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Court : Allahabad

Decided On : May-21-1948

Reported in : AIR1948All440

Appellant : Kameshwar and ors.

Respondent : Rex

Judgement :
ORDER

Wanchoo, J.

1. This is an application by Kameshwar, R.K. Chaube, Babu Lal Srivastava and Radhey Chopra under Section 491, Criminal P.C., against the orders of detention passed against them under Section 3(1)(a) of U.P. Act, IV of 1947 by the District Magistrate of Allahabad. The orders under Section 3 in each of these cases were passed on 23rd March 1948, and the reasons for detention were communicated to the applicants on 1st April 1948. I have gone through the orders under Section 3 and the notices under Section 3 and they, in my opinion, sufficiently comply with the provisions of U.P. Act, IV of 1947. There is, therefore, no reason to hold that the detention is illegal on the ground that there has not been sufficient compliance with the provisions of U.P. Act, IV of 1947.

2. The main contention on behalf of the applicants in this case is that U.P. Act, IV of 1947 is ultra vires of the Provincial Legislature inasmuch as it provides for

arbitrary detention and not for preventive detention and that the t Provincial Legislature has power to legislate only with respect to preventive detention. This point was raised before this Court in another case in Cri. Misc. No. 630 of Harihranand Saraswati v. Supdt. Centraj Jail, Banaris Reportedin : AIR1948 All435 and I decided then that the Act was intra vires of the Provincial Legislature as it provided for preventive detention and not for arbitrary detention. It is, therefore, not necessary to repeat the reasons which led me to this conclusion in that case. Learned Counsel has, however, urged some fresh grounds in support of his contention that this is an Act providing for arbitrary detention and as such ultra vires of the powers of the Provincial Legislature. It has been argued that the Act violates a cardinal principle of natural justice namely that the accuser should not also be the judge. This contention is based on that provision of the Act which says that after reasons for detention have been communicated to a detenu, he has a right to make a representation to the authority ordering his detention. It is said that this means that the person ordering the detention is also the person who has been made the judge in this case for considering whether the representation should be allowed or not.

3. It seems to me, however, that this argument completely misunderstands the purpose behind preventive detention. There is no question of there being any accuser and any Judge, where a person has been detained for certain reasons as provided in the Act. Under the provisions of the Act an order under Section 3 is passed ex parte by the authority concerned on such information as might have been placed before it, after satisfying itself that there is necessity for the order. Then comes Section 5 of the Act under which the detenu can make a representation. It is then for the authority concerned which had passed that ex parte order to consider that representation and decide, whether the ex parte order which had been passed on the materials supplied to it was rightly passed or not and whether there is any necessity for either revoking or modifying that order. I fail to see why this procedure of an ex parte order followed by a review by the same authority on representation made to it should be considered against natural justice and why the authority passing the order should be called an accuser at one stage and a judge at the other. There are provisions in the Criminal Procedure Code also which provide first for an ex parte order and later for considering whether the ex

parte order should be maintained or should be vacated after hearing the party or parties concerned. In this connection I may refer to orders under Section 144, Criminal P.C., where also the authority concerned can pass an ex parte order in the first instance and then on representation made to it review the order.

4. It has been urged that in similar circumstances the provisions of Regn. 18B, Defence (General) Regulations, 1939 provide for the consideration of the representation by an advisory committee. It is true that there is this provision for consideration of the representation by an advisory committee in the law in England. But it is clear that the Secretary of State who passes the order is not bound to accept the opinion of the advisory committee. Therefore, in England also, the Secretary of State who passes the order is the final authority for passing orders on the representations.. The absence of an advisory committee like the one provided in the English Regulations will, however, not make U.P. Act, IV of 1947 a piece of legislation for arbitrary detention, when in England also the final authority is the Secretary of State who passes the order. I do not think, therefore, the feet that the representation is considered by the same authority which passed the order, can in cases of this kind be called a negation of the principle of natural justice that the accuser should not also be the judge. The Act, therefore, cannot be held to be ultra vires of the powers of the Provincial Legislature as providing for arbitrary detention on this account.

5. The next point which has been urged in this connection is that the words of Section 3 are much too general and therefore the Act is a piece of legislation for arbitrary detention. Here also reference was made to the provision of Regulation 18-E mentioned above which runs as follows:

If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.

There is no doubt that Section 3 of U.P. Act iv of 1947 has not gone into the same details as the Regulation quoted above. I The Legislature has contented itself by

saying in Section 3, that the Provincial Government may, if it is satisfied that it is necessary to detain a person in order to maintain public order or in the interest of public safety or communal harmony, pass an order for detention. The section, however, does not define how the Provincial Government should be thus satisfied while there is such a definition in 'Regulation 18B. It is, however, clear that detention can only be ordered by the Provincial Government, if it is satsified that the person concerned must be detained, for one of the three reasons mentioned in this section. This certainly circumscribes the powers of Provincial Government within these limits and it is not very different from the provision of Regulation 18B which provides for the detention of persons who have been recently concerned in acts prejudicial to the public safety or defence of the realm. The only difference is that the word 'recently' appears in Regulation 18B, while this word is not to be found in Section 3. But it is obvious that no one would order the detention of a person for something that happened years ago and, though the word 'recently' has not been used in the section, it must be only with reference to recent acts that the Provincial Government would decide whether it is necessary to detain a person for the reasons given in Section 3. I am, therefore, of opinion that it cannot be said the words of Section 3 are so general that the power that is conferred by it is one for arbitrary detention and not for preventive datention. I, therefore, hold that U.P. Act IV of 1947 is intra vires of the powers of the Provincial Legislature as it obviously provides for preventive detention.

6. Another point that has been urged is that the grounds that were supplied to the applicants made out an offence under the law. As such the two wants should have been prosecuted under the sic law and it was improper to detain them for something which amounted to an offence. I cannot accept this argument. It may be that the authorities might have prosecuted the applicants for inciting labour to go on illegal strike. But that would not take away the power of detention under U.P. Act iv of 1947. After all, this Act is meant for action in an emergency' which requires that the person concerned should be immediately put under restraint and stopped from continuing the course of conduct which led to his detention. That may not be possible to achieve if there can only be prosecution for any offence that might have been committed incidentally. I, therefore, see no reason to hold that the applicant's detention is improper because they could have been

prosecuted for some offence under the labour laws.

7. The last point relates to one of the applicants viz., Kameshwar. His contention is that he is the son of Someshwar Prasad while in the notice that was sent to him under Section 5 he was described as the son of Bameshwar Prasad. In the order that was passed on 23rd March, this man was described as Kameshwar Agarwal of Allenganj. He was arrested before the notice under Section 5 was given on 1-4 1948. The contention on behalf of the Crown is that by mistake his father's name was mentioned as Rameshwar Prasad instead of Someshwar Prasad. It seems to me that this contention of the Crown is correct and that the detention order under Section 3 was meant for Kameshwar applicant and it was only by mistake that the name of his father was mentioned as Sameshwar Prasad instead of Someshwar Prasad. It was said in the affidavit that there was another Kameshwar Prasad in Allahabad; but the counter affidavit on behalf of the Crown shows that orders of detention were passed not only against the applicant but also against the other Kameshwar Prasad also. So there is no question of confusion in the mind of the District Magistrate relating to the two Kameshwar Prasads. It is remarkable that the residence of the applicant is given correctly in the notice under Section 5. It is not suggested that there is any other person called Kameshwar Prasad son of Rameshwar Prasad, resident of Allenganj. I am, therefore, satisfied that the order in question was meant for Kameshwar applicant and not for anybody else. The application is hereby dismissed.

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