Pyare Lal And Anr. vs State on 30 March, 1951

Equivalent citations: AIR1952ALL180, AIR 1952 ALLAHABAD 180

ORDER

Brij Mohan Lal, J.

1. This is an application under Section 491, Criminal P. C., by two brothers, viz. Pyare Lal and Radhe Lal who are at present undergoing detention under the Preventive Detention Act IV [4] of 1960.

2. The applicants are residents of Afzalgarh in district Bijnor. They own property at Afzalgarh and carry on business at Dhampur. They have been prominent members of the local Congress Committees bat have, of late, fallen out with their old colleagues. Their contention is that they are victims of the machinations of their erstwhile companions. On 7.12.1950 the District Magistrate of Bijnor passed two separate orders detaining each one of the two applicants under Section 3 (1) (a) (iii), Preventive Detention Act. The applicants were taken in custody at Lucknow on 26-1.1950. On 29.12.1960 the State Government passed two separate orders revoking the District Magistrate's orders dated 7-12-1960 and itself directing the detention of each of the two applicants with a view to prevent them "from acting in any manner prejudicial to the maintenance of supplies and services essential to the community". These orders also were passed under Section 3 (i) (a) (iii) of the Act.

3. The learned counsel for the applicants has pointed out in the first instance that no period of detention is specified in either of the two orders passed by the State Government. This circumstance, however, is immaterial. The law does not require the detaining authority to specify the period of detention. There is nothing in the Act to indicate that omission to specify the period of detention vitiates the detention order.

4. In the case of Bashir v. State, 1950 ALL. L.J. 518, it was no doubt held that omission to specify the duration of detention was sufficient to vitiate the order. That was a detention under the Maintenance of Public Order Act (U.P. Act (IV [4] of 1947). But that view was departed from in a later case reported in Bam Adhar v. State, A.I.R. (38) 1961 ALL. 18. This is a Division Bench case and it lays down that the order of detention does not become invalid because the period of detention has not been specified in the circumstances the orders sought to be impugned in the present case cannot be declared to be void on the ground that they failed to specify the period of detention.

5. It was vehemently contended by the learned counsel for the applicants that it was obligatory on the part of Government to follow the procedure prescribed by Sections 9 and 10 of the Act in respect of the orders passed by the District Magistrate of Bijnor. Section 9 lays down that reference should be made to the Advisory Board within six weeks of the date of detention. Section 10 prescribes that the Advisory Board shall submit a report within ten weeks from the date of detention.

6. It is conceded by the Govt. that in the present case this procedure was not followed in respect of the District Magistrate's orders for the obvious reason that the said orders had been revoked by the State Government within three days of the applicant's detention. The learned counsel for the applicants has, however, contended that it was the imperative duty of the State Government to follow the procedure prescribed by Sections 9 and 10 irrespective of the fact that the orders of the District Magistrate had been revoked. As a matter of fact, he has gone to the length of contending that the orders of revocation passed by the, State Government were ultra vires the said Government and he further maintains that the State Government could not itself pass the order of detention so long as the requirements of Sections 9 and 10 of the Act had not been complied with in respect of the District Magistrate's orders.

7. I have given due thought to the contention put forward by the learned counsel for the applicants. In my opinion, the power of revocation conferred on the State Government by Section 13 is untrammelled by any restrictions. There is nothing in the Act to suggest that this power of revocation cannot be exercised unless the procedure prescribed by Sections 9 and 10 has been followed. The State Government has an unfettered discretion in the matter of revocation and it can revoke the District Magistrate's order at any time and at any stage of the proceedings. There is no condition imposed as a condition precedent to the exercise of this power.

8. Since the State Government could revoke the order at any stage and since it did exercise that power, it was totally unnecessary for it to follow the procedure prescribed by Sections 9 and 10 in respect of the District Magistrate's order. It would have been futile to follow that procedure when the orders themselves has been vacated.

9. The State Government could itself pass orders of detention at any stage and I see no force in the contention put forward by the learned counsel for the applicants that the orders passed by the State Government were ultra vires the Government. The learned counsel has not been able to point out to any provision of law in support of his contention that the State Government could not pass an order of detention in the circumstances in which it did. It may be pointed out that the procedure prescribed by Sections 9 and 10 of the Act has been followed by the State Government in respect of its own orders. In the circumstances, I am of the opinion that the objection put forward by the learned counsel for the applicants has no force. The orders were validly passed and suffer from no such defect as is suggested by the learned counsel for the applicants.

10. The grounds furnished by the State Government to the detenus under Section 7 of the Act were as follows :

> "Now, therefore, in pursuance of the provisions of Section 7 of the said Act, the Governor of Uttar Pradesh is hereby pleased to direct that you be informed that the grounds of your detention are that you are in the habit of stocking controlled commodities without proper authority for subsequent sale in the black market. In order to achieve this objective you along with your brother Piarey Lal obtained nine bales of cloth on 14.11.1950 from the District Co-operative Federation, Bijnor, by representing through a forged application purporting to be in the name of your

relation Lala Ram Swarup of Afzalgarh that as the entire quota of cloth Rs. 30,000 which was supplied to him in connection with the grain worth Rs. 10,000 was still lying with him and therefore for the disposal of which he required cloth of superior quality worth Rs. 8000. Of these nine bales eight were stored by you from 14 to 21-11-1950 in your premises called Karkhana in Dhampur town which was not authorised for the storage and sale of controlled cloth under a license. In the said premises you were caught selling these eight bales of controlled cotton cloth in 22 lots of different sizes at 35% above the controlled rate to certain refugee cloth dealers on 21.11.1950. Subsequently in order to camouflage this black market sale you got made fictitious entries in the registers of Lala Ram Swarup from 25 to 30.11.1950.

You Were also found in unauthorised possession on 4.12.1950 of 100 bags of Moonji, 111/2 bags of barley, and 4 bags of rice which are controlled commodities. These commodities were stored by you in your said premises.

On the same day you were also found in possession of 17 bales of ginned cotton about which you never furnished any information to the licensing authority.

You also made an application for the grant of a licence for centrifugal machines by giving a statement that you wanted to prepare sugar from 4000 mds. of Rab which you had in your stock. A licence for the said machines was accordingly issued to you on 14.11.1960 bat when your Karkhana was Inspected by Sri L.K. Nagar, Magistrate 1st class and Deputy Superintendent of Police both of Bijnor on 3 12-1950 not a single drop of Rab was found there.

ON 8-11-1950 you lifted through your Munim Musaddi Lal from Sechara Mills the quota of 45 bags of crystal sugar allotted to your relation L. Ram Swarup, out of which you sent only a very small quantity for distribution at Afzalgarh and the remaining sugar was stored by you for conversion into powdered sugar and its ultimate sale in the black market by mixing it with khandsari sugar.

These actions on your part are prejudicial to the control organisation which is in the interest of the maintenance of supplies and services essential to the community and it is to stop you from continuing this course of conduct that it has been considered necessary to detain you.

Also, in pursuance of the provisions of the said section of the said Act, the Governor of Uttar Pradesh is pleased to direct that you be further informed that you have a right to make a representation in writing against the order under which you are detained. If you wish to make such a representation you should address it to the Home Secretary to the State Government through the Superintendent of the Jail in which you are detained."

11. The learned counsel for the applicants has contended in respect of each ground that its contains wrong statements of facts and has further contended that because of this circumstance the satisfaction of the Governor, as expressed in the State Government's order, was nob a bona fide satisfaction. He has further claimed that he is entitled to prove that the facts alleged in the grounds are incorrect.

12. A recent authority on the questions raised by the learned counsel is to be found in the Full Bench case of Rex v. Durgadas, 1948 ALL. L.J.

491. It is stated therein that the grounds and particulars must not be vague, indefinite or in complete and must convey sufficient information to the detenu to enable him to make a representation. It may be pointed out that this Full Bench case was a case under the Maintenance of Public Order Act (U.P. Act IV (4) of 1947) which made it obligatory on the State Government to furnish not only 'grounds' but also 'particulars'. Under the Preventive Detention Act of 1950 the State Government is bound to furnish 'grounds' alone and not 'particulars'.

13. The grounds quoted above do not suffer from the defeat of vagueness, indefiniteness or incompleteness. They are such that, if true, they can on the one hand reasonably lead the State Government to the conclusion that the applicants should be detained and on the other furnish sufficient information to the detenus to enable them to make a representation. The object of the detention, as quoted above, was within the scope and object of the Preventive Detection Act.

14. In a case like the present it is not open to this Court to go into evidence and come to the conclusion that the applicants were likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community. The order can be upheld if it is found that the detaining authority was satisfied that the applicants were likely to act in that manner, unless detained. What is important is not the proof of the likely activities of the applicants but of the satisfaction of the detaining authority. If the detaining authority was in fact satisfied on that point, it is not for this Court to question its satisfaction. By way of analogy reference may be made to the provisions of Section 145, Criminal P. C. It is provided there that if a Magistrate of the first class is satisfied that there is a dispute likely to cause a breach of peace he can act in a certain manner provided by the said section. It has been held that the satisfaction must be that of the Magistrate and not of any other authority. If on evidence before him the Magistrate is satisfied, the higher authorities including the High Court cannot say that the Magistrate should not have been satisfied on that evidence and cannot question the Magistrate's satisfaction. On the contrary, if the Magistrate is not satisfied about the likelihood of the breach of peace, the High Court cannot say that the evidence was such that he should have been satisfied. Even if the High Court is satisfied and the Magistrate is not satisfied that there is a likelihood of breach of peace, the High Court cannot direct the Magistrate to act under Section 145, Criminal P. C. In short, it is the Magistrate and the Magistrate alone who is to be satisfied and his satisfaction cannot be called in question in the High Court. The same is the principle under the Preventive Detention Act. If the State Government on the evidence placed before it is satisfied that the applicants are, unless detained, likely to act in a manner prejudicial to the maintenance of supplies and services essential to the community this Court cannot go into the evidence and cannot question the satisfaction of the detaining authority.

15. It is true that this Court has held in the aforesaid Full Bench case that the satisfaction must be honest satisfaction, but there can be no doubt in the present case about the honesty of the satisfaction of the detaining authority. As stated above, the grounds were such that, if true, they would justify the action taken by the Government.

16. It is pointed out by the learned counsel for the applicants that in the present case it is admitted that at least one of the grounds is incorrect on facts. He refers to the affidavits filed on behalf of the applicants. It has been alleged on behalf of the applicants that Radhe Lal had never applied for a licence for the centrifugal machine and that no licence was ever delivered to either Radhe Lal or Piare Lal. These allegations have not been denied by the State Government. All that appears from the affidavit filed on behalf of the State Government is that an application for licence was made by Piarelal and that an order was passed by the proper authority for issuing a licence to him but the licence was never delivered to either Radhelal or to Piarelal.

17. It is contended by the learned counsel for the applicants that, since one of the grounds at least contained wrong facts and since the detaining authority was misled by these wrong facts to pass an order of detention the satisfaction of the said authority cannot in the circumstances of the case, be treated as a bona fide satisfaction. With this contention also I am unable to agree. All that can be said in this case is that, wrong facts were placed by subordinate officials before the detaining authority. But that does not mean that the detaining authority did not honestly believe these facts to be true. Since that authority acted on the belief that these facts were true, it cannot be contended that its satisfaction was not an honest satisfaction. So far as this Court is concerned, it must stay its hands the moment it is satisfied that the detaining authority honestly believed these facts to be true.

18. If inaccuracy proved by admission is permitted to be used as a ground for questioning the good faith of detaining authority's satisfaction there is no reason why inaccuracy proved by evidence should not be similarly used. This will mean that in every case the applicants will be entitled to challenge the accuracy of the grounds of detention and will be permitted to lead evidence on the questions of fact. This was never the intention of law.

19. I am not prepared to hold that the satisfaction of the detaining authority was in this case not an honest satisfaction. For the above reasons I am of the opinion that the order of detention cannot be challenged.

20. The application is rejected.