

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.32059 of 2014

BETWEEN

Suggu Rami Reddy.

... PETITIONER

AND

The Government of Andhra Pradesh, Rep. by its Chief Secretary,
Secretariat, Hyderabad and others.

...RESPONDENTS

Counsel for the Petitioner: MR. ARAVALA RAMA RAO

Counsel for the Respondents: ADVOCATE GENERAL (AP)

For GP FOR GAD – R2

GP FOR HOME (AP)

GP FOR REVENUE (AP)

MR. K.V. SHIVA PRASAD – R8

The Court made the following:

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ORDER:

Heard learned senior counsel for the petitioner, learned Advocate General appearing for respondents 1 to 7 and Mr. K.V. Shiva Prasad, learned counsel appearing for respondent No.8.

2. This writ petition is directed against the externment order passed against the petitioner by the Collector and District Magistrate, Srikakulam, respondent No.5, dated 13.09.2014 under Section 3(1) of the A.P. Prevention of Anti-Social and Hazardous Activities Act, 1980 hereinafter referred to as the AP Act 9 of 1980.

3. The impugned order itself refers to an earlier order of externment dated 28.02.2014 passed under the aforesaid provision of the AP Act 9 of 1980 for a period of six months and the said period being on the verge of expiry on 28.08.2014, the Superintendent of Police, Srikakulam under his letter dated 13.08.2014 requested the Collector and District Magistrate to extend the said earlier order by a further period of six months by giving various inputs with regard to the activities planned by the petitioner. Based upon the said letter, the Collector and District Magistrate, recorded in the order that he has examined the issue afresh and keeping in view the involvement of the petitioner in several cases, as listed in the said order, found him falling in the definition of Goonda under Section 2(e) of the AP Act 9 of 1980. The Collector and District Magistrate, accordingly, was of the opinion that in view of the inputs placed by the Superintendent of Police and the orders of the District Court, Srikakulam and keeping in view the likelihood of breach of peace and violent agitation on account of uncontrolled aggressive behaviour of the petitioner, it was a fit case for invoking the provisions of the AP Act 9 of 1980 and passed the aforesaid externment order expelling the petitioner from the jurisdiction of Srikakulam for a period of six months.

4. Counter affidavit filed on behalf of respondent No.6 states, *inter alia*, that the impugned order had to be passed by the Collector and

District Magistrate for ensuring maintenance of public order and to prevent the petitioner from indulging in dangerous and disturbing activities so as to maintain tranquility, social harmony and order.

It is also stated that the petitioner was responsible for creating numerous law and problems in the area and has been resorting to unlawful activities by unleashing terror along with his associates. Hence, the impugned order is sought to be justified and it is asserted that the said order is in accordance with law.

5. Learned senior counsel for the petitioner made specific submission with regard to the requirement under Section 3(1) of the AP Act 9 of 1980 and also referred to the definition of Goonda under Section 2(e) read with explanation. According to the learned senior counsel, the petitioner cannot be called as habitual offender,

as the present impugned order is passed merely on the assumption that in future the petitioner is likely to commit offences punishable under Section 294 read with chapters 16, 17 and 22 of the Indian Penal Code. So far as Section 3 of the AP Act 9 of 1980 is concerned, learned senior counsel specifically points out that the said provision itself requires the Commissioner or the District Magistrate to give a notice in writing informing such person of the general nature of the material allegations against him and give him opportunity of tendering explanation before passing any such order. Learned senior counsel, therefore, submits that no such notice and opportunity having been given, the order itself is violative of the safeguards prescribed under Section 3(1) of the AP Act 9 of 1980. Alternatively, learned senior counsel also submitted that even assuming that the order impugned is one of extending the order of externment under Section 5 of the AP Act 9 of 1980, the order had to be in continuation of the earlier order of externment and that the order of extension must record reasons in writing that it is impracticable to give opportunity to the person concerned for making representation. Hence, if the order is construed to be one passed under

Section 5 of the AP Act 9 of 1980, the same is required to be invalidated as no such reasons are found recorded in the order.

6. Learned Advocate General, on the other, fairly submits that under Section 3(1) of the AP Act 9 of 1980 it is necessary that prior notice in writing is given and opportunity of tendering explanation must also be complied with before passing of the order.

However, learned Advocate General justified the impugned order on the ground that it is an extension of earlier externment order.

Learned Advocate General specifically pointed out that while the earlier order was in force, the Superintendent of Police sought extension of the said order by a further period of six months by giving inputs to the District Collector on 13.08.2014 i.e. well before the expiry of the earlier order. Hence, irrespective of the provision under which the order is shown to have been passed, learned Advocate General contends that the order must be considered as an order passed under Section 5 of the AP Act 9 of 1980.

7. For the sake of convenience, Sections 3(1) and 5 of the AP Act 9 of 1980 are extracted hereunder:

“3. Externment of goondas: - Where it appears to the Commissioner or the District Magistrate –

- (a) that any person is a goonda; and
- (b) (i) that his movements or acts in the district or any part thereof are causing or are calculated to cause alarm, danger or harm to persons or property; or
- (ii) that there are reasonable grounds for believing that he is engaged or about to engage in the district or any part thereof, in the commission or abetment, or any offence or act specified in sub-clauses (i) to (v) of clause (e) of Section 2; and
- (c) that witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property;

the Commissioner or the District Magistrate shall, by notice in writing inform him of the general nature of the material allegations against him in respect of clauses (a), (b) and (c) and given him a reasonable opportunity of tendering an explanation regarding them.”

5. Extension of period of order:- The Commissioner or the District

Magistrate may, after giving, except where, for reasons to be recorded in writing, he is satisfied that it is impracticable so to do, an opportunity of making a representation in that behalf to the person concerned, extend, from time to time, in the interest of the general public, the period specified in the order made under Section 3, but the period so extended shall in no case exceed two years in the aggregate.”

8. It would be evident from a reading of Section 3(1) of the AP Act 9 of 1980 that prior notice and opportunity of tendering explanation is required to be fulfilled before passing any order. Admittedly, no such notice and opportunity was given in the present case. Secondly, so far as Section 5 of the AP Act 9 of 1980 is concerned, it is necessary for the Commissioner or the District Magistrate, as the case may be,

to record reasons in writing regarding impracticability to give an opportunity to the person to make representation. No such reasons are found recorded anywhere in the impugned order. As is required under Section 3 of the AP Act 9 of 1980, even for extension, an opportunity of hearing is required to be given for the purpose of exercise of power under Section 5 of the AP Act 9 of 1980, unless it is recorded by reasons in writing that it is impracticable to give an opportunity.

On both counts, therefore, even if the order is construed to be either under Section 3(1) or Section 5 of the AP Act 9 of 1980, the order impugned cannot be sustained, as it suffers from non-compliance with the mandate of provisions aforesaid. On that ground, therefore, the impugned order is liable to be set aside and is accordingly set aside.

The writ petition is accordingly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

February 25, 2015

Note: Furnish C.C. of the order within three days.

(B/o) DSK