

Shiv Pratap Singh Vs. District Magistrate/Addititional District Magistrate, Etawah and Another

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Court : Allahabad

Decided On : Sep-28-1999

Reported in : 2000(1)AWC139; 2000CriLJ855

Judge : S.R. Singh and; D.R. Choudhary, JJ.

Acts : Uttar Pradesh Control of Goondas Act, 1970 - Sections 2, 2(1), 3, 3(1), (2) and (3); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 5064 of 1999

Appellant : Shiv Pratap Singh

Respondent : District Magistrate/Addititional District Magistrate, Etawah and Another

Advocate for Def. : Amarjeet Singh, Addl. G.A.

Advocate for Pet/Ap. : Umesh Chandra Mishra, Adv.

Judgement :

S.R. Singh. J,

1. Impugned herein is the notice dated 8.7.1999 (Annexure-1 to the petition) issued by the Additional District Magistrate, Etawah thereby calling upon the

petitioner to show cause why should an order under Section 3 of the U. P. Control of Goondas Act. 1970 (In short the 'Act'), be not passed against him. To short-list, the petitioner in the show cause notice has been arraigned to be indulging in criminal activities within the peripheries of the conditions referred to in Clauses (a), (b) and (c) of Section 3 (1) of the Act and as many as five cases have been cited manifesting his criminal antecedents as per report submitted by the police.

2. The question that begs consideration is two-fold ; firstly whether initiation of proceedings for externment under Section 3 of the Act by issuing a show cause notice is contingent upon recital of material nature of allegations in the notice? To rephrase it, whether recital of the general nature of material allegations against the individual concerned is a Jurisdictional question ; and Secondly, whether it would be a sound exercise of discretion under Article 226 of the Constitution to interfere with a show cause notice under Section 3 (1) of the U. P. Control of Goondas Act. 1970, merely premised on the ground that the notice fails to give material nature of allegations against the notice?

3. Sri U.C. Misra, learned counsel appearing for the petitioner began by submitting that in view of recent Full Bench decision of this Court in B.S. Tyagi v. State of U. P., 1999 (39) ACC 321, alternative remedy would not operate as a bar and the show cause notice having taint of Illegality and invalidity should be quashed by this Court in exercise of its power of superintendence and Judicial review under Article 226 of the Constitution. In opposition. Sri Amarjeet Singh learned Additional Government Advocate submitted that the impugned show cause notice encapsulates general nature of material allegations made against the petitioner vide police report referred to therein and that it is not a fit case in which this Court should step in to exercise its extra-ordinary and discretionary power under Article 226 of the Constitution at this stage.

4. We have given our anxious consideration to the submissions made by the learned counsel. For proper appreciation of the submissions canvassed across the Bar, we may usefully quote Section 3 of the Act.

'3. Externment, etc, of Goondas.-- (1) Where it appears to the District Magistrate :

(a) that any person is a goonda, and

(b) (i) that his movements or acts in the district or any part thereof are causing, or are calculated to cause alarm, danger or harm to persons or property ; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of an offence referred to in sub-clauses (i) to (iii) of Clause (b) of Section 2, or in the abetment of any such offence : and

(c) that witnesses not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property.

The 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.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witness that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) Thereupon the District Magistrate on being satisfied that the conditions specified in Clauses (a), (b) and (c) of subsection (1) exist may by order in writing-

(a) direct him to remove himself outside the area within the limits of his local Jurisdiction or such area and any district or districts or any part thereof, contiguous thereto, by such route, if any, and within such time as may be specified in the order and to desist from entering the said area and such contiguous district or districts or part thereof, as the case may be, from which he was directed to remove himself until the expiry of such period not exceeding six months as may be specified in the said order ;

(b) (i) require such person to notify his movements, or to report himself, or to do both. In such manner at such time and to such authority or person as may be specified in the order ;

(ii) prohibit or restrict possession or use by him or any such article as may be specified in the order ;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order ;

until the expiration of such period, not exceeding six months as may be specified in the order.'

In re first question, a conspectus of the provisions aforestated would make it luculently clear that as a condition precedent to passing an order under sub-section (3) of Section 3, the District Magistrate is required to be 'satisfied' that the conditions specified in Clauses (a), (b) and (c) of sub-section (1) exist and, as a necessary corollary, to give a reasonable opportunity of tendering explanation to the noticee regarding allegations made against him in respect of Clauses (a), (b) and (c) of sub-section (1) of Section 3. The notice under sub-section (1) is required to be given in writing informing the notices of 'general nature of the material allegations against him in respect of Clauses (a), (b) and (c)'. Obviously, the object of giving of notice in writing containing 'general nature of material allegation' in respect of Clauses (a), (b) and (c) of sub-section (1) of Section 3, is to give an effective opportunity of submitting explanation but for which an opportunity of showing cause would be a farce. In fact, requirement of giving general nature of material allegations in the show cause notice is a facet of natural Justice, which has been expressly, embodied in the statute itself. The noticee, it may be observed, has been bestowed the right to produce evidence in support of his explanation to consult and be defended by counsel of his choice ; and to examine himself or if so desires, any other witness that he may wish to produce in support of his explanation 'unless for reasons to be recorded in writing, the District Magistrate is of the opinion that the request is made for purposes of vexation or delay'.

5. The requirement of setting out 'general nature of material allegation' in the notice as comprehended by sub-section (1) read along with the rights conferred on the person concerned by virtue of sub-section (2) of Section 3, though designed to give an effective opportunity of hearing. Is not a condition precedent to initiation of the proceeding under Section 3 of the Act. The condition precedent to initiation of proceeding, in our opinion, is that it must 'appear' to the District Magistrate that the person concerned is a Goonda and that his movements or acts in the district or any part thereof are causing or are calculated to cause alarm, danger or harm to persons or property ; of that there are reasonable grounds for believing that he is engaged or about to engage in district or any part thereof in the commission of an offence referred to in sub-clauses (i) to (iii) of Clause (b) of Section 2 or in the abetment of such offence : and that the witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property. If once, on the basis of the information received, the District Magistrate forms a bona fide opinion, as to the existence of the conditions stipulated in Clauses (a), (b) and (c) of sub-section (1), he would be Justified in initiating the proceeding by issuing a show cause notice.

6. Power to issue a notice under sub-section (1) of Section 3 of the Act is phrased in a subjective language. It is a settled proposition of law that if an authority is empowered to take a given course of action where it 'appears' to it that the prescribed state of affairs existed, the Courts generally interpret such grant of power literally and refuse to go behind the assertion of the competent authority that it was honestly satisfied as to the existence of the condition precedent, even if their existence was Judicially determinable by a Court [De Smith's Judicial Review of Administrative Action by Evens. 4th Edn. p. 32). Courts are loathe to assert power to review the finding de novo and go behind the satisfaction arrived at by the competent authority as to existence of the conditions precedent for invoking the power. Challenge to the notice at the very inception of the commencement of the proceeding can be made on limited grounds, e.g.. where there was no material before the District Magistrate on the basis of which he could reasonably form an opinion as to the existence of the grounds referred to in Clauses (a), (b) and (c) of sub-section (1) ; or where the requisite opinion formed by the District Magistrate was vitiated by mala fide or due to the reasons of non-application of mind to the

material placed before him ; or any other similar ground. No such ground has been taken in this case, nor has the notice been impugned on the ground that conditions precedent to issuance of notice were not satisfied. The fact that the 'general nature of material allegations' were not unfolded in the notice may constitute a ground for assailing the ultimate order that may be passed under subsection (3) of Section 3, but the failure to give general nature of material allegations does not impinge upon the jurisdiction of the District Magistrate to initiate the proceedings under Section 3 (1) of the Act. The question No. 1 formulated in the beginning thereto of the judgment is answered accordingly.

7. Coming to grips with the second question as to whether it would be a sound exercise of discretion to invoke extraordinary Jurisdiction under Article 226 of the Constitution to interfere with the show cause notice issued under Section 3 (1) of the Act merely on the ground that the notice does not contain general nature of material allegations against the noticee in respect of the grounds enumerated in clauses (a), (b) and (c) of sub-section (iii). Suffice it to say that the Court should be loath to intervene at this stage. It would be apposite to observe here that since the purpose of giving 'general nature of material allegations' is to afford an effective opportunity of hearing, it would be served if the individual concerned asks for the copy of the police report, etc. before submitting his explanation. The District Magistrate by supplying the requisite material can cure the defect, if any. In the notice.

8. In *Executive Engineer Bihar State Housing Board v. Ramesh Kumar Singh and others*, (1996) 1 SCO 327, show cause notice was issued by the Bihar State Housing Board calling upon the respondent Ramesh Kumar Singh to explain why not an order of eviction be passed against him for his unauthorised living in a portion of the house allotted by the Board on hire-purchase basis to respondent No. 4 therein. The noticee instead of showing cause straight-away filed writ petition before the High Court for quashing of the show cause notice. The High Court entertained the writ petition and granted the relief prayed for. The Supreme Court reversed the judgment of the High Court and held that writ petition should not have been entertained and further that the first respondent therein was unjustified in invoking the extraordinary jurisdiction of the High Court under Article

226 of the Constitution without first showing cause inasmuch as there was no attack against the vires of the statutory provisions governing the matter, and no question of infringement of any fundamental right guaranteed by the Constitution was alleged or proved nor was the show cause notice ex facie a 'nullity' or 'without jurisdiction' in the traditional sense of that expression, i.e.. that even the commencement or initiation of the proceedings on the face of it and without anything more is totally unauthorised. The Apex Court observed as under :

'In such a case, for entertaining a writ petition under Article 226 of the [Constitution of India](#) against a show cause notice at that stage, it should be shown that the authority has no power or jurisdiction to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternative remedy and show cause against the same before the authority concerned and take up the objection regarding Jurisdiction also there. In the event of adverse decision it will certainly be open to him to assert the same either in appeal or revision as the case may be also, in appropriate cases, by invoking the jurisdiction under Article 226 of the [Constitution of India](#).'

9. In Union of India v. Metal Box Co., India Ltd. and others, (1996) 2 SCC 122, the question was whether a writ petition challenging notice of demand of excise duty involving valuation of excisable goods can be entertained straight-way without first exhausting the alternative remedy. Relying upon its earlier decision in Executive Engineer Bihar State Housing Board, (supra), the Apex Court held as under :

'We find it difficult to sustain the judgment of the learned single Judge and of the Division Bench for more than one reason, but first we must mention that filing of and entertaining the writ petition straight away against a notice of demand issued by the Central Excise Officer (Superintendent of Central Excise) in matter involving valuation was inadvisable. It has been repeatedly deprecated by this Court, the latest decision being in Executive Engineer Bihar State Housing Board v. Ramesh Kumar Singh, which decision refers to and affirms the ratio of the earlier decision of this Court.'

10. The learned counsel for the petitioner, however, placed reliance on B.S. Tyagi and Ramju Pandey (supra) in support of his contention that where notice does not

contain 'general nature of material allegations' the High Court should straight away entertain the petition against the show cause notice instead of relegating the notices to avail of the alternative remedy. The submission is untenable. Court's discretion in the matter of a given case remained unaffected even after the decisions relied on by the counsel.

11. In *Ramji Pandey v. State of U. P.*, 1981 Cr LJ 1083, a three Judge Bench of this Court has expatiated upon that show cause notice under Section 3 (1) of the Act must contain 'general nature of material allegations' forming basis of the requisite opinion of the District Magistrate as to existence of the conditions visualised by Clauses (a), (b) and (c) of sub-section (1) of Section 3. It has further been expounded therein that if the notice fails to contain general nature of material allegations, it would be vitiated and the proceedings taken in pursuance thereto would be rendered null and void. The proposition laid down by the Full Bench in the aforesaid case, have been reiterated by a five Judge Full Bench of this Court in the recent case of *Bheem Sain Tyagi*, (supra), wherein it has been added as a supplement that existence of alternative remedy could not affect the jurisdiction of this Court to entertain the writ petition challenging the validity of the notice at the initial stage itself. The proposition that notice under Section 3 (1) of the Act calling upon the person concerned to show cause why should an order under sub-section (3) of Section 3 be not passed, must contain general nature of material allegations against him in respect of Clauses (a), (b) and (c) of sub-section (1) is no longer in the domain of doubt, nor does there lurk a doubt that if the notice does not contain general nature of material allegations in respect of Clauses (a), (b) and (c) of sub-section (1), and noticee is prejudiced thereby, the final order of externment, etc. that may be passed on the basis of such notice, under sub-section (3) would be vitiated. But the question of prejudice does not arise at this stage for the noticee can ask for and be supplied with the requisite material before submission of his explanation and thus the defect, if any, in the notice would stand cured. In such view of the matter, it would not be a sound exercise of discretion on the part of this Court to intervene at the initial stage of issuance of show cause notices merely because it does not contain 'general nature of material allegations' against the noticee.

12. True, the judicial review of an administrative order or a quasi-judicial order is the basic feature of our Constitution, which cedes the Judiciary with that power and the judiciary, it cannot be gainsaid, is the sentinel on the qui vive to protect the liberty and rights of the citizen apart from getting the other organs of the State exercising their powers within the confines of the Constitution and the Laws, and in appropriate cases, where ends of Justice so require, this Court does invoke its extraordinary power under Article 226 of the Constitution but it is equally well-settled that where there exists an efficacious alternative remedy, the extraordinary power under Article 226 must be exercised sparingly with care and caution, and restraint and circumspection.

13. In *Rashid Ahmad v. Municipal Board Kairana*, AIR 1950 SC 163, the Supreme Court has held that existence of adequate legal remedy would be a factor to be reckoned with in the matter of entertaining petition for issue of prerogative writs. The said decision as followed in *K.S. Rashid and Sons v. Income-tax Investigation Commissioner* : [1954]25ITR167(SC) , wherein reiterating the aforesaid proposition, it has been held that where alternative remedy existed, it would be sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution 'unless there are good grounds therefor'. The purport of the rule as to the bar of alternative remedy has been more succinctly set out by the Apex Court in *State of U. P. v. Mohd. Nooh*, AIR 1958 SC 86, as under:

'This rule requiring exhaustion of statutory remedy before the writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that aggrieved party had other adequate legal remedies.'

14. Another Constitution Bench decision in *Calcutta Discount Co, Ltd. v. Income-tax Officer* : [1961]41ITR191(SC) , has laid down the principles in the following words :

'Though the writ of prohibition or certiorari will not issue against the executive officer, the High Court has power to issue it in a fit case and an order prohibiting the executive authority from acting without jurisdiction. Where such action of an executive authority acting without Jurisdiction subjects or is likely to subject a

person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or direction to terminate such consequences. Writ of certiorari and prohibition can issue against Income-tax Officer acting without Jurisdiction under Section 34, I.T. Act.'

15. In the recent case of Whirlpool Corporation v. Registrar T.N. Mumbai and others : AIR 1999 SC22 , it has been held, inter alia, as under:

'Under Article 226 of the Constitution, the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain the writ petition but the High Court has imposed upon itself certain restriction one of which is, that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction but the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or vires of an Act is Challenged.'

16. In view of the above decision, it is no longer res integra that existence of alternative remedy is not an absolute bar particularly in three contingencies referred to by the Apex Court in Whirlpool Corporation, [supra]. In the present case, however, none of the three contingencies exists. True, a notice under Section 3 (1) of the Act does involve certain degree of personal inconvenience to the noticee but it is sanctioned by law and the writ petition which seeks quashing of the notice is not tantamount to a writ petition for enforcement of any of the fundamental rights. Though requirement of giving general nature of material allegations is in substance a requirement of principle of natural justice but this is not the proper stage to raise the question of violation of principle of natural justice. The grievance as to violation of principle of natural justice may be raised only after a final order is passed on the basis of a notice, which does not contain general nature of material allegations and the requisite material is not supplied even after demand by the noticee of a given case and since the notice has been issued by the competent authority in exercise of statutory power, the vires of which is not

under challenge, the third contingency visualised in Whirlpool Corporation does not arise.

17. In the absence of the police report on the basis of which the impugned notice has been issued, it would not be possible to hold that the impugned notice does not contain general nature of material allegations against the petitioner in relation to the conditions stipulated in Clauses (a), (b) and (c) of sub-section (1) of Section 3. The petitioner will have ample opportunity to raise the issue regarding validity of the notice in his explanation and he may even move an application, before submitting his explanation, praying for copy of the police report and/or general nature of allegations material against him in respect of conditions visualised by Clauses (a), (b) and (c) of sub-section (1) of Section 3 of the Act. In case the petitioner moves any such application, the District Magistrate/ authority concerned shall be obliged to furnish the 'general nature of material allegation' including the police report on the basis of which the impugned notice has been issued. We, therefore, refrain from expressing any opinion on the issue whether the impugned show cause notice contains the general nature of material allegation against the petitioner. In view of the discussion aforesaid, it would not be a sound exercise of discretion on our part to invoke the extraordinary jurisdiction under Article 226 of the [Constitution of India](#) at the threshold of initiation of proceedings under Section 3 of the Act.

18. Before parting, it would be apt to observe that in such matters, the Court should bear in mind the right of the public as a whole to live in peace and tranquility. A reasonable balance must be struck between the individual liberty and the right of the community/society as a whole. Interference at this stage tends to defeat the purpose and object of the enactment, which makes provisions for the control and suppression of Goondas with a view to maintaining public order in the society. In such view of the matter, we are not inclined to interfere with the impugned show cause notice. The petitioner, in the circumstances, must be relegated to avail of the alternative remedy of showing cause.

19. Accordingly the writ petition is dismissed without prejudice to the right of the petitioner to either ask for a copy of the police report relied on by the respondent-

authority before submitting his explanation or raise the issue regarding validity of the notice in his explanation/reply to the proposed action.

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