SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Tarun Sen Deka and ors. Vs. the State

Tarun Sen Deka and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/125135

Court : Guwahati

Decided On : Jan-20-1949

Judge : Ram Labhaya, J.

Appellant : Tarun Sen Deka and ors.

Respondent : The State

Prior history : Ram Labhaya J. 1. A Division Bench of this Court consisting of the learned Chief Justice and my learned brother Thadani J. heard the petitions of 14 persons detained by District Magistrates under the Assam Maintenance of Public Order Act 1947 (Assam Act v. [5] of 1947). The petitions were all Under Section 491, Criminal P.C. The order of the Bench disposed of 12 petitions. In the case of the two petitioners, namely, Bijoy Kumar Das and Sukbomoy Chakravarty, the learned Judges could not agree a

Judgement :

Ram Labhaya J.

1. A Division Bench of this Court consisting of the learned Chief Justice and my learned brother Thadani J. heard the petitions of 14 persons detained by District Magistrates under the Assam Maintenance of Public Order Act 1947 (Assam Act v. [5] of 1947). The petitions were all Under Section 491, Criminal P.C. The order of the Bench disposed of 12 petitions. In the case of the two petitioners, namely, Bijoy Kumar Das and Sukbomoy Chakravarty, the learned Judges could not agree

as to the appropriate orders and directed that these cases be placed before a third Judge. The decision of two more petitions under 6. 491, Criminal P.C. turns on the same question which arises in the aforesaid petitions. These are NoSection 17 and 19 of 1948 and they have also been included in the reference. This order will dispose of all the four petitions.

2. Both Bijoy and Sukhomoy were ordered to be detained by separate orders of the District Magistrate of Goalpara, The orders were passed on sits May and 21st June 1948 respectively and are in identical terms. The operative part of the order in both the cases was as follows:

I, in exercise of the powers conferred on me Under Section 2, Clause (1), Sub-section (a), Assam Maintenance of Public Order Act, 1947 (Assam Act v. [5] of 1947), read with Assam Government Notification No. HMI. 31/47 dated 21st February 1948, direct that the said Bijoy Kumar Das/Sukbomoy Chakravarty be detained in jail custody for a period of six months with effect from the date of rervice of this order Under Section 2 (1)(a) of the said Act, read with the same Government Notification.

3. The period of detention was, as is clear from the order, six months in each case.

4. Hemanta Kumar Ganguli and Jiban Chandra Kalita were similarly ordered to be detained by the orders of the District Magistrate, Darrangi dated 17th June and 22nd June 1948 respectively. The orders in these cases were also in identical terms. The operative part of the orders was in the following terma :

Now, therefore, in exercise of the powers delegated to me Under Section 9, Assam Maintenance of Public Order Act, 1947 (Assam Act v. [5] of 1947), I, the said Bati Kanta Sharma, do hereby direot that the said Hemanta Kumar Ganguli/Jiban Chandra Ealita be detained Under Section 2 (1)(a) of the said Act.

5. The period of detention is not specified in these two orders. By virtue of the provisions contained in Section 3 of the Act it could not exceed six months.

6. It will be noticed that the orders in all the four oases were passed Under Section 2 (1)(a), Assam Maintenance of Public Order Act, 1947, read with Notification No.

HMI 31/47 dated 2ist February 1948 issued by the Provincial Government Under Section 9 of the Act.

7. The Assam Maintenance of Public Order Act, 1947, was passed in the language of the pro-amble

to enable the Provincial Government to provide for preventive detention, imposition and recovery of collective fines, control of meetings and processions and of services essential to the life of community and purposes connected therewith in order to safeguard, prevent and overcome, should it arise, any break down of law and order.

8. The object of the Act has been stated in clear terms and it was to enable the Provincial Government to provide for preventive action of a certain nature to meet a definite contingency. The Act, therefore, contemplates action by the Provincial Government for its effective working. [9] Section 2, Clause (1) of the Act enumerates the powers conferred on the Provincial Government. Amongst other orders that the Provincial Government is authorised to make, it could also direct Under Section 2 (1)(a) that a person be detain-ed. Clause (2) of the same section empowers District Magistrates to exercise powers conferred by Clause (a) of Sub-section (1). They are also permitted to direct a person to be detained. But in their case it is laid down expressly that an order made by a District Magistrate Under Section 2 (1)(a) shall be valid for a periodnot exceeding two months. The two clauses of Section 2 which are relevant to the discussion, are reproduced below :

2 (1). The Provincial Government, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the public safety and the mointenance of public order it is necessary so to do, may make an order-

(a) directing that he be detained;

2, A District Magistrate may exercise the power conferred by Clause (a) of Sub-section (1) and an order be made by him shall be valid for a period not exceeding two months.

9. Now, Section 2 does not fix any duration for which orders passed by the Provincial Government under different clauses of Section 2 (1) may remain in force. This duration is provided in Section 3, which lays down that an order Under Section 2 shall remain in force for a period not exceeding six months unless revoked by the authority making the order provided that such revocation shall not prevent the making Under Section 2 of a fresh order to the same effect as the order revoked.

10. The petitioners whose cases are now be. fore me were all detained Under Section 2 (1)(a) read with the Notification of the Provincial Govern-merit Under Section 9. Section 9 of the Act empowers the Provincial Government to direct: 'that any power or duty, which is conferred or imposed on the Provincial Government shall in such circumstances and under such conditions, If any, as may be specified in that direction, be1 ezercieed or discharged by any officer or authority, not being an officer or authority subordinate to the Central Government.'

11. On 21st February 1948 the Provincial Government acting in the exercise of powers conferred on it by Section 9, Assam Act, by their Notification No. HMI 81/47 directed that powers conferred on the Provincial Government by Section 2 Shall be exercised within the local limits of their jurisdiction by the District Magistrates of Goal-para, Darrang and some others. As stated above the orders with which we are concerned now were passed by the District Magistrates of Goal-para and Darrang.

12. The contention raised by the learned Counsel for the petitioners is that by reason of Section 3, Clause (2) the order of the District Magistrate cannot be valid for any period in excess of two months. Clause (2) of Section 2, according to their argument, imposes a statutory limit to the powers of the District Magistrates in the matter of detention. The Provincial Government, therefore, could not confer any larger powers of detention on the District Magistrates as such a conferment would conflict with and violate a statutory direction. It is further argued that even if the language of Section 9 be held to be wide enough to permit delegation of authority to District Magistrates to detain persons for a period exceeding two months, it should be read subject to Clause (2) of Section 2 and the Notification dated 21st

February 1948 should be held1 ultra vires to the extent to Which it conflicts with it.

13. I have given my anxious consideration to the contention raised. I am not convinced that it is sound and feel that it should not prevail. The entire basis of the argument is that the Legislature by enacting Clause (2) in the section put a limit to the powers of detention exercisable by the District Magistrates. Any notifica. tion of the Provincial Government conferring larger powers would be repugnant to the statutory direotion and to that extent should be held to be ultra vires. The argument loses sight of an Apparent fact. The Legislature when enacting Clause (2) of Section 3 also provided that Provincial Government may delegate its powers and duties. . It is not disputed that these powers included the-power to detain a person for a period in excess of two months. It also admitted that according to the language employed in Section 9 this power-could be delegated to any officer. The District Magistrates are not excluded from the category of officers to whom this particular power or other powers of the Provincial Government may be-delegated. Delegation of duties and powers of the Provincial Government to officers and authorities subordinate to the Central Government alone is forbidden. By delegating its power of detention to certain District Magistrates, the Provincial Government acted in conformity with a statutory direction, Section 9 of the Act is as much a creature of the Legislature as Section 2 (2). Both occur in the same Act. The Act has to be read as a whole and the only question is whether there is any essential conflict between the two provisions of the same Act. I am firmly of opinion that there is no trace of any such conflict. In fact Section 9 is merely complementary to the provisions contained in Clause (a), Section 2. The-Legislature conferred limited powers on all District Magistrates and it left to the Provincial Government to delegate all or any of its powers to any of its officers under such circumstance and conditions as may be specified in the order of delegation. There is no inconsistency in the-Legislature giving limited powers to a District Magistrate so far as detention is concerned and then leaving it to the Provincial Government to extend it should it find necessary so to do. The notification does not contravene 8. 9 in any way and is not in excess of the authority conferred on the Provincial Government, by it, if the plain language of the statute is given its ordinary meaning. It would thus be clearly intra vires and by virtue of it the District Magistrates mentioned in the notification could exercise

powers of the Provincial Government Under Section 2 (1)(a).

14. The U. P. Maintenance of Public Order (Temporary) Act (IV [4] of 1947) has provisions corresponding to Sections 2 (1), 2 (2), S and 9, Assam Maintenance of Public Order Act, 1947. Under the U. P. Act the District Magistrates could not detain person for any period exceeding 15 days. The Provincial Government in the exercise of its powers Under Section 11 delegated its powers to District Magistrates. The validity of an order of a District Magistrate which directed detention for a period exceeding 15 days was challenged in Daya Shanker v. Emperor,. A.I.R. (35) 1948 ALL. 321 : 49 Cr.L.J. 388, on the ground that the notification conferring larger powers on the District Magistrate was ultra vires of the Provincial Government. The contention did not prevail. The notification and in consequence the order of the District Magistrate were held valid. I find myself in full agreement with the view taken in this case.

15. The learned Chief Justice has arrived at a different conclusion. He has held that the powers of a District Magistrate even when acting as a delegate of the Provincial Government are still limited by the provisions of Section 2 (2) of the Act, and that an order of detention passed by him is not valid for a period exceeding two months. The process by which this result is arrived at is as follows. The learned Chief Justice was of the opinion that the provisions of 8, 2 (2) should have found place as a proviso to Section 3. In that case he would have felt no difficulty in holding that District Magistrate whether he was acting by virtue of the powers conferred by the proviso or by virtue of the powers delegated to him Under Section 9 he could not pass orders of detention for a period exceeding two months, He further thought if as a result of inartistic drafting the provision comes as Section 2 (2) and not in its proper place as a proviso to Section 3, it should not lose its real meaning or import and it should still bear the same meaning a3 would have been assigned to it if it had occurred as a proviso to 8. 3. He supported this conclusion by the argu-ment that if the Legislature had intended deliberately to provide that an order of detention by a District Magistrate acting as a delegate as distinct from an order Under Section 2 (2) should remain in force for six months, it would have been easy to word the provision in unambiguous language. The utterances of the distinguished Chief Justice are entitled to great weight. I hold them in great esteem

and I have, therefore, felt considerable hesitation in expressing a contrary opinion; but in all humility and with deep respect I venture to observe that a District Magistrate acting under the Act need not have two capacities at all. So long as no powers are delegated to him he acts Under Section 2 (2) and on the strength of the authority given to him by the Legislature. If later on the Provincial Government delegates its powers to him Under Section 2 (1)(a) by virtue of Section 9, S . 2 (2) which limits his power of detention becomes inoperative for he can pass any order of detention for any period not exceeding six months Under Section 2 (1)(a). It is then unneoessary for him to exeroise any powers Under Section 2 (2). The effect of delegation is practically to reduce Clause (2) of Section 2 to a mere surplus age. For all practical purposes it stands suspended as the District Magistrate then can exercise the powers of the Provincial Government Under Section 2 (1)(a). It is, therefore, not correct, in my humble opinion, to say that even when the District Magistrate exercises his delegated authority Under Section 2 (1)(a), his power is limited by the provisions contained in Section 2 (2),

16. It is a cardinal rule of the construction of statutes in general that the intention of an enactment should be gathered from the language employed in it and that where words used are clear and unambiguous, it is the duty of the Gourta to give effect to them according to their plain meaning. There is no ambiguity either in the provisions contained in Section 2 or in Section 9. The language has to be considered as it stands and I doubt if it is open to a Court to place a certain section or a clause in a section and read it as a proviso to another section for ascertaining its meaning and then assigning the same meaning to it in its original place. But even if this process is permissible, there should be no difference in interpretation. In Clause (2) of Section 2 District Magiatrates are allowed to detain persons for a period not exceeding two months. Clause (2) of Section 2 could not have been placed as a proviso to Section 3 without changing the language of Section 8 itself. In that case Section 3 would have provided that an order made Under Section 2 by the Provincial Government shall be in force for a period not exceeding six ' months. As Section 3 stands now the words 'Provin-oial Government' do not occur. The reason is that Section 3 can, as it stands now, refer only to ordera passed by the Provincial Government as the authority of the District Magistrate to pass orders under Clause (1)(a) of Section 2 has been separately defined by

Clause (2) of Section 2.

17. If Clause (2) of Section 2 had appeared as a proviso to Section 3, the result would have not been at all different. The section then would have defined the powers of the Provincial Government and of the District Magistrates. Section 9 would still have been available for enlarging the powers of District Magistrates by delegation. Whatever way we look at it the diapute resolves itself into a question whether the Legislature intended that the Provincial Government may delegate all its powers to all its officers except that it could not delegate powers of detention exceeding two months to any of its District Magistrates.

18. From the language employed in the Act itself it h clear that the Legislature included the District Magistrates in the category of officers to whom powers could be delegated. If the intention of the Legislature were different, Section 9 would have been made subject to the foregoing provisions of the Act. In that case Section 2 (2) would have had overriding effect over Section 9. This was the obvious course to follow if the intention was that the District Magistrates under no circumstances should order detention for a period exceeding two months. The learned Chief Justice agrees that the language of Section 9 authorises the Provincial Government to confer powers on the District Magistrates to order detention in excess of two months. But he holds that even in spite of this delegation, the District Magistrates cannot exercise any power in excess of that conferred on them by Section 2 (a). In his view the Legislature intended that larger powers of detention than those which were given to District Magistrates by Section 2 (2) were to be conferred on officers of higher status like a Commissioner or a Chief Secretary. I again venture to express my doubts as to whether it is permissible to speculate about the intention of the Legislature when the language used is clear, It may be said that where the words used are clear they must be given effect to by Courts even if the construction leads to absurd or anomalous results. But if speculation as to the intention of the Legislature is permissible, I am of opinion that the Legislature could sever have contemplated the exclusion of District Magistrates from the list of officers to whom local Government could delegate its powers Under Section 2 (1)(a). A district is the most important unit of the administration. The District Magistrate is in charge of it and is responsible for

'maintaining law and order. He gets first hand information about subversive elements in society. He is in a position to take immediate action. If higher authorities are given larger powers of detention, they will get information either from the District Magistrates or if they have independent sources of information they may feel the necessity of verification by the Diatriot Magistrate. Action would be delayed and it may defeat the very purpose of the Act. The Commissioners and Chief Secretaries have not got the same facilities which the Deputy Commissioners enjoy for preventive action under the Act at the proper time. In the circumstances it is difficult to contemplate that the Legislature intended that in no circumstances should a District Magistrate be permitted to exercise powers of detention for a period exceeding two months. In fact the language permits, and there may be abundant justification otherwise for conferring powers of detention on Sub-Divisional Officers or Assistant Commissioners even. It is for this reason that the discretion of the Provincial Government so far as delegation is concerned has been left completely unfettered.

19. I am in respeotful agreement with the learned Chief Justice when he holds that if there, are two interpretations, the one more favourable to the liberties of the subject should be accepted and that the statute restricting the liberties of the subjects should be construed strictly. But even if these dicta are followed the conclusion arrived at by me remains. The plain language of the provisions of the Act under consideration does not admit of two interpretations. It is not equivocal in any sense and this single interpretation is the result of a strict construction according to which words used have to be given their plain and ordinary meaning. The alternative construction rests as an assumed intention and is in defiance of the real import and significance of the language employed.

20. Let us now accept for purpose of argument that the language used is ambiguous and does lend itself to two possible constructions. Even then according to the recognised canons of interpretation the Court should adopt the one which will be consistent with the smooth working of the system which th6 statute purports to regulate. As held by Tek Chand J. in Sohan Singh v. Jagir Singh A.I.R. (29) 1942 Lah. 114 : A.I.R. (1942) Lah. 364 F.B. relying on Shannon Realities Ltd, v. St. Michel, 1924 A. C. 185 : 93 L. J. P.C. 81:

Where two constructions are equally open, that alternative construction is to be chosen which will be consistent with the smooth working of the system which the statute purports to regulate and that alternative is to be rejected which will introduce absurdity, uncertainty, friction or confusion in the working of the system.

21. Now, if it is held that even in spite of the notification of the Provincial Government a District Magistrate cannot detain a person for a period exceeding two months we would in effect be holding that the Provincial Government cannot delegate its powers under all clauses of Section 2 (s) to District Magistrates though it may do so to officers lower in status than the District Magistrates. The Provincial Government may utilise these powers if it finds that circumstances justify their use. Such exercise will lead to anomalous results. If the Provincial Government tries to confer its powers on officers higher in status than the District Magistrates it shall be confronted: with the obvious difficulties which has been indioated above and smooth working of the machinery which the Legislature brought into existence 'in order to safeguard, prevent and overcome, should it arise, any break down of law and order' would be interfered with.

22. In these circumstances there would be abundant justification for preferring the interpretation I have placed on the relevant provisions of the statute. It avoids inconvenient results and is conducive to the smooth working of the machinery provided by the statute.

23. The period of detention for six months against the petitioners has expired in each case. The petitions have become infructuous and may have been dismissed on that short ground. But in view of the importance of the point involved, I have been requested by the learned Advocate. General to give a decision on the merits of the controversy and considering that the question of the legality of the detention is involved, I have thought it expedient to do so. I have found that the orders of the District Magistrates were valid in all cages. Agreeing with my learned brother Thadani J., I hold that the petitions must fail and are hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com