State Vs. Gangadhar

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Court : Madhya Pradesh

Decided On : Dec-31-1956

Reported in : AIR1957MP54

Judge : A.H. Khan and ;Newaskar, JJ.

Acts : Madhya Bharat Maintenance of Public Order Act, 1949 - Sections 7, 7(1) and 11; Code of Criminal Procedure (CrPC) , 1898 - Sections 144; Constitution of India - Article 19 and 19(1)

Appeal No. : Criminal Appeal No. 7 of 1953

Appellant : State

Respondent : Gangadhar

Advocate for Def. : A.B. Mishra, Adv.

Advocate for Pet/Ap. : Shivdayal, Deputy Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Nevaskar, J.

1. Accused Gangadhar Sakharam Dandawate and 20 others prosecuted under Section 7 (2) of the Madhya Bharat Maintenance of Public Order Act (7 of 1949),

by Police Indraganj, Lashkar, for contravention of the order dated 20-10-1052 assued by T. S. Powar, District Magistrate, District Gird Gwalior, under Section 7 (1) of the said Act as also under Section 143 of the Indian Penal Code before the Additional District Magistrate Lashkar who found them hot guilty and acquitted them.

2. This appeal is preferred against the said order of acquittal.

3. Facts material for the present appeal are as follows : On 30th April 1949 the Government of Mahya Bharat purporting to exercise its powers under Section 11 of the Madhya Bharat Maintenance of Public Order Act (7 of 1949) delegated all its powers, exercisable by it, under the Act barring the powers those imposing collective fines under Section 6 and under Section 10, to the respective Subas (Collectors) of the District.

4. In pursuance of the powers thus conferred Mr. T. S. Powar who was then the Suba of District Gird Gwalior issued a Notification Ex. P/1 on 20-10-1952 under Section 7 (1) of the Act prohibiting inter alia taking out of any procession in any area within Phulbag-com-pound as described in the order without his written permission to that effect. The order was said to be operative from 8 A. M. of 21-10-1952 to 8 P. M. of 21-11-1952. The order bore the signature of Mr. T. S. Powar and his official designation was mentioned to be District Magistrate Gird Gwalior.

5. While this order was said to be in force on 22-10-1952 at 3 P. M., a profession was take out with slogans of political character through the prohibited area. The processionists were more than five in number and the accused Gangadhar Dandawate and 20 others who are being prosecuted were among them. The avowed object of the processionists was to defy the ban imposed by the said authority. They were therefore prosucuted as aforesaid both under Section 7 (2) of the Madhya Bharat Maintenance of Public Order Act and under Section 143 I.P.C.

6. The accused challenged the validity of Section 11 of the Act and the due exercise of power delegated to the Suba under the Act including due promulgation of the order under Section 7 (1).

7. The learned Additional District Magistrate on recording evidence found that the order in question was duly notified with the aid of loud-speakers as also by its publication in the local news papers and that the accused had full knowledge of the same and that they were actuated by a motive to defy the ban taking advantage of the grave situation created in the city due to shortage of food materials. He however held that the impugned order was issued by Mr. T. S. Powar not as Suba but as District Magistrate, District Gird Gwalior and as such was defective at its inception. It was further found that the order in question was meant to apply not to any particular individual association of individuals, institution or organisation but to general public. The order thus issued as against general public was invalid being outside the purview of Section 7 (1) of the said Act. He therefore purely on the latter two grounds held the impugned order to be invalid. Its contravention was on these grounds, according to him, not an offence. He therefore acquitted the accused,

8. Before the learned Magistrate one more question was raised on behalf of the accused. This was that Section 11 of the Madhya Bharat Maintenance of Public Order Act (7 of 1949), became ultra vires after 26-1-1950 when the Constitution came into force by reason of Article 13 of the Constitution. Reliance in this connection was placed upon the decision of Calcutta High Court reported in Khagendro Nath De v. District Magistrate Dinajpur, AIR 1951 Cal 3 (A) and State v. Motilal, 1953 Madh-B LJ 607: (AIR 1952 Madh-B 114) (B). It was therefore contended that the said Act and particularly Section 7 of the said Act was rendered ultra vires by reason of Article 13 of the Constitution as such! void.

9. The learned Additional District Magistrate considered it unnecessary to refer this question to the High Court under Section 432 of the Criminal Procedure Code as according to him it was not necessary to do so for the disposal of the case. According to him his findings that the order was not issued by the Suba and that it was addressed to the general Public visiting the specified area in Phulbag-compound were in themselves sufficient to entitle the accused to acquittal.

10. The present appeal is directed against the said order of acquittal.

11. The Deputy Government Advocate Mr. Shiv Dayal contended that the order clearly mentions in its text that the authority issuing the order was doing so in pursuance of his powers under Section 7. (1) which as Suba he was entitled to do by reason of the power delegated to the Suba of the District by the Government as notified in Government Gazette dated 30-4-1949. The mere erroneous mention of the official designation cannot render the order invalid when in fact the same person was factully invested with powers to issue the order. It was, according to the learned Advocate, merely an erroneous description of the authority and such an error cannot have the effect of rendering the exercise of powers by it invalid. He relies in this connection upon the decisions of the Supreme Court in Dattatraya v. State of Bombay, AIR 1952 SC 181 (C) and P. Joseph John v. State of Travancore-Cochin, (S) AIR 1935 SC 160 (D).

12. As regards the second point decided in favour of the accused the learned counsel contended that there is basically a difference between powers under Section 144 Criminal Procedure Code and those which are exercisable under Section 7 (1) of the Act in question. The very scheme of the section and the purpose behind it make it clear that an order under it can well be intended for general public visiting any particular locality which is either the seat of trouble or is intended to be protected. The order issued under these circumstances without naming any individual cannot be said to be bad.

13. Both these contentions have considerable weight No doubt the order dated 20-10-1952, Ex. P. 1 could have been better expressed, had the officer, who was both the District Magistrate and the Suba would have stated underneath his signature mentioned the correct designation viz. Suba. But as explained by the Supreme Court in AIR 1952 SC 181 (C), the essential thing in the matter of exercise of executive function by a public authority is the factual existence of power in him to act and not the official designation in which he expresses himself to be acting. Even where the manner of such expression be proved by a special Article of the Constitution the provision is held directory and not mandatory and an order pertaining to it does not render the act of the authority concerned invalid. In Dattatray's case (C) the person who signed the confirmation order of the detenu under the Preventive Detention Act, 1950 was Assistant Secretary to the

Government of Bombay and expressed the order as for the Secretary to the Government of Bombay when he ought to have expressed the order in the name of the Governor. It was held that he having power to issue order in question on behalf of the Government an erroneous mention, by him as regards the correct designation cannot render it invalid.

There the Assistant Secretary signed in pursuance of power conferred upon him by the Rules framed by the Government of Bombay. He however failed to mention the correct expression. Similarly Mr. T. S. Powar who as Suba possessed power delegated to him under Section 7 (1) of the Act exercised that power but failed to express it correctly and instead of signing as Suba signed it as District Magistrate. It is no doubt true that the two positions have a reference to different statutes but some times such mistakes are possible and public acts if rendered invalid for such a mistake, it would work serious inconvenience and would not promote the main object of the Act in question.

14. The contention of Mr. Anand Bibari Mishra in this connection is that Mr. T. S. Powar could not be held to have applied his mind to the appropriate notification which conferred powers upon him and that in view of the manner in which he gave the people to understand he should be treated to have acted as District Magistrate. But I am unable to appreciate this contention in view of the decisions of the Supreme Court referred to above. The statute conferred power upon the Government to exercise powers under Section 7 (1). It further authorised it to delegate the power to any subordinate authority. The Government delegated the power to the Subas (Collectors). The Gird Gwalior Suba who is also the District Magistrate, exercised that power and issued the order in question but expressed it in his other official designation. The provision in the Act is intended for the benefit of general public who have no control over the Subas and in case the order is held invalid it would work general inconvenience. Had Mr. T. S. Power no powers of a Suba the matters would have been different. In that case his order would have been invalid owing to factual absence of power to act.

15. As regards the second point the provisions of Section 7 (1) of the Madhya Bharat Maintenance of Public Order Act are as follows:--

'The Government may, for the purpose of securing public safety, public order or supplies and services essential to the life of the community, by general or special order prohibit,restrict or impose conditions upon the holding of processions, meetings or assemblies by any person, class of persons or organisations.'

16. It is clear from the wordings of this Section that it is essentially different from Section 144 of the Criminal Procedure Code in its language and scope. There is moreover an essentail difference in the two statutes and ihe meaning and scope of one cannot be interpreted on the basis of the other provision.

17. But there is the third point left undetermined by the learned Magistrate and which is urged by Mr. Anand Bihari for the accused. His contention is that the Suba purported to act under Section 7 (1) in pursuance of the power delegated to him by ihe Government in exercise of the powers conferred upon it under Section 11 of the Act which is very widely worded. If the provision thus delegating the powers is unreasonably wide the effect will be that it would clothe the Government to restrict the fundamental rights of a citizen under Article 19 unreasonably. The Government can enable any of its subordinates including even a peon to act under the Act barring a few exceptions. Section 7 (1) necessarily has a bearing on the fundamental right to assemble peacefully and to move freely. Although in the interest of general public for maintaining order Government should possess power so also other subordinate responsible authorities including District Magistrate, yet in view of the very wide amplitude in which Section 11 is couched it is open to serious mischief. It is contended that it is immaterial that in a particular case the delegation is to a proper authority or an inappropriate authority has acted responsibly and reasonably but that would not detract from the provision its defective nature. The provision in the form in which it existed in Section 11 at the material lime created unreasonable restrictions upon the fundamental rights guaranteed under Article 19(b) and (d) and was therefore void. It is urged that in the later Act viz. M. B. Public Security Act (19 of 1953), directed more or less to the same object, the delegation is not permitted to an officer below the rank of a District Magistrate, vide Section 22 of the Apt. The learned counsel relied upon the two decisions referred to in the order of the Court below viz. AIR 1951 Cal 3 (A) and 1953 Madh BLJ 607: AIR 1952 Madh. B. 114 (B).

18. The learned Deputy Government Advocate Mr. Shiv Dayal tried to meet this argument by quoting the following observations of their Lordships of the Supreme Court in State of Madras v. V. G. Row, AIR 1952 SC 196 (E).

'It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can bo laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale ofvalues of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.'

19. In my opinion the contention raised by Mr. Anand Bihari ought to be accepted.

20. While dealing with a similar provision in corresponding Bengal Act, His Lordship Chief Justice observed:--

'It was then contended that two sections of the Act are clearly ultra vires in that they entitle the State Government to make orders in a manner wholly unreasonable. As I have pointed out earlier, the Supreme Court have held in Dr. N. B. Khare v. State of Delhi, 86 Cal L.J. 83: AIR 1950 SC 211 (F), that not only must a court have regard to the nature of the restrictions imposed, but they must also have regard to the procedure by which these restrictions are imposed. I may again quote observation of Kania C.J. in Khare's case, 86 Cal L.J. 83 at P. 86, (AIR 1950 S.C. 211) at P 214 (F).

'While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law'. 'What is contended is that Sections 35 and 38 afford a procedure for making those orders which is wholly unreasonable'.

Section 38 is in these terms:--

'The State Government may, by notified order, direct that any power or duty which is conferred or imposed by the provision of this Act upon the State Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also by any officer or authority subordinate to the State Government.'

'One of the powers conferred by the Act is the power of making an externment order & clearly by Section 38 of the Security Act, Government can delegate that power to any officer or authority subordinate to the State Government. Officers or authorities subordinate to the State Government may be officers or authorities of a comparatively lowly kind. The order before us was made by a District Magistrate who of course is the senior executive officer in a district. He is clearly an officer of Government, but so would be a Sub-Deputy Collector and this section clearly entities Government to authorise a Sub-Deputy Collector to make an order of externment or indeed to make any of the other order which the Government are empowered to make under this Act

A Commissioner of Police in the City of Calcutta or a Superintendent of Police in the Moffussil is I think clearly an officer or authority subordinate to the State Government and so is a Sub-Inspector. It appears to me that Section 38 is framed wide enough to allow the Government to authorise a Sub-Inspector to make these orders. A Havildar is a lowly and humble officer of Government. He certainly is a servant of Government, and I do not think that the term 'officer' has any precise meaning. Servants of Government are frequently classifiedas gazetted or non-gazetted officers or ministerialor non-ministerial officers. All are however, officers, no matter what the qualifying objective may be.

'In any event it seems to me that Section 38 is framed in such a manner as would permit Government to delegate their powers to officers who, I think, would be wholly unfitted to be entrusted with the power of making such orders. Mr. Chandra Shekhar Sen on behalf of the State recognised this but he has referred to another observation of Kania C. J. in Dr. Khare's case, 86 Cal LJ 83: AIR 1950 SC 211 (F). At p. 88 (of Cal LJ) : (at p. 214 of AIR) the learned Chief Justice observed:--

'Moreover the whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and may abuse the provisions of the section. In my opinion, it is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of the power given by a law sometimes occurs ; but the validity of the law cannot be contested because of such an apprehension.'' 'What Mr. Sen has contended is that we must not assume that Government would delegate their powers to some humble officer or authority who or which could not be regarded as fitted to exercise such powers. However this Court is not presuming that the Government would abuse its powers by appointing some one not fitted to make the order. If the Government by a notification had delegated its powers to the humblest class of officers subordinate to the Government it would not be abusing the authority. It would bo exercising a right which the Act actually gave it. It would not be doing something to circumvent the Act. On the contrary, it would be doing something which it was entitled to do under the Act.

'In the Preventive Detention Act, 1950 the Central Legislature recognised the necessity of placing restrictions on the right of Government to delegate its powers. By that enactment, delegation of the power to make an order of detention can be validly made out only to senior and responsible officers namely a District Magistrate, a Sub-Divisional Officer and a Commissioner of Police in what were known as the Presidency Towns. There is no such restriction on the powers to delegate in Section 38 of the Act now under consideration. The power under that Section is only limited to this extent that the power (person) authorised to make orders must be an officer of Government whatever his rank, status, knowledge or experience may be,

'It appears to me that Section 4 which entitles Government to delegate its powers to any officer subordinate to it irrespective of whether that officer is fit to make such orders is to my mind a procedure which is wholly unreasonable and that being so, this Court must hold that Section 38 is ultra vires as being beyond the powers given to the State by Clause (5) of Article 19 of the Constitution.'

21. The above quoted observations contain complete discussion of the pros and cons of the question under consideration.

22. The observations of the Supreme Court in AIR 1952 SC 196 at p. 200 (E) quoted above relied upon by Mr. Shiv Dayal have no hearing upon the present controversy. They are only directed towards explaining the scope of judicial review of a piece of legislation clearly explainingthe limitations to which such a review is and should be subject while dealing, with questionof reasonableness of restrictions imposed by the said legislation upon the fundamental rights guaranteed by the Constitution.

23. In my opinion the opinion expressed by Harries C. J. in the above case and that by Kaul C. J. in 1953 Madh B LJ 607 : AIR 1952 Madh B 114 (B) fully apply in the present case, and Section 11 of the Madhya Bharat Maintenance of Public Order Act, (7 of 1949) as it stood at the material time was clearly contrary to the fundamental rights guaranteed under Article 19(b) and (d) of the Constitution by imposing unreasonable restrictions upon those rights by reason of the wide amplitude of possible delegation by Government of its powers under Section 7 (1) of the Madhya Bharat Maintenance of Public Order Act, (7 of 1949). The contravention of the order in pursuance of such delegation cannot therefore be illegal.

24. The result is that the order of acquittal in this case does not deserve to be interferedwith though on a ground different from those on which the order of the lower Court was based.

25. The appeal is therefore dismissed.

A.H. Khan, J.

26. I agree.