

S. Bharat Kumar Vs. Chief Election Commissioner of India and ors.

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Court : Andhra Pradesh

Decided On : Dec-16-1994

Reported in : 1995(1)ALT(Cri)230; 1995CriLJ2608

Judge : Ramesh Madhav Bapat and ;Y. Bhaskara Rao, JJ.

Acts : [Constitution of India](#) - Articles 14, 19(1), 19(5) and 21; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 20, 20(1), 21, 107, 108 and 110

Appeal No. : Writ Petition No. 20282 of 1994

Appellant : S. Bharat Kumar

Respondent : Chief Election Commissioner of India and ors.

Advocate for Def. : C.P. Sarathy, Adv. and ;The Govt. Pleader

Advocate for Pet/Ap. : K.G. Kannabhiran, Adv.

Judgement :

Y. Bhaskar Rao, J.

1. This writ petition challenges the validity of G.O. Rt. No. 2796, Home (Courts. B) Department, dated 26-10-1994 whereby certain Police Officers, namely, the Superintendents of Police and Deputy Superintendents of Police, were conferred with powers under Section 108 and 110 of the Code of Criminal Procedure by

appointing them as first class Executive Magistrates in order to exercise control over 'the sympathisers of left wing extremists group.'

2. The validity of this Government Order is challenged mainly on three grounds, namely, 1) the expression 'the sympathisers of left wing extremists groups' is highly vague, in that, there are absolutely neither guidelines nor instructions muchless definition for the said expression so as to ascertain or identify the persons covered thereby, 2) conferment of such powers is a legislative act and therefore such a power is not within the realm of State Executive, and 3) conferment of the powers of the Executive Magistrate on the police officers is squarely against the cardinal principle that no person can be a Judge in his own case, and that therefore the G.O. is violative of Articles 14 and 21 of the Constitution.

3. The learned Government Pleader no doubt sought to sustain the G.O. by submitting that the Code of Criminal Procedure does nowhere bar such a conferment of power on the police officers, more so when revenue officers, special police officers are already vested with and exercising such power; and that in the instant case the powers conferred are only for the limited period up to 31-12-1994 and that too in the wake of the ensuing elections to the State Assembly.

4. First, we shall advert to the contention that the expression 'the sympathisers of left wing extremists groups' is vague hitting hard on the validity of the G.O. In this context, it is relevant to have a look into the decision of the Supreme Court in *State of M.P. v. Baldev Prasad*, AIR 1961 SC 293 : 1961 (1) Cri LJ 442, wherein the word 'goonda' was the subject matter of construction. Though the word as such was defined by the Act concerned therein, still the controversy raised there was, whether the definition was of inclusive nature or otherwise. Inasmuch as the Act envisaged deprivation of the fundamental right of a citizen under Article 19(1)(d) and (e) of the Constitution, the Supreme Court held that much care ought to have been taken in the light of Article 19(5) of the Constitution in order to provide sufficient safeguards against casual, capricious or even malicious exercise of the powers by the authorities concerned. The Supreme Court in that background held :

'In other words, the restrictions which it allows to be imposed on the exercise of the fundamental right of a citizen guaranteed by Art. 19(1)(d) and (e) must in the circumstances be held to be unreasonable.'

5. The Constitutional Bench of the Supreme Court in *K. A. Abbas v. Union of India*, : [1971]2SCR446 , had the occasion to advert to the question whether the doctrine of 'void for vagueness' is applicable in India. Thereafter referring to the earlier decision in *Municipal Committee, Amritsar v. State of Punjab*, : [1969]3SCR447 , it was held that 'no law will be considered bad for sheer vagueness' is not an absolute principle. Again, also after referring to the decision in *State of M.P. v. Baidev Prasad* (supra), the Supreme Court held that where the persons applying the law are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution. It also observed that the invalidity arises from the probability of the misuse of the law to the detriment of the individual.

6. In a matter under Preventive Detention law, Justice Chinnappa Reddy in *Mohd. Yousuf v. State of J & K*, : [1980]1SCR258 , considered the effect of vague grounds for detention. There, the grounds of detention began with the statement that the detenu is a 'die-hard Naxalite'. As to who is the Naxalite was the question before the Supreme Court. The controversy was whether they are blood-thirsty monsters or ideological revolutionaries and the argument was that the expression 'Naxalite' was as definite or as vague as all words describing ideologies such as democracy, etc. The Supreme Court ultimately held that the detention was bad since the grounds included are vague.

7. The decision in *Kartar Singh v. State of Punjab*, 1994 SCC (Cri) 899 : 1994 Cri LJ 3139, deals with the validity of enactments containing vague prohibitions. The Supreme Court laid down :

'Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to police men and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to steer far wider of the unlawful zone than if

the boundaries of the forbidden areas were clearly marked'.

8. In the light of these decisions, it can safely be held that the expression 'the sympathisers of left wing extremists groups' is vague since devoid of any guideline, instructions or definition to identify persons covered by such groups and this vagueness renders the G.O. void since the doctrine of void for vagueness is applicable to us. Further, the persons applying the G.O. (police officers) would be in a boundless sea of uncertainty leading to the probability of misuse of the power conferred thereunder. Also by testing the validity of the G.O. in the light of the 'prohibitions' so as to bring in a person within the expression 'the sympathisers of left wing extremists groups', it is again vague as to what are the factors to identify the so-called groups.

9. Now, advertent to the question whether conferment of powers under Sections 108 and 110 of the Code of Criminal Procedure is a legislative action, it is to be noted that the two provisions primarily relate to security cases for good behaviour. The persons against whom such power is available for exercise are covered specifically by the very same provisions and they formed a class by themselves. Now the impugned G.O. introduces one more class of persons namely, the sympathisers of left wing extremists groups, amenable for exercise of the powers under Sections 108 and 110 of the Code of Criminal Procedure. It is not in dispute that the State Executive is not delegated with the power to supplement one more class of persons to the statute. It is contextually to be borne in mind that Section 21 of the Code of Criminal Procedure empowers the State Government to appoint Executive Magistrates to deal with the persons enumerated in Sections 108 and 110 of the Code of Criminal Procedure. Therefore, appointment of Executive Magistrates to deal with a class of persons not mentioned in Sections 108 and 110 is not envisaged either by Section 21 or by any other provision in the Code. Such a supplementation of another class of persons for being dealt with under Sections 108 and 110 of the Code of Criminal Procedure is, therefore, not certainly within the realm of the powers conferred on the State Executive and accordingly it can be effected only by a legislative action. Inasmuch as in the instant case the State Executive usurped the powers of the State Legislature, the action covered by the G.O. is ultra vires the provisions of the Code of Criminal Procedure and

accordingly merits to be struck down.

10. Now remains the third point, namely, whether police officers can be appointed as the Executive Magistrates. Primarily the very appointment of a Prosecutor as a Judge is against the cardinal principle of Criminal Jurisprudence, as was submitted by the learned counsel Sri K. Kannabhiran, that no person can be a judge in his own case. Further, the provisions in the Code of Criminal Procedure are silent as to who should be appointed as an Executive Magistrate. No doubt, Sub-section (5) of Section 20 clarifies that nothing in Section 20 would preclude the State Government from conferring the powers of Executive Magistrate on a Commissioner of Police in relation to a metropolitan area. This specific and express reference to the Commissioner of Police alone and that too in relation to metropolitan area can by no stretch be extended to either other police officers or with reference to other areas since Sub-sections (1) to (4) of section 20 nowhere, even remotely, spell out such a power of appointment vested in the State Government.

11. It would be interesting to recall the history behind appointment of Executive Magistrates to deal with security matters. In British-India Police Act of 1861 through Section 6 appointment of police officers as Executive Magistrates was envisaged. However, immediately in the next year i.e., in 1862, through Amendment Act X/1862, the said section was repealed for whatever reasons it was, perhaps being not a healthy practice. It is because such provision of appointment as Executive Magistrates was available in the British-India Police Act, the Code of Criminal Procedure, 1898 carried with it such a provision.

12. Earlier, as submitted by Mr. Kannabhiran, this Court in *V. M. Ranga Rao v. State of A.P.*, 1985 (2) APLJ 361, had the occasion to deal with the validity of the appointment of Superintendent of Police, Vijayawada Urban as Special Executive Magistrate to try cases falling under Sections 107 and 110 of the Code of Criminal Procedure. This Court dealing with that question held as under :-

'Though the Executive has wide power under Sections 20(1) and 21 of the Code, the appointment of 'any person' as Special Executive, Magistrate there is an implied prohibition thereunder that the exercise of discretion must be circumspect

attune to the statutory standard and constitutional goals. A person appointed as Executive or Special Executive Magistrate, should be of the cadre or specified class of officers belonging to the executive service of the Government, like District Collector, R.D.O., etc., hitherto being appointed or in a given case a retired judicial officer or person, a person of good reputation of the locality but he should not have any interest in the subject matter of the enquiry. Therefore, we are inclined to hold that the Parliament never intended to invest the State Government with an authority to appoint any person of its choice but should be of a person referred to above. Thus, the exercise of powers by the State Government must be declared to be arbitrary and unreasonable, violating Article 14 of the Constitution. It outstepped its limits prescribed by the Code and thereby it is ultra vires of its power.'

It is submitted that against this decision, the Supreme Court is moved by way of an appeal. However, inasmuch as the judgment is not suspended by the Supreme Court, the law laid down rules the field, surely subject to the result in the appeal.

13. The contention of the learned Government Pleader that there is no bar for appointing the police officers as Executive Magistrates by placing reliance upon *Kartar Singh v. State of Punjab*, (supra) merits no countenance since that is only a decision wherein the power of the Superintendents of Police to record confessional statements of the detenus under TADA Act was the subject matter of challenge and that power alone was upheld. There question of appointment of police officers as Executive Magistrates was not in issue. Therefore, that decision would be of no help to sustain the G.O.

14. The contention of the learned Government Pleader that since the G.O. is issued only as interim measure, that too upto 31-12-1994 and therefore cannot be challenged in this writ, is nothing but a vain attempt to sustain the G.O. inasmuch as the interim nature of the G.O. is no immunity against the test in the light of Articles 14 and 21 of the Constitution. As a matter of fact, the Supreme Court in *A. K. Roy v. Union of India*, : 1982 CriLJ340 , clearly held that temporary nature of law is immaterial for the purpose of Article 21 of the Constitution.

15. From the above, it is clear that the G.O. suffers from all the three vices, namely, hit by the doctrine of void for vagueness, usurped the legislative functions and violative of Article, 21 of the Constitution. Accordingly, the impugned G.O. is quashed and the writ petition is allowed. No costs.

16. Petition allowed.

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