

Supreme Court of India

Commissioner Of Police And Anr. vs Gurbux Anandram Bhiryani on 15 December, 1987

Equivalent citations: JT 1988 (1) SC 8, 1988 Supp (1) SCC 568

Author: R Misra

Bench: R Misra, M Dutt

ORDER Ranganath Misra, J.

1. The detaining authority under the Maharashtra Prevention of Dangerous Activities of Slum-lords, Bootleggers and Drug Offenders Act 55 of 1981 (hereafter referred to as the Act) is under appeal by special leave against the quashing of the order made against it by the Bombay High Court. The appellant made the order of detention in exercise of power under Section 3(1) of the Act and the grounds in respect of the detention were furnished to the respondent on 19.12.1986. He is also facing a prosecution under Section 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 where he is on bail. The order of detention runs thus:-

Whereas the Commissioner of Police, Greater Bombay is satisfied with respect to the person known as Gurbux Anandram Bhiryani, Res: 502 Exotique Co-op. Housing Society, 5th Floor, 17th Road, Khar (West) Bombay- 400 052 that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained under the Maharashtra Prevention of Dangerous Activities of Slum-lords, Bottleggers and Drug Offenders Act, 1981 (No. LV of 1981.) .

Now, I therefore, in exercise of the powers conferred by Sub- section (1) of Section 3 of the said Act, read with Government order, Home Department (Special) No. DDS/1386/ 1/SPL-3(B), dated 1st October, 1986, the Commissioner of Police, Greater Bombay hereby directs that the said Gurubux Anandram Bhiryani be detained under the said Act.

The High Court quashed the detention by accepting the position that the fact that the detenu had been released on bail in the criminal prosecution referred to above had not been placed before the detaining authority and not being aware of such a material facting he had come to the conclusion that it was necessary to place the detenu under the detention under the Act. We have heard in learned Counsel on both sides and while we are not in agreement with certain use observations made by the High Court, we find it difficult to interfere with the order quashing the detention. The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend up to three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In scores of decisions this Court has been emphasising the necessity of strict compliance with the requirements of the preventive detention law; yet authorities on whom the power is conferred have not been complying with the requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act is frustrated and the

suffering in the community does not abate.

2. Since we are of the view that even on the additional ground we have indicated, the order of detention was bad. It is not necessary to consider whether ground provided in the impugned judgment is tenable for quashing. The appeal fails and is dismissed. We would leave it open to the appellant to deal with the situation in accordance with law.