



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

%

Reserved on : 20.09.2023

Pronounced on : 19.12.2023

+ **W.P.(CRL) 2254/2023 AND CRL.M.A. 21075/2023**

DEVI BENIWAL

..... Petitioner

Through: Mr. Pranay Abhishek, Advocate.

versus

LT GOVERNOR OF DELHI AND ORS

..... Respondent

Through: Ms. Rupali Bandhopadhyia, ASC for
the State with Mr. Akshay Kumar and
Mr. Abhijeet Kumar, Advocates.SI
Anjana Kumar Singh, PS Wazirabad.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C.
2. The writ petitioner by the way of this petition has assailed the externment order dated 28.02.2023 passed by Addl. DY. Commissioner of Police, New Delhi by virtue of which the petitioner has been directed to remove himself beyond the limits of NCT of Delhi for a period of one (01) year.
3. The petitioner filed an appeal under Section 51 Delhi Police Act, 1978 before the Lt. Governor, Delhi, challenging the externment



order dated 28.02.2023 passed by Addl. DY. Commissioner of Police, New Delhi. The Lt. Governor, vide order dated 07.06.2023 dismissed the representation of the petitioner. The petitioner has also assailed the order dated 07.06.2023 passed by Lt. Governor, Delhi via the instant writ petition.

4. In brief the facts of the case are that on a proposal for externment of petitioner received from the SHO P.S Chanakya Puri, the proceedings under Section 47 of Delhi Police Act were initiated against the petitioner on 28.06.2022 by Addl. DY. Commissioner of Police, New Delhi. Thereafter on 28.02.2023 order of externment against the petitioner was passed with the direction of removing the petitioner beyond the limit of NCT of Delhi for a period of 1 year. Being aggrieved the petitioner filed an appeal against the order before the Lt. Governor, Delhi and the same was also dismissed vide order dated 07.06.2023.

5. I have heard the learned counsel for the petitioner, learned ASC for the state and have perused the records of the case.

6. During the course of the argument learned counsel for the petitioner submitted that the impugned orders dated 28.02.2023 and 07.06.2023 suffers from conjecture and surmises as the proceedings conducted under section 47 of Delhi Police Act is contrary to section 48 of the said act. He further submitted that the Article 21 of the Constitution of India guarantees the right of personal liberty to every person and must not be deprived of such right even after that the petitioner was directed to remove himself beyond the limits of NCT of Delhi for a period of 1 year.



7. In support of his contention learned counsel for the petitioner relied upon the Judgments passed by the Hon'ble Supreme Court in ***Maneka Gandhi V. Union of India, 1978 AIR 597 and Bandhua Mukti Morcha V. Union of India 1984 AIR 802***, to contend that right to life and liberty is a fundamental right and to take away a life and personal liberty the procedure must be right, just and fair and not arbitrary and oppressive.

8. On the other hand the learned ASC for the state has opposed the present writ petition and submitted that the above mentioned grounds raised by the petitioner were also urged before both the forums who considered the same and passed the reasoned order which are impugned by the petitioner in the present petition.

9. In the instant case, the petitioner has been directed to remove himself beyond the limits of NCT of Delhi on the grounds that he has 3 cases of gambling act against him and he is not likely to reform his way of life till stringent measure are taken against him, further his continuous presence in the area will be the constant source of tension and disturbance for the law abiding citizens.

10. I have thoroughly considered the presented arguments. Pursuant to Article 19(1)(d) of the Constitution of India, citizens possess an inherent right to unrestricted movement within the territory of India. However, Article 19(5) empowers the State to enact legislation authorizing the imposition of reasonable limitations on the exercise of the right delineated in Article 19(1)(d). A directive of externment issued under the provisions of Section 47 of the Delhi Police Act, places a constraint on the individual to whom the directive



pertains, prohibiting entry into a specified geographical area. Consequently, such directives infringe upon the fundamental right safeguarded by Article 19(1)(d). As a result, any restriction imposed through the issuance of an externment order must withstand scrutiny for its reasonableness.

11. The relevant provision i.e., Section 47 Delhi Police Act, 1978 is reproduced as under.

“Section 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.”

12. The ground in clause (a) is that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to a person or property. The ground in clause (b) is 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, XVI or XVII in IPC, or the abetment of any such offence. Clause (b) is qualified by a condition that the competent authority empowered to pass such order should be of the opinion that 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. Obviously, the opinion must be formed on the basis of material on record.

13. In the instant case, the activities or the movements of the petitioner are not such which cause alarm, danger or harm to any person or property. The allegations against the petitioner are only with regard to gambling under Section 9/12/55 Gambling Act punishable with fine not exceeding one thousand rupees, or to imprisonment for



any term not exceeding three months. Nothing has been brought on record to show that the petitioner is engaged or about to be engaged in the commission of an offence involving force or violence or an offence punishable under chapter XII, XVI or XVII IPC or the abetment of any such offence which is the qualified condition empowering to pass an externment order against a person if the competent authority, on the basis of the material on record formed an opinion that 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 which is not the case here in the present matter.

14. There is an unequivocal recognition that an externment order constitutes an extraordinary measure, resulting in the curtailment of a citizen's fundamental right to unrestricted movement within the territorial confines of India. Practically, such an order precludes the individual from even residing in his own residence alongside family members throughout the duration of its validity. In certain instances, the issuance of such an order may deprive the individual of his means of livelihood. Consequently, it is imperative to exercise restraint in resorting to Section 47, considering its exceptional nature.

15. For the invocation of clause (a) of Section 47, there must be substantive evidentiary material on record, forming the basis upon which the competent authority must subjectively ascertain that the actions or conduct of the individual in question are causing or likely to cause alarm, danger, or harm to persons or property. In the case of an order under clause (b), objective material must exist on record,



leading the competent authority to subjectively determine that there are reasonable grounds to believe that the person in question is presently involved or is on the verge of engaging in an offense involving force or violence, or offenses punishable under Chapter XII, XVI, or XVII of the Indian Penal Code (IPC). Offenses under Chapter XII pertain to Coin and Government Stamps, those under Chapter XVI concern offenses affecting the human body, and those under Chapter XVII relate to offenses concerning property.

16. Even in scenarios where multiple offenses falling under clause (b) of Section 47 have been registered against an individual, this alone does not suffice to justify the issuance of an externment order under clause (b). Furthermore, when invoking clause (b), the competent authority must, based on the evidentiary material, be satisfied that witnesses are unwilling to come forward to provide evidence against the individual proposed for externment due to apprehensions regarding their safety or property. The recording of such subjective satisfaction by the competent authority is an essential prerequisite for the validity of an externment order under clause (b).

17. As the challenged order infringes upon the fundamental right protected by Article 19(1)(d) of the Constitution of India, it is imperative to assess its reasonableness as per the provisions of clause (5) of Article 19. Upon examining the available factual information, it is evident that the mentioned order lacks proper consideration and exhibits signs of arbitrariness as the petitioner has only 4 cases against him being FIR no. 213/2009 under Section 12 Gambling Act; FIR no. 102/2020 under Section 9/12/55 Gambling Act; FIR no. 26/2022



under Section 9/12/55 Gambling Act; FIR no. 194/2022 under Section 9/12/55 Gambling Act, out of which one is pending consideration and the petitioner has plead guilty in other three. Furthermore, he is not the habitual offender in terms of the *Explanation* to Section 47 Delhi Police Act. Consequently, it becomes susceptible to legal challenge, and validity of the impugned orders cannot be upheld in accordance with the law.

18. Moreover, the Hon'ble Supreme Court in the case of *Pandharinath Shridhar Rangnekar v. Dy. Commr. Of Police, State of Maharashtra* in paragraph 9, has held that the reasons which necessitate or justify the passing of an extraordinary order of externment arise out of extraordinary circumstances.

19. Therefore, keeping in view the entire facts and circumstances, taking into account the observation of Hon'ble Supreme Court in *Pandharinath Shridhar Rangnekar (Supra)* and also considering the material on record the present writ petition is allowed and the externment order dated 28.02.2023 passed by Addl. DY. Commissioner of Police, New Delhi and the order dated 07.06.2023 passed by Lt. Governor, Delhi are hereby quashed and set aside accordingly.

RAJNISH BHATNAGAR, J

DECEMBER 19, 2023

P