Keshav Nilkanth Joglekar

Vs

The Commissioner of Police, Greater Bombay (and connected petitions)

Petitions Nos. 102, 105 to 110 of 1956

(CJI S. R. Dass, P. Govinda Menon, S. K. Das, B. P. Sinha, T. L. Venkatarama Ayyar JJ)

17.09.1956

JUDGMENT

VENKATARAMA AYYAR J. -

These are petitions filed under article 32 of the Constitution for the issue of writs in the nature of habeas corpus. They arise on the same facts and raise the same questions.

On 13-1-1956 the Commissioner of Police, Bombay, passed orders under section 3(2) of the Preventive Detention Act IV of 1950 (hereinafter referred to as the Act), directing the detention of the present petitioners, and pursuant thereto, they were actually arrested on 16-1-1956. The grounds on which the orders were made were formulated on 19-1-1956, and communicated to the petitioners the next day. On 21-1-1956 the Commissioner reported the fact of the order and the grounds therefor to the State Government, which approved of the same on 23-1-1956.

The contention of the petitioners before us is that when the Commissioner passed the orders for detention on 13-1-1956, it was his duty under section 3(3) to report that fact forthwith to the State Government, and as he did not do so until 21-1-1956, he had acted in contravention of the statute, and that the detention was therefore illegal. That raises the question as to what "forthwith" in section 3(3) of the Act signifies, and whether on the facts the report was made "forthwith", within the meaning of that word in that sub-section.

The word "forthwith", it has been observed, is of elastic import. In its literal sense, it might be construed as meaning that the act to be performed forthwith in relation to another should follow it automatically without any interval of time, or, as held in some of the American authorities, should be performed at one and the same time as the other. But even in America, the preponderance of judicial opinion does not favour this construction. In Corpus Juris, Volume 26, page 998 the position is thus stated :

> "Although the term has received a strict construction, ordinarily it is not to be strictly construed, but should receive a liberal or reasonable construction. Some regard must be had to the nature of the act or thing to be performed and the circumstances of the case".

In England, there is a long catena of decisions interpreting the word "forthwith" occurring in statutes, rules and contracts, and their trend has been to construe it liberally. As early as 1767, discussing the meaning of the word 'immediately' - and the word "forthwith" has been held to have the same significance - Lord Hardwicke observed in Rex v. Francis [Cun. 165; 94 E. R. 1129, 1133.]

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> "But then the word immediately, is strongly insisted on, as a word which excludes all means acts and time; and therefore, that this taking away the money must necessarily be in the presence of Cox. But all the nine Judges held this word immediately, to be of so loose a signification, and not to imply necessarily, that the money was taken away in Cox's presence. For this word does neither in its use and application, nor in its grammatical construction, exclude all mesne acts or time..... But it is more necessary and proper in this case, to consider the signification of this word in the legal way. And it is plain that in this acceptation, it is not understood to exclude mesne acts or time..... And on the Statute Hue and Cry, 27 Eliz. c. 13, s. 11, where the words with as much convenient speed as may be, are made use of, all the precedents have expressed these words, by the word immediate, as may be seen in the books. The last case which I shall mention on this point, is that of the writs of habeas corpus, issuing out of this Court, which are most frequently made returnable immediately; and in this case the word is never understood either to exclude mesne acts or time, but only means, with convenient speed.... ".

In Reg. v. The Justices of Worcester [[1839] 7 Dowl. Pr. Cas. 789-791 : 54 R. R. 902 (903).], where the question was as to the meaning of the word "forthwith" in section 50 of 6 Will. IV, Coleridge, J. observed :

> "I agree that this word 'forthwith' is not to receive a strict construction like the word 'immediately', so that whatever follows, must be done immediately after that which has been done before. By referring to section 50, it seems that whatever is to be done under it, ought to be done without any unreasonable delay. I think that the word 'forthwith' there used, must be considered as having that meaning".

The meaning of the word "immediately" came up for consideration in Thompson v. Gibson [[1841] 8 M. & W. 282; 151 E. R. 1045, 1047.]. Holding that it was not to be construed literally, Lord Abinger C. B. observed :

> "If they" (acts of Parliament) "could be construed literally, consistently with common sense and justice, undoubtedly they ought; and if I could see, upon this act of Parliament, that it was the intention of the legislature that not a single moment's interval should take place before the granting of the certificate. I should think myself bound to defer to that declared intention. But it is admitted that this cannot be its interpretation; we are therefore to see how, consistently with common sense and the principles of justice, the words 'immediately afterwards' are to be construed. If they do not mean that it is to be done the very instant afterwards, do they mean within ten minutes, or a quarter of an hour, afterwards ? I think we should interpret them to mean, within such reasonable time as will exclude the danger of intervening facts operating upon the mind of the Judge, so as to disturb the impression made upon it by the evidence in the cause".

In agreeing with this opinion, Alderson, B. expressly approved of the decision of Lord Hardwicke in Rex v. Francis [Cun. 165; 94 E. R. 1129, 1133.]. This construction of the word 'immediately' was adopted in Page v. Pearce, Lord Abinger C. B. observing :

> "It has already been decided, and necessarily so, that the words 'immediately afterwards' in the statute, cannot be construed literally; and if you abandon the literal construction of the words, what can you substitute but 'within a reasonable time ? '...."

In the Queen v. The Justices of Berkshire [(1878-79) 4 Q. B. D. 469 (471).], where the point was as to the meaning of "forthwith" in section 52 of 35 & 36 Vict., Chapter 94, Cockburn C. J. observed :

> "The question is substantially one of fact. It is impossible to lay down any hard and fact rule as to what is the meaning of the word 'immediately', in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time', and imply prompt, vigorous action, without any delay, and whether there has been such action is question of fact, having regard to the circumstances of the particular case". The same construction has been put on the word "forthwith" occurring in contracts. In Hudson and others v. Hill and others [[1874] 43 L. J. C. P. 273 (280).] which was a case of charterparty, it was observed at page 280 :
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> "'Forthwith' means without unreasonable delay. The difference between undertaking to do something 'forthwith' and within a specified time is familiar to everyone conversant with law. To do a thing 'forthwith' is to do it as soon as is reasonably convenient". In Reg. v. Price [8 Moore P. C. 203, 12 E. R. 78.], it was held by the Privy Council that the word "forthwith" in a bail bond meant within a reasonable time from the service of notice. On these authorities, it may be taken, an act which is to be done forthwith must be held to have been so done, when it is done with all reasonable despatch and without avoidable delay.

But it is argued by Mr. N. C. Chatterjee that the view taken in the above decisions as to the meaning of the word "forthwith" has been abandoned in the later decisions, and that under the law as it stands, when an Act has to be performed forthwith in relation to another, what has to be decided is not whether it was done within a reasonable time, but whether it was done so closely upon the other as to form together one continuous act. He relied in support of this opinion on the decision in Re Muscovitch [[1939] 1 A. E. R. 135.] affirming, that in Re Muscovitch [[1988] 4 A. E. R. 570.]. That was a decision on rule 132 of the Bankruptcy Rules, which provided that "Upon entering an appeal, a copy of the notice of appeal shall forthwith be sent by the appellant to the registrar of the court appealed from". The facts were that the appeal was lodged in time on 25-10-1938 but the notice was served on 28-10-1938, and it was found that there was "no satisfactory reason or no reason at all, why there was any delay in the matter" (Re Muscovitch [[1938] 4. A. E. R. 570.]). On that, it was held that the requisition that "the notice shall forthwith be sent" was not satisfied. This is authority only for the position that when an act is done after an interval of time and there is no explanation forthcoming for the delay, it cannot be held to have been done "forthwith". That is made clear by Sir Wilfrid Greene M. R. in the following passage in Re Muscovitch [[1939] 1 A. E. R. 135.] at page 139 :

> "Having regard to the construction which was put upon the word 'forthwith' which is peremptory, and admits of no interval of time between the entry of the appeal and the sending of the notice save such as may be imposed by circumstances which cannot be avoided. I find it impossible in the present case to say that the notice was sent forthwith within the meaning of the rule."

Reliance is also placed for the petitioners on the decision in Ex parte Lamb; In re Southam [[1881] 19 Ch. D. 169.], which was followed in Re Muscovitch [[1939] 1 A. E. R. 135.]. There, construing the word "forthwith" in rule 144 of the Bankruptey Rules 1870, which corresponds to rule 132, which was the subject of interpretation in Re Muscovitch [[1939] 1 A. E. R. 135.], Jessel M. R. observed at page 173 :

> "In think that the word 'forthwith' must be construed according to the circumstances in which it is used. Where, as in Hyde, v. Watts [12 M & W. 254.], there is a covenant to insure a man's life, there must of necessity be some delay, for the act could not be done in a moment. But where an act which is required to be done 'forthwith' can be done without delay, it ought to be so done".

In that case also, the learned Judges found that the delay was not explained. And the observation of Lush L. J. in the same case was that "the word 'forthwith' has not a fixed and an absolute meaning; it must be construed with reference to the objects of the rule and the circumstances of the case". There is nothing the decisions in Re Muscovitch [[1939] 1 A. E. R. 135.] and Ex parte Lamb : In re Southam [[1881-82] 19 Ch. D. 169.] which can be considered as making a departure from the construction put on the word "forthwith" in the earlier authorities that it meant only that the act should be performed with reasonable speed and expedition and that any delay in the matter should be satisfactorily explained.

> It is argued for the petitioners that even if the construction put on the word "forthwith" in the above decisions is accepted as correct, it must, in any event, yield to any contrary intention expressed in the statute, and that the provisions of the Act afforded clear indication of such an intention. It is contended that the legislature while providing in section 7 that the grounds should be communicated to the detenu "as soon as may be" has enacted that the report under section 3(3) should be sent "forthwith", that the use of two different depressions in the two sections is a clear indication that they do not mean the same thing, that as the words "as soon as may be" import that the act might be performed in a reasonable time, the word "forthwith", which is more peremptory must be construed as excluding it. The decisions in Emperor v. Phuchai [I. L. R. 50 All 909 : A. I. R. 1929 All 33.] and in K. U. Kulkarni v. Ganpat Teli [I. L. R. [1942] Bom. 287 : A. I. R. 1942 Bom. 191.] were quoted in support of the position that when two different expressions are used in different parts of the same clause or section, they should be construed as used in different senses.

We agree that "forthwith" in section 3(3), cannot mean the same thing as "as soon as may be" in section 7, and that the former is more peremptory than the latter. The difference between the two expression lies, in our opinion, in this that while under section 7 the time that is allowed to the authority to send the communication to the detenu is what is reasonably convenient, under section 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report. Under section 7 the question is whether the time taken for communicating the grounds is reasonably requisite. Under section 3(3) it is whether the report has been sent at the earliest point of time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.

It was contended that as section 7 required that the communication should be made not later than 5

days from the date of the order, and as section 3(3) was ore peremptory than section 7 in that it required that the report should be made forthwith, the period allowable under section 3(3) could not exceed 5 days, and that as in these cases the reports were sent 8 days later, they could not be held to have been sent forthwith. This argument mixes up two different matters contained in section 7. The period of 5 days provided therein is an absolute one and is independent of the period which is permissible under the expression "as soon as may be", which must, by its very nature, be indefinite depending on the facts and circumstances of the case. It will be as erroneous to read 5 days into the period allowable under the expression "as soon as may be" as read the 12 days within which the State has to approve the order under section 3(3) into the period which is allowable under the expression "forthwith". The result then it that the report sent by the Commissioner to the State 21-1-1956 could be held to have been sent "forthwith" as required by section 3(3), only if the authority could satisfy us that, in spite of all diligence, it was not in a position to send the report during the period from 13th to 21st January 1956.

We must now examine the facts from the above standpoint. The Commissioner of Police has filed an affidavit explaining why the reports were not sent till 21st January 1956, though the orders themselves had been made as early as 13th January, 1956. Ever since the publication of the proposal to form a State of Maharashtra without the city of Bombay, there had been considerable agitation for the establishment of a Samyuktha Maharashtra with the city of Bombay included in it. An action committee had been set up on 15-11-1955 for the purpose, and there had been hartal and morchas resulting in outbursts of lawlessness and violence and in the burning of a police chowki. The final decision on the question was expected to be taken and announced in the middle of January 1956, and the atmosphere was highly surcharged. It was in this situation that the Commissioner decided to take action under section 3(2) of the Act against the leading spirits of the movement, and passed the present orders for detention against the petitioners on 13-1-1956. In his affidavit, the Commissioner states that he decided first "to locate the persons against whom orders of detention were made by me on the 13th January, 1956 and after having done so, to arrest all of them simultaneously so that none of them may go underground or abscond or evade execution of the detention orders". Then the affidavit goes on to state :

> "It was not possible for me to send the report earlier as the situation in the City of Greater Bombay was tense, pregnant with danger on the 13th January, 1956, and continued to be so till 16th January, 1956, and actual rioting occurred during that night and those riots continued till 22nd January, 1956. I and my staff were kept extremely busy all throughout in maintaining law and order and simultaneously taking steps to round up miscreants. In this unusual and tense situation, it was not possible to make a report earlier than the day on which it was made".

We see no reason for not accepting these statements. What happened on the 16th and the following days are now matters of history. The great city of Bombay was convulsed in disorders, which are among the worst that this country has witnessed. The Bombay police had a most difficult task to perform in securing life and property, and the authorities must have been working at high pressure in maintaining law and order. It is obvious that the Commissioner was not sleeping over the orders which he had passed or lounging supinely over them. The delay such as it is, is due to causes not of his making, but to causes to which the activities of the petitioners very largely contributed. We have no hesitation in accepting the affidavit, and we hold that the delay in sending the report could not have been avoided by the Commissioner and that when they were sent by him, they were sent "forthwith" within the meaning of section 3(3) of the Act.

Mr. S. C. Gupta put forward some special contentions on behalf of the petitioners in C. M. Ps. Nos. 109 and 110 or 1956. He contended that as the order originally made against the petitioner in C. M. P. No. 109 of 1956 was that he should be detained in Arthur Road Prison, Bombay, the subsequent order of the Commissioner by which he was detained in Nasik Prison was without jurisdiction. It is clear from the affidavit of the Commissioner that the petitioner was not ordered to be detained in Arthur Road Prison but in Nasik Road Central Prison, and that he was kept temporarily in Arthur Road Prison, pending arrangements to transport him to Nasik. It was next contended that the materials on which the orders of detention were made and set out in the communications addressed to the petitioners all related to their past activities, and that they could not constitute grounds for detention in futuro. This contention is clearly unsound. What a person is likely to do in future can only be a matter of inference from various circumstances, and his past record will be valuable, and often the only, record on which it could be made. It was finally contended that what was alleged against the petitioners was only that they advocated hartal, and that was not a ground for making an order of detention. But the charge in these cases was that the petitioners instigated hartal bringing about a complete stoppage of work, business and transport with a view of promote lawlessness and disorder, and that is a ground on which an order could be made under section 3(2).

All the contentions urged by the petitioners therefore fail, and these petitions must be dismissed.

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