Neutral Citation No. - 2023:AHC:218132-DB

Reserved on 28.10.2023

Delivered on 17.11.2023

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 15849 of 2023

Petitioner :- Ashraf
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Vineet Singh Parmar,Mohammad Arif Siddiqui
Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.
Hon'ble Manoj Bajaj,J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

2. The writ petition has been filed seeking following relief:

"Issue a writ, order or direction in the nature of writ of certiorari quashing the show cause notice dated 18.09.2023 (Annexure No.1 to the writ petition) Computerized Case No. D202309600004194 of 2023 (State Vs Ashraf) under Section 3 of U.P. Control of Goondas Act, District- Jalaun issued by Additional District Magistrate (Finance & Revenue), Saharanpur/respondent no. 3, Police Station-Mirzapur, District-Saharanpur."

3. The contention of learned counsel for the petitioner is that notice under the Goondas Act has been issued to the petitioner on the basis of a single case.

4. Counsel for the petitioner has relied upon the judgment and order dated 10.08.2023 passed by a Co-ordinate Bench of this Court in Criminal Misc. Writ Petition No. 12619 of 2023 (Govardhan vs. State of U.P.). Therein the notice was on the basis of a solitary case.

5. In our considered opinion, challenge to a notice is not tenable. The petitioner still have every opportunity of replying to the impugned show-cause notice issued to him and to contest the proceedings, if any, that may be drawn on its basis.

6. Moreover, in **Kareem vs. State of U.P. through Principal Secretary, Misc. Bench No. 24256 of 2020**, vide order dated 04.01.2021, a co-ordinate Bench has refused to interfere in similar circumstances on the ground of existence of an alternative remedy of showing cause before the District Magistrate. This judgment is earlier in time and is based also on pronouncements of the Apex Court, but has not been considered in the judgment cited.

7. In Kareem (supra) also, challenge to the notice was on the ground that it had been issued on the basis of a single criminal case. Relevant portion of judgment is extracted below:

"Now, coming to the definition of 'Goonda' the Court finds that Goonda means a person who is covered by (i) of Section 2(b) or Clause (ii) or Clause (iii) or Clause (iv) or Clause (v) of the said Section. All the clauses are disjunctive as is evident from the use of the word 'or'.

Clause (iv) of Section 2(b) makes it very clear that a person can be categorized as Goonda if he is generally reputed to be a person who is desperate and dangerous to the community. This provision has not been considered in Suresh Tiwari' case (supra), though, Section 2(b) has been quoted in the said judgment. As regards the decision in Imran alias Abdul Qudus Khan the said case also considers meaning of the words 'habitual criminal' and does not delve upon other clauses of Section 2(b). The decision of the Supreme Court rendered in the case of ***Vijay Narain Singh Vs. State of Bihar and Ors. reported in (1984) 3 SCC 14*** *as referred in the judgement in Suresh Tiwari's case (supra) deals with Section 2(b) of Bihar Control of Crimes Act, 1981 and it was not a case of challenge to a notice.*

Be that as it may, the specific issue as to maintainability of writ petition under Article 226 of the Constitution of India against a notice issued under Section 3(1) of U.P. Control of Goondas Act, 1970 came up for consideration before a Division Bench of this Court in case of Ballabh Chaubey Vs. Additional District Magistrate (Finance), Mathura and Anr; Criminal Misc. Writ Petition No. 2954 of 1996 decided on 22.01.1997 reported in 1997 A. Cr. R. 387 (1997 ALJ 1630). A Division of this Court specifically considered this issue and after referring to various decisions of this Court and that of the Hon'ble Supreme Court opined not to entertain the writ petition at the stage of notice and gave cogent and detailed reasons in support of its conclusion. Relevant extract of the said decision is quoted hereinbelow:-

"8. The detention laws like National Security Act, or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act make serious in-road in the liberty of a person. Under these laws a person is detained without any prior notice and that too on the subjective satisfaction of the detaining authority which satisfaction cannot be challenged on merits. The person detained gets only a right to make representation against his detention but that too after he has been detained and he has been deprived of his liberty. The decision of the representation naturally takes time. The principle that the machinery provided by the Act should not be permitted to be by-passed by taking recourse to proceedings under Article 226 of the Constitution prior to

execution of the detention order was reiterated even in such cases. In ***Additional Secretary to Government of India v. Smt. Alka Subhash Gadia, JT 1991 (1) SC 549****, the submission on behalf of the detaining authority is noticed in para 25 of the Report which is as under :*

"It was contended by Sri Sibbal, learned Additional Solicitor General, on behalf of the appellants that since the detention law is constitutionally valid, the order passed under it can be challenged only in accordance with the provisions of, and the procedure laid down, by it. In this respect there is no distinction between the orders passed under the detention laws and those passed under other laws. Hence, the High Court under Article 226 of this Court under Article 32 of the Constitution should not exercise its extraordinary jurisdiction in a manner which will enable a party to by-pass the machinery provided by the law."

The Court after considering the submissions of the parties held as follows in para 30 :

"..... The power under Article 226 and 32 are wide, and are untrammelled by any external restrictions and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraint for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to evoke their discretionary extraordinary and equitable jurisdiction under Articles 226 said 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available ....."

This decision has been subsequently followed in ***N. K. Bapan v. Union of India, JT 1992 (4) 49****;* ***State of Tamil Nadu v. P. K. Shamsuddin, JT 1992 (4) 179*** *and* ***Subhash Mujimal Gandhi v. L. Miningliana, 1994 (6) SCC 14****. The provisions of detention laws are far more stringent than the Control of Goondas Act as here order is passed after notice and trial and the person against whom order is passed does not lose his liberty. He is merely deprived of his right to live in a particular area from where he is externed but is free to reside any where else in the country. There is no reason why the same principle should not apply in the present case as well. The law being well-settled that where a Statute provides a machinery of its own, the aggrieved person should first exhaust the remedies provided under the Statutes before approaching the High Court under Article 226 of the Constitution and the High Court would not normally entertain a petition straightway, the present petition challenging the notice is liable to be rejected on the ground of alternative remedy.*

9. In ***Raja Sukhnandan v. State, AIR 1972 All 498****, the writ petition was filed at the stage of notice. The Division Bench examined the contention based*

upon the constitutional validity of U. P. Control of Goondas Act but refused to consider the submission regarding illegality of the notice on the ground that the same could be agitated before the District Magistrate and if the decision went against the petitioner, in appeal before the Commissioner. In ***Kabir Chawla v. State of U.P., 1994 SCC (Cri) 577****, the validity of the notice under Section 3 of the Act was assailed but the Supreme Court declined to go into this question on the ground that the petitioner could satisfy the District Magistrate who was seized of the matter. It may be mentioned here that in all the cases where validity of notice issued under similar Statute relating to externment of Goondas was assailed before the Supreme Court, the matter had been taken in appeal against final orders of externment see* ***Gurucharan Singh v. State of Bombay, AIR 1952 SC 221; Hari Khemu Gawli v. Dy. Commissioner of Police, AIR 1956 SC 559; Bhagubhaj v. District Magistrate, AIR 1956 SC 585*** *and* ***State of Gujarat v. Mehboob Khan, AIR 1968 SC 1468****.*

10. There is another reason for not entertaining the writ petition at the stage of notice. As the preamble of the Act shows, it has been enacted to make special provisions for the Control and Suppression of Goondas with a view to the maintenance of Public Order. The provisions of the Act are intended to prevent further mischief by a Goonda and not to secure his conviction in a pending case. If a person is permitted to challenge the notice at the initial stage and seek stay of the proceedings, the very purpose for which notice is issued and the law under which it is issued will be frustrated as the externment order remains in operation only for a limited period.

11. Learned counsel has next submitted that in ***Ramji Pandey v. State of U.P., 1981 Cri LJ 1083****, writ petition had been filed challenging the notice under Section 3 of the Act and the writ petition was allowed by a Full Bench of this Court and, therefore, the present petition also deserves to be entertained. The judgment of the Full Bench shows that the question whether a writ petition should be entertained against a notice was not at all considered. The only question which was canvassed and was considered by the Bench was whether the notice was in accordance with the requirement of Section 3 of the Act. No such argument that a writ petition under Article 226 of the Constitution should not be entertained at the stage of notice seems to have been canvassed and therefore no decision has been given on this point. It is well-settled that a decision is an authority for when it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in it. See* ***M/s. Orient Paper and Industries Ltd. v. State of Orissa, AIR 1991 SC 672*** *para 19. Doctrine of precedent is limited to the decision itself and as to what is necessarily involved in it. Judicial authority belongs not to the exact words used in this or that judgment, nor even to all reasons given, but only to the principle accepted and applied as necessary grounds of decision see* ***Krishna Kumar v. Union of India, AIR 1990 SC 1782*** *pages 18 and 19. The Full Bench having not considered the question of maintainability of the writ petition at the stage of notice, the decision rendered by it cannot be held to be an authority or binding precedent for holding the writ petition to be maintainable.*

12. In view of the reasons discussed above the writ petitions are dismissed on the ground of alternative remedy."

8. Under the circumstances and following the pronouncement made in Kareem Vs. State of U.P., no interference is called for at this stage in this petition. The judgment in Kareem (supra) has not been considered in Govardhan vs. State of U.P. cited by the petitioner.

9. Accordingly, this petition fails and is dismissed.

Order Date :- 17.11.2023
Aditya Tripathi

Digitally signed by :-
ADITYA TRIPATHI
High Court of Judicature at Allahabad