Shamrao V. Parulekar

Vs

The District Magistrate, Thana Bombay and Two Others

D M Pangarkar

Vs

The State of Bombay and Another

Mrs Godavari Parulekar

Vs

The District Magistrate Thana Bombay and Two Others

Ganesh Laxman Patil for Tukaram Hari Wazekar

Vs

The District Magistrate, Kolaba and Two Others

The State of Hyderabad - Intervener

Petition No. 86, 147, 157, 155 of 1952

(CJI M. Patanjali Sastri, M. C. Mahajan, Vivian Bose, B. K. Mukherjea, S. R. Dass JJ)

26.05.1952

JUDGMENT

BOSE J :-

This Petition and three others, namely petitions Nos. 147,155 and 157 of 1952, raise issues regarding the vires and applicability to these cases of section 3 of the Preventive Detention (Amendment) Act, 1952. This judgment is confined to those points and will govern these cases only in so far as they raise those points. The remaining points which do not touch these issues will be dealt with by another Bench. The only exception is a point raised in Petition No. 155 of 1952 with which deal with that separately.

The present petition (No. 86 of 1952) was argued very ably and with commendable conciseness by the petitioner in person. The fact that he has not been able to persuade us to his view is not due to any defect in his presentation of the case.

The Petitioner was arrested on the 13th of November, 1951, and an order of detention under the Preventive Detention Act of 1950 was served on him the same day, and he was given the grounds of detention on the following day, the 16th. His case was placed before an Advisory Board and on the

8th of February, 1952, the Bombay Government"confirmed and continued"the detention under section 11 (1) of the Preventive Detention Act of 1950.

This Act, as it originally stood, was due to expire on the 1st of April, 1951, but in that year an amending Act was passed which, among other things, prolonged its life to the 1st of April, 1952. The order of detention in this case was passed under the Act of 1950 as amended by the Act of 1951. According to past decision of this Court, the detention would have expired on the 1st of April, 1952, when the Act of 1950 as amended in 1951 would itself have expired. But a fresh Act was passed in 1952 (Act XXXIV of 1952), the Preventive Detention (Amendment) Act, 1952. The effect of this Act was to prolong the life of the Act of 1950 for a further six months, namely till the 1st of October, 1952. The question is whether that Act also prolonged the detention and whether it had the vires to do so.

It was contended that the mere prolongation of the life of an Act does not, by reason of that alone, prolong the life of an Act does not, by reason of that alone, prolong the life of a detention which was due to expire when the Act under which it was made expired. Therefore, as the Act under which the present detention was made was due to expire on the 1st of April, 1952, the mere prolongation of its life by the amending Act did not affect a prolongation of the detention. Accordingly, the petitioner should have been released on the 1st of April 1952, and as there is no fresh order of detention he is entitled to immediate release.

We need not express any opinion on that point because there is present in the amending Act something more than a mere prolongation of the life of the old one. There is section 3 which is in these terms :

> "Validity and duration of detention in certain cases -
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> Every detention order confirmed under Section 11 of the principal Act and in force immediately before the commencement of this Act shall have effect as if it had been confirmed under the provisions of the principal Act as amended by this Act; and accordingly, where the period of detention is either not specified (by whatever form of words) to be for the duration or until the expiry of the principal Act or until the 31st day of March, 1952, such detention order shall continue to remain in force for so long as the principal Act is in force, but without prejudice to the power of the appropriate Government to revoke or modify it at any time."

It will be noticed that the concluding part of this section states that the detention order shall remain in force "for so long as the Principal Act is in force." Section 2 of the amending Act defines the "principal Act" to mean the Act of 1950 was due to expire on the 1st of April, 1952, the present detention also came to an end on that date and so, in the absence of a fresh order of detention, the petitioner's definition after that date was illegal. This argument, though ingenious, is fallacious.

The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England : see Craies on Statute Law 5th edition, page 207; it

is the law in America : see Crawford on Statutory Construction, Page 110 : and it is the law which the Privy Council applied to India in Keshoram Poddar v. Nundo Lal Mallick. Bearing this in mind it will be seen that the Act of 1950 remains the Act of 1950 all the way through even with its subsequent amendments. Therefore, the moment the Act of 1952 was passed and section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by section 2, that is to say, the Act of 1950 now due to expire on the 1st of October, 1952.

Turning now to section 3, whose vires is questioned, and examining it clause by clause we first get these words :

> "Every detention order confirmed under Section 11 of the Principal Act and in force immediately before the commencement of this Act."

According to the rule of construction just examined the words "principal Act" mean the Act of 1950 as amended by the Acts of 1951 and of 1952, that is to say, the Act of 1950 due to expire on the 1st of October, 1952. Incidentally, in the particular context it could not mean the Act of 1950 as it stood in 1950 because no order confirmed under it as it then stood could have been alive "at the commencement of this Act"namely on the 15th of March, 1952.

The Section continues-

> "shall have effect as if it had been confirmed under the provisions of the principal Act as amended by this Act."

The underlined words "as amended by this Act"were relied on the show that wherever the words "the principal Act" were referred to they meant the unamended original Act of 1950, otherwise these words would have been unnecessary. In our opinion, they were unnecessary in the sense that their absence would not have made any difference to the interpretation though it would have made the section harder to follow and understand. We say that for this reason. Without the underlined words the section paraphrased would read -

> "Every detention order confirmed under the original Act shall have effect as if confirmed under its provisions.'

It this were to be read literally it would lead to an absurdity, for if the order is actually confirmed under the original unamended Act it would be pointless to introduce a fiction and say that the order shall be deemed to be confirmed under that Act as unamended. But even apart from a strictly technical construction, the language of the section is accurate because, as we have said, the rule is that an amended Act must be read as if the words of amendment had been written into the Act except where that would lead to an inconsistency, and this would be one of those cases unless the words are construed in a sensible and commonsense way. The draughtsman therefore had either to leave the words as they were, with an apparent inconsistency, or make his meaning clear by adding the words he did. But we do not think the addition made any difference to the result.

We now turn to the second half of section 3, that is to say, to the words following the semi-colon. It is important to note here that this part is consequential on the first and merely explains the effect of the first half. It is also relevant to note that it deals with four different kinds of orders, different, that is to say, in the form of the words used though in the end they all come to the same thing. It deals with the following kinds of order :-

(1) an order in which the period of detention is not specified at all; in that event the detention would end at midnight on the night of the 31st of March, 1952. It is clear that in this context the words "the principal Act" cannot mean the Act expiring on the 1st of October, 1952, because it envisages an order made before the Act of 1952 was in being and so on the date of its making the order could only refer to the Act then in being :

(2) an order in which the period is stated to be "for the duration of the principal Act", that is to say, till the 31st of March, 1952;

(3) an order in which period is specified to be until the expiry of the principal Act, which again brings us back to the 31st of March, 1952, as the last day of detention :

(4) an order in which the period is specified to be till the 31st of March, 1952. In all these four cases the section says that the detention order shall" continue to remain in force, for so long as the principal Act is in force, "that is to say, till the 1st October, 1952,

That follows from the first part of the section because that is the meaning which the law directs shall be placed on these words unless the context otherwise direct and the context does not direct otherwise here. This part of the section is only explanatory.

But we wish to found deeper than this. It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intend what common sense would show was obviously intended the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided. See the speech of Lord Wensleydale in Grey v. Pear son quoted with approval by the Privy Council in Narayana Swami v. Emperor; also Salmon v. Duncombe. The rule is also set out in the text books : See Maxwell on the Interpretation of Statutes, 9th edition page 236, and Craies on Statutes Law, 5th edition, page 89 to 93. The meaning of section 3 is quite plain and only desperate hair splitting can reduce it to an absurdity. Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used. We hold that there is no difficulty of construction.

It was next argued that in any event the extended detention became a fresh detention (because of the Act of 1952) from the date the Act came into force, and reliance was placed upon the judgments of two of us, Mahajan and Das JJ. in S. Krishnan v. The State of Madras. It is enough to say that that was not the decision of the court in that case, and further, that the two Judges who held it was a fresh detention nevertheless considered that a fresh order with its concomitant fresh grounds and a fresh reference to the Advisory Board were not required; therefore, either way the petitioner must fail.

Reference was made to the equality clause in article 14th of the Constitution but that argument is easily met because the classification which section 3 makes is reasonable. In one class it places all

those whose cases have already been considered by the Advisory Board and in the other those whose cases have yet to go before it; also the law is fair, or at any rates as fair as detention laws can be, despite this distinction because power is left to the appropriate Government to revoke or modify these orders, or any of them, at any time. Substantially therefore there is no differentiation.

Article 14 was considered at length in The State of West Bengal v. Anwar Ali Sarkar, and according to the law laid down there, the Court must be satisfied on two points before it can strike at a law on the ground of unlawful discrimination. It must be satisfied (1) that the law in fact discriminates and (2) that such discrimination is not permissible on the principle of a rational classification made for the purposes of the legislation.

The argument here was that section 3 discriminated against those detenus whose cases had been referred to the Advisory Board and whose detention was confirmed, on the strength of its report, under section 1191) before the amending Act of 1952 was passed. The reason given was that these detentions are automatically extended up to the 1st of October, 1952, by section 3 without further reference to an Advisory Board whereas in other cases, that is to say, in the case of those who were detained before the amending Act but whose case had not been referred at the date it came into force, and in the case of those detained after the amending Act, the Advisory Board is called into play and individual attention is given to each case with the result that many of those detentions might not be for as long as six months. They might, for example, be only for one month or two. It was urged that this was discrimination of a kind which cannot be supported by any principle of permissible classification because classification into the above categories has no reasonable relation to the objects of the legislation, such as security of the State, maintenance of public order and so forth.

We are unable to accept this line of reasoning. To say that section 3 automatically extends the detention of person in the petitioner's position to the 1st of October, 1952, and stop there, is only to make a partial statement of the effect of section 3 because the extension is subject to the power of the appropriate Government to revoke or modify it at any time. In other words, the automatic continuation of the detention till the 1st of October is not absolute and irrevocable but is made dependent on the power of the appropriate Government to revoke or modify it as its discretion under section 13 of the Act. The State may or may not continue the detention or the whole of the extended period. In both classes of cases the duration of the detention within the overall limit of the life of the Act is left to the discretion of the State. The only difference is that in the one class of cases the discretion is exercised after the period has been extended by the amending Act, in the other the appropriate Government fixes the period itself in its discretion and can again at its discretion revoke or modify it. In both cases, the substance of the law is that the period of detention is left to the discretion of the State, and so there is no substantial discrimination.

It was argued that however fair this may look on paper, in practice there will be grave discrimination because, as a matter of fact, the State will not apply its mind in the majority of cases like the petitioner's. That is an argument we cannot accept and no material was placed before us to justify such a conclusion.

We turn now to the next point. It was contended that section 3 offends the Constitution because article 22 (4) and (7) do not envisage the direct intervention of Parliament in a whole batch of case. The protection guaranteed is that there shall be individual attention and consideration to each separate case by some duly specified and constituted authority. In our opinion, this is not accurate.

Article 22 (4) guarantees that there shall be no preventive detention for more than three months unless the law authorising it makes provision for an Advisory Board and the Board after considering each individual case separately reports that there is in its opinion sufficient cause for such detention. To that extent there must be individual consideration of each case, but once the report is made and is unfavourable to the detenu, then the detention can be for a longer period provided it does not exceed "the maximum period prescribed by any law made by parliament under sub clause (b) of clause (7)."Sub- clause (b) of clause (7) empowers Parliament to prescribe "the maximum period for which any person may in any class or..... of case be detained under any law providing for preventive detention." Parliament is accordingly empowered to specify a class. It has done so. The class is all persons whose cases have already been considered by an Advisory Board. It is empowered to prescribe a maximum period. That also it has done. The extended detention (that is to say, for more than three months) can then be "under any law providing for preventive detention. A law made by Parliament falls within these words. Parliament is equally authorised to say who shall determine the period of detention, and as there is nothing in the Constitution to prevent it, it can itself exercise the authority it is empowered to delegate to others.

Stress was laid on the words "any person" in sub-clause (b) of clause (7) and it was contended that this contemplates individual attention in each case. But if that is so, then it means that Parliament must itself direct the maximum period for each separate person falling within the class individually. The words are, we think, reasonably plain and we hold that Parliament can prescribe the maximum for a class taken as a whole as it has done in section 3.

It was next argued that once the power given under clause (7) to fix a maximum period has been exercised the power exhausts itself and cannot be exercised again in respect of the same detention. In our opinion, no such limitation is imposed upon Parliament by the Constitution.

Then it was said that section 3 stands on a footing different from section 12 of the amending Act of 1951 as it introduces the idea of potentially indefinite detention and accordingly is repugnant to the Constitution, and in any event is a fraud upon it. In so far as this means that section 3 fixes no time limit, the contention is unsound because the section specifies the exact period of the detention, namely till the expiry of the Act of 1950, that is to say, till the 1st of October, 1952. in so far as it means that Parliament is enabled to continue detentions indefinitely by the expedient of periodic amendments in the Act of 1950, the answer is that Parliament has the power. This was precisely the power exercised in the amending Act of 1951 and upheld by this Court in S. Krishnan v. The State of Madras. The present Act is no different from that in this respect.

So far, we have dealt with the facts in petition No. 86 of 1952. The facts in the other three petitions naturally differ in their details but they all conform to the same general pattern so far as the points discussed above are concerned, so there is no need to discuss them individually. We hold that section 3 of the amending Act of 1952 in intra vires and that the detentions are not bad on any of the grounds discussed above. The rest of the points raised in each individual case are left open except for one point which arises in petition No. 155 of 1952. That point is as follows.

The first ground of detention to the petitioner in this case reads :

> "Being the President of Jamat of Agris you have used your position as such to increase your influence over the residents of Uran Peta, have created a band of obedient and trusted associates, have inflicted heavy fines on village in Uran Peta who have disregarded your wishes and have imposed on them boycott or

excommunication in the case of their refusal to pay the fines."

It was argued that the very outset these allegations import nothing more than an exercise of functions such as the infliction of fines and excommunication which the petitioner as head of the caste had authority to do. They do not touch any of the matters covered by section 3 (1) (a) of the Preventive Detention Act, 1950, under which the petitioner is detained. For example, they do not touch the security of the State or the maintenance of public order or any of the other matters specified in section 3. They are therefore irrelevant to the detention, and as it is impossible to say how far these irrelevant matters influenced the detention, the petitioner is entitled to release. Reliance was placed upon certain observations of the Federal Court in Rex. v. Bassudev. We think it unnecessary to examine this point because we do not think the ground is irrelevant nor do we agree that it means what the petitioner says.

In our opinion, the grounds of detention must be regarded as whole and when that is done the relevance of the first ground becomes plain. The gravamen of the charge against the petitioner is that he aimed at setting up a parallel government in the Uran Peta area and that in order to achieve that end he did various acts such as intimidating the workers in the salt pans with threats of murder, and his own workers with threats of death, unless they carried out his orders; and among the lesser instances given to illustrate the exercise of parallel governmental authority are the ones set out in the first ground, namely the infliction of fines with the sanction of excommunication and boycott to ensure their payment and due obedience to his orders. This point has no force and is decided against the petitioner. It will not be open to him to re-agitate this afresh when his case is reheard on the remaining issues.

All the four cases will now be set down for hearing on the remaining points which arises in them. As they do not involve constitutional issues they need not go before a Constitution Bench.

Agent for the petitioner in Petition No. 155 : M. S. K. Sastri for P. G. Gokhale.

Agent for the respondents and Intervener : P. A. Mehta.

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