

# **BOMBAY HIGH COURT**

In re Govind Pandurang Phalke

Vs.

State (Bombay)

Criminal Appln. No. 1060 of 1953

(Chagla, C.J. and Shah, J.)

23.11.1953

## **JUDGMENT**

### **Chagla, C.J.**

1. This is a petition challenging an order made by the Additional District Magistrate, North Satara, on 24-7-1953, by which the District Magistrate ordered the petitioner to remove himself outside the area of North Satara district for a period of one year and not to return to the said area during that period. The petitioner is the President of a labour union consisting of workers working in Cooper Engineering Works in Satara, and on 2-5-1953, he was served with a notice under Section 59, Police Act and that notice set out the various grounds on which the externing authorities proposed to take action. The petitioner was heard, he offered an explanation, called witnesses, and the externing authority was satisfied that a case had been made out under Section 56, Police Act and passed the order as already stated on 24-7-1953.

2. Mr. Patel who appears for the petitioner has challenged this order on two grounds. The first ground is that the externing authority has taken into consideration a ground which is foreign to the Act and outside its ambit and scope. The activities of the petitioner which were referred to in the notice were : (1) That he had instigated the workers in the Cooper Engineering Works between December 1952 and March 1, 1953, forcibly to take possession of the factory and to offer resistance to the police and the company's men and as a result of that instigation the workers actually took forcible possession of the factory on 2-3-1953, and on 3-3-1953, indulged in various criminal acts. The notice goes on to say that the petitioner's objectionable activities had been in continuation of similar activities for the last two years, and these activities are set out in Clauses (a) and (b) and these two activities are (a) that during the two months' strike between 12-6-1951 and 13-8-1951, in the Cooper Engineering Works at Satara, the petitioner and his associates used to intimidate the workers in the factory by threats of bastinadoing, killing, maiming in order to compel the workers to continue the strike, and (b) that the petitioner and his

associates were making use of intimidation against the workers in order to enlist them as members of the Satara Road Mazdoor Sangh of which the petitioner is the President.

The second activity which was referred to in the notice was that the petitioner and his associates had been secretly intimidating persons from Dhumalwadi and nearby villages with bastinadoing, maiming, setting houses on fire and doing damage to their property and other unlawful things because they were not co-operating with the petitioner in his agitation against the implementation of the P. F. and C. S. H. Act, which have caused and are causing considerable alarm in the minds of the villagers and apprehension of danger to their person and property. The third activity referred to in the notice is that the petitioner and his associates have, of late, been noticed indulging extortion. The fourth was that the petitioner and his associates were also understood to be in possession of unlicensed fire-arms, which has been causing considerable alarm and spreading a feeling of insecurity of life and property in the minds of the villagers from Satara Road and the neighboring villages and the Cooper Company's employees. It was also stated in this notice that the witnesses were not willing to come forward to give evidence in public against the petitioner by reason of apprehension of danger and harm to their person and property. The activities which were referred to in the notice were mentioned in order to make out a case against the petitioner that these activities had caused and were calculated to cause alarm, danger, and harm to person and property in the Satara Road and the surrounding area. Having held an inquiry the learned District Magistrate came to the conclusion that all the grounds mentioned in the notice had been established except the one ground with regard to the petitioner being in possession of unlicensed fire-arms, and having come to that conclusion, the externing authority made the order to which reference has been made.

3. Now, what is contended by Mr. Patel is that the externing authority has taken into consideration an activity of the petitioner which related to the period 12-6-1951 to 13-8-1951. This was the activity in connection with the two months' strike in the Cooper Engineering Works and according to Mr. Patel the only activities which can be considered under the Police Act are activities which are indulged in by the person against whom the notice is issued in the approximate or immediate past. An activity of the petitioner which was so remote in time as having been indulged in 1951 was outside the ambit of the statute and therefore in coming to the conclusion the externing authority took into consideration a factor which was foreign to the statute. Turning to Section 56, Bombay Police Act, that section provides - and we are quoting the relevant portion of the section - whenever it shall appear to the District Magistrate that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, then the District Magistrate may issue the necessary order under that section. Therefore, what this portion of the section requires is that the movements or acts of a person should cause or should be calculated to cause alarm, danger or harm to person or property. What should occur 'in presentiae' is the causing of or the possibility of causing alarm, danger or harm, and the alarm, danger or harm should be caused or should be calculated to be caused by the movements or acts of any person. The section does not provide that the movements or the acts, of the person should also be movements or acts 'in presentiment' or in the approximate or

immediate past. Any movement or any act of a person, so long as it causes or is calculated to cause alarm, danger or harm to person or property, would come within the mischief of this section.

4. Mr. Patel has relied on a decision of this Court in 'In re : Moinuddin Abdullamia, AIR 1949 Bombay 86, where a division bench of this Court was considering Section 2, Bombay Public Security Measures Act of 1947, and the language used in that section was "is acting" and Sen, J. in his judgment at p. 92 points out that "is acting" must refer to immediate or approximate past. With respect, that judgment is entirely correct because under that section the mischief aimed at was the activity of the person concerned which activity must be in the immediate or approximate past. It was the objectionable activity itself which was the mischief aimed at by the Legislature. The objective of the Legislature in Section 56, Police Act is to consider whether the alarm is caused or is calculated to be caused and that alarm must be caused at or about the time when the order is proposed to be made. But the Legislature has not indicated that the activity or the movement of the person concerned must also take place at or about the time that the order is to be made. The language of the two sections is entirely different and therefore the construction of the expression "is acting" in Section 2, Public Security Measures Act of 1947 can be of no assistance in construing the language used by the Legislature in Section 56, Police Act.

5. Therefore, in our opinion, the only relevant consideration as far as Section 56(a) is concerned is whether a particular activity or movement of the person concerned causes or is calculated to cause alarm, and it is left to the satisfaction of the externing authority whether such activity or movement in fact causes or is calculated to cause alarm. We dare say that in a majority of cases the movement or activity of a person would naturally be within the immediate or approximate past, but there is no reason to rule out an activity or a movement which might have taken place some time in the past. The question really is of the satisfaction, of the externing authority. If the externing authority *bona fide* comes to the conclusion that an activity or a movement of the person concerned, although not within the immediate past, has in fact caused alarm or is calculated to cause alarm, he is competent to make an order under Section 56.

6. The other contention urged by Mr. Patel is that some of the activities referred to in the notice have not been set out with sufficient particularity, and emphasis is placed on two of those activities which are referred to in the notice. One is (1)(b) with regard to the petitioner and his associates making use of intimidation against the workers in order to enlist them as members of the Satara Road Mazdoor Sangh, and the other is (2) that the petitioner and his associates have been secretly intimidating persons from Dhumalwadi and nearby villages with bastinadoing, maiming, setting houses on fire and doing damages to their property and other unlawful things because they were not co-operating with the petitioner in his agitation against the implementation of the prevention of fragmentation and consolidation of Small Holdings Act. What is urged by Mr. Patel is that no time and no date is mentioned as to when the petitioner is alleged to have indulged in these activities, and Mr. Patel says that in the absence of such particulars the notice is

not proper and proper opportunity was not given to the petitioner to represent his case to the external authority. Mr. Patel has relied on several decisions of this Court, but before we go to the decisions it is always safer and wiser to turn to the section itself. Section 59 provides that, before an order under Section 56 is passed against any person, the officer acting under any of the said sections or any officer above the rank of an Inspector authorized by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. Therefore, the information that is to be supplied to the person concerned is the general nature of the material allegations against him. The Legislature is at pains to point out that the nature of the material allegations should be general and not particularized. Material allegations have got to be stated, but with regard to these material allegations what has got to be stated is their general nature. It is difficult to understand how, when the Legislature has expressly used this expression, it could be contended that the Legislature intended that full particulars should be given by the officer of the material allegations against the person concerned. It is true that although the general nature of the material allegations has got to be supplied to the person concerned, the general nature must be of such a nature as to give him a reasonable opportunity of tendering an explanation regarding them. The latter part of this sentence in Section 59 really affords an important safeguard to the subject. Although the nature may be general, it should not be so general as to make it vague and not precise. Although the nature has to be general, it must still be of such a character as to give the person concerned a reasonable opportunity of tendering an explanation regarding the material allegation. Therefore, in order to decide whether Section 59 has been complied with or not, the test must always be whether the person concerned was given a reasonable opportunity of tendering an explanation regarding the material allegations against him, and if that test is satisfied, it is futile to consider whether proper particulars were given or not.

7. Mr. Patel has relied on the decisions of the Supreme Court and particularly on the decision in - '*State of Bombay v. Atma Ram*'<sup>1</sup>, where the Court held that in the case of preventive detention, particulars as full and adequate as the circumstances permit must be given by the detaining authority. Turning to the constitutional safeguard under Article 22, clause (5) of that article provides that the detaining authority must communicate to the detained person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. In clause (5) of Article 22 the Constitution does not indicate the nature of the grounds and it is because of this that the Supreme Court construed the grounds to mean grounds with full and adequate particulars. But when we turn to the Police Act the Legislature has indicated the nature of the material allegations that has to be furnished to the person concerned and that nature, as already pointed out, is to be a general nature. Therefore, in our opinion it is not safe to construe the Police Act in the light of the Constitutional safeguard provided by clause (5) of Article 22.

8. Now, applying the test which we have suggested is the proper test, could it be said that with regard to two of the activities on which reliance has been placed by Mr. Patel, the petitioner was

not given a reasonable opportunity to give his explanation ? He is told with regard to the first activity that he and his associates were making use of intimidation against the workers in order to enlist them as members of the Satara Road Mazdoor Sangh of which he is the President. Apart from indicating the time and the date, the material allegation is set out with sufficient particulars to enable the petitioner to give an explanation if he was so minded. The same is the case with regard to the other activity. There also the petitioner is told that he was secretly intimidating persons from Dhumalwadi and nearby villages. He is told what the nature of the intimidation is, he is told why he was intimidating, and he is told that this causes considerable alarm in the minds of the villagers and apprehension of danger to their person and property. We feel that unless the law required that as full and as adequate particulars as the nature of the case required have to be given under the Police Act, the activities mentioned in the notice are sufficiently clear and precise to enable the petitioner to give an explanation with regard to them.

<sup>1</sup> AIR 1951 SC 157

9. Therefore, in our opinion, neither of these two grounds is tenable. The result is that the petition fails and must be dismissed.

Petition dismissed.