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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 28.08.2017

Judgment Pronounced on: 27.09.2017

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W.P(CRL) 1232/2017

AVINASH @ JANU

..... APPELLANT

Through: Mr. Ajayinder Sangwan, Advocate
with Mr.Tarunaesh Kumar, Ms.Karuna
Nidhar Rawal, Mr.Deepak Sherawat,
Mr.rohan Sharma and Mr. Anirudha Kumar,
Advocates.

versus

LT. GOVERNOR OF DELHI THROUGH STATE GOVT OF
NCT OF DELHI & ORS

..... RESPONDENTS

Through: Mr. Rajesh Mahajan, ASC for
the State with Mr.Sachin Gupta, Advocate
along with SI Rajender Singh, PS Malviya
Nagar, Delhi.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The petitioner has invoked the writ jurisdiction of this court under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.PC') by impugning the order dated 22.03.2017 of the Lt. Governor, Delhi whereby the order dated 10.02.2017 of Additional Deputy Commissioner of Police, South District, New Delhi (in short

‘Addl. DCP) under Sections 47 & 50 of the Delhi Police Act, 1978 (in short ‘DP Act’) directing the petitioner to remove himself beyond the limits of the NCT of Delhi for a period of one year, was confirmed.

2. The process of externment started on 30.04.2015 when the proposal for externment of the petitioner Avinash @ Janu was received by the DCP from SHO Malviya Nagar. It was proposed that the petitioner has been engaging himself in the commission of illegal acts and activities and his movements in the limits of the NCT of Delhi are calculated to cause alarm and danger disturbing societal peace. He is a potential source of harming public at large. The petitioner was found to have been named in three FIRs:-

- (i) FIR No. 373/12 under Sections 379/411/34 IPC registered at PS Saket.
- (ii) FIR No. 523/12 under Sections 356/379/411/34 IPC registered at PS Malviya Nagar.
- (iii) FIR No.1086/14 under Sections 354D/506 IPC registered at PS Malviya Nagar.

3. As per the Reply filed by the respondent/State, the petitioner was convicted in the case at serial no. (i) & (ii) vide orders dated 22.10.2013 and 01.09.2015 respectively. The case at serial no. (iii) is pending trial.
4. A notice for externment containing a summary of allegations was served upon the petitioner on 15.05.2015 in accordance

with Section 47 & 50 of the DP Act by virtue of the power vested in the DCP/Additional DCP conferred by the Commissioner of Police under Section 8(ii) of the DP Act.

5. The petitioner appeared before the DCP on 18.12.2015. He was informed of the general nature of the allegations against him in vernacular to which he pleaded not guilty and claimed trial. The petitioner submitted his written reply on 12.02.2016.

6. A supplementary notice dated 25.10.2016 under Section 50 of the DP Act was served upon the petitioner as during the externment proceeding under Section 47 of DP Act he was found involved in other criminal activities and the following criminal cases were found registered against him: -

(i) FIR No. 356/15 under Sections 392/34 IPC registered at PS South Campus, Delhi.

(ii) FIR No. 451/15 under Section 392 IPC registered at PS South Campus, Delhi.

(iii) FIR No. 582/15 under Section 392 IPC registered at PS South Campus, Delhi.

(iv) FIR No. 921/15 under Sections 356/379/411/34 IPC registered at PS Vasant Kunj South, Delhi.

7. As per the reply filed by the respondent/State, out of these four cases, cases at serial no. (i), (ii) and (iii) went untraced as no recovery was effected, while the case at serial no. (iv) is pending trial.

8. Despite opportunity, the petitioner did not submit any reply to the supplementary notice. The petitioner chose not to engage an advocate even though he was informed of his right to engage a counsel through the Delhi Legal Service Authority, Saket Court, New Delhi free of costs. He also did not lead any evidence despite several opportunities. The petitioner appeared in person on 10.02.2017 before Addl. DCP-I and submitted that he was living peacefully and earning his livelihood by fair means. He also prayed for an opportunity to reform himself. He promised that he will not indulge in any illegal activity in the future and keep peace in the society.
9. After hearing the petitioner and perusing the statement of witnesses and other evidence, the Additional DCP came to the conclusion that the petitioner is involved in several criminal cases punishable under the IPC. He was of the view that his presence in the community is hazardous to the society and his continuous presence in the area is leading to cause harm, alarm and danger the respectable citizens, who have a right to live peaceful life. He further came to the conclusion that witnesses are unwilling to depose in public against him because of the apprehension on their part as regards to the safety of their person and property at the hands of the respondent and his conduct requires stringent view. He also concluded that the petitioner is not likely to improve till stringent measures are taken against him.

10. By impugned order dated 22.03.2017, the Lt. Governor concurred with the findings of the Addl. DCP dated 10.02.2017. The appellant authority was also of the view that even during the pendency of the externment proceedings, the petitioner has not desisted himself from indulging in unlawful activities which shows that he has not mended his ways.
11. Learned counsel for the petitioner had argued that the impugned order was illegal, arbitrary and against the settled principle of law and is therefore liable to be set-aside.
12. He further argued that the petitioner was not found to be habitually intimidating other persons by acts of violence or by show of force as contemplated under Section 47(c) (ii) of the DP Act, and therefore he could not be proceeded against under this Section.
13. He urged that mere apprehension by the police that the petitioner might be involved in criminal activities is not enough but a clear and present danger, based upon credible material which makes the movement and acts of the person in question dangerous must be present in order to warrant an externment order under the DP Act. He relied upon the judgment of Hon'ble Supreme Court in **Prem Chand v Union of India & Ors., AIR 1981 SC 613 (para 9)**, and three judgments of this court in **Akash Kashyap @ Puniyan v Lt. Governor of Delhi & Anr., W.P(CRL) 1148/2015 (para 18, 21, 22, 23, 24, 25, 35, 36, 37 & 39)**, **Ghan Shyam Kapoor v Lt. Governor of Delhi,**

2015 SCC OnLine Del 14180 (para 10, 11, 12, 13, 14, 15, 23, 24 & 25) and Bhim Singh v Lt. Governor of Delhi 98 (2002) DLT 216 (DB) (para 10 & 11) to substantiate his arguments.

14. He further argued that the impugned order was highly arbitrary and passed without any application of mind which has resulted in curtailing the life and liberty of the petitioner.
15. Per contra, the learned Additional Standing Counsel for the State submitted that the impugned order was based on material available on record and the settled legal proposition and did not suffer from any impropriety or illegality and therefore does not warrant any interference.
16. He submitted that the petitioner was involved in various criminal activities between 2012-2015 which is clear from the various FIRs registered against him. He further argued that the externment order was passed after following the mandate laid down in Sections 47 & 50 of the DP Act.
17. He further argued that under Section 47 of the DP Act, it was only the existence of material and not the sufficiency of material which can be questioned. He relied upon three judgment of the Hon'ble Supreme Court in **(i) State of NCT of Delhi & Anr. V Sanjeev alias Bittoo, 2005 SCC (Cri) 1025 (para 14 & 15) (ii) Phulwari Jagdambaprasad Pathak v R.H. Mendonga & Ors., (2000) 6 SCC 751 (para 16) & (iii) Phulwari Jagdambaprasad Pathak v R.H. Mendonga & Ors., (2000) 6 SCC 751 (para 16)**, two judgments of this Court

in (i) *Surjeet Singh v State & Anr.*, 72 (1998) *Delhi Law Times* 389 (para 20-23) & (ii) *Ajay Pal Singh v State (NCT of Delhi) & Ors.*, 91 (2001) *Delhi Law Times* 91 (DB) (para 14 & 15) to further substantiate his point.

18. I have heard the learned counsel for the parties.
19. In order to appreciate the rival contentions of the parties, it is deemed appropriate to reproduce Sections 47 of the DP Act, for disposal of this petition: -

“47. Removal of persons about to commit offences.—

Whenever it appears to the Commissioner of Police—

(a) that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property; **or**

(b) 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 an offence punishable under Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860) or under section 290 or sections 489A to 489E (both inclusive) of that Code or in the abetment of any such offence; **or**

(c) that such person—

(i) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; **or**

(ii) has been found **habitually** intimidating other persons by acts of violence or by show of force; **or**

(iii) **habitually** commits affray or breach of peace or riot, or **habitually** makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others; **or**

(iv) has been **habitually** passing indecent remarks on women and girls, or teasing them by overtures;

and that in the opinion of the Commissioner of Police witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, the Commissioner of Police may, by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof, by such route and within such time as the Commissioner of Police may specify and not to enter or return to Delhi or part thereof, as the case may be, from which he was directed to remove himself.

Explanation.—A person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have committed or to have been involved in any of the acts referred to in this section shall be deemed to have **habitually** committed that act.

20. A bare perusal of the Section 47 of DP Act shows that it consists of three parts. The first part relates to satisfaction of the Commissioner of Police that: -

(i) the movements or acts of any person are causing or calculated to cause alarm or danger or harm to any person or property; **or**

(ii) there are reasonable grounds to believe that such person is engaged or is about to be engaged in the commission of an offence under Chapter XII (related to coins/Government stamps) or Chapter XVI (offences affecting human body) or Chapter XVII (offences against property) or Chapter XXII (relating to criminal intimidation, insult and annoyance) or Section 290 or Section 489A to 489E of IPC or in abetment of any such offence, **or**

(iii) such person: -

(a) is so desperate and dangerous so as to render his roaming at large in Delhi or in any part thereof would be hazardous to the community; **or**

(b) has been found habitually intimidating persons; **or**

(c) causing affray; or breach of peace or riot, or habitually makes forcible collection of subscription or threatened to be; **or**

(d) has been habitually passing indecent remarks on women and girls, or teasing;

Second part of the section deals with forming further opinion and satisfaction by the Commissioner of Police in conjunction

with any one of the grounds or all the grounds, that out of fear witnesses are not willing to come forward to depose against such person.

Third part authorises the Commissioner to Police to adopt any of three options (i) to behave, or (ii) to remove himself outside Delhi, or (iii) to remove himself from any part of Delhi.

21. Learned counsel for the petitioner argued that there was no material available on the record for consideration by the competent authority to warrant externment of the petitioner and that he was not a habitual offender within the meaning of Section 47 (C) (ii) to (iv) of DP Act. He argued that prior to issuance of the supplementary notice dated 25.10.2016, though three cases were stated to have been registered against the petitioner but in fact one year prior to the initiation of process of externment, he was involved only in one case vide FIR No. 1086/2014, PS Malviya Nagar, Delhi. He submitted that with malafide intention to extern the petitioner from Delhi, the police had falsely implicated him in four cases during the externment proceedings to make out a case of petitioner as a habitual offender.
22. The word 'habitually' mentioned in sub-clause (ii), (iii) & (iv) of sub-section (C) of Section 47 of DP Act is elaborated by explanation which says that a person who within a period of one year immediately preceding the commencement of an action under Section 47 of DP Act is found in not less than three

occasions to have committed or to have been involved in any of the acts referred in sub-clauses shall be deemed to have habitually committed that act.

23. The arguments on behalf of the petitioner that for passing an externment order, there must be at least three cases within one year immediately preceding commencement of an action under Section 47 of DP Act so as to cover him under the meaning of habitual is thus misleading. The word “habitually” is used only in sub-clause (ii) to (iv) of sub-section (C) of Section 47 DP Act. Therefore, even if one of the clauses either (a) or (b) or sub clause (i) of clause (C) coupled with the other ingredients are present, the externment order of the competent authority cannot be termed invalid or illegal. Similar view was taken by this court in **Om Prakash Vs. Additional Deputy Commissioner of Police, (2002) 61 DRJ 481 (Para 10 & 11)**. A reference to the impugned order would show that the reasons are covered not only in Sections 47(a) and 47(c)(i) but also in Section 47(c)(ii) and either of the provision followed by further satisfaction of the Competent Authority that witnesses are not turning up, is sufficient to warrant action against the petitioner.
24. The Hon’ble Supreme Court in **Lt. Governor, NCT v. Ved Prakash, (2006) 5 SCC 228** held that the Sections 47 & 50 of the DP Act are *pari materia* to Section 56 of the Bombay Police Act, 1951. The judgment also elaborates the grounds on which

an order of externment could be assailed. Para 11 and 21 of the said judgment reads as under: -

“11. It is not in dispute that the provisions of Section 56 of the Bombay Police Act are in pari materia with Section 45 of the Delhi Police Act. Interpretation of the said provision of the Bombay Police Act came up for consideration before a Bench of this Court in *Pandharinath Shridhar Rangnekar v. Dy. Commr. of Police* [(1973) 1 SCC 372 : 1973 SCC (Cri) 341 : AIR 1973 SC 630] wherein inter alia the **following contentions were raised:** (SCC p. 374, para 5)

“(iii) The externing authority must pass a reasoned order or else the right of appeal would become illusory.

(iv) The State Government also ought to have given reasons in support of the order dismissing the appeal. Its failure to state reasons shows non-application of mind;”

“21. An order of externment must always be restricted to the area of illegal activities of the externee. The executive order must demonstrate due application of mind on the part of the statutory authority. When the validity of an order is questioned, what would be seen is the material on which the satisfaction of the authority is based. The satisfaction of the authority although primarily subjective, should be based on objectivity. But sufficiency of material as such may not be gone into by the writ court unless it is found that in passing the impugned order the authority has failed to take into consideration the relevant facts or had based its decision on irrelevant factors not germane therefor. Mere possibility of another view may not be a ground for interference. It is not a case where malice was alleged against the third appellant.”

25. Similar view was taken subsequently by the Apex Court in **Sate of NCT of Delhi & Another Vs. Sanjeev @ Bittoo, (2005) 5 SCC 181**, where the nature of material required under Section

47 of DP Act was also elaborated. Paras 15, 17 and 22 to 25 of the said judgment read as under: -

“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. v. Renusagar Power Co.* [(1988) 4 SCC 59 : 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 Edn. at pp. 285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised 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 authorised 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.

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.

22. These principles have been noted in the aforesaid terms in *Union of India v. G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] . In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself.

23. Though Section 52 limits the scope of consideration by the courts, the scope for judicial review in writ jurisdiction is not restricted, subject of course to the parameters indicated supra.

24. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with the question mere repetition of the provision would not be sufficient. Reference is to be made to some material on record and if that is done, the requirements of law are met. As noted above, it is not

the sufficiency of material but the existence of material which is sine qua non.

25. As observed in *Gazi Saduddin case* [(2003) 7 SCC 330 : 2003 SCC (Cri) 1637] satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.”

26. The Hon’ble Supreme Court in *Pandharinath Shridhar Rangnekar v. Commr. of Police*, (1973) 1 SCC 372 while interpreting Section 56 of the Bombay Police Act held as under:-

“These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of Section 56, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. **A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show-cause notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which is impossible to bring to book by established methods of judicial trial because in such**

trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee 'of the general nature of the material allegations against him'. That obligation fixes the limits of the correlative right of the proposed externee. **He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations."**

27. In light of the judgment in *Sanjeev's case (supra)*, the sufficiency of the material cannot be called into question. All that is needed to be seen is that there was material on record available which would lead a prudent person to believe that the requirements under Section 47 & 50 were satisfied. Further, the concerned authority has to assess the material on record objectively after taking into consideration all the relevant facts.
28. The Addl. DCP in the present case came to the conclusion that the presence of the petitioner in the NCT of Delhi to be hazardous to society on the basis of the various cases registered against him in the year preceding the issuance of the notice under Section 47 & 50 of the DP Act and the statement of the witnesses recorded in camera by Mr. P.S Kushwah, the then Additional DCP, South District, Delhi. The petitioner as per the explanation to Section 47 of the DP Act comes within the

meaning of a 'habitual offender' and therefore his externment order was based on material on record and an objective analysis of the evidence on record.

29. In the present case, the competent authority i.e. Additional DCP after recording evidence and other material on record found that the petitioner was involved in several criminal cases punishable under IPC; the presence of the petitioner in the community is hazardous to the society and his continuous presence in the area is leading to cause alarm, harm and danger to the respectable citizens of society. He further came to the conclusion that the witnesses are unwilling to depose against the petitioner being apprehensive of safety to their person and property and strengthening measures are required to be taken against him. There is no force in the arguments of the learned counsel for the petitioner that there was no sufficient material before the competent authority to pass an order of externment in violation of the fundamental right of the petitioner to leave at his place of residence.
30. Moreover, the order passed by the Commissioner of Police under Section 47 of DP Act attains finality and it can be challenged within certain parameters mentioned in Section 52 of DP Act, which reads as under: -

52. Finality of order in certain cases.- An order passed by the Commissioner of Police under section 46, section 47 or section 48 or the Administrator under section 51

shall not be called in question in any court except on the ground-

(a) that the Commissioner of Police or the Administrator, as the case may be, had not followed the procedure laid down in sub- section (1), sub- section (2) or sub- section (4) of section 50 or in section 51, as the case may be; or

(b) that there was no material before the Commissioner of Police or the Administrator, as the case may be, upon which he could have based his order; or

(c) in the case of an order made under section 47 or an order in appeal therefrom to the Administrator under section 51, the Commissioner of Police or the Administrator, as the case may be, was not of the opinion that witnesses were unwilling to come forward to give evidence in public against the person against whom such order has been made.”

31. Therefore, as discussed earlier, the satisfaction of the Addl. DCP was based on existing material and relevant facts after following the procedure and safeguards as laid down in Section 47 to 50 of the DP Act.
32. In view of the above discussion, there is no reason to interfere with the order of externment dated 10.02.2017 and of the appellate authority dated 22.03.2017, which are based on reasons, which have been recorded and well within the parameters of Section 47 to 50 of DP Act.
33. In light of the facts and circumstances of the case and the law laid down by the Hon’ble Supreme Court, I find no infirmity in

the impugned order of the Lt. Governor dated 22.03.2017 dismissing the appeal of the petitioner and confirming his externment from the NCT of Delhi vide order dated 10.02.2017 passed by the Additional DCP, South District, New Delhi.

34. The petition is dismissed accordingly.

(VINOD GOEL)
JUDGE

SEPTEMBER 27, 2017

"shailendra"//

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