

THE STATE OF MADHYA PRADESH & ORS.

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v.

DHARMENDRA RATHORE

(Criminal Appeal No. 171 of 2019)

JANUARY 29, 2019

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**[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]**

*Madhya Pradesh Rajya Suraksha Adhiniyam, 1990:*

*ss. 3, 4, 5, 6, 13 and 18 – Power of externment – Competence of Additional District Magistrate – Held: Scheme of the Adhiniyam contemplates exercise of power of District Magistrate u/s. 3, 4, 5 and 6 by Additional District Magistrate or Sub-Divisional Magistrate – Hence, Additional District Magistrate is competent to pass the externment order.*

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**Allowing the appeals, the Court**

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**HELD: 1. In the Statutory Scheme of the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990, there is no provision, which prohibits passing an order by an officer lower than the rank of District Magistrate, rather under Section 13, there is no limitation on the State Government while specially empowering an officer of the State to exercise the power of District Magistrate under Sections 3, 4, 5 and 6 and further under Section 18, the powers and duties of District Magistrate can be directed to be exercised or performed by Additional District Magistrate or Sub -Divisional Magistrate for such areas as may be specified in the order. Thus, the Scheme of the Adhiniyam, 1990 clearly contemplate exercise of the power of District Magistrate under Sections 3, 4, 5 and 6 by an Additional District Magistrate or Sub -Divisional Magistrate. The Notification dated 05.03.2003 was not under challenge in the writ petition. [Para 14][715-F-H]**

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*Ajaib Singh v. Gurbachan Singh AIR 1965 SC 1619 : [1965] SCR 845 – distinguished.*

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**2. The period of externment being one year, which has already expired, there is no useful purpose in considering the other grounds. [Para 15][716-B]**

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**Case Law Reference****[1965] SCR 845                      distinguished                      Para 4**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 171 of 2019.

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From the Judgment and Order dated 20.06.2014 of the High Court of M.P., Bench at Gwalior in WA No. 71 of 2014.

WITH

CrI. Appeal No. 172 of 2019.

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Varun Chopra, AAG, Mrs. Swarupama Chaturvedi, B. N. Dubey, Advs. for the Appellants.

Ms. Nidhi, Adv. for the Respondent.

The Judgment of the Court was delivered by

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**ASHOK BHUSHAN,J.** 1. Leave granted.

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2. These two appeals raising similar question of law has been heard together and are being decided by this common judgment. State of Madhya Pradesh has filed the appeal questioning the judgment of Division Bench of the High Court dated 30.10.2013 passed in Writ Appeal No. 244 of 2013 and judgment of Division Bench in Writ Appeal No. 71 of 2014 dated 20.06.2014 following the earlier judgment dated 30.10.2013.

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3. For deciding the appeals, it shall be sufficient to refer to the facts in Criminal Appeal – The State of Madhya Pradesh & Ors. Vs. Dharmendra Rathore. The Additional District Magistrate, Gwalior has passed an order dated 26.02.2013 externing the respondent for a period of one year from the district concerned. An appeal was filed by the respondent against the order of the Additional District Magistrate before the Commissioner, Gwalior Division, which too was dismissed on 17.06.2013. A writ Petition No. 4818 of 2013 was filed by the respondent challenging the order of the Additional District Magistrate as well as of the Commissioner, Gwalior Division. The main ground taken by the respondent before the High Court was that the Additional District Magistrate had no jurisdiction to pass the order under the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as “Adhiniyam, 1990”). The order can be passed only by District Magistrate. Reliance was also placed on an order passed by another

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learned Single Judge dated 30.05.2013 in Writ Petition No. 8555/2012 – Arvind Sharma Vs. State of Madhya Pradesh & Ors. The High Court relying on judgment of Arvind Sharma Vs. State of Madhya Pradesh & Ors. allowed the writ petition holding that Additional District Magistrate was incompetent to pass the order under the Adhiniyam, 1990. Writ Appeal was filed against the judgment of the High Court by the State of Madhya Pradesh being Writ Appeal No. 71 of 2014. By judgment and order dated 20.06.2014, the writ appeal has been dismissed by Division Bench relying on its judgment in Writ Appeal No. 244 of 2013 dated 30.10.2013 – State of Madhya Pradesh Vs. Arvind Sharma, in which judgment, the High Court after considering the provisions of Sections 3, 13 and 29 of the Adhiniyam, 1990 and relying on the Constitution Bench judgment of this Court in **Ajaib Singh Vs. Gurbachan Singh, AIR 1965 SC 1619** held that the order could not have been passed by any authority lower than the rank of District Magistrate. State aggrieved by the order has come up in this appeal.

4. Learned counsel for the appellant in support of the appeal contends that High Court committed error in relying on the Constitution Bench Judgment of this Court in **Ajaib Singh Vs. Gurbachan Singh (supra)**. He submits that in the case of **Ajaib Singh (supra)**, this Court had occasion to consider the provisions of Defence of India Act, 1962 and Defence of India Rules, which contained a different statutory scheme. The Statutory Scheme in the Adhiniyam, 1990 being different, the said judgment was not applicable. It is submitted that Additional District Magistrate was fully competent to pass the order under the Adhiniyam, 1990.

5. Learned counsel for the respondent supporting the order of the High Court contends that when Sections 3, 4, 5 and 6 empowers the District Magistrate to pass the order, an authority lower in rank could not have been passed the order. It is further submitted that the State Government, in exercise of power under Section 13, can also not delegate its power to any authority lower in rank to the District Magistrate. It is further submitted that there were other grounds to challenge the order of Additional District Magistrate in the writ petition but High Court having considered only one ground, other grounds were not considered.

6. We have considered the submissions of the learned counsel for the parties and have perused the records.

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A        7. It is necessary to notice the statutory scheme under the Adhiniyam, 1990. Sections 3 and 4 of the Adhiniyam, 1990 are as follows:-

B        **3. Power to make restriction order.** - (1) If a District Magistrate is satisfied with respect to any persons that he is acting or is likely to act in a manner prejudicial to the security of the State or the maintenance of public order and that, in order to prevent him from so acting it is necessary in the interest of the general public to make an order under this Section, the District Magistrate, may make an order,-

C        (a) requiring him to notify movements or to report himself or both to notify his movements and report himself in such manner at such times and to such authority or persons as may be specified in the order;

D        (b) imposing upon him such restrictions as may be specified in the order, in respect of his association or communications with such persons as may be mentioned in the order;

(c) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order.

E        (2) A restriction order made under sub-section (1) shall remain in operation for such period as may be specified therein and shall in no case exceed a period of one year from the date of the order.

F        **4. Dispersal of gangs and bodies of persons.** - Whenever it appears to the District Magistrate that the movement or encampment of any gang or body of persons in the district is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body, or by members thereof the District Magistrate, may by an order addressed to the persons appearing to be the leaders or chiefmen of such gang or body and published by beat of rumor otherwise, as the District Magistrate thinks fit, direct the members of such gang or body,-

G        (a) to conduct themselves in such manner as may be necessary in order to prevent violence and alarm; or

H        (b) to disperse and each of them to remove himself outside the district or any part thereof or such area, and any district or

districts, or any part thereof contiguous thereto with such time as the District Magistrate may specify, and not to enter the said district or part thereof or such area and such contiguous districts, or part thereof, as the case may be or not to return to the place from which each of them was directed to remove himself.

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8. Sections 5 and 6 are other provisions, which confer some power to District Magistrate to remove a person about to commit offence and remove a person convicted of certain offences. Sections 7 provides that period of operation of orders under Sections 4, 5 or 6 shall in no case exceed a period of one year. Section 13 provides for power of externment of the State Government, which is to the following effect:-

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**13. Power of externment of State Government.** - (1) The State Government or the officer specially empowered by the State Government in that behalf, may, in like circumstances, and in like manner, exercise the powers exercisable in a district by the District Magistrate under Section 3, 4, 5 or 6 with this modification that it shall be lawful for the State Government or the officer specially empowered to direct the members of such gang or body, or persons or immigrants, or persons convicted, as the case may be, to remove themselves from and not to enter or return or any district or districts or parts thereof whether contiguous thereto or not.

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(2) The provisions of Sections 7, 8, 10, 11 and 12 and of Section 9 where the order is passed by the officer specially empowered by the State Government under sub-section (1) shall *mutatis mutandis* apply to the exercise of any powers under this section as they apply to the exercise of any powers under Section 3, 4, 5 or 6.

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(3) Where the order is passed by the State Government under sub-section (1), the State Government may, either on its own motion or on an application of the person aggrieved, review any order passed by itself and pass such order in reference thereto as it thinks fit :

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Provided that no order shall be varied or reversed unless notice has been given to the person concerned to appear and be heard in support of such order.

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- A 9. Section 18 deals with delegation of powers and duties of District Magistrate, which is to the following effect:-

**18. Delegation of power and duties of District Magistrates. -**

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may by order direct that any power on duty conferred or imposed on a District Magistrate under this Act shall be exercised or performed by such additional District Magistrate or Sub-Divisional Magistrate and for such areas as may be specified in the order
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10. In the present case, the State Government had issued a notification under Section 13 delegating the power of the District Magistrate to the Additional District Magistrate divisional head quarter, Indore, Jabalpur, Rewa, Ujjain, Bhopal, Gwalior, Hoshangabad, Sagar and Chambal (Murena). Notification dated 05.03.2003 is to the following effect:-
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- “Madhya Pradesh Gazette  
Extra-ordinary  
Published by Authority  
Bhopal Wednesday dated 5th March, 2003  
Home Department (C section)  
Ministry, Vallabh Bhawan Bhopal  
Bhopal dated 5th March 2003
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- No. F35-116-2001-P-one- In exercise of powers conferred by sub section (11) of section 13 of Madhya Pradesh State Security Act, 1990 (No. 4 of 1991) and superseding the notification no. F17-1-51-B(1)-2, dated 7th May 1991 and F35-116-2001-T-one dated 10th July, 2001 of this very department, the State Government hereby empowers the Additional District Magistrate of divisional head quarter, Indore, Jabalpur, Rewa, Ujjain, Bhopal, Gwalior, Hoshangabad, Sagar and Chambal (Murena) for the purposes of the aforesaid sub section.
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By order  
& in the name of the Governor of MP  
Rakesh Sahni, Principal Secretary”

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11. The entire basis of impugned judgment of the High Court is the Constitution Bench judgment of this Court in **Ajaib Singh (supra)**. In **Ajaib Singh's case (supra)**, this Court had occasion to consider the provisions of Defence of India Act, 1962 and the Rules framed thereunder, where in that case, one Lall Singh, who was working as Additional District Magistrate, was invested with the power of District Magistrate under Section 10(2) of the code of Criminal Procedure, 1898, had passed an order of detention of the appellant under the Defence of India Act as District Magistrate. The challenge was that he was incompetent to pass an order being not the District Magistrate. It is necessary to consider the Scheme of Section 3(i) of the Act and notice relevant provision in Paragraph No.6, which is to the following effect:-

“6. We do not think it necessary for purposes of this case to decide the first point raised by the learned Advocate General, for we have come to the conclusion that no officer other than the District Magistrate of a District can pass an order of detention under R. 30 of the Rules in view of the provisions of the Act and of the Rules to which we shall now refer. Section 3(1) of the Act gives power to the Central Government by notification in the Official Gazette to make such rules as appear to it necessary or expedient for securing the defense of India and civil defense, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of community. Section 3(2) then provides for the making of rules for various purposes without prejudice to the generality of the powers conferred by section 3(1), and the 15th clause thereof provides for detention. The relevant portion of that clause necessary for our purposes reads thus :-

“(15). Notwithstanding anything in any other law for the time being in force -

(i) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable, of being of hostile origin or having acted, acting, being about to act or being likely to act in a manner prejudicial to the defense of India and civil defense, the security of the State, the public safety or interest,

- A the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner."
- B It would be seen that section 3(2)(15)(i) which is the source of power to detain according to the Rules to be framed thereunder itself lays down that the authority empowered to detain shall not be lower in rank than that of a District Magistrate."
- C 12. It is to be noted that under the Statutory Scheme under the Defence of India Act, detention order can be passed by the authority empowered by the rules to apprehend or detain with restriction that the authority empowered to detain **not being lower in rank than that of a District Magistrate**. In view of the above Statutory Scheme, this Court held that Additional District Magistrate being not the District Magistrate was incompetent to pass the impugned order. In Paragraph No.7, following has been held:-
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- E "7. Then we came to section 40(2) of the Act, which gives power to the State Government to delegate its powers to any officer or authority subordinate to it. This power of delegation, however, must be read harmoniously with section 3(2)(15) and therefore under section 40(2) the State Government cannot delegate its power to detain to any officer below the rank of a District Magistrate. Rule 30 of the Rules then provides for detention and under that rule that power is conferred on the Central Government or the State Government to detain any person. That power of the State Government can however be delegated under section 40(2) to any officer subordinate to it. But as we have already indicated the power of delegation must be read harmoniously with section 3(2)(15) and therefore the State Government cannot delegate the power to detain to any officer who is lower in rank than the District Magistrate. The position is further clearly brought out in r. 30-A which provides for review of a detention order made by an officer. It is made clear there also that the officer shall in no case be lower in rank than a District Magistrate. The effect of these provisions thus is that the power of detention can either be
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- H exercised by the State Government or by its delegate who however



can in no case be lower in rank than a District Magistrate. The Act and the Rules therefore show unmistakably that the power of detention can only be exercised by the State Government or an officer or authority to whom it might be delegated but who shall in no case be lower in rank than a District Magistrate.” A

13. This Court has further contrasted the provisions of the order of that of Preventive Detention Act, when where District Magistrate is specially empowered. Paragraph No. 8 of the judgment is as follows:- B

“8. We may in this connection contrast the language of section 3(2) of the Preventive Detention Act, No. 4 of 1950, which lays down that any of the following officers, namely :- C

(a) district magistrates,

(b) additional district magistrates specially empowered in this behalf by the State Government,

(c).....

(d)..... D

may exercise the powers conferred by section 3(1)(a)(ii) and (iii). If the intention under the Act and the Rules was that the Additional District Magistrate may also exercise the power of detention conferred thereunder we would have found a provision similar to that contained in the Preventive Detention Act.” E

14. Applying the ratio of the above judgment in the facts of the present case, it is clear that in the Statutory Scheme of the Adhiniyam, 1990, there is no provision, which prohibit passing an order by an officer lower than the rank of District Magistrate rather under Section 13, there is no limitation on the State Government while specially empowering an officer of the State to exercise the power of District Magistrate under Sections 3, 4, 5 and 6 and further under Section 18, the powers and duties of District Magistrate can be directed to be exercised or performed by Additional District Magistrate or Sub -Divisional Magistrate for such areas as may be specified in the order. Thus, the Scheme of the Adhiniyam, 1990 clearly contemplate exercise of the power of District Magistrate under Sections 3, 4, 5 and 6 by an Additional District Magistrate or Sub -Divisional Magistrate. The Notification dated 05.03.2003 was not under challenge in the writ petition. F G

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A           15. We are, thus, of the view that Constitution Bench Judgment  
of this Court in **Ajaib Singh (supra)** was not applicable in the facts of  
the present case and High Court committed the error in relying on the  
said judgment for holding that Additional District Magistrate had no  
jurisdiction. The impugned judgment is, thus, unsustainable on the above  
ground. We further notice that the period of externment being one year,  
B           which has already expired, there is no useful purpose in considering the  
other grounds of challenge as contended by the counsel for the  
respondent.

C           16. In result, the appeals are allowed. The impugned judgments  
of the High Court are set aside.

Kalpana K. Tripathy

Appeals allowed.