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Court : Allahabad

Decided On : Sep-11-2012

Judge : Sudhir Kumar Saxena

Appeal No. : Misc. Single No. 3732 of 2012

Appellant : Azad Singh

Respondent : State of U.P.

Judgement :

1. THIS writ petition under Article 226 of the Constitution of India is directed against the order dated 28.06.2012 passed by Commissioner, Faizabad Division, Faizabad as well as order dated 05.05.2012 passed by Additional District Magistrate, C.S.M. Nagar, directing externment of petitioner for a period of six months under Section 3 of the U.P. Control of Goondas Act, 1970 ('Act' in short).

2. BRIEFLY stated petitioner's case is that petitioner won the election of Block Pramukh while his political opponent Saurabh Singh had lost. Presently petitioner is Block Pramukh of Block Salon, District C.S.M. Nagar, and at the behest of Saurabh Singh on 14.11.2011, a show-cause-notice under Section 3(1) of the Act was issued stating therein that twenty-five cases were pending against him. Witnesses were not deposing against him on account of his terror. He was asked to submit reply by 26.11.2011. Petitioner did not file reply. Consequently, A.D.M., C.S.M. Nagar declared petitioner to be 'Goonda' and ordered his externment for a

period of six months by order dated 05.05.2012.

An appeal filed against the above order was dismissed by the Commissioner, Faizabad Division, Faizabad vide order dated 28.06.2012.

These two orders have been impugned in this writ petition.

3. SRI R.B.S. Rathore, learned counsel for the petitioner submitted that most of the cases mentioned in the notice resulted in acquittal. They were old. There were no fresh cases showing his activities to be prejudicial to the peace of the society attracting Section 3(1) of the Act.

Sri Rathore further submitted that order of externment is based on the report of Police dated 29.05.2010 but order has been passed on 05.05.2012. This report has been annexed as Annexure-3 to this writ petition which refers to two cases of 2010. One NCR and another beat information.

4. FROM the perusal of NCR, it appears that allegation was that Azad Singh wanted to cut the trees belonging to family grove. This NCR led to the proceedings under Sections 107, 116 of the Cr.P.C. Another case mentioned in the report is beat information given by Police dated 27.05.2010 informing that the petitioner is a daredevil and earns money by illegal means. Earlier, he was Block Pramukh. On account of his clout, he got his brother elected as village Pradhan and he has connection with the political parties. Village people are not feeling safe on account of his criminal activities, as such proceedings under Section 3 of the Act may be initiated against the petitioner.

It is further submitted that in the notice issued by A.D.M., there is reference of 25 cases. Out of 25 cases, 23 cases pertain to the years 1988-93, 1994, 1995, 1996, 1997, 1998, 2006.

It is submitted that in 20 cases, petitioner has been acquitted and in one case final report was submitted. Only four cases are said to be pending against him and they belong to the year, 1992, 1997 and the year, 2006. All these four cases find mention in the order of Commissioner. Two cases are under Sections 302 I.P.C. Details of the cases is given hereunder :

5.

(A) Case Crime No. 18 of 1997 under Sections 302, 506, 507, 120-B and 3(1)(x) SC/ST Act, Police Station Salon, District Raebareli.

(B) Case Crime No. 167 of 2006, under Sections 307, 302, 506 I.P.C. and 2/3 U.P. Gangsters Act, Police Station Bhadokhar, District Raebareli.

(C) Case Crime No. 152 of 1992, under Section 2/3 U.P. Gangsters Act, Police Station Salon, District Raebareli.

(D) Case Crime No. 108 of 2006, under Sections 395, 342, 506, 147, 323 I.P.C., Police Station Kotwali, District Raebareli.

6. IT is also mentioned in the order of Commissioner that in the year, 1997 too petitioner was externed.

Submission of learned counsel for the petitioner is that cases pending being quite old, there was no occasion for the Authorities to resort the provisions of the Act. There was no fresh material to suggest that petitioner was still indulged in any activities prejudicial to the peace of society. It is further submitted that copy of the police report was never supplied to the petitioner, as such principle of natural justice stood violated.

A counter affidavit was filed by Sri Mahmood Ahmad Siddiqui, Deputy S.P., Salon, District C.S.M. Nagar. In Paragraph 17 of the counter affidavit it is stated that after submission of police report, following cases were also registered against the petitioner.

7.

(A) Case Crime No. 1275 of 2010, under Sections 147, 148, 149, 307, 504, 506 I.P.C. relating to incident dated 25.10.2010.

(B) Case Crime No. 1276 of 2010, under Sections 307, 147, 148, 149, 427 I.P.C. relating to incident dated 25.10.2010.

(C) Case Crime No. 526-A of 2011, under Sections 147, 323, 342 I.P.C. relating to incident dated 07.06.2011.

In all these cases, chargesheet has been submitted.

8. A rejoinder affidavit has been filed reiterating the contents of petition. In supplementary affidavit petitioner denied knowledge of above three cases.

Km. Nand Prabha Shukla, learned A.G.A. submitted that petitioner has a long criminal history which shows that he has been Goonda throughout. Even after submission of police report, three cases were registered against him. Thus, petitioner a 'Goonda', has been rightly externed and no interference is warranted by this Court.

So far as notice is concerned, cases registered against the petitioner on 25.10.2010 and 07.06.2011 were not mentioned therein, albeit, although, notice was given by A.D.M., C.S.M. Nagar on 14.11.2011.

9. IT is apparent that District Magistrate while proposing to initiate the proceedings against the petitioner did not take into consideration the three cases which find mention in the counter affidavit. The notice given under Section 3(1) of the Act led to the final order dated 05.05.2012. Final order also mentions the same cases which were mentioned in the notice. Therefore, it has to be presumed that while passing the order District Magistrate did not consider the newly registered three cases.

10. SO far as other cases are concerned, it is apparent that they were quite old. Notice does not mention any case of the year, 2011. Order does mention one case registered under Section 504, 506 I.P.C. relating to incident of April, 2010.

Thus, it can be said that no case against the petitioner in the year, 2007, 2008 and 2009 has been registered under the I.P.C. Authorities were left with only one case registered under Sections 504, 506 I.P.C. in the year, 2010.

If petitioner was to be externed in the year, 2012 as further incidents had come to his notice, District Magistrate could have taken action by issuing fresh notice

mentioning all the cases including recent cases.

11. THE notice under Section 3(1) of the Act is sine qua non for proceeding, further in the matter, as such, notice is jurisdictional one. Notice mentions the last incident dated 27.05.2010, the beat information. Notice was given one year six months thereafter. Order of externment was passed after a further period of six months. Although, in the counter affidavit it is mentioned that after submission of Police report dated 29.05.2010, three more cases were registered. But these cases are not mentioned in the notice, as such, either Police did not inform the District Magistrate about these cases or District Magistrate did not feel necessary to consider these cases worth taking action under the provisions of the Act. Whatever be the reason, fact remains notice does not mention these cases and last case mentioned in the notice is beat information dated 27.05.2010, as such, the reasons supplied in the counter affidavit are of no avail to state. Firstly, because reasons cannot be supplied, subsequently in counter affidavit; secondly the newly registered cases did not form part of the notice.

As discussed above, period of two years between the date of last incident mentioned in the notice and the order of externment appears to be too stale to furnish any cause of action to the District Magistrate to act under the Act.

12. PROVISIONS of the Act are preventive in nature. This Court in the case of Baldeo Singh Vs. State of Uttar Pradesh (Writ Petition No. 541 of 1978 decided on 19.04.1998), while interpreting the provisions of the Act, made following observations :

"The purpose of the Act is to prevent such activities as are mentioned in clauses (a), (b) and (c) of sub section (1) of Section 3. The distinction between a penal and a preventive law is that the one looks at the past and the other at the future. In the administration of a penal law the relevant time is the time when the offence is committed. But in the case of a preventive law the relevant date is the date on which the order is passed. In matters where a law gives to an authority power to issue orders for the purpose of preventing the commission of offences, the time becomes the essence of the law and the circumstances have to be reviewed on the date of the order. The matter assumes greater importance when the power

given by a Preventive Act is such as affects the fundamental right of a citizen guaranteed under Article 19(1)(d) and (e) of the Constitution. The present law gives power to the District Magistrate to restrict the movements of a citizen and to forbid him from residing even in his own house in the locality, it is therefore a serious kind of preventive law, and is of course not a penal law."(emphasis mine).

While interpreting the preventive law strict compliance has to be ensured as it directly interferes with the personal liberty of citizen. In the case of Ramnarain Singh Vs. State of Bihar AIR 1972 SC 2225 following observation has been made that can be usefully quoted hereinafter :

"The underlying object of the section is preventive and not penal. The section is designed to enable the Magistrate to take measures with a view to prevent commission of offences involving breach of peace or disturbance of public tranquility wide powers have been conferred on the Magistrates specified in this Section and as the matter affects the liberty of the subject who has not been found guilty of an offence, it is essential that the power should be exercised strictly in accordance with law."

In the case of Gulam Hussain Vs. Police Commissioner, Calcutta AIR 1974 SC 1336 it was observed that there must be a live link between the grounds of criminal activity alleged by the detaining authority and the purpose of detention, namely, inhibition of prejudicial activity of the species specified in the statute. This credible chain is snapped if there is too long and unexplained an interval between the offending acts and the order of detention.

13. IN the case of Lakshman Khatik Vs. State of West Bengal, AIR 1974 SC 1264, the gap of complained act and the impugned order was only of seven months. The Hon'ble Court observed as under :

"The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of food-grains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. IN our opinion, the order of detention is invalid."

14. FROM the above, it can be simply deduced that gap between the activities and the order must not be a long gap. It should be a reasonable time. No time limit can be fixed as a general rule as it will upon the facts and circumstances of the each case, however, there should appear a tangible and rationale link between the complaint, issue of notice and the order of externment. So far as time gap is concerned, if there is unreasonably long gap between two, it can be presumed that overt activities of the noticee did not remain prejudicial so as to regulate his presence in the District.

Intent of the Act is to arrest such activities by taking preventive measures. Thus, Act contemplates action with promptitude so as to tackle emergent situations. Act ordains District Magistrate to act with a sense of urgency as maximum period of externment is only six months.

Learned A.G.A. cited a decision of Apex Court i.e. Collector and District Magistrate and others Vs. S. Sultan (2009) 3 SCC (Cr.) 778. In Para 10 of the judgment it is stated that most of the incident appears to be of the month of November, 2005 while order of detention was passed on 20.03.2006. This order was found not to be bad. It appears that in the above case time gap was only four months, as such, this decision is inapplicable.

15. ANOTHER judgment given by Delhi High Court cited by Km. Nand Prabha Shukla, learned A.G.A. is the case of Vijay Singh @ Vijay Pahalwan Vs. State and others 1999 (50) DRJ 599. In para 10 of the judgment Hon'ble Judge observed that principles laid down in respect of preventive detention would not apply in the case of externment. Relevant observations are quoted hereinbelow :

"Before proceeding further, one has to take note of certain distinction between preventive detention and an order of externment. While in preventive detention, the person is confined, in externment, a person is not confined in any jail or anywhere else; he is a free person to move about excepting a certain area. The moment this distinction is kept in mind, the principles which have been laid down in respect of preventive detention in essence would not apply to the case of externment."

"Then, learned Judge proceeds to hold remoteness in point of time irrelevant for order of externment (Para 10 and 11)."

With respect I am unable to subscribe to the above view of Hon'ble Delhi High Court as Full Bench in the case of Ashok Dixit Vs. State of U.P. and another, AIR 1987 Allahabad 235 has taken the view that " the object of the U.P. Goondas Act is different and it was enacted for different purposes to be applicable in different context. The U.P. Goondas Act was preventive in nature whereas U.P. Act No. 7 of 1986 is punitive" (para 146). Moreover, in the case of Baldeo Singh (supra), it has been held by Division Bench that Goonda Act is a "serious kind of preventive law, and is of course not a penal law."

16. IN view of the above, the decision given by Hon'ble Single Judge of Delhi High Court holding remoteness in point of time as an irrelevant ground is not applicable to the cases of externment under the U.P. Act.

Learned A.G.A. referred to a case of Apex Court i.e. Subramanian Vs. State of Tamil Nadu and another (2012) 2 SCC (CrI.) 526. In this case Kaliyamoorthy filed a complaint with the police on 18.07.2011 against the detenu. He had also filed a complaint before the City Crime Branch on 07.02.2010. Relying upon this, on 21.07.2011, Commissioner of Police passed a detention order against the detenu under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 holding the detenu to be a 'Goonda' noticing his involvement in the case of 18.07.2011 as well as three past cases of the years 2008 and 2010.

Learned A.G.A. referred specifically to following observations of the judgment which are quoted below:

"It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining

Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion."

17. RELYING upon these observations, learned A.G.A. submitted that if District Magistrate has reached a conclusion that petitioner was a Goonda on the basis of material available before him, this Court cannot substitute its opinion to that of detaining authority.

18. APEX Court itself mentions that ground of detention had to be proximate as well. In para 20 of the judgment Hon'ble APEX Court while observing that occurrence related to an incident of 18.07.2011, apart from two prior cases registered in the year 2008 and 2010, detention order having been passed on 21.07.2011, three days after the last incident, reference of the other cases that belonged to the year of 2008 and 2010, would not make them stale.

In the case of Subramanian (supra), gap of last complained act and order of detention was only three days, as such, this judgment does not help learned A.G.A.

In the case before this Court, it is manifest that last incident referred to the notice is dated 24.05.2010 while impugned order was passed on 05.05.2012, District Magistrate, does not make any mention of other cases lodged or reported during this period of two years, as such, gap of two years would definitely be not proximate.

19. THERE is one more distinguishing feature. Section 3 of the Act contemplates that District Magistrate shall by notice in writing inform him of the general nature of

the material allegations against him in respect of Clauses (a), (b) and (c) and give him a reasonable opportunity of tendering an explanation regarding them.

Section 3(2) of the Act gives right to noticee to consult and be defended by a counsel of his choice who shall be given a reasonable opportunity to examine any witness which he needs to be produced. It is on the basis of this material i.e. material placed by the Police mentioned in the notice and noticee, District Magistrate has been authorized to pass order under Section 3(3) of the Act.

20. IN the cases cited by learned A.G.A. the provision of notice was not there. Once legislature permits authorities to do a thing in a particular manner, that has to be done in accordance with that mode or not at all and other modes will be deemed to be prohibited. Notice is mandatory and jurisdictional, material allegations mentioned in the notice have to be brought to the notice of person sought to be externed so as to give him reasonable opportunity. IN these circumstances, it is apparent that notice being jurisdictional one, proceedings have to be confined to the material allegations mentioned in the notice itself. Any other material cannot form the basis of the externment order. The cases which did not find mention in the notice can not be relied upon by learned A.G.A. for justifying the impugned order.

This Court is not commenting upon the subjective satisfaction arrived at by the District Magistrate nor is commenting upon the merits of the allegations mentioned in the notice as even order of acquittal in appropriate case may not dilute the satisfaction of District Magistrate if he is found to be 'Goonda' under the Act.

It is true that D.M. has to form an opinion on the basis of subjective satisfaction but then satisfaction has to be based upon the material made available under Section 3(3) of the Act. Satisfaction arrived on an extraneous material, not contemplated in law i.e. other than the one supplied by police forming part of notice or by noticee in reply to notice; would vitiate the decision making process and the ultimate order. In law District Magistrate can not be presumed to have considered the extraneous material.

21. AS last case was of the year, 2010, the impugned order of externment having been passed on May, 2012. It can be said that order is based on stale incident.

22. IN view of the above discussion, this Court is of the view that order of externment being based upon the stale incidents, same is liable to be quashed.

Petition is allowed, with no costs.

Order dated 28.06.2012 passed by Commissioner, Faizabad Division, Faizabad as well as order dated 05.05.2012 passed by Additional District Magistrate, C.S.M. Nagar are quashed.

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