

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1123 OF 2023

Kiran Harishchandra Gangawane
Age : 28 years, Occu : Labour,
R/o. Plot No. 101, G-Building Glariya
City Rajdhani Nagar, Padegaon, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Commissioner of Police,
Aurangabad
4. The Asstt. Commissioner of Police,
Aurangabad City, Dist. Aurangabad.
5. The Deputy Commissioner of Police,
(Zone-1), Aurangabad City, Dist. Aurangabad
6. The Police Inspector,
Police Station, Cantonment,
Tq. and Dist. Aurangabad. .. Respondents

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Mr. M.B. Borse, Advocate for the petitioner.
Mr. G.O. Wattamwar, APP for the Respondent – State.

...

CORAM : R. M. JOSHI, J.
DATE : AUGUST 25, 2023

PER COURT :

. This petition takes exception to the order dated 14.03.2023 passed by Dy. Commissioner of Police, Aurangabad invoking Section 56 (1)(A)(B) of the Maharashtra Police Act and passing order of externment of the petitioner from the Aurangabad District for the period of two years and order dated 30.06.2023 passed by Divisional Commissioner, Aurangabad whereby he was externed from Aurangabad District for the period of one year.

2. It is the case of the petitioner that he is a labour and resident of Aurangabad city. According to him, he is falsely implicated in some criminal cases. On 24.01.2023 Deputy Commissioner of Police had issued notice under Section 56 (1)(A)(B) of Maharashtra Police Act (hereinafter referred to as the 'Act') alleging that the activities of the petitioner are causing danger and harm in Crime No. 317 of 2018, 321 of 2018 and 151 of 2021. The petitioner after receipt of the said notice tendered his reply on 22.02.2023. After hearing the petitioner Dy. Commissioner of Police passed order dated 14.03.2023. The petitioner preferred appeal

against the said order before the Divisional Commissioner, Aurangabad under Section 60 of the Act. The Divisional Commissioner partly allowed the appeal and confirmed the order of Dy. Commissioner of Police to the extent of externment of the petitioner from District Aurangabad for the period of one year.

3. The petitioner is aggrieved by both the orders and hence this petition is filed on the grounds specifically set out in the petition from para no.(I) to (XXII). The contention of the petitioner is that his reply was not considered by the concerned authorities and the impugned orders are passed in ignorance of the fact that in one of the matters, the petitioner has been acquitted by the Sessions Court. It is also his contention that there is no direct evidence of the witnesses who have claimed any intimidation, threat to life or extortion at the hands of petitioner. It is submitted that orders in question were passed belatedly after two years of the alleged incident and hence on these amongst other grounds the impugned orders deserve to be set aside.

4. Learned counsel for the petitioner mainly submitted that

the petitioner has been acquitted for the offences connected with Cr. No.321 of 2018. Thus, it is his submission that except for the offence registered in the year 2018 and offence under the Arms Act of the year 2021, there is no other offence which would have nexus with the passing of the order of externment by the concerned authority. It is also argued that there is no findings recorded by the Dy. Commissioner of Police as well as Divisional Commissioner as to the reason for which the petitioner is externed from the entire district of Aurangabad. It is therefore his submission that the impugned orders particularly order dated 30.06.2023 passed by Divisional Commissioner to the extent of externment of the petitioner from the entire district of Aurangabad for the period of one year, deserves to be quashed and set aside.

5. Learned APP supported the impugned order passed by the Divisional Commissioner on the ground that the petitioner has never claimed his acquittal to be a ground for the purpose of setting aside the order in question passed by the Dy. Commissioner of Police. It is his further submission that at the time of the issuance of the order of externment, the offence under Crime No.321 of 2018 was pending and hence in absence of any specific plea being taken before

the appellate authority, it is now not open for the petitioner to claim that the said crime cannot be the basis for passing order of externment. It is specifically submitted that the nature of offences committed by the petitioner pertaining to the offence against the body and property and also in view of the fact that he was found carrying fire arm, there was reasonable ground to believe that the petitioner is likely to commit offences and therefore deserves to be externed. It is submitted that after conducting the criminal enquiry and after giving opportunity of hearing to the petitioner, the order in question was passed and hence there is no infirmity in the order of externment passed by the Dy. Commissioner of Police.

6. In order to appreciate the submissions in the context of factual matrix of the case, it would be relevant to take into consideration the scope of judicial interference in the matters of administrative decision such as in the case of externment of any individual in exercise of Section 56 (1) of the Act. It would be relevant to take note of the observations made by the Hon'ble Apex Court in case of Deepak Laxman Dongre Vs. State of Maharashtra and Others, AIR 2022 SC1241. The Hon'ble Apex Court in paragraph 4 of

the said judgment has considered the fundamental right conferred on the citizen to move freely throughout the Country under clause (d) of Article 19(1) of the Constitution of India and observed that:

“4. We have given careful consideration to the submissions. Under clause(d) of Article 19(1) of the Constitution of India, there is a fundamental right conferred on the citizens to move freely throughout the territory of India. In view of clause (5) of Article 19, State is empowered to make a law enabling the imposition of reasonable restrictions on the exercise of the right conferred by clause (d). An order of externment passed under provisions of Section 56 of the 1951 Act imposes a restraint on the person against whom the order is made from entering a particular area. Thus, such orders infringe the fundamental right guaranteed under Article 19(1)(d). Hence, the restriction imposed by an order of externment must stand the test of reasonableness.”

It is held in paragraph 6 as under:

“6. As observed earlier, Section 56 makes serious inroads on the personal liberty of a citizen guaranteed under Article 19(1)(d) of the Constitution of India. In the case of Pandharinath Shridhar Rangnekar v. Dy. Commr. of Police, State of Maharashtra in paragraph 9, this Court has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances. In the same decision, this Court held that care must be taken to ensure that the requirement of giving a hearing under Section 59 of the 1951 Act is strictly complied with. This Court also held that the requirements of Section 56 must be strictly complied with.

It is held in paragraph 7 as under:

7. There cannot be any manner of doubt that an order of externment is an extraordinary measure. The effect of the order of externment is of depriving a citizen of his fundamental right of free movement throughout the territory of India. In practical terms, such an order prevents the person

even from staying in his own house along with his family members during the period for which this order is in subsistence. In a given case, such order may deprive the person of his livelihood. It thus follows that recourse should be taken to Section 56 very sparingly keeping in mind that it is an extraordinary measure. For invoking clause (a) of sub-section (1) of Section 56, there must be objective material on record on the basis of which the competent authority must record its subjective satisfaction that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to persons or property. For passing an order under clause(b), there must be objective material on the basis of which the competent authority must record subjective satisfaction 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 offences punishable under Chapter XII, XVI or XVII of the IPC. Offences under Chapter XII are relating to Coin and Government Stamps. Offences under Chapter XVI are offences affecting the human body and offences under Chapter XVII are offences relating to the property. In a given case, even if multiple offences have been registered which are referred in clause (b) of sub-section (1) of Section 56 against an individual, that by itself is not sufficient to pass an order of externment under clause (b) of sub-section(1) of Section 56. Moreover, when clause(b) is sought to be invoked, on the basis of material on record, the competent authority must be satisfied that witnesses are not willing to come forward to give evidence against the person proposed to be externed by reason of apprehension on their part as regards their safety or their property. The recording of such subjective satisfaction by the competent authority is sine qua non for passing a valid order of externment under clause (b).

. These observations of Hon'ble Apex Court clearly lay down the guidelines for testing validity and sustainability of an order of externment passed by the authority under Section 56 of the Act.

7. Reference also needs to be made to the judgment of the Hon'ble Apex Court in the case of State of NCT of Delhi Vs. Sanjeev

@ Bitto, 2005 DGLS (SC) 320 wherein the Hon'ble Apex Court has dealt with the scope for judicial interference in the matters of administrative decisions. It would be relevant to refer observations of Hon'ble Apex Court in paragraph 15, which reads thus:

"15. 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 (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.”

By considering the law on the point it is further observed in paragraph 17 that:

‘17. 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.’

It is further held that whether action falls within any of these categories has to be established. Mere assertion in that regard would not be sufficient. Finally, it is observed in paragraph 21 as under:

“21. 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.”

8. Similar observations can be found in case of **Deepak** (*supra*) wherein the Hon’ble Apex Court in paragraph 10 of the judgment has observed that the Court cannot cause interfere in administrative order only because there is a possibility of another

view being taken. In case of any other administrative order, the judicial review is permissible only on the grounds of *mala fides*, unreasonableness or arbitrariness.

9. The aforesaid law laid down by the Hon'ble Apex Court is sufficient guideline in order to decide the case in hand. Perusal of the facts of the present case indicates that there is no dispute about the competency of the Dy. Commissioner of Police who has passed the order dated 24.01.2023 to exercise of powers under Section 56 of the Act whereby the Petitioner is externed. Further it is not the case of the petitioner that he was not heard before passing of the said order and as such there is compliance of the principles of natural justice. This Court has to consider as to whether the impugned order is tainted with *mala fides*, unreasonableness or arbitrariness if interference is to be caused therein. As held by the Hon'ble Apex Court that the Court will be slow in interference in the matters relating to administrative function unless the decision is tainted by illegality, irrationality or procedural impropriety. The Court also needs to consider that the action falls within any of these categories is established as mere assertion thereof would not be sufficient to cause such interference.

10. There is no dispute about the fact that at the time of the issuance of the notice under Section 56 (1)(A)(B) of the Act, in all three offences were registered and pending trial against the petitioner. Perusal of the record shows that the said crimes were committed with use of weapons and that the petitioner is also found with fire arm and other weapons. The preliminary enquiry conducted by the concerned police further indicates that the petitioner is prone of committing the offences and carrying weapons with him. It is further recorded in the impugned order that one witness has stated about giving threat by the petitioner claiming that he is the goon of the area and that he will have to pay Rs.1,000/- per month by way of extortion / protection money. When the said witness has refused to concede to the said demand, he was beaten and was threatened to kill. Because of the said threat, the witness did not dare to lodge a complaint with the police. Similarly, prior to 2 ½ month of the conducting the enquiry it was also found that the similar threats were given to the other witnesses. It is specifically recorded by the Dy. Commissioner of Police that the witnesses are not coming forward to record their statement out of fear and terror of the petitioner in the area. The concerned authority therefore was satisfied with regard to the

material on record which indicates that there is possibility of commission of further offences by the petitioner and hence impugned order cannot be set aside in totality.

11. In the said order, however the petitioner was externed from the District Aurangabad for the period of two years. There is no reason recorded as to why the petitioner is required to be externed from the entire district of Aurangabad that too for the maximum period of two years. The appellate authority therefore has interfered in the said order and the petitioner was externed from the Aurangabad District for the period of one year. The question before this Court as to whether the appellate authority had taken into consideration the facts and circumstances of the case and has also recorded the reason for externment of the petitioner from the entire district of Aurangabad.

12. Perusal of the record indicates that all the offences registered against the petitioner are with Chavni Police Station which comes within the jurisdiction of the Aurangabad Taluka. No other crime is recorded against him in any other police station. There is nothing on record to show that the petitioner has threatened or terrorised any person beyond the jurisdiction of Chavni Police Station.

There is absolutely no material on record to indicate that the externment of petitioner from the entire district of Aurangabad is essential in order to prevent commission of further crimes.

13. Neither in the order passed by the Dy. Commissioner of Police nor in the order of Divisional Commissioner records any reason for externment of petitioner from the entire district of Aurangabad. As held by Hon'ble Apex Court in the judgment cited supra administrative order if sans reasons can be interfered with. In view of this, as there is no reason recorded by both the authorities for externment of the petitioner from the entire district of Aurangabad, the order of externment to that extent deserves interference. Hence the following order:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order dated 30.06.2023 is upheld to the following extent:
 - (a) The order of externment of the petitioner for the period of one year is maintained to extent of Taluka Aurangabad only.

[R. M. JOSHI]
JUDGE

GGP