

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 21st February, 2018
Decided on: 4th December, 2018

+ **W.P.(CRL) 1485/2017**

PARAMJEET

... Petitioner

Represented by: Mr.Kanhaiya Singhal with
Mr.Nishant Bhardwaj, Advocates.

versus

STATE (NCT OF DELHI)

... Respondent

Represented by: Mr.Avi Singh, Additional Standing
Counsel with Ms.Purnima Malik,
Advocate with SI Pardeep Singh, PS
Mahendra Park.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 1st April, 2016 passed by the Additional DCP directing externment of the petitioner from the territory of Delhi for a period of two years and the order dated 19th October, 2016 passed by the Lieutenant Governor dismissing the appeal filed by the petitioner, petitioner prefers the present petition.

2. On a proposal for externment received by the Additional DCP a show cause notice was issued by him to the petitioner on 22nd September, 2014 based on the cases registered against the petitioner and that the petitioner has been found habitually involved in cases of committing offences of voluntarily causing hurt, voluntarily causing hurt by dangerous weapons or means with common intention rioting, rioting armed with deadly weapon, voluntarily causing hurt in committing or attempting to commit robbery and/or such offence punishable under Chapter II, VIII, XVI and XVII of IPC. As per the notice the acts and movements of the petitioner caused

alarm, danger and harm to the person and property and witnesses were not coming forward to depose against him in public due to apprehension on their part as regards the safety of their person and property.

3. On appearance the petitioner was informed of his right to legal aid, however, he did not choose to exercise the same and stated that he would engage his own counsel. Despite repeated adjournments, the petitioner was present without counsel and in the reply filed by the petitioner to the show cause notice under Section 50 of the Delhi Police Act, 1978 it was stated that there was no concrete evidence against him, the notice was issued in a mechanical manner and the allegations against him were wrong and denied. The Additional DCP examined the witnesses and the petitioner was given opportunity to cross-examine and lead defence evidence which the petitioner denied. Relying upon the material placed on record and the statements of the witnesses recorded in camera, the Additional DCP passed the order dated 1st April, 2016.

4. In the appeal preferred by the petitioner, the petitioner inter alia urged that there was nothing on record to show that the petitioner was hazardous to the society, the mandatory requirements enshrined in Section 50 of the Delhi Police Act were not fulfilled and that there was no sufficient material before the Additional DCP to come to the conclusion that witnesses were not forthcoming to depose against the petitioner.

5. In the present petition, contention of learned counsel for the petitioner, relying upon the decision of this Court in Ghan Shyam Kapoor @ Dhanu vs. Lt. Governor of Delhi & Anr., W.P. (Crl.) No. 2165/2015 disposed of on 18th December, 2015 is that there was no material before the competent authority to conclude that the witnesses were not coming forward

to give statement against him. The petitioner was appearing before the learned Trial Courts and all the witnesses appeared in the Trial Courts against him and deposed as per the facts.

6. It is well settled that the scope of interference in an order passed by a quasi judicial/administrative authority is limited and the Court in a writ petition under Article 226 of the Constitution of India does not sit as a Court of appeal. In the decision reported as 2005 (5) SCC 181 State of NCT of Delhi and Anr. vs. Sanjeev @ Bittoo Supreme Court noting the scope of interference in a writ petition challenging an administrative decision held:

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. Renuagar 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.

16.

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.

18. The famous case commonly known as “the Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] ” is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

19. Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] (KB at p. 229 : All ER pp. 682 H-683 A). It reads as follows:

“... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word ‘unreasonable’ in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.”

Lord Greene also observed (KB p. 230 : All ER p. 683 F-G)

“... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another.”

(emphasis supplied)

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.

20. *The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU case [(1984) 3 All ER 935: 1985 AC 374: (1984) 3 WLR 1174 (HL)] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows: (All ER p. 950h-j)*

“Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European Economic Community;”

Lord Diplock explained “irrationality” as follows: (All ER p. 951a-b)

“By ‘irrationality’ I mean what can by now be succinctly referred to as ‘Wednesbury unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

21. In other words, to characterise a decision of the administrator as “irrational” the court has to hold, on material, that it is a decision “so outrageous” as to be in total defiance of logic or moral standards. Adoption of “proportionality” into administrative law was left for the future.

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. (See *Indian Rly. Construction Co. Ltd. v. Ajay Kumar* [(2003) 4 SCC 579: 2003 SCC (L&S) 528].)

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*.

7. Sections 47 and 50 of the Delhi Police Act read as under:

“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.

50. Hearing to be given before order under sections 46, 47 or 48 is passed.- (1) Before an order under section 46, section 47 or section 48 is made against any person, the Commissioner of Police shall by notice in writing inform him of the general nature of the material allegations against him and given him a reasonable opportunity of tendering an explanation regarding them.

(2) If such person makes an application for the examination of any witness to be produced by him, the Commissioner of Police shall grant such application and examine such witness, unless for reasons to be recorded in writing, the Commissioner of Police is of opinion that such application is made for the purpose of causing vexation or delay.

(3) Any written explanation put in by such person shall be filed with the record of the case.

(4) Such person shall be entitled to be represented in the proceeding before the Commissioner of Police by a counsel.

(5) (a) The Commissioner of Police may for the purpose of securing the attendance of any person against whom any order is proposed to be made under section 46, section 47 or section 48 require such person, by order in writing, to appear before him and to furnish a security bond with or without sureties for attendance during the inquiry.

(b) The provisions of sections 119 to 124 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to the order under clause (a) to furnish security bond.

(6) Without prejudice to the foregoing provisions, the Commissioner of Police, while issuing notice to any person under sub- section (1) may issue a warrant for his arrest and

the provisions of sections 70 to 89 (both inclusive) of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to such warrant.

(7) The provisions of section 445, section 446, section 447 or section 448 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in relation to all bonds executed under, this section.”

8. Thus the essential requirements to pass an order of externment are either the movement of the person are causing or calculated to cause alarm, danger or harm to the person or property, or there is a reasonable belief of the said person engaging in commission of offence or such person is so desperate and dangerous as to render his being at large in Delhi, hazardous for the community or is habitually intimidating, threatening, causing breach of peace or passing indecent remarks and also the 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.

9. The case of the petitioner is that false cases have been instituted against him, falsity or truth of the allegations in the FIRs registered against the petitioner is not the scope of determination before the competent authority and if the person has a propensity and is involved in offences of serious nature, satisfying the ingredients of Section 47 Delhi Police Act the competent authority is within its jurisdiction to pass the externment order.

10. In the externment order the competent authority has relied upon three cases being FIR No.58/2011 under Sections 323/324/34 IPC, FIR No.294/2012 under Sections 147/148/149/323/324/307/34 IPC and FIR No.402/2014 under Sections 392/394 IPC all registered at PS Mahendra Park. During the pendency of the externment proceedings petitioner was

involved in one more case being FIR No.828/2015 under Sections 323/341/394/427/506/34 IPC also registered at PS Mahendra Park for which a supplementary show cause notice was issued to him. The four cases against the petitioner duly reflect his propensity to commit offences calculated to cause danger or harm, or harm to the person or property and for a person of such a conduct staying in the community is desperate and dangerous to the people at large.

11. As regards the ingredients of Section 47 Delhi Police Act the witnesses are not coming forward to depose in public, the Additional DCP has examined witnesses in camera, whose statements have been perused by this Court, which reveals that due to fear of the petitioner witnesses are not coming forward to give evidence against him. Merely because some witnesses have deposed during the trial, the fact that they had been won over and other witnesses. On the basis of evidence placed on record it cannot be held that it was a case of no evidence against the petitioner.

12. As regards procedural fairness is concerned in terms of the requirement of Section 50 Delhi Police Act is concerned show cause and supplementary show cause notices were duly issued to the petitioner explaining him the grounds against him. No breach of any requirement of Section 50 Delhi Police Act has been pointed out.

13. Thus the two impugned orders suffer from no illegality or perversity. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 04, 2018

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