

Velpula Pullaiah Vs. Govt. of A.P. and Others

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Court : Andhra Pradesh

Decided On : Sep-06-1999

Reported in : 1999(5)ALD640; 2000(1)ALT(Cri)182

Judge : Bilal Nazki, J.

Acts : [Constitution of India](#) - Articles 14 and 21; Andhra Pradesh Prevention of Anti-Social and Hazardous Activities Act, 1980 - Sections 3, 3(3) and 6; Gaming Act, 1974

Appeal No. : WP No. 10526 of 1999

Appellant : Velpula Pullaiah

Respondent : Govt. of A.P. and Others

Advocate for Def. : Government Pleader for Home

Advocate for Pet/Ap. : Mr. Kummati Venkatesula, Adv.

Judgement :

ORDER

1. Rule Nisi.

2. The third respondent passed an order on 23rd April, 1999 in terms of Section 3(3) of A.P. Prevention of Anti Social and Hazardous Activities Act, 1980 (hereinafter referred as 'the Act') against the petitioner. This order has been

challenged in this writ petition. The petitioner states that he was convicted in two cases by Judicial First Class Magistrate, Dharmavaram in STC No.81 of 1995 and STC No.1 of 1997 for organising the game of Matka. The conviction was under Gaming Act, 1974. The petitioner also states that seven cases are pending against him under the same Act before the Magistrate at Dharmavaram. He further states that the cases which are pending against him are false cases and they have been lodged by Police in order to satisfy the statistical targets, and these cases are pending for the last two years. It is stated that the order impugned is violative of Articles 14 and 21 of the [Constitution of India](#). It is also stated that the impugned order is not even in conformity with Section 3(3) of the Act. He submits that, for the last two years no case was registered against the petitioner. He further states that he is not a habitual offender and is running a small Beedi bunk for his livelihood and because of the order passed he and his family shall suffer.

3. Counter has been filed by the Collector and District Magistrate, Ananthapur. In the counter it is stated that the petitioner was carrying on the activity of organising Matka. It is further stated that the provisions of Section 3 of the Act were complied with and petitioner was given opportunity to show cause on the proposed action before the impugned order was passed. The District Magistrate further states that after carefully considering the available material in the light of the explanations offered by the petitioner the impugned order was passed. It is further stated that the conviction of the petitioner in two cases which is admitted by him brought him within the purview of the Act. The pendency of the seven cases also shows that the petitioner was continuing with the activities of organising Matka.

4. The case was heard in detail. The learned Counsel for the petitioner submitted that the order needs to be quashed on the sole ground that it is violative of Article 21 of the Constitution. He also contends that the order is even violative of the provisions of the Act. Elaborating on the first argument he submits that Article 21 of the Constitution guarantees the fundamental right of liberty and life and the restrictions if any and deprivations of freedom of life and liberty can only be imposed by a procedure which is established by law. In the present case, the Act provides a right to file an appeal under Section 6 before a Tribunal within fifteen days from the date of service of the order, but, from the date the Act was

promulgated i.e., 1980 no Tribunal has ever been constituted. He submits that the procedure established by law as mentioned in Article 21 is not a procedure only with respect to factum of deprivation of liberty but also it extends to get the grievance redressed by a forum provided by such law. He further contends that since the Act was meant to deprive people of their liberties therefore the Legislature provided a safeguard by giving a right of appeal to the aggrieved persons. Since this right of appeal has been made illusory because the forum provided for filing appeal is not established, the order passed by the respondent is in fact mala fide exercise of power.

5. The learned Counsel for the respondents has not been able to show that any Tribunal has been constituted. Since the Tribunal has not been constituted and the persons against whom the orders are passed under the Act are not able to file an appeal, a valuable right guaranteed to them by the Act is denied. I am convinced that on this ground alone this writ petition should succeed. The authorities have no right to deprive a person right of liberty except through due process of law and when due process of law envisages a right of appeal, denial of it would amount to denial of a fundamental right to concerned. Even in cases of preventive detention, time and again the Supreme Court held that the provisions of legislations which deprive the people of liberties should be strictly construed. In *Kishori Mohgn v. State of West Bengal*, the Supreme Court held:

'4. The Act confers extraordinary power on the executive to detain a person without recourse to the ordinary laws of the land and to trial by Courts. Obviously, such a power places the personal liberty of such a person in extreme peril against which he is provided with a limited right of challenge only. There can, therefore, be no doubt that such a law has to be strictly construed. Equally also, the power conferred by such a law has to be exercised with, extreme care and scrupulously within the bounds laid down in such a law.'

5. Considering what has been stated above, I do not think that other grounds which have been taken in this petition are needed to be decided.

6. The writ petition is allowed and the impugned order is quashed. The State Government and its functionaries and the authorities created under the A.P.

Prevention of Anti-Social and Hazardous Activities Act, 1980 are directed not to pass any orders under the Act in future till a Tribunal in terms of Section 6 of the Act is constituted.

7. Copy of this order be sent to the Chief Secretary to Government, Government of Andhra Pradesh who shall intimate the concerned authorities accordingly.

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