* AIR 1943 Sind 107 that the words "especially empowered" implied the exercise by Government of a certain selection or discrimination as regards an individual on whom the special power was to be conferred, and that to authorise the Deputy Superintendent of a particular place, whoever he might be, however numerous successors to that office might be, would be to go against the principles of selection embodied in the section and "to be something in the form and nature of a general and not a special power", made the following observations:

"I respectfully think that when a particular place was selected by Governor, it is conceivable that Government intended to post there only such Assistant or Deputy Superintendent as was competent to exercise the power u/s 6 of the Act. This would be covered by the words "in virtue of their office" used in S. 39 Criminal PC."

(19) The Gujarat High Court in Full Bench decision, *Sabuddin Sheikh Mapaur v. J. S. Thakar* and another AIR 1969 Guj 7 Placed the following interpretation on the expression "the Sub-Divisional Magistrates specially empowered by the State Government in that behalf", as used in section 56 of the Bombay Police Act :

"THEREFORE, on the whole, we have come to the conclusion that, the correct interpretation of the expression which we have to construe is that, in order that there may be a special conferment of power u/s 56 afore said in regard to a Sub-Divisional Magistrate, power must be conferred upon that officer either by his name or by virtue of his office. In either case, Government must have definitely before its mind's eye the particular individual or person who is being selected for the conferment of power. If that is not so, then, the officer is not specially empowered. On the other hand, in our judgment, if power is conferred upon the classes of Sub-Divisional Magistrates, which will be the case if more than one particular individual is intended by the Government and specially so if the Government intends to empower the successors. in office of the Sub-Divisional

Magistrates concerned then, it is a general conferment of power." Regarding the decision of the Bombay High Court in *Emperor v. Savalaram Kashinath Joshi* AIR 1948 Bom 156 it was, however, remarked that though the ratio embodied in the said case had been correctly laid down but the application of that ratio to the facts of the case was not correct. In that context it was mentioned in the judgment of the Gujarat High Court that if a notification empowers "not a person holding a particular office at a particular point of time, but, empowers all his successors in office, then, the Government does not select any particular person, an individual or an officer, for the conferment of power, but it selects a place and confers powers upon all officers who may happen to be transferred at that place, including an officer who may not have any service at the time, when the notification was issued and about whose capability or experience the Government may not have the slightest idea at the time when the notification is issued" and "that it would be wrong to regard such a notification as a special conferment of power and not general".

(20) It appears to us that when a notification empowers all Magistrates of a certain class to try certain cases, it cannot be said to "specially empower" every Magistrate of that class to try those cases. The effect of such a notification would be that every such Magistrate would be "generally" and not "specially" empowered. In *Mahomad Kasim and another v. Emperor* AIR 1915 Mad 1159 the view taken was that when a class of officers is invested with powers to try certain offences, they have to be regarded to have been "generally" empowered, as the word "generally" is in contrast with the word "specially", which is used in speaking of individuals. The Mysore High Court, in *State of Mysore v. Kashambi and another* (1963 (2) Cr. L.J. 226, however, struck a different note by remarking that the word "specially" does not convey the idea of picking and choosing of the Magistrates and whether additional powers should be conferred on some or all depend upon the exigencies of the situation and not on any other test. In *C.V. Madhava Mannadiar Vs. District Collector and Addl. District Magistrate, Palghat and Others*, a similar view was taken. We are, however, in respectful agreement with the view taken in the case of *Mahomad Kasim*, (supra).

(21) The idea behind specially empowering one or more persons by name or by virtue of his or their office does involve the element of selection so that such person or persons would be suitable for trying the cases or taking action for which he is or they are specially empowered. With very great respect we are, however, unable to agree with the observations made in the case of *Sabuddin Sheikh Mansur* (supra) by the Gujarat High Court that if more than one individual is intended to be specially empowered, and particularly when the intention is also to empower the successors in office, then the conferment of power is necessarily a general one. In the case of *Savalaram Kashinath Joshi* (supra), decided by the Bombay High Court and which decision was approved by the Supreme Court, the notification dated August 23, 1928 had empowered Assistant Superintendents and Deputy Superintendents at six specified places including the Poona City and on the basis of that notification the Deputy Superintendent of Police Poona city in

the year 1944 was held to be specially empowered for purposes of section 6 of the Bombay Prevention of Gambling Act. Obviously the other Assistant Superintendents and Deputy Superintendents at the five other specified places, like the Deputy Superintendent of Police for Poona city, could, also be regarded to be specially empowered. In our opinion there can be special empowerment either by name or by virtue of office of more than one individual but when the entire class is empowered the empowerment ceases to be special and becomes general. The distinction between "specially empowered" and "generally empowered" is not that the empowerment is in favor of one or more than one individual but whether the empowerment is of a person or persons as distinguished from empowerment of the entire class. The conferment of power ceases to be special when the entire class is empowered. In that event the element of selection inherent in specially empowering would be lacking. It is, however, immaterial whether empowerment is by name or by virtue of office or that the successors of the persons specially empowered are intended to be also so empowered.

(22) The validity of the Chief Commissioner's notification dated April 15, 1966, by which all Sub-Divisional Magistrates in the Union territory of Delhi were empowered for purposes of sections 55, 56 and 57 cannot be sustained as the empowerment made has to be regarded "general" and not "special", as required by the Act. Under sections 55, 56 and 57 besides the District Magistrates, Sub-Divisional Magistrates specially empowered by the Chief Commissioner in that behalf can act. The legal effect of the notification which was issued was that no Sub-Divisional Magistrate became "specially empowered" for purposes of sections 55, 56 and 57 of the Act. The orders passed by Shri H. A. Arfi u/s 56 or the notices issued by Shri P. N. Gupta u/s 59 with a view to take action under sections 56 and 57 of the Act and the proceedings consequent to the said notices have, Therefore, to be quashed on that short ground.

(23) We may as well state that no advantage can be taken by the respondents of the provisions of section 63AA. Under the provisions of that section the Chief Commissioner or any officer specially empowered by him in that behalf, can, in like circumstances and in like manner, exercise the power exercisable by the District Magistrate, Sub-Divisional Magistrate or District Superintendent specially empowered by the Chief Commissioner in that behalf, as the case may be, under sections 55, 56 or 57 of the Act. There is no dispute that action could be taken either by the Chief Commissioner or by an officer specially empowered by the Chief Commissioner for exercising his powers as conferred by section 63AA. No Sub-Divisional Magistrate in the Union territory of Delhi has been conferred the powers exercisable by the Chief Commissioner by virtue of the provisions of section 63AA and moreover such conferment of powers cannot be on the entire class of the Sub-Divisional Magistrates.

(24) As by the orders of externment made by Shri Arfi he had directed three of the petitioners to remove themselves outside the limits of the Union territory of

Delhi it would be worth considering whether such orders were legal even if it could somehow be assumed that all the Sub-Divisional Magistrates in the Union territory of Delhi had been specially empowered for purposes of sections 56 of the Act. The power given to the District Magistrate or a Sub-Divisional Magistrate specially empowered is to direct the person against whom action is taken to remove himself "outside the area within the local limits of his jurisdiction". There is no dispute that the local limits of jurisdiction of the District Magistrate Delhi extend to the entire Union territory. The same thing, however, cannot be said about Sub-Divisional Magistrates. As was provided by section 4(1)(u) of the Code of Criminal Procedure, 1898, a sub-division meant a sub-division of a district. Section 8 of the said Code further provided for dividing any district outside the presidency towns into sub-divisions or for making any portion of any such district a Sub-Division and for altering the limits of any sub-division. u/s 13, also of the Code of Criminal Procedure, 1898, any Magistrate of the first or second class could be put in charge of a sub-division and could be relieved of the charge as the occasion may have required. A Magistrate placed in charge of a sub-division was called "a Sub-Divisional Magistrate". Under the Code of Criminal Procedure, 1973 as well a Sub-Division means a sub-division of a district and u/s 20(4) the State Government can place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires and the Magistrate so placed in charge of a sub-division is called the Sub-Divisional Magistrate.

(25) The local limits of the jurisdiction of a Sub-Divisional Magistrate, in his capacity of a Sub-Divisional Magistrate, are obviously the limits of the sub-division of which for the time being he may be placed in charge. Reliance was sought to be placed by the learned counsel for the respondents on *Om Prakash Vs. State*, . It seems to us that no help can be derived from that case as it did not deal with the question as to what are the limits of the jurisdiction of a Sub-Divisional Magistrate. In that case what was held was that a Sub-Divisional Magistrate can exercise the powers of a Magistrate first class in portions of the district to which he is posted that lie outside his own sub-division unless the order defining a local area into a sub-division contains a provision which restricts the exercise of those powers to that sub-division only.

(26) The notification issued by the Chief Commissioner on April 15, 1966 did not in any way alter the limits of any of the existing sub-Divisions. It was merely mentioned therein that in exercise of powers under sections 55, 56 and 57 of the Act the local limits of the jurisdiction of all Sub-Divisional Magistrates "shall be the whole of the Union Territory of Delhi". The direction thus given was against the provisions of sections 55 to 57 of the Act, for the officer taking action under those sections can only direct the person against whom action is taken to remove himself outside the area within the local limits of his jurisdiction. Without amending the provisions of sections 55 to 57 of the Act even a specially empowered Sub-Divisional Magistrate cannot direct a person to remove himself outside the area which is not within the local limits of his jurisdiction as a Sub-Divisional Magistrate. Where in a case it may be considered necessary to order

removal of a person outside the Union territory of Delhi, under provisions of the said sections, and when the officer taking action is not the District Magistrate the case will have to be sent to the District Magistrate for action being taken in accordance with law for the local limits of his jurisdiction do extend to the entire Union territory of Delhi.

(27) It was urged on behalf of the respondents that clause (5) of section 2 of the Bombay Police Act, 1951 containing the definition of the word "district " was not extended to the Union territory of Delhi and, Therefore, it was competent for the Chief Commissioner to order that the Sub-Divisional Magistrates shall exercise powers under sections 55 to 57 of the Act in the whole of the Union territory of Delhi. We find no force in this contention. The definition of "District" as given in clause (5) of section 2 of the Bombay Police Act was that "District" meant a territorial division Constituting a district for the purposes of the Code of Criminal Procedure, 1898 but did not include Greater Bombay. While extending certain provisions of the Bombay Police Act to the Union territory of Delhi it was not considered necessary to extend the definition of the word "District" as given in clause (5) of section 2. In spite of that limits of various sub-divisions in the Union territory of Delhi were fixed under the Code of Criminal Procedure, 1898 and various officers have been placed in charge of the different sub-divisions. If any of the sub-divisional Magistrates are specially empowered for purpose of sections 56 and 57 of the Act then each one of them can so long the provisions of sections 56 and 57 are not amended, only pass orders directing persons against whom action is taken under any of those sections to remove himself from the local limits of his jurisdiction as a sub-divisional Magistrate and not from the limits of the entire Union territory of Delhi.

(28) It is significant to note that under the Bombay Police Act the power conferred by sections 55 to 57 was more extensive. There a person could be asked to remove himself not only outside the area within the local limits of the jurisdiction of the officer taking action but also any district or districts, or any part thereof, contiguous thereto. While extending the provisions of sections 55 to 57 of the Bombay Police Act to the Union territory of Delhi the words "or such area and any district or districts or any part thereof, contiguous thereto" were omitted. So a specially empowered Sub-Divisional Magistrate cannot, under the provisions of section 55, 56 and 57, direct a person to remove himself from the entire Union territory of Delhi or from any area which is not part of the sub-division of which he is in charge.

(29) Our conclusions, Therefore, are that the notification issued by the Chief Commissioner on April 15, 1966 suffered from two legal infirmities. First, it did not have the legal effect of specially empowering any Sub-Divisional Magistrate or Sub-Divisional Magistrates and the empowerment being in favor of all the Sub-Divisional Magistrates it was general and not special empowerment, as required by sections 55 to 57 of the Act. Secondly, the area within which powers could be exercised by Sub-Divisional Magistrates under sections 55 to 57 of the Act could

not without amendment of those provisions of the Act be made more extensive than the local limits of the jurisdiction of each of the Sub-Divisional Magistrate.

(30) It was not seriously contended before us that if the Sub-Divisional Magistrates in the Union territory cannot be regarded to have been specially empowered under sections 55 to 57 of the Act and the action taken by two of the Sub-Divisional Magistrates against the petitioners was without any jurisdiction still they could not challenge the action taken by moving this court under provisions of Article 226 of the Constitution of India but against the final orders made could file appeals u/s 60 of the Act. Filing any appeals would not have served any useful purpose for the matter involved was legality of the notification issued by the appellate authority itself.

(31) As mentioned earlier the validity of the provisions of section 56 of the Act was also sought to be challenged by three of the petitioners. During arguments that contention was not pressed and the cases were argued by the learned counsel for the petitioners on the basis that sections 56 and 57 of the Act were in no way ultra-vires any of the provisions of the Constitution of India. In *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay* and Another, section 57 of the Bombay Police Act was held to be valid. The same reasoning would apply to the validity of section 56 of the Act.

(32) For the reasons given above the petitions of Vijay Kumar and Suraj Paul are accepted and the notices dated the 24th and the 26th November 1973, u/s 59 of the Act, issued by Shri P. N. Gupta, Sub-Divisional Magistrate, Kamla Market, and the proceedings consequent thereto are quashed. Petitions of Om Parkash, Giarsa Ram and Kailash are also accepted and the orders of externment made by Shri H. A. Arfi, Sub-Divisional Magistrate, Patel Nagar, u/s 56 of the Act, are as well quashed and it is declared that under Notification No. F. 2(296)/62-Home (ii) dated the 15th April. 1966 of the Chief Commissioner, Delhi, the Sub-Divisional Magistrate concerned could not be regarded to have been specially empowered for purposes of sections 56 and 57 of the Act. In view of all the circumstances of the cases we direct that the costs of all the petitions shall be borne by the parties themselves. We shall, however, like to make it clear that this order shall not in any way be construed as a bar for the District Magistrate Delhi or any Sub-Divisional Magistrate who may be specially empowered in taking action against the petitioners or any one of them in accordance with law.