Sadhu Singh vs Delhi Administration on 1 June, 1965

Equivalent citations: 1966 AIR 91, 1966 SCR (1) 243, AIR 1966 SUPREME COURT 91, 1966 SCD 318, 1966 MADLJ(CRI) 153, 1966 (1) SCJ 215, 1966 (1) SCR 243

Author: J.C. Shah

Bench: J.C. Shah

PETITIONER:
SADHU SINGH

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT:
01/06/1965

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.

CITATION:
1966 AIR 91 1966 SCR (1) 243
CITATOR INFO :
R 1967 SC 908 (9)
O 1967 SC1507 (8)
RF 1968 SC 327 (1,8)
F 1974 SC2249 (6)

ACT:
Defence of India Rules, 1962, Rules 30(1), 30-A(6)(b), 30-A(8)-Review of order of detention within six months-Order of review whether quasi-judicial-opportunity to detenu to make representation whether necessary.

HEADNOTE:
The petitioner was detained under an order of detention passed by the DIstrict Magistrate of Delhi under r. 30(1) of the Defence of India Rules, 1962 on 5th September, 1964. The order was confirmed by the Administrator under r. 30-A6(b) on the same date,. Within six months i.e. on February 24, 1965, the Administrator reviewed the order under r. 30-

A(8) and confirmed it. The petitioner thereafter filed a petition under Art 32 of the Constitution praying for a writ of certiorari quashing the order under r. 30-A(8). In support of the petition it was urged that (1) Even if the proceedings under r. 30(1) and r. 30A6(b) may be purely administrative, a proceeding for review under r. 30A(8) is quasi-judicial in character. (2) An order of review involves judicial consideration of the facts on which the original detention order was based in the light of subsequent developments including change of views on the part of the detenu, and this cannot be effectively made unless the detenu is afforded an opportunity to make a representation. (3) Every order made by a public authority which affects the rights of an individual must of necessity be preceded by a quasi-judicial determination of the question on the determination of which the order may be made, and a determination made contrary to the rule of natural justice is liable to be struck down by order of a competent court. (4) The use of the word 'decide' in cl. (8) of Rule 30-A implies the existence of a lis between the State and the detenu relating to the right of the State to continue to detain him after the period of six months contemplated by the statute. (5) The Administrator had reviewed his own order under s. 30-A6(b) and not the order under r. 30(1) and thus there was no compliance with r. 30-A(8).

HELD : (i) It was not open to this Court to review the order under r. 30A(8). Making of an order of detention proceeds upon the subjective satisfaction of the prescribed authority in the light of the circumstances placed before him or on his coming to know that it is necessary to detain the person concerned with a view to preventing such person from acting in any manner prejudicial to the defence of India or civil defence, the maintenance of public order etc. If that order is purely executive and not open to review by the Courts, a review of the very circumstances in which the order was made in the light of the circumstances since the date of that order cannot but be regarded as an executive order. [248 F-H]

(ii)There is no provision in the statute that the reviewing authority must before making the order under r. 30A(8) give an opportunity to the detenu to make a representation and no such safeguard is implicit in the scheme of the statute. [249 C]

A writ of certiorari lies whenever a body of persons having legal authority to determine questions affecting the rights of subjects and having

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the duty to act judicially act in excess of their legal authority; it does not lie to remove or adjudicate upon the order which is of an administrative or ministerial nature. [249 D]

Province of Bombay v. Kusaldas S. Advani and Ors. [1950] S.C.R. 621, relied on.

(iii)There is no principle or authority in support of the view that whenever a public authority is invested with power to make an order which prejudicially affects the rights of an individual whatever may be the nature of the power exercised, whatever may be the procedure prescribed and whatever may be the nature of the authority conferred, the proceedings of the public authority must be regulated by the analogy of rules governing judicial determination of disputed questions. [253 C-D]

Ridge v. Baldwin and Ors. L.R. [1964] A.C. 40, explained.

Rex v. Electricity Commissioner, Ex parte London Electricity Joint Committee Company, [1924] 1 K.B. 171, Rex v. Legislative Committee of the Church Assembly, Ex Parte Haynes-Smith, [1928] 1 K.B. 411 and Nakkuda Ali v. Jayaratne [1951] A.C. 66, referred to.

(iv)The word 'decide' used in r. 30-A(8) does not make the order under that rule judicial. [253 E]

Observations of Fazl Ali J. as to the import of the word 'decision' in Advanis case relied on.

(v)The second paragraph of the order of the administrator made it clear that the detention order of the petitioner would continue and that detention order was clearly the order made by the District Magistrate and confirmed by the Administrator. There was no substance in the contention that the Administrator bid reviewed the order confirming the order of detention and not the order of detention. It is difficult to divorce the order of detention from the order confirming it, for without confirmation the order of detention would have no legal sustenance. [254 D-E]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 43 of 1965. Writ Petition Under Art. 32 of the Constitution of India for enforcement of fundamental fights.

R. K. Garg and S. C. Agarwala, for the petitioner. R. H. Dhebar, for the respondent.

The Judgment of the Court was delivered by Shah, J. In exercise of the powers conferred by Rule 30(1) of the Defence of India Rules, 1962, the District Magistrate, Delhi ordered that the petitioner be detained in the Central Jail, New Delhi. On September 11, 1964 the District Magistrate informed the petitioner that the Administrator, Union Territory of Delhi, -hereinafter called 'the Administrator-had reviewed the detention order, dated September 5, 1964, and had confirmed the same. On April 12, 1965 the petitioner moved this Court for an "order setting aside his detention" and for an order for his release. He submitted, inter alia, that the District Magistrate had made the order for a collateral purpose; that there was nothing on the record to show that the District Magistrate reported forthwith the detention of the petitioner to the Administrator, or that the Administrator had reviewed the detention of the petitioner as required by law; and that in default of a "proper review" of the detention order by the Administrator under Rule 30-A (8) of the Defence of

India Rules, 1962, detention of the petitioner after six months from the date of the original order was unauthorised. The District Magistrate, Delhi swore an affidavit that he had carefully considered the materials placed before him and on being satisfied that the petitioner "was indulging in anti-social activities", and that the activities of the petitioner were prejudicial to the maintenance of public order, and that it was necessary to detain the petitioner, he made an order that the petitioner be detained; that the fact of detention was forthwith reported to the Administra- tor; that the Administrator had confirmed the order of detention of September 5, 1964, and that the Administrator had also within six months from the date of detention reviewed that order and had decided on February 24, 1965, to continue the detention of the petitioner. By order, dated April 28, 1965, this petition was directed to be heard during the vacation and accordingly it was placed before me for hearing on May 18, 1965. On that day, the petitioner filed an argumentative affidavit in rejoinder without setting out any facts, controverting the statements made by the District Magistrate.

In support of the petition, counsel urged that the detention of the petitioner was without authority because the Administrator had confirmed the order under Rule 30-A(6) (b) of the Defence of India Rules without taking into account all the circumstances which had a bearing upon the order of detention passed by the District Magistrate, and the Administrator reviewed the order of detention without affording an opportunity to the petitioner to satisfy him that the grounds which may have existed for directing the petitioner's detention did not exist on the date when the order was reviewed.

A resume of the relevant provisions of the Defence of India Act and the Rules may briefly be made. The Defence of India Act, 1962 was enacted by the Parliament with a view to arm the Central Government with extraordinary powers in the situation which arose on account of the Chinese invasion of the borders of India. By S. 3 of the Act power was conferred upon the Central Government to make rules for securing the defence of India, civil defence, public safety, maintenance of public order and related matters. Rule 30 authorised the Central Government or the State Government, if it was satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order etc. it was necessary so to do, to make an order, amongst others, directing that he be detained. By Rule 30-A machinery was set up for confirmation and review of detention orders. Clause (2) of Rule 30-A provided that every detention order shall be reviewed in accordance with the provisions contained in the Rule. Clause (5) provided that a detention order made by an officer empowered by the Administrator shall forthwith be reported to the Administrator. By cl. (6) it was provided that on receipt of a report under sub-rule (5) the Administrator shall after taking into account all the circumstances of the case, either confirm or cancel the order. Clause (8) provided that every detention order made by an officer empowered by the Administrator and confirmed by him under cl. (b) of subrule (6) shall be reviewed at intervals of not more than six months by the Administrator who shall decide upon such review whether the order should be continued or cancelled.

The validity of the order of detention was challenged only on the ground that there had been no confirmation of the order by the Administrator in the manner provided by Rule 30-A (6) (b). In the

petition it was alleged that there was in fact no confirmation by the Administrator. The District Magistrate in his affidavit stated that the Administrator had confirmed the order of detention on September 5, 1964, and that all the procedural requirements relating to the making of the order were duly complied with. By his affidavit in rejoinder the petitioner merely argued that as the order was confirmed only on the basis of the report of the fact of detention, it could not be said that the order was confirmed after taking into account all the circumstances of the case under Rule 30-A(6). At the hearing counsel for the petitioner asked for leave to amend the petition by setting up in support of the Petition the ground that the Administrator had not taken into, account all the circumstances of the case. In order to avoid any delay in the disposal of the petition, counsel for the Delhi Administration, showed to me the order of confirmation made by the Administrator and the original order was banded up. The order prima facie suffered from no defect. Counsel for the petitioner did not urge any further argument in regard to the validity of the order of confirmation after the order was handed up by counsel for the Delhi Administration.

Relying upon the use of the expression "the Administrator who shall decide upon such review whether the order should be continued or cancelled", it was urged that even if a proceeding directing detention of a person in exercise of powers under Rule 30(1) and a proceeding for confirmation of the order may be purely administrative, a proceeding for review of the order under Rule 30-A (8) is quasi-judicial in character and the Administrator must afford to the detenu an opportunity to make his representation on the action proposed to be taken in regard to him on review. Counsel submitted that an order of review of detention leading to continuation of detention involves a judicial approach by the authorities to all the facts on the basis of which the original order of detention was made and a review of those facts in the light of subsequent developments including the change of views, if any, of the detenu since he was detained, and this, it was contended, cannot be effectively made unless the detenu is afforded an opportunity to make his representation and to convince the Administrator that the facts or circumstances which may have justified the making of the original order of detention did not continue to exist or in the context of changed circumstances did not justify the continuation of detention. Alternatively, it was contended that the use of the word "decide" in cl. (8) of Rule 30-A implies the existence of a lis between the State on the one hand and the detenu on the other relating to the right of the State to continue to detain him after the expiry of the Period of six months contemplated by the statute.

In my view there is no substance in either of the contentions. Rule 30(1) has been enacted as an emergency measure. It authorises the appropriate Government or the Administrator, or authorities empowered by the Government or the Administrator, with a view to prevent a person from acting to the detriment of public order and safety, to detain him without trial. However shocking it may appear that a person may be detained without a trial or without being even informed of the specific grounds on which such action is deemed necessary, in the larger interests of the security of the State such as maintenance of peaceful con- ditions in the country, public order, conduct of military operations etc. the Parliament has thought it necessary when a grave emergency arose to invest the appropriate Government and the Administrator with that power. Validity of the statute which invests the executive with these drastic powers has been upheld by this Court, and that is no longer a live issue. It is conceded, and in my judgment rightly, that the satisfaction of the authority which justified the use of the power under Rule 30, and confirmation of the order of detention are not

subject to judicial review, for the order of detention without trial is preeminently an executive act. The subjective satisfaction of the detaining authority is a condition of the making of the order, and if that condition is shown to exist, the courts have no power to enquire into the sufficiency of materials on which the order is made or the propriety or expediency of making the order. It is the satisfaction of the prescribed authority which is determinative of the validity. That, however, does not exclude the Court's power to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of prescribed conditions precedent to the exercise of power, or into a plea that the order was made mala fide or for a collateral purpose. That, however, is not judicial review of the order.

If jurisdiction of the Court to enter upon a judicial review of the order of detention and its confirmation is excluded, it is difficult to appreciate the grounds on which it may legitimately be urged that the decision to continue detention upon review of the order of detention may still be regarded as subject to judicial review.

By cl. (8) of Rule 30-A power is conferred upon the Adminis- trator to review the detention at intervals of not more than six months. This provision has apparently been made for ensuring that detention of a person may not continue longer than is necessary for effectuating the purpose for which it was originally made.

It invests the Administrator, subject to the restriction imposed, with power to review the order of detention from time to time and to decide whether the order should be continued or cancelled.

Making of an order of detention proceeds upon the subjective satisfaction of the prescribed authority in the light of circumstances placed before him, or coming to his knowledge, that it is necessary to detain the person concerned with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order etc. If that order is purely executive, and not open to review by the courts, a review of those very circumstances on which the order was made in the light of the circumstances since the date of that order cannot but be regarded as an executive order. Satisfaction of the authority under Rule 30(1) proceeding upon facts and circumstances which justifies him in making an order of detention and the satisfaction upon review of those very facts and circumstances in the light of circumstances, which came into existence since the order of detention, are the result of an executive determination and are not subject to judicial review.

It was, however, urged that even if this Court cannot review the determination of the authority, the Court is entitled to inquire whether the authority before making the order brought to bear upon it a judicial approach, that is whether the authority gave an opportunity to the detenu to. make a representation against the action proposed to be taken in regard to him, and if it appears that he failed to do so, a writ of certiorari may issue and the order may be discharged by the issue of an appropriate writ.

There is no such safeguard prescribed by the statute : it is also not implicit in the scheme of the statute. A writ of certiorari lies wherever a body of persons having legal authority to determine

questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority; it does not lie to remove or adjudicate upon the order which is of an administrative or ministerial nature. See Province of Bombay v. Kusaldas S. Advant and others.(1) Counsel for the petitioner contended that every order made by a public authority which affects the rights of an individual must of necessity be preceded by a quasi-judicial determination of the question on the determination of which the order may be made and if the determination is made contrary to the rules of natural justice, it is liable to be struck down by order of a competent court. He submitted that this rule has been expounded by the House of Lords in a recent judgment (to be presently noticed. The view which this Court has taken is inconsistent with any such _proposi- tion e.g., observations of Kania C.J. in Advani's case(1) at p. 633, of Mukherjea J. at p. 669 and of S. R. Das J., at p. 715; and in my judgment the observations of Lord Reid in Ridge v. Baldwin and others(1) which counsel for the petitioner leans upon, do not support that proposition. In Ridge's case(1) the watch committee of a Borough in purported exercise of powers conferred on them by S. 191(4) of the Municipal Corporations Act, 1882 dismissed a chief constable from his office, without formulating a specific charge, and without informing him of the grounds on which they proposed to proceed, and without giving him an opportunity to present his case. The watch committee in arriving at its decision considered, inter alia, his own statements in evidence and the observations made by the Judge who tried a case against him of (1) [1950] S. C. R. 621 (2) L R. [1964] A. C. 40.

conspiracy to obstruct the course of justice. The chief constable then brought an action against the watch committee for a declaration that his dismissal was "illegal, ultra vires and void". The House of Lords by a majority held that the chief constable could be dismissed by the watch committee only on grounds stated in s. 191(4) of the Act of 1882, and as they dismissed him on the ground of neglect of duty, they were bound to observe the principles of natural justice. The power of dismissal under s. 191(4) of Act 1882 could not in the view of the house be exercised until the watch committee had informed the chief constable of the grounds on which they proposed to proceed and had given him a proper opportunity to present his case in defence, and the resolution of the watch Committee without giving that information and affording him an opportunity to defend himself was null and void. Ridge's case(1) does not support the broad proposition that no order of public authority which affects the rights of a person may be made, without giving that person an opportunity of making a representation against the proposed order and the observations made on pp. 72 & 73 of the Report are clearly against any such proposition. The House was dealing with a case involving the interpretation of a statute enacted at a time when, as the Parliament was well aware, the courts habitually applied the principles of natural justice to Provisions like s. 191 (4) of the Act of 1882. The principal criticism of Lord Reid was directed against what he conceived was the misunderstanding of the well known passage in the judgment of Atkin, L.J. in Rex v. Electricity Commissioners, Ex parte London Electricity Joint Committee Company(1) in subsequent decisions especially by Lord Hewart C.J. in Rex v. Legislative Committee of the Church Assembly, Ex parte Haynes-Smith (3) and in the judgment of the Privy Council in Nakkuda Ali v. Jayaratne(4)-a case from Ceylon, Atkin L.J. in Rex v. Electricity Commissioners, Ex parte London Electricity joint Committee Company(1) observed :

> "But the operation of the writs (of prohibition and certiorari) has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as,

> courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

(1) L. R. [1964] A. C. 40.

(2) [1924] 1 K. B 171, 205 (3) [1928] 1 K.B. 41 1.

(4) [1951] A. C. 66.

In dealing with a preliminary question whether a writ of prohibition may be issued to prohibit the Legislative Committee of the Church Assembly from proceeding with a measure called the "Prayer Book Measure, 1927", Lord Hewart C.J. in Rex v. Legislative Committee of the Church Assembly Ex parte Haynes Smith(1) proceeded to observe at p. 415 :

> " In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be super added to that characteristic the further characteristic that the body has the duty to act judicially."

Lord Reid took exception to the last clause of the law so stated.

He observed :

> " If Lord Hewart meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice, then that appears to me impossible to reconcile with the earlier authorities."

The point of the criticism was that a body invested with authority to determine what the rights of an individual should be, may be held to perform a judicial function without something more in the statute to impose on it a duty to act judicially. But it was not said that whenever a body is called upon to determine or decide some question which affects the rights of an individual, the proceeding must be regarded as judicial.

In Nakkuda Ali v. M. F. De S. Jayaratne(2) a decision of the Judicial Committee in a case coming from Ceylon-an order of the Controller of Textiles in Ceylon cancelling the licence of a dealer under Rule 62 of the Defence (Control of Textiles) Regulations, 1945-a war-time regulation-which authorised him to cancel a licence "where the Controller had reasonable grounds to believe that any dealer was unfit to be allowed to continue as a dealer" was challenged in the Supreme Court of Ceylon by a petition for a writ of certiorari. The Supreme Court dismissed the petition, and the Judicial Committee affirmed the order. In the view of the Judicial Committee the words of

Regulation 62 imposed "a condition that there must in fact exist such reason- (1) [1928] K. B. 411.

(2) [1951] A. C. 66.

able grounds, known to the controller, before he can validly exercise the power of cancellation. But it does not follow necessarily from this that the controller must be acting judicially in exercising this power". The Judicial Committee observed "

> "It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the controller is acting judicially or quasi-judicially when he acts under this regulation. If he is "not under a duty so to act then it would not be according to law that his decision should be amenable to review and, if necessary, to avoidance by the procedure of certiorari,"

and held that certiorari did not lie in the case. The Judicial Committee then quoted the passage already set out from the judgments of Atkin L.J., in Rex v. Electricity Commissioners, Ex parte London Electricity Joint Committee Company(1), and of Lord Hewart C.J. in Rex v. Legislative Committee of the Church Assembly, Ex parte Haynes-Smith (2) and observed that, "It is that characteristic that the controller lacks in acting under regulation 62". In Nakkuda Ali's case(1) the Controller was prima facie dealing with a case in which the rights of a person were to be determined, but the Judicial Committee was of the view that the statute in the particular case did not require the Controller to act judicially. There is undoubtedly a clear distinction between cases in which an authority is invested with power to determine the rights of a person, and cases in which the authority is invested with power to act in a certain matter, and the exercise of that power affects the rights of a person. In the former, the duty to act judicially may readily be inferred. But whether a public authority invested with powers to pass a specified order is required to act judicially must depend upon the scheme of the statute which invests him with that power. The nature of the authority conferred, the procedure prescribed and the nature of the powers exercised will determine the question whether the public authority is required to act judicially it is not however predicated that before a writ of certiorari or prohibition may issue the duty to (1) [1924] 1 K. B. 171.

(3) [1951] A. C. 66.

(2) [1928] 1 K. B. 411.

act judicially must be expressly or independently imposed upon the authority called upon to determine the rights of a citizen. In the view of the Judicial Committee "if the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy of judicial rules." The scheme of the Regulation therefore negatived according to the Judicial Committee, a judicial approach.

I am not concerned in this case with the validity of the criticism by Lord Reid of the two decisions. It is sufficient to state for the purpose of this case that there is no principle or binding authority in support of the view that wherever a public authority is invested with power to make an order which prejudicially affects the rights of an individual whatever may be the nature of the power exercised whatever may be the procedure prescribed, and whatever may be the nature of the authority conferred, the proceeding of the public authority must be regulated by the analogy of rules governing judicial determination of disputed questions.

The alternative contention that the use of the word "decide" in Rule 30-A (8) compels a judicial approach cannot also be sustained. As pointed out by Fazl Ali J., in Advani's case(1) at p. 642 :

> "The word "decision" in common parlance is more or less a neutral expression and it can be used with reference to purely executive acts as well as judicial orders. The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is: Is there any duty to decide judicially ?"

Rule 30-A(8) requires the Administrator to review at intervals of not more than six months the detention order and then to decide upon such review whether the order be continued or cancelled. That only imports that the Administrator after reviewing the material circumstances has to decide whether the detention of the detenu should be continued or cancelled. Undoubtedly, in reviewing the order of detention, the Administrator would be taking into account all the relevant circumstances existing at the time when the order was made. the subsequent developments, which (1) [1950] S. C. R. 621.

sup.Cl/65-2 have a bearing on the detention of the detenu and the representation, if any, made by the detenu. But the rule contemplates review of the detention order and in the exercise of a power to review a condition of a judicial approach is not implied.

Counsel for the petitioner said that the order of the Administrator dated February 24, 1965 was invalid, because the Administrator had reviewed the order confirming the order of detention and not the order of detention. In the preamble clause there is a reference to a "report for review of the order, dated the 5th September, 1964 confirming the detention order" of the petitioner. But it is difficult to divorce the order of detention from the order of confirmation, for without confirmation the order of detention would have no legal sustenance. The Rule provides that the order of detention shall forthwith be reported, if made by an officer empowered by the Administrator, to the Administrator and that the Administrator shall, after taking into account an the circumstances of the case, either confirm the detention order or cancel it. It is pursuant to the detention order so confirmed, that a person remains detained, and the review which is intended to be made under Rule 30-A (8) is of that order which is confirmed. The second paragraph of the order of the Administrator makes it clear that the detention order of the petitioner shall continue and that detention order is clearly the order made by the District Magistrate and confirmed by the Administrator.

The petition therefore fails and is dismissed.

Petition dismissed.