

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

W.P. NOs.28191 of 2015

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ORDER:

The order of detention passed by the Collector and District Magistrate, Chittoor, detaining the detenu under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (hereinafter called "Act 1 of 1986") is questioned in this Writ Petition, among others, on the ground that the satisfaction of the detaining authority suffer from non-application of mind; and the detaining authority had arrived at his subjective satisfaction on the basis the activities of the detenu were injurious to the maintenance of public peace and law and order, whereas the requirement under Act 1 of 1986 is to detain persons whose activities are prejudicial only to the maintenance of public order.

The detaining authority passed the order of detention recording his satisfaction that the detention of the detenu is necessary to prevent him from indulging further in activities which are prejudicial to maintenance of public order. However, the grounds of detention reflect his satisfaction that the detenu was required to be detained, under Section 3 (2) of Act 1 of 1986, as his activities were injuries to the maintenance of public peace and law and order.

It is contended, on behalf of the petitioners, that A.P. Act 1 of 1986 can only be invoked if the activities of the detenu are prejudicial to "**public order**"; detention, on the ground that activities of the detenu are prejudicial to "**law and order**", is impermissible under the 1986 Act; the detaining authority has used both the expressions – "**law and order**" and "**public order**" – in recording his satisfaction; the satisfaction of the detaining authority, on the ground that the activities of the detenu are prejudicial to "**public peace**" and "**law and order**", are irrelevant factors, the use

of which reveal non-application of mind and vitiate the orders of detention; the order of detention is akin to a decree, and the grounds of detention are akin to a judgment; on the basis of the material furnished by the sponsoring authority, and after perusing the file and analysing the material placed before him, the detaining authority decides whether or not the concerned person should be detained; such a reference forms the basis of the satisfaction arrived at by the detaining authority to detain the detenu in preventive custody; the very fact that the detaining authority referred to “**public order**” in the Order of detention, and “**public peace**” and “**law and order**” in the grounds of detention reflects his confused state of mind; he was not sure of the reason for detaining the detenu; he was swayed by irrelevant considerations which vitiated the order of detention; and reference to “**public peace**” and “**law and order**” in the grounds of detention vitiates the order of detention also.

Learned Advocate-General for the State of Andhra Pradesh, would submit that the order of detention states that the activities of the detenu are prejudicial to “**public order**”; even, in several parts of the grounds of detention, reference is made only to “**public order**”; an isolated reference to “**public peace**” and “**law and order**”, in the concluding part of the grounds of detention, would not vitiate the order of detention; and both the order and the grounds of detention should be read together.

The meaning of the words “**maintenance of public order**”, in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive, is confined to graver episodes not involving cases of “**law and order**”, which are not disturbances of public tranquillity but of *ordre publique*. (**Madhu Limaye v. Sub-Divisional Magistrate**) . “**Public order**” is synonymous with public safety and tranquillity. Public order, if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. Disorder is no doubt prevented by the maintenance of law and order also, but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. (**Ram Manohar Lohia v. The State of Bihar; Commissioner of Police v. C. Anita**). “Public order” is something more than ordinary maintenance of law and order. The test to be adopted, in determining whether an act affects law and order or public order, is: does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? (**C. Anita**³; **Kanu Biswas v. State of W.B.**).

The expression “**law and order**” is wider in scope, as contravention of the law always affects order. “**Public order**” has a narrower ambit, and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of “**law and order**” and “**public order**” is one of degree, and the extent of the reach of the act in question on society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only and, therefore, touch the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is in its impact on society, it may be very different. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention, in its effect, is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problems of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting “public order” from that concerning “law and order”. (C. Anita³).

The State is at the centre and society surrounds it. The acts become graver as we journey from the periphery of the largest circle towards the centre. (Madhu Limaye¹). For expounding the phrase “**maintenance of public order**”, one has to imagine three concentric circles : Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the Security of the State. All cases of disturbances of public tranquillity fall in the largest circle but some of them are outside “**public order**” for the purpose of the phrase “**maintenance of public order**”, similarly every breach of public order is not necessarily a case of an act likely to endanger the security of the State. (Ram Manohar Lohia²; Madhu Limaye¹).

Every infraction of the law must necessarily affect order, but an act affecting “**law and order**” may not necessarily also affect the “**public order**”. Likewise an act may affect “**public order**”, but not necessarily the “**Security of the State**”. The true test is not the kind, but the potentiality of the act in question. One act may affect only

individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the Security of the State. (**C. Anita³; Kishori Mohan Bera v. State of W.B.; Pushkar Mukherjee v. State of W.B.; Arun Ghosh v. State of W.B. and Nagendra Nath Mondal v. State of W.B.**). Stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound, in some measure, to lead to disorder but every infraction of the law does not necessarily result in public disorder. “**Law and order**” comprehends disorders of less gravity than those affecting “**public order**” just as “**public order**” comprehends disorders of less gravity than those affecting “**Security of State**”. (**C. Anita³; Kuso Sah v. State of Bihar; Harpreet Kaur v. State of Maharashtra; T.K. Gopal v. State of Karnataka and State of Maharashtra v. Mohd. Yakub**).

In **Ram Manohar Lohia²** the Supreme Court held that the action of the District Magistrate was entirely his own; he was, no doubt, facing a law and order problem, but he could deal with such a problem through the ordinary law of the land, and not by means of preventive detention; his powers were limited to taking action to maintain public order; he could not run the law and order problems in his District by taking recourse to the provisions for detention under the preventive detention laws; if he thought in terms of “public order”, he should have said so in the order or explained how the error arose; he did neither; and if the needs of public order demanded action a proper order should have been passed.

The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to “**public peace**” and “**law and order**” neither of which are grounds for detaining a citizen, in preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds of detention are read together, the fact that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of “**public order**”, and in the grounds of detention, as affecting “**public peace**” and “**law and order**”, reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of “**public order**” or “**public peace and law and order**”. As noted hereinabove, “**public**

order” has acquired a meaning distinct from “**law and order**” and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to “**public peace and law and order**”, his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention.

On this short ground, the impugned order of detention must be, and is hereby, set aside. The detenu shall be set at liberty forthwith provided he is not required to keep in custody in any other case/cases registered against him.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 10.12.2015.

MRKR