

Padam Kumar Jain Vs. Rex

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Court : Allahabad

Decided On : Aug-24-1949

Reported in : AIR1950All132

Judge : Harish Chandra, J.

Acts : Uttar Pradesh Maintenance of Public Order (Temporary) Act, 1947 - Sections 5; Uttar Pradesh Maintenance of Public Order (Amendment and Proceedings Validation) Act, 1949 - Sections 8; Uttar Pradesh Maintenance of Public Order (Proceedings Validation) Ordinance, 1949

Appeal No. : Criminal Misc. Case No. 1015 of 1949

Appellant : Padam Kumar Jain

Respondent : Rex

Advocate for Pet/Ap. : Additional Government Advocate

Disposition : Application rejected

Judgement :

ORDER

Harish Chander, J.

1. This is an application of one Padam Kumar Jain under Section 491, Criminal P. C., calling in question the legality of his detention in the District Jail at Agra by virtue of an order of detention passed by the U. P. Government under Section 3, U. P. Maintenance of Public Order (Temporary) Act, 1947, on the ground that the grounds of detention furnished to him under Section 5 of that Act are vague and indefinite and are not sufficient to enable him to make a proper representation to the Government as contemplated by that section.

2. In the case of *Rex v. Durga Das*, 1948 A. L. J. 491: (A. I. R. (36) 1949 ALL. 148), a Full Bench of this Court has held that where the ground and particulars supplied to the detenu under Section 5 of the Act are indefinite or incomplete and do not convey sufficient information to the detenu to enable him to make a representation that the detaining authority was wrong in its belief that his detention was necessary in the interest of the public safety the further detention of such detenu becomes illegal. The learned Additional Government Advocate has, however, drawn my attention to the recently promulgated Act-- the U. P. Maintenance of Public Order (Amendment and Proceedings Validation) Act, 1949 (U. P. Act XI [11] of 1949)--and points out that the validity of such detention can no longer be challenged on the above ground in view of the provisions of Section 8 of that Act.

3. This Act has amended Section 5 of the principal Act and the Proviso to the new section runs as follows:

'Provided that neither the said order nor the detention of the said person thereunder shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency of the communication made as aforesaid.'

It would thus appear that in the case of persons detained subsequent to the passing of this Amendment Act, Courts cannot go into the question whether the grounds upon which an order of detention is based and which are communicated to the detenu in pursuance to the amended Section 5 are vague and indefinite.

4 Sub-section (2) of Section 8 of the amended Act runs as follows :

'Where any question arises as to the validity or legality of any order passed under Section 3 of the principal Act...the same shall be determined as if the provisions of this Act had been in force at all material dates.'

The argument of the learned Additional Government Advocate is that the further effect of this provision is that it is no longer open to the Courts to go into the question whether an order of detention passed by the Provincial Government under Section 3 of the principal Act has or has not been rendered invalid on account of the fact that the grounds upon which the detention was based and which had been communicated to the detenu were vague and indefinite. It is said that if the detention of a detenu is held to be illegal, it has the effect of making the order of detention passed by the Provincial Government under Section 3 invalid and that the determination of such a question amounts to the determination of the question whether an order of detention passed by the Provincial Government under Section 3 is or is not valid. The interpretation of the word 'validity' is not free from difficulty and no case law seems to exist to guide us in the interpretation of that term. Bouvier's Law Dictionary, Third Edition, 1914, under the word 'validity' gives the following explanation:

'Legal sufficiency in contradistinction to mere regularity. An official sale, an order, judgment, or decree may be regular ; the whole practice in reference to its entry may be correct, but it may still be invalid for reasons going behind the regularity of its forms.'

5. It is argued that if the further detention of a detenu is held to be illegal that fact would render the order of detention invalid for reasons which go behind the mere regularity of its form and that therefore the determination of the question whether the further detention of a detenu is or is not legal involves the question whether the order of detention issued by the Provincial Government under Section 3 of the Act is or is not valid. In *Rex v. Durgadas*, (1948 A. L. J. 491 : A. I. R. (36) 1949 ALL. 148) the following observations occur:

'One of the points that has been referred to us is whether non-compliance with the provisions of Section 5 invalidates the detention order passed under Section 3 of the Act and makes it void ab initio, or it only makes further detention illegal. From

Section 5 it will appear that the Act contemplates the arrest of the detenu first and the supply of the reasons to him afterwards. Non-compliance with a subsequent condition may make further detention illegal; but it would not necessarily make the order under Section 3 void ab initio unless it can be assumed that as the provisions of Section 5 were not complied with the detention order under Section 3 was passed without any grounds whatsoever and was, therefore, not a bona fide order.'

It would appear that in the view of their Lordships an order of detention in a case in which the further detention of a detenu was held to be illegal could not be regarded as void ab initio. But the above quotation from the judgment would seem to indicate that such an order of detention becomes void as from the date from which such detention is held to be illegal. There is thus some support in these observations for the view that the determination of the question whether the further detention of a detenu is or is not illegal involves the consideration of the question whether the original order of detention passed by the Provincial Government under Section 3 of the Act can be regarded as valid or not. On behalf of the applicant reference is made to Sections 5 and 6 of the Act in which a distinction has been made between an order of detention or an order of enlargement and the detention itself. But by Section 5, a new section, namely, Section 4-A has been introduced and by Section 6 a new section has been substituted for Section 5 of the principal Act and these words occur in these new sections. Section 8 merely deals with the 'removal of doubts and validation of proceedings' and no such distinction between an order of detention or an order of enlargement and the detention itself was called for. In my view the omission in Sub-section (2) of Section 8 of any reference to the detention itself is of no consequence.

6. Reference has also been made to Clause (b) of Sub-section (1) of Section 8 which runs as follows:

'All orders made, actions or proceedings taken, directions issued or jurisdictions exercised by any authority under or in accordance with the provisions of the principal Act during the period from 1st March 1948 upto the commencement of this Act shall be deemed to be as good and valid in law as if such orders, actions,

proceedings, directions and jurisdictions had been duly made, taken, issued or exercised under the said Act as amended by this Act.'

This is a very general provision and would cover the action taken by the Provincial Government in communicating the grounds of detention to the applicant under Section 5 of the principal Act. According to this provision the action taken by the Provincial Government under Section 5 of the Act will be deemed to be

'as good and valid in law as if such action had been duly taken under the Act as amended by this Act.'

7. The result is that in considering this matter the proviso to the new Section 5 will have to be applied and it will not be open to this Court to hold that the detention of the applicant is 'invalid or unlawful or improper' on the ground of any 'defect, vagueness or insufficiency of the communication' made under Section 6 of the Act.

8. Before I close this judgment I may refer to another argument advanced on behalf of the applicant. It is said that Section 8 of the Amendment Act has been introduced with a specific object. The principal Act came into force on 1st March 1947 and was to remain in force for a period of one year unless extended by a resolution passed by the Legislature. In a recent case the Federal Court has held that a similar provision in a Bihar Act was invalid. In view of this ruling of the Federal Court the Provincial Government promulgated an ordinance -- the U. P. Maintenance of Public Order (Proceedings Validation) Ordinance, 1949--by which the life of the Act was extended up to 31st March 1950. Thereafter the present Amendment Act was passed in which a similar provision has been made and in Section 2 it is laid down that the principal Act shall remain in force up to 31st March 1951. The argument is that the purpose of Section 8 is to validate all proceedings that may have taken place under the principal Act after it had expired on 1st March 1948 and before the U. P. Maintenance of Public Order (Proceedings Validation) Ordinance, 1949 was promulgated. No doubt that is one of the objects of Section 8. But a perusal of the whole of the Amendment Act shows that the purpose of Section 8 is also to validate other orders and proceedings as well. The section itself is very comprehensive and I do not think it is possible to put any limitation upon its scope or interpretation.

9. For the reasons given above, I am satisfied that the further detention of the applicant cannot be held to be illegal on the ground that the grounds of detention as communicated to him under Section 5 of the Act were defective, vague or insufficient.

10. The application is accordingly rejected.

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