State Of N.C.T. Of Delhi And Anr vs Sanjeev @ Bittoo on 4 April, 2005

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (crl.)  498 of 2005

PETITIONER:
State of N.C.T. of Delhi and Anr.

RESPONDENT:
Sanjeev @ Bittoo

DATE OF JUDGMENT: 04/04/2005

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

Leave granted.

The true scope and ambit of Section 51 of the Delhi Police Act, 1978 (in short the `Act') falls for determination. Notice dated 20.5.2002, was issued by Deputy Commissioner of Police, (South-West) District, New Delhi, under Section 50 of the Act requiring the noticee to show cause as to why action in terms of Section 47 of the Act should not be taken against him. In the notice it was noted that since March 1997 he was engaged in several illegal acts in his activities and movement in the area of P.S. Dwarka, were causing alarm to the residents. List of 7 cases under various penal statutes on the basis of the records of the concerned police station was given. It was indicated that the witnesses including camera witnesses were not willing to give evidence in public against him because of the fear of danger to their person and properties. There was no written reply to the notice, but the noticee appeared and examined a witness to show that he was innocent. After the grant of further opportunities appellant no.5- Additional Deputy Commissioner of Police passed an order under Section 47 of the Act directing that the respondent should remove himself beyond the limits of NCT of Delhi for a period of one year w.e.f. 25.12.2002. He was permitted to attend the courts at Delhi on all the dates of hearing and thereafter immediately remove himself out of the limits of NCT of Delhi, but not to visit any place except courts premises. The relaxation was only for the date of hearing for the cases before the Courts. The contents of the order were explained to him and a copy was also delivered to him.

The order was challenged before the Lieutenant Governor of Delhi who rejected the appeal under Section 51 of the Act.

A writ petition was filed before the Delhi High Court. By the impugned judgment a learned Single Judge quashed the order observing that pre- requisites for passing an order under Section 47 of the Act were not available. For coming to such conclusion reliance was placed on a Division Bench Judgment of the Delhi High Court in Bhim Singh v. Lt. Governor of Delhi and Anr., (2002) 2 JCC 1132. Learned Single Judge was of further view that in Bhim Singh's case (supra) it was noted by the Division Bench that authority passing the order under Section 47 of the Act has to clearly indicate as to why one of the three options available was not being adopted. In the instant case, learned Single Judge held that there was no clear material or elaborate reasoning indicated to show that alternative options were examined and only one of them was adopted. Said order of the learned Single Judge is the subject-matter of challenge.

It was noted at the time of issuance of notice that though the externment order had worked out itself on account of afflux of time because of certain apparent divergence in views expressed by several Benches of the High Court, the matter needs to be examined.

In spite of notice no one appeared on behalf of the respondent.

In support of the appeal Ms. Mukta Gupta, Advocate, submitted that both learned Single Judge and the Division Bench in Bhim Singh's case (supra) lost sight of Section 52 of the Act. The said provision provides the limited grounds on which the order under Section 47 can be questioned before any court. It was also submitted that a detailed order is not necessary to be passed while exercising powers under the Act to direct externment. Strong reliance was placed on decisions of this Court in Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police, The State of Maharashtra, [1973] 1 SCC 372 and Gazi Sududdin v. State of Maharashtra and Anr., [2003] 7 SCC 330 to buttress the plea.

It was also pointed out that a clearly divergent view was taken by another Division Bench of the Delhi High Court in Dheeraj v. State, (NCT of Delhi) (2001 V AD (Delhi) 672), which was not noted in Bhim Singh's case (supra). In the said case a Division Bench of the High Court held that the question of period of exterment cannot be questioned in a writ petition.

In order to appreciate the submissions it would be necessary to quote Sections 47, 51 and 52 of the Act. They read as follows:-

> "47. Removal of persons to commit offences - Whenever it appears to the Commissioner of Police -
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> (a) that the movement or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to, be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code or under Section 290 or Section 498A to 489E (both inclusive) of that Code or in the abatement of any such offence; or

(c) that such person -

(i) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or

(ii) has been found habitually intimidating other persons by acts of violence or by show force; or

(iii) habitually commits affray or breach of peace or riot, or habitually makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others; or

(iv) has been habitually passing indecent remarks on women an girls, or teasing them by overtures;

and that in the opinion of the Commissioner of Police witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the Commissioner of Police may, by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof by such route and within such time as the Commissioner of Police may specify and not to enter or return to Delhi or part thereof, as the case may be, from which he was directed to remove himself.

Explanation - A person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have habitually committed the act.

Section 51: Appeal against orders under sections 46, 47 or 48 - (1) Any person aggrieved by an order made under Section 46, Section 47 or Section 48 may appeal to the Administrator within thirty days from the date of the service of such order on him.

(2) An appeal under this section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against, and shall be accompanied by that order or a certified copy thereof.

(3) On receipt of such appeal, the Administrator may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as he may deem necessary, confirm vary or set aside the order appealed against:

> Provided that the order appealed against shall remain in force pending the disposal of the appeal, unless the Administrator otherwise directs.
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> (4) The Administrator shall make every endeavour to dispose of an appeal under this section within a period of three months from the date of receipt of such appeal.
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> (5) In calculating the period of thirty days provided for an appeal under this section, the time taken for obtaining a certified copy of the order appealed against, shall be excluded.

Section 52: Finality of order in certain cases:- An order passed by the Commissioner of Police under Section 46, Section 47 or Section 48 or the Administrator under Section 51 shall not be called in question in any court except on the ground -

(a) that the Commissioner of Police or the Administrator, as the case may be, had not followed the procedure laid down in sub-section (1), sub- section (2) or sub-section (4) of Section 50 or in Section 51, as the case may be; or

(b) that there was no material before the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or

(c) in the case of any order made under Section 47 or an order in appeal therefrom to the Administrator under Section 51, the Commissioner of Police or the Administrator, as the case may be, was not of the opinion that witnesses were unwilling to come forward to give evidence in public against the person whom such order has been made."

Section 47 consists of two parts. First part relates to the satisfaction of the Commissioner of Police or any authorized officer reaching a conclusion that movement or act of any person are causing alarm and danger to person or property or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in commission of enumerated offences or in the abetment of any such offence or is so desperate and dangerous as to render his being at large hazardous to the community. Opinion of the concerned officer has to be formed that witnesses are not willing to come forward in public to give evidence against such person by reason of apprehension on their part as regards safety of person or property. After these opinions are formed on the basis of materials forming foundation therefor the Commissioner can pass an order adopting any of the available options as provided in the provision itself. The three options are: (1) to direct such person to so conduct himself as deemed necessary in order to prevent violence and alarm or (2) to direct him to remove himself outside any part of Delhi or (3) to remove himself outside whole of Delhi.

Ms. Mukta Gupta, learned counsel, submitted that by the impugned order passed by the Additional Deputy Commissioner of Police (South-West) District, New Delhi, not only enumerated the various acts with reference to materials but also came to hold that immediate action in terms of Section 47 was necessary and all relevant details were given. The grounds on which the satisfaction was arrived at so far as first part of Section 47 are also relevant for the purpose of adopting any of the three options. The fact that one of the options was adopted after analyzing factual scenario clearly indicates that the other two options were not considered sufficient enough to deal with the particular situation in the case at hand.

In Pandarinath's case (supra) this Court was considering the scope and ambit of Section 56 of the Bombay Police Act, 1951 (in short `the Bombay Act'). It was held that externee was entitled to know the material allegations and their general nature. In the said case five points were raised in support of the appeal by the externee. They are as follows:

> (i) The allegation that witnesses were not willing to come forward to depose against the appellant in public is falsified by the very record of the present proceedings.
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> (ii) The particulars contained in the notice issued under Section 59 of the Act, are so vague that the appellant could not possibly meet the allegations made against him and thus he was denied reasonable opportunity to defend himself.
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> (iii) The externing authority must pass a reasoned order or else the right of appeal would become illusory.
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> (iv) The State Government also ought to have given reasons in support of the order dismissing the appeal. Its failure to state reasons shows non-

application of mind; and

(v) The order of externment imposes unreasonable restrictions on the personal liberty of the appellant in that, whereas his activities are alleged to be restricted to an area within the jurisdiction of the Vila Parle Police Station, the order of externment not only extends to the whole District of Greater Bombay but to the District of Thana also.

In para 14 of the judgment this Court dealt with third and fourth point and held as follows:

> "The third and fourth points have the same answer as the second point just dealt with by us. Precisely for the reasons for which the proposed externee is only entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write a reasoned order in the nature of a judgment. If those authorities were to discuss the evidence in the case, it would be easy to fix the identity of witnesses who are unwilling to dispose in public against the proposed externee externess. A reasoned order containing a discussion of the evidence led against the externee would probably spark off another

round of tyranny and harassment."

As regards the period, it was held that it is primarily for the externing authority to decide how best the order can be made effective, so as to subserve its real purpose. How long within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 58 it should extend are matters which must depend upon his decision on the nature of the data which the authority is able to collect in the externment proceedings. No general formulation can be made that order of externment must always be restricted to the area to which the illegal activities of the externee. There can be doubt that the executive order has also to show when questioned that there was application of mind. It is the existence of material and not the sufficiency of material which can be questioned as the satisfaction is primarily subjective somewhat similar to one required to be arrived at by the detaining authority under the preventive detention laws. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. Mere possibility of another view cannot be ground for interference.

One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. and Ors. v. Renusagar Power Co. and Ors. , AIR (1988) SC 1737. At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action"

> 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and
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> (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant

considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is `illegality' the second `irrationality', and the third `procedural impropriety'. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 All. ER. 935, (commonly known as CCSU Case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See Commissioner of Income-tax v. Mahindra and Mahindra Ltd., AIR (1984) SC 1182. The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book ``Applications for Judicial Review, Law and Practice'' thus:

> "There is a general presumption against ousting the jurisdiction of the Courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradig, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in council of Civil Service Unions v. Minister for the Civil Service this is doubtful. Lords Diplock, Scaman and Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. May prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest.'' (Also see Padfield v. Minister of Agriculture, Fisheries and Food, (LR (1968) AC 997).

The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

The famous case commonly known as "The Wednesbury's case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (KB at p. 229: All ER p. 682). It reads as follows:

> "……It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word `unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting `unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority….In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed (KB p.230: All ER p.683) "….it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. …. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another." (emphasis supplied) Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

> "….Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call `illegality', the second `irrationality' and the third `procedural impropriety'. That is not to say that

> further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of `proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community.'' Lord Diplock explained ``irrationality'' as follows:
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> "By `irrationality' I mean what can by now be succinctly referred to as Wednesbury unreasonableness'. It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In other words, to characterize a decision of the administrator as ``irrational'' the Court has to hold, on material, that it is a decision ``so outrageous'' as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

These principles have been noted in aforesaid terms in Union of India and Anr. v. G. Ganayutham, [1997] 7 SCC 463. In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself. (See Indian Railway Construction Co. Ltd. v. Ajay Kumar, [2003] 4 SCC 579.

Though Section 52 limits the scope of consideration by the Courts, the scope for judicial review in writ jurisdiction is not restricted, subject of course to the parameters indicated supra.

It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with question mere repetition of the provision would not be sufficient. Reference to be made to some material on record and if that is done the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non.

As observed in Gazi Saduddin's case (supra) satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.

The material justifying externment can also throw light on options to be exercised. If referring to the materials, the authority directing externment also indicates the option he thinks to be proper and appropriate it can not be said to be vitiated even though there is no specific reference to the other options. It is a matter of legitimate inference that when considering materials to adjudicate on the question of desirability for externment, options are also considered and one of the three options can be adopted. There can not be any hair splitting in such matters. A little play in the points is certainly permissible while dealing with such matters.

In the case as noted above, all the relevant aspects were considered and High Court was not justified in holding to the contrary. The Appeal was heard primarily to clarify certain doubtful areas, in view of some divergent views expressed by different Benches of the High Court, though the period of externment was over.

The appeal is accordingly disposed of.