

ALLAHABAD HIGH COURT

Smt. Saraswati Devi

Vs.

District Magistrate

Civil Misc. Writ No. 2117 of 1963

(H.C.P. Tripathi, J.)

03.08.1964

ORDER

H.C.P. Tripathi, J.

1. This writ petition is directed against the orders of the District Magistrate of Deoria requisitioning a house under Section 29 of the Defence of India Act, 1962.

2. The petitioners are the owners of a house in the town of Deoria. At the relevant time the petitioner No. 1 was living in a portion of the building and the other portion was tenanted by A.N. Chauhan, an Assistant Engineer in the Public Works Department of the State Government.

3. On the 20th of February, 1963 the District Magistrate of Deoria passed an order requisitioning the aforesaid building which reads :

"No. 810/ReEO dated 20-2-63

To

Shri Hari Shanker Misra (Owner)

Excise inspector

Gauri Bazar Sugar Factory,

Gauri Bazar Distt, Deoria.

Whereas in my opinion it is necessary and expedient to requisition the immovable property specified in the schedule hereto annexed of which you are the owner, person in possession, for securing the defence of India or efficient conduct of military

operations.

Now, therefore in exercise of the powers under Section 29 of the Defence of India Act, 1962 (Act No. 51 of 1962) conferred on me by Central Government under Notification No. 3/2/62 Poll (Spl)-II (G.S.R. No. 1716) dated December 13, 1962, issued by the Ministry of Home Affairs, I.S.N. Pandita, District Magistrate, Deoria, hereby requisition the aforesaid immovable property and further make the orders which appears to me necessary and expedient in connection with the said requisitioning. That the above mentioned owner shall hand over the vacant possession of the aforesaid immovable property after removing therefrom any furniture or other article, to O.C., 54, U.P. Kn. N.C.C.(R) C/O B. K. D. Degree College, Deoria or his nominee within four days of the order failing which the possession of the aforesaid accommodation will be got delivered through such force as may be necessary for ensuring compliance of this order. Schedule , (Description of the immovable property.)

Building belonging to Hari Shanker Misra, Excise Inspector Gauri Bazar Sugar Factory and situated near Soldier Board Building with following boundary.

(S.N. Pandita)

District Magistrate, Deoria.

Boundary.

1. East - House of Dr. B.N. Mukerjee.
2. West - Dwelling of Mango Bhar.
3. South - Dwelling of Deo Nandan, Sweeper.
4. North - Road.

4. It appears that in spite of this order the possession of the building could not be obtained and therefore the District Magistrate passed another order on 12th of April 1963 directing the Station Officer, Police station, Kotwali to get the possession of the aforesaid building to the Officer Commanding 54 Provincial Battalion N.C.C.(R) or his nominee after using such minimum force as may be necessary for carrying out the order. Parties are agreed that the possession of the house has since been delivered to the respondent No. 2 and only some goods belonging to the petitioner are kept locked in one of the rooms of the house.

5. Learned counsel for the petitioner has challenged the validity of the aforesaid orders on a variety of grounds. His contention is that as the National Cadet Corps is not a constituent of the Armed Forces of the Union, the District Magistrate has no authority under the Defence of India Act to requisition the aforesaid house"for securing the

defence of India and conduct of military operations." Learned counsel says that as the objects for which the requisition has been made are wholly illusory, the impugned orders are a result of colourable exercise of power by the District Magistrate and, as such, are, unsustainable in law. The other contention raised by the learned counsel is that as the Notification 3/2/62-Poll (Spl)-II (G.S.R. No. 1716) dated December 13, 1962 has not been expressed in the name of the President of India, it is invalid being in violation of Article 77 of the Constitution and thus there is no legal delegation by the Central Government in favour of the District Magistrate empowering him to pass an order under Section 29 of the Defence of India Act. In support of this proposition, reliance was placed on a single Judge decision of this Court in the case of *Balak v. State of Uttar Pradesh*,¹ Learned counsel has urged that though the petitioner No. 1 is also one of the joint owners of the house and was alone in its actual occupation no notice was served on her which too has vitiated the impugned orders.

6. Learned counsel for the State has urged that under the Defence of India Act the power is committed to the District Magistrate to requisition any property on his subjective satisfaction of its being essential "for securing the defence of India and for the efficient conduct of the military operations", and if the District Magistrate has exercised that power on the basis of his subjective satisfaction, it cannot be questioned in a Court of law. In other words, as the necessity of requisition is dependent on the personal opinion of the District Magistrate, the opinion formed by him provided it is formed in good faith, cannot be questioned and the order being purely administrative, the Court has no jurisdiction to go behind it and investigate the sufficiency or otherwise of the reasons and grounds on which it is based. The Act does not lay down any objective standard and does not provide for holding an inquiry or for issuing notice before passing the order of requisition, which clearly indicates that it is an administrative order dependent on the personal opinion of the District Magistrate and is not amenable to interference by a Court of law in writ proceedings. Learned counsel has further urged that the Government of India Notification delegating the power to the District Magistrate does not violate the provisions of Article 77 of the Constitution and is perfectly legal.

7. A perusal of the impugned order makes it obvious that the house has been requisitioned because in the opinion of the District Magistrate it was necessary and expedient to do so for "securing the defense of India and conduct of military operations." The two objects, namely, the defense of India and the conduct of military

operations are interdependent. In other words, if it was necessary to requisition the house for efficient conduct of military operations, then it will automatically amount to securing the defense of India and the authority which issued the order must have deemed it to be necessary for securing the defense of India, provided it has found it necessary for the efficient conduct of military operations.

8. The relevant portion of Section 29 of the defense of India Act is as follows :

"Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defense of India, civil defense, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning."

9. Under Section 40 of the Act the Central Government is authorized to delegate its power to any officer or authority subordinate to it and under the Notification referred to above the Central Government has delegated its power to District Magistrates.

10. Section 2(e) of the Act reads :

"Military operations" means the operations of the Armed forces of the Union."

11. Section 3(vi) of (The) Army Act, 1950 (Act XLVI of 1950) reads :

"corps" means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act;"

Sub-cl. (xi) of the same Section says :

"the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them;"

12. Under the Army Act

"regular Army" means officers, Junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service."

13. It is, therefore, obvious that military operations as envisaged under Section 29 of the Defence of India Act are the operations of the Armed Forces of the union which means the regular Army, Navy and Air Force or any part of any one or more of them, as defined in the Army Act, and it could never have meant an operation in any manner of the members of the National Cadet Corps who are not part of the regular Forces of the Union.

14. The National Cadet Corps has been constituted under Act XXXI of 1948 with the object of giving requisite military training to boys and girls studying in universities or recognized schools. Section 10 of the Act provides that

"no person subject to this Act shall by virtue of being a member of the Corps be liable for active military service, but subject thereto any such person shall be liable to perform such duties and discharge such obligations as may be prescribed."

Section 11 of the Act provides that "any person enrolled under this Act may be punished for the contravention of any rule made under this Act with fine....." A member of the National Cadet Corps is "entitled to receive his or her discharge from the Corps on the expiration of the period for which he or she was enrolled or on his or her ceasing to be borne on the roll of the university or school to which he or she may "belong." This provision makes it clear that a person is not liable to active military service by reason of his being a member of the National Cadet Corps, and is not also amenable to military discipline. In the circumstances, it is obvious that the requisition of an immovable property for the occupation of a member of the National Cadet Corps cannot have even a remote connection with the object of efficient conduct of military operations, as envisaged under the Act.

15. In the counter-affidavit of Hari Shanker Singh it has been affirmed that the provision for accommodation for newly raised N.C.C. Battalions is extremely necessary for efficient conduct of military operation in the present emergency as N.C.C. are feeding grounds for the armed forces. It is true that the possibility of some members of the National Cadet Corps subsequently joining the regular Armed Forces of the Union cannot be ruled out, but it is also true that there is no obligation on, any one of them to join the same. In the circumstances, there is no direct and close nexus between the N.C.U. and the Armed Forces of the Union on the basis of which it can be held that the requisitioning of a house for N.C.C. will result in the efficient conduct of military operations as mentioned in Section 29 of the Act. I am, therefore, of opinion that one of the objects, namely, the conduct of military operations for which the house in question has been requisitioned is wholly non-existent and the other object of securing the defense of India being dependent on the first also disappears when the first object is held to be illusory.

16. In support of his contention that the impugned orders are not justiciable, learned counsel for the State has relied on a decision of the Hon'ble Supreme Court in the case of *Province of Bombay v. Khushaldas S. Advani*,² In that case it was held that when the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari. This case is an authority for the proposition that if the impugned orders fall under the ambit of Section 29 of the Defence of India Act, then the sufficiency or otherwise of the grounds on which the orders have been passed cannot be investigated by the Court and the writ of Certiorari would not lie.

17. In my opinion, however, if the impugned order is outside the scope of the Act and the grounds disclosed by it are not relevant to the object provided under Section 29 of the Defense of India Act, then the Court is not powerless in affording relief to the aggrieved party.

18. In the case of *Sodhi Shamsher Singh v. State of Pepsu*,³ it was observed :

"It has been held by this Court, on more occasions than one, that the propriety or reasonableness of the satisfaction of the Central or the State Government upon which an order for detention under Section 3, Preventive Detention Act is

based, cannot be raised in this Court and we cannot be invited to undertake an investigation into sufficiency of the matters upon which such satisfaction purports to be grounded. We can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of objects prejudicial to the defense of India or to the security of State and maintenance of law and order therein."

19. In this case three persons were detained under Section 3(1) of the Preventive Detention Act 1950 for having published pamphlets containing a vitriolic attack upon the character and integrity of the then Chief Justice of Pepsu and accusing him of gross partiality and communal bias in the matter of recruiting officers for judicial posts and also in deciding cases between the litigants. Their Lordships were pleased to hold that "whatever other remedies that might be open to the aggrieved party or to the Government to prevent such scurrilous attack upon the head of the judiciary in the state, we do not think that the provisions of the Preventive Detention Act could be made use of for that purpose."

20. In the light of these observations, it can be clearly held that the District Magistrate could have requisitioned the house in question for the other purposes mentioned in section 29 of the Act, but certainly not for securing the defense of India and conduct of military operations, which are wholly foreign to the facts of the case. The other two decisions relied on by the learned counsel for the State in support of his proposition that even the requisition for N.C.C. can amount to a requisition for the conduct of military operations are distinguishable on facts.

21. In the case of *Kawalram v. Collector of Madras*,⁴ while dealing with the arguments of the learned counsel for the petitioner that the requisitioning of a house for the Collector, cannot be deemed to be an act done for the purpose of maintaining supplies or services essential to the life of the community, their lordships were pleased to observe that the Collector is in charge of supplies which are essential to the lives of the citizens of Madras. He cannot carry out these important duties efficiently without a suitable residence and therefore the provision of a house is something which is necessary for maintaining of supplies and services essential to the life of the community, in this case the object for which the house was requisitioned clearly fell under the purview of R. 75-A of the Defense of India Rules under which the power had been exercised.

22. in the case of *H.C. Gupta v. Mackertich" John*,⁵ a hotel had been requisitioned for the occupation of the personnel of the Armed Forces under Rule 75-A of the then Defense of India Rules in this case while dealing with the arguments of the learned counsel for the petitioner who had raised a challenge to the validity of the requisition order which had been passed under Rule 75-A of the then Defense of India Rules, his Lordship Chief Justice Derbyshire observed :

"The position generally with regard to orders made under emergency Defense Regulations and the powers of the Courts thereunder is summed up in the judgment of Lord Greene, M. R. in the English case, *Carltona Ltd. v. Commissioners of Works*,⁶ as follows :

"It has been decided as clearly as anything can be decided that, where a regulation of this kind commits to an executive authority the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the Courts to investigate the grounds or the reason-ableness of the decision in the absence of an allegation of bad decision. If it were not so it would mean that the Courts would be made responsible for carrying on the executive government of this country on these important matters. Parliament which authorizes this regulation, commits to the executive the discretion to decide and with that discretion. If bona fide exercised no Court can interfere. All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the Legislature and to see that those powers are exercised in good faith. Apart from that, the Courts have no power at all to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction."

23. It is obvious that this case does not help the respondents. On the other hand, it indicates that the Court can see whether the power which the authority has claimed to exercise falls within the four corners of the powers given by the Legislature.

24. In the case of *Bhibban Lal Saksena v. State of Uttar Pradesh*,⁷ while dealing with the arguments of the learned counsel for the petitioner that where out of the two grounds on which the petitioner was detained one was non-existent the whole order is vitiated as no one can say to what extent the bad ground operated on the mind of the detaining authority, their Lordships observed :

"The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can, we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made..... in such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

25. In this case, I have already held that one of the two grounds given in the order, namely, for efficient conduct of military operations is wholly illusory and, therefore, even if the other ground, namely, for securing the defense of India is held to be existent and valid, the order as a whole shall stand vitiated. It is, therefore, obvious that the impugned order requisitioning the house of the petitioners being outside the scope of Section 29 of the Defense of India Act is wholly illegal.

26. In view of my above finding I do not consider it necessary to examine the other two contentions raised by the learned counsel for the petitioners.

27. In the result, this petition is allowed, and I direct a writ of mandamus to issue to the opposite parties not to give effect to the orders dated 28th February, 1963 and 12th April, 1963 and to deliver back the possession of the house in dispute to the petitioners in the circumstances of the case I make no order as to costs.

Petition allowed.

Cases Referred.

1. AIR 1962 All 208
2. AIR 1950 SC 222
3. AIR 1954 SC 276
4. AIR 1944 Mad 285
5. AIR 1946 Cal 140
6. (1943) 2 All England Reporter 560 at p. 504
7. AIR 1954 SC 179