

Nar Singh Vs. Additional District Magistrate and anr.

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Court : Allahabad

Decided On : Aug-01-1979

Reported in : 1979CriLJ1426

Judge : K.C. Agrawal and ;K.M. Dayal, JJ.

Appellant : Nar Singh

Respondent : Additional District Magistrate and anr.

Judgement :

K.C. Agrawal, J.

1. This writ petition challenges the validity of the U.P. Control of Goondas Act, 1970 (hereinafter referred to as the Act). The petitioner is a resident of Police Station, Taj Ganj, Agra. He was served with a notice under Section 3 of the Act informing him of the general nature of the material allegations against him in respect of Clauses (a)(b) and (c) of Sub-section (1) of Section 3 of the Act and was called upon to offer his explanation regarding them. In the notice, the various allegations on which the Additional District Magistrate was satisfied that the petitioner was a Goonda had been mentioned. On receipt of the notice, the petitioner moved an application that the evidence of the State should be recorded first and thereafter the petitioner be asked to furnish evidence. The application was rejected on the ground that the application since was mis-conceived, the prayer made in the same could not be granted.

2. The only provision challenged as ultra vires in the present case is Sub-section (2) of Section 3 of the Act. Sub-section (2) of Section 3 reads as under:

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 reasonable opportunity 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. Counsel's contention was that since a valuable right of cross-examination of the witnesses sought to be relied upon by the prosecution, has been denied by Sub-section (2) of Section 3, the procedure for declaring a person as Goonda is unjust, and unreasonable. According to the petitioner since Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law, the procedure contemplated by Article 21 must be right and just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. Counsel contended that since the right of cross-examination as well as the ordinary procedure followed for the proof of the offence against the accused has not been adopted by Section 3 of the Act, Sub-section (2) of the aforesaid section is liable to be declared ultra vires.

4. The validity of Section 3 of the Act had been considered by this Court in *Raja v. State* 1972 All LJ 537 and in *Harsh Narain v. District Magistrate* 1972 All LJ 762. In both of these cases, the two Division Benches found that the Act is valid. In *Harsh Narain's* case, the High Court held that the restrictions imposed on the freedoms guaranteed by Article 19 were reasonable and as such the same could not be struck down on the ground of infringement of the right of movement conferred by Article 19(1)(d) of the Constitution. In arriving at this conclusion the High Court placed reliance on a decision of the Supreme Court reported in *Hari Khemu Gawali v. Deputy Commr. of Police Bombay* : 1956 CriLJ1104 .

5. The submission of the counsel for the petitioner was that as the decisions of this Court given in *Raja v. State of U.P.* and *Harsh Narain v. District Magistrate* are no

longer good law due to the subsequent decision of the Supreme Court reported in Smt. Maneka Gandhi v. Union of India : [1978]2SCR621 and in re-Special Courts Bill : [1979]2SCR476 . The present case may be referred to a larger Bench, for reconsideration of the decisions of the earlier Division Benches.

6. Since we are unable to find any merit in the submission of the learned Counsel for the petitioner, we do not feel the necessity of referring the present case to a larger Bench. In our opinion, the view taken by the two Division Benches of our court are binding on us and are not required to be reconsidered on account of the subsequent decisions of the Supreme Court mentioned above.

7. We now proceed to give our reasons for the view taken by us. Before we do so, a brief reference to the provisions of the U.P. Control of Goondas Act, 1970 is necessary.

8. The Act was enacted for the purpose of controlling and suppressing goondas with a view to maintain the public order. Section 2(b) defines 'Goonda'. Section 3(1) lays down as under:

3. (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 any offence punishable under Chapter XVI, Chapter XVII, or Chapter XXII of the Indian P.C. or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or under the U.P. Excise Act, 1910, or in the abetment of any such offence and

(c) that 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-

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.

9. Under Sub-section (2) of Section 3 the person against whom an order under this section is proposed to be made will have the right to consult and be defended by a counsel of his choice and also have a reasonable opportunity of examination and the witnesses that he may wish to produce. Thereupon if the District Magistrate is satisfied that the conditions specified in Clauses (a), (b) and (c) of Sub-section (1) existing there could make an order in writing directing him to remove himself outside the district or part as the case may be by such route, if any, within such time as may be specified in the order. He can also be directed to desist, from entering the district or the specified part thereof until the expiry of such period not exceeding six months.

10. Section 4 empowers the District Magistrate to grant permission to the externed Goonda to return temporarily. Under Section 5 the initial period of six months can be extended from time to time by a maximum of two years, in the aggregate. Section 6 provides for an appeal to the Commissioner. Section 7 lays down the procedure to be adopted by the District Magistrate or the Commissioner for securing the attendance of any person against whom an order of Section 3 is proposed to be made. Section 8 provides that the District Magistrate or the Commissioner may take into consideration any evidence which he considers to have probative value, and the provisions of the Indian Evidence Act does not apply. Section 9 empowers that District Magistrate and the Commissioner to rescind any orders made by them. Section 10 deals with punishment for contravention orders, passed under Sections 3, 4, 5 and 6. Section 11 provides for the forcible removal of the externed goonda who returns in contravention of the order. Section 15 deals with the rule making power of the State.

11. The basis, as already stated was, that the procedure prescribed for declaring a person Goonda is not fair and reasonable. The submission was that the police was required to follow the same procedure for declaring a person as a Goonda, which is necessary to be observed in prosecuting a person for the offence. It is incorrect

to think that the procedure provided by the Criminal Procedure Code is the only procedure which can be said to be fair and be adopted and observed in every case. The Criminal Procedure Code is not exhaustive with respect to the procedures to be followed in all the matters. The legislature has got the right to prescribe the procedure to be followed different than one prescribed by the Criminal Procedure Code, The test for determining the reasonableness of the procedure should not be the test that it conforms with that of the Criminal Procedure Code, What opportunity may be regarded as reasonable would necessarily depend on the practical necessity of the situation. What may not be reasonable in one case may be reasonable in the other. The reasonableness depends on various factors. It is, however, undeniable that in order to save a particular provision from being struck down on the ground of infringement of Article 21 of the Constitution that the same should be fair, right and just. It should not suffer from vice of arbitrariness and unreasonableness.

12. In the instant case, when a person is declared to be a goonda on the grounds given in Clauses (a) to (c) being established, it is necessary that the District Magistrate must be satisfied with respect to all the three matters stated in Clauses (a) to (c). If, therefore, even one requirement is missing, the order would be invalid. Clause (c) deals with 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 property or person. In such a situation to hold that the opportunity of giving a right to cross-examine is necessary even in such cases would result in nullifying the provision. It may be true that the object of cross-examination is to elicit information concerning facts in issue which is favourable to the person on whose behalf the cross-examination is conducted but the situation being such that the witnesses are not coming forward to depose against such a person, the omission to give a right to cross-examine cannot be said to be unfair or unreasonable. Moreover by an order of declaring a person to be a goonda, the right of movement is certainly curtailed but the curtailment being not unreasonable and meant for the public interest, cannot be held to be ultra vires the provisions of the Constitution. An order of declaring a person as a goonda is made in the larger interest of the public to maintain peace in the locality where the goonda resides.

13. In *A.K. Gopalan v. State of Madras* : 1950 CriLJ1383 the majority judgment held that certain Articles of the Constitution exclusively deal with specific matters. This view, however, was not approved by the Supreme Court in its later decision in *R. C. Cooper v. Union of India* : [1970]3SCR530 . In *Sambhu Nath Sarkar v. State of West Bengal* : [1974]1SCR1 the Supreme Court held that the law of preventive detention has to meet the challenge not only of Articles 21 and 22 but also Article 19(1)(d). This would show that Article 21 cannot be read in isolation and that it has to be read along with other fundamental rights guaranteed by the Constitution. To the same effect is the law laid down by the Supreme Court in *Maneka Gandhi's case* (supra). What was laid down in *Maneka Gandhi's case* has been stated by Y.V. Chandrachud, C.J. in *re-Special Courts Bills case* (supra). The observations of the Hon'ble Court made are as follows:

In *Maneka Gandhi v. Union of India* : [1978]2SCR621 it was observed by one of us, Bhagwati, J. that the law must be now taken to be well-settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty and there is consequently no infringement of the fundamental right conferred by Article 21, such law, in so far as it abridges or takes away any fundamental right under Article 19, would have to meet the challenge of that Article, The view which was accepted by the majority, is that the rights dealt with in different Articles contained in Part III of the Constitution do not represent separate streams of rights but are parts of an integrated constitutional scheme. It is thus beyond the pale of controversy now, that the various articles in Part III of the Constitution cannot be treated as mutually exclusive.

14. In *Maneka Gandhi's case* it was held by the majority that the procedure contemplated by Article 21 must be right and just and fair and not arbitrary fanciful or oppressive, therefore, if the procedure is not fair, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

15. In the instant case, the grievance of the petitioner raised before us only was that the procedure being different from the one required to be followed as against an accused, the former procedure hits Article 21 of the Constitution. We have held

above that a person to be declared as goonda cannot insist on the same procedure being followed as against him, which is required to be observed for prosecuting a person. By declaring a person as a goonda, his movements are restricted. He is not arrested and confined to prison. The curtailment of liberty is reasonable.

16. For what we have said above, we are unable to find that the procedure laid down in Sub-section (2) of Section 3 of the Act is unfair or oppressive. Since in our opinion the reasonableness of procedure cannot be reduced to hard and fast rules, we hold that the procedure for declaring a person as 'goonda' is not such which can be said to be unreasonable.

17. Strong reliance was placed by the learned Counsel for the petitioner on a decision of the Supreme Court in *Nawab Khan v. State of Gujarat* : 1974 CriLJ1054 . In that case the order made under Section 56 of the Bombay Police Act, 1951, was held to be void on the two grounds: (i) that no opportunity to show cause notice had been afforded to the petitioner; and (ii) that the requisite opinion contemplated by the mandatory requirements of Section 56 had not been formed. In this background, the Supreme Court held that the ex-ternment order passed under Section 56, was invalid. This case is not an authority for the proposition that a similar provision of externment had been found to be ultra vires the Constitution. The decision of that case turned on its own facts.

18. The validity of Section 7(2) of the Act had also been challenged before us. In *Harsh Narain v. District Magistrate* (supra), a Division Bench held that since U.P. Control of Goondas Act, 1970 is not a law providing for preventive detention, hence its validity cannot be challenged on the ground of being offensive to Article 22(4) of the Constitution.

19. In *Harpal Singh v. State* : AIR1950 All562 the Division Bench of this Court held: Section 123-A of the Criminal Procedure Code to be ultra vires on the ground that they were inconsistent with the provisions of Clauses (4) & (5) of Article 22 of the Constitution. We are not concerned with the infringement of Article 22 of the Constitution inasmuch as the Act with which we are dealing with does not provide for preventive detention.

20. The last argument of the learned Counsel for the petitioner challenging the validity of Rule 23 is to be stated for being rejected. Rule 23 provides for the circumstances which may be taken into account to have probative value. This was enacted to carry out the purpose of Section 8 of the Act.

21. In the result, the writ petition fails and is dismissed. No order as to costs.

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