

Abhay Shridhar Ambulkar

Vs

S. V. Bhave, Commissioner of Police and Others

Writ Petition (Cri.) No. 1248 of 1990 with Special Leave Petition (Cri.) No. 1407 of 1990

(K. Jagannatha Shetty, A.M. Ahmadi JJ)

17.12.1990

JUDGMENT

K. JAGANNATHA SHETTY J

1. Abhay Sridhar Ambulkar-petitioner has been detained under the National Security Act, 1980 ("The Act"). The order of detention dated 12th February 1990 was issued by the Commissioner of Police, Greater Bombay, who is the first respondent in these cases. The order was issued under Section 3 (2) of the Act with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order. The grounds of detention have been served to the petitioner along with the detention order. The petitioner challenged the validity of his detention in the High Court of Bombay by means of a Writ Petition under Art. 226 of the Constitution. The High Court has dismissed the writ petition. Against the judgment of the High Court, Special Leave Petition (Crl.) No. 1407 of 1990 has been preferred. Simultaneously, the petitioner has filed Writ Petition (Crl.) No. 1248 of 1990 under Article 32 of the Constitution challenging the same order of detention by raising a new ground which has not been taken before the High Court.

2. We have heard counsel for the petitioner, perused grounds of detention and the judgment of the High Court. The High Court has properly considered all the questions raised and we are in agreement with the conclusion reached by the High Court. The Special Leave Petition is, therefore, rejected.

3. This takes us to the Writ Petition in which an additional question has been raised. The question relates to the validity of the Government order dated 6th January 1990 pursuant to which the Commissioner of Police made the detention order. It would be convenient to set out that order hereunder.

ORDER

Dated 6th January 1990

59. NATIONAL SECURITY ACT

1980

NO. NSA-2390/ 1/SPL-3(B) - Where as the Government of Maharashtra is satisfied that having regard to circumstances prevailing or likely to prevail in the Greater

Bombay Police Commissionerate, it is necessary that during the period commencing on 30th January, 1990 and ending on the 29th April, 1990, the Commissioner of Police and the said Commissioner should also exercise the powers conferred by sub-section (2) of Section 3 of the National Security Act, 1980 (65 of 1980) (hereinafter referred to as "the said Act')

Now, therefore, in exercise of the powers conferred by sub-section (3) of the Section 3 of the said Act, the Government of Maharashtra hereby directs that for the period commencing on the 30th January 1990 and ending on 29th April 1990 the Commissioner of Police, Greater Bombay may also if satisfied as provided in sub-section (2) of Section 3, of the said Act exercise the powers conferred on the State Government by subsection (2) of Section 3 of the said Act. By order and in the name of Governor of Maharashtra."

4. On 12th February 1990, the Commissioner of Police in exercise of the powers conferred by sub-section (2) of Section 3 of the Act read with Government order dated 6th January 1990, passed the order of detention which has been challenged in this case.

5. The essence of the attack of counsel for the petitioner is that there was no valid conferment of power on the Commissioner to make the detention order. Counsel submitted that the Government issued the order dated 6th January 1990 without applying its mind and it simply reproduces the wordings of subsection (3) of Section 3. The satisfaction of the Government for conferring power on the Commissioner for the period in question purports to have been reached on the circumstances prevailing on the date of the order or likely to prevail during the three months period in question. The Government was not certain which of the alternate circumstances was relevant for reaching the subjective satisfaction and seems to have acted in mechanical manner without application of mind.

6. In order to appreciate these submissions it is necessary to set out Section 3, so far as material. It reads:

"3. Power to make orders detaining certain persons-

(1) xxxxx xxxxx xxxxx

(2) The Central Government or the State Government may, if satisfied with respect to any 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 so to do, make an order directing that person be detained.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2) exercise the powers conferred by the said sub-section: -

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State

Government may, if satisfied as aforesaid that it is necessary so to do, amend order to extend such period from time to time by any period not exceeding three months at any one time."

The power to make an order of detention primarily rests with the Central Government or the State Government. The State Government, however, being satisfied with certain circumstances may order that the District Magistrate or the Commissioner of Police may also make an order of detention in respect of matters relating to the security of the State or Public Order or maintenance of supplies and services essential to the community against any person within their respective areas. The State Government can make such an order which shall not in the first instance exceed three months but it may extend such period from time to time making fresh order for a further period against not exceeding three months at one time. It may be noted that the conferment of this power on the District Magistrate or the Commissioner of Police is not to the exclusion of but in addition to the powers of the Government to exercise its own power.

7. The first paragraph of the order dated 6th January 1990 states that Government was satisfied that having regard to the circumstances prevailing or likely to prevail in Greater Bombay Police Commissionerate it is necessary that during the period commencing on 30th January 1990 to 29th April 1990 that the Commissioner should also exercise the powers conferred under sub-section (2) of Section 3 of the Act. This is indeed no more than a reproduction of the terms of subsection (3) of Section 3. But sub-section (3) refers to two independent circumstances namely : (i) the prevailing circumstances, (ii) the circumstances that are likely to prevail. The former evidently means circumstances in present that is prevalent on the date of the order and the latter means the anticipated circumstances in future. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers for the current period, it has to satisfy itself with the prevailing circumstances. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers during the future period, it must be satisfied with the circumstances that are likely to prevail during that period. This seems to be the mandate of sub-section (3).

8. Subjective satisfaction for the exercise of power under sub-section (3) of Section 3 must be based on circumstances prevailing at the date of the order or likely to prevail at a future date. The period during which the District Magistrate or the Commissioner of Police, as the case may be, is to exercise the power provided by sub-section (2) of Section 3 is to be specified in the order which would depend on the existence of circumstances in praesenti or at a future date. If the subjective satisfaction is based on circumstances prevailing at the date of the order, the choice of period, which must not exceed three months, would have to be determined from the date of the order. If the conferment of power is, considered necessary because of circumstances likely to prevail during the future period, the duration for the exercise of power must be relatable to the apprehended circumstances. Therefore, the specification of the period during which the District Magistrate or Commissioner of Police is to exercise power under sub-section (2) of Section 3 would depend on the subjective satisfaction as to the existence of the circumstances in praesenti or future. Since very drastic powers of detention without trial are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding the period during which such power shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail. The subjective satisfaction cannot be lightly recorded by reproducing both the alternative clauses of the statute. The subjective satisfaction on the prevailing Circumstances, or circumstances that are likely to prevail at a future date is the sine qua non for the exercise of power. The use of the word 'or' signifies either of the two situations for

different periods. That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail ,in future. The latter may stem from the former. For example, there may be disturbances on the date of the order and the same situation may be visualised at a future date also in which case the power may be conferred on the subordinate officers keeping both the factors in mind; but in that case the two circumstances would have to be joined by the conjunctive word 'and' not the disjunctive word 'or'. The use of the disjunctive word 'or' in the impugned Government order only indicates non-application of mind and obscurity in thought. The obscurity in thought inexorably leads to obscurity in language. Apparently, the Government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used the disjunctive word "or" in the impugned order.

9. In the result, we allow the writ petition quash the Government order dated 6th January 1990. Consequently, the detention order of the petitioner is also quashed as being without authority of law.

Petition allowed.

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