APPELLATE CRIMINAL

1956
Feb. 21

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar.

BAL KESHAV THAKREY *v.* THE COMMISSIONER OF POLICE, GREATER BOMBAY.*

Preventive Detention Act (IV of 1950), ss. 3, 7—Grounds furnished to detenu mentioning an important circumstance which did not exist—Whether detaining authority could be said to have applied its mind before making order of detention—Approval of State Government under s. 3 (3), nature of—Whether such approval based on incorrect facts is vitiated.

Before a valid order of detention can be made under s. 3 of the Preventive Detention Act, 1950 it is essential that the detaining authority should be satisfied that the grounds subsequently furnished to the detenu under s. 7 of the Act existed. It may be that the detaining authority may have more materials than the grounds disclosed, but it is the grounds furnished which must be the basis on which the detaining authority should have been satisfied before making the order of detention. Where therefore one of the most important grounds turns out to be based on material which did not exist, it cannot be said that the detaining authority had applied its mind to the making of the order.

While under s. 3 (*1*) the detaining authority has to be satisfied about the prejudicial activities of the person sought to be detained, s. 3 (*3*) requires not mere satisfaction but approval of the State Government; what is required is not mechanical approval but an approval which is the result of a mental process on the basis of relevant, proper and correct materials placed before the Government. If the Court is satisfied that the State Government gave its approval on incorrect facts placed before it, it cannot regard the approval as one required by law; it is vitiated by extraneous factors.

CRIMINAL Application under art. 226 of the Constitution of India.

The facts are sufficiently set out in the Judgment.

N. V. Phadke with *M. V. Paranjpe, H. R. Gokhale, B. V. Chavan* and *R. G. Madbhavi,* for the Applicant.

H. M. Choksi, Government Pleader, for the State.

Chagla C. J.—The Preventive Detention Act confers wide and drastic powers upon the State Government and also upon certain officers mentioned in that Act. It constitutes a serious infringement upon civil liberty and to the extent that it constitutes that infringement, it must be strictly construed, and the Court must always be vigilant to see that every safeguard provided in that Act has been complied with. The Government Pleader asks us to bear in mind the critical times we have recently been passing through. In our opinion it is very essential that a Court of law should, as far as possible, keep away from the heat and dust of political battle and make an objective and detached appraisal of the record before it. That does not mean that the Court should not be anxious to see that the security of the State is maintained. Nor does it mean that the Court should not see to it that the Preventive Detention Act, which is intended for the security of the State, is not an effective instrument in the hands of the

*Criminal Application No. 164 of 1956.

State. But it is equally necessary, especially in critical times, that the Court should be vigilant to safeguard the liberty of the subject. The conflict between the security of the State and the liberty of the subject is always a conflict difficult to resolve; but the Constitution and the Preventive Detention Act have sought to resolve it by arming the State with wide powers and at the same time providing important safeguards for the liberty of the subject. It is with this background that we must look at the order which is challenged by this petition.

The order was made on January 13, 1956 by the Commissioner of Police, Greater Bombay, and the order recites that he was satisfied with respect to the person known as Keshav Sitaram Thakre of Greater Bombay that, with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, it was necessary to make the following order, which he proceeded to make, viz., that in exercise of the powers conferred by the Preventive Detention Act, 1950, the Commissioner of Police, Greater Bombay, directed that the said Keshav Sitaram Thakre be detained, and pursuant to this order he was detained. The grounds on which the detention order was made were furnished to Thakre on January 20, 1956, and the grounds are that in order to bring about the establishment of Samyukta Maharashtra with Bombay, he had been exhorting the members of the public in Greater Bombay to take strong action and to fight for it till the goal was reached. Then the grounds set out what Thakre is supposed to have said at two meetings—one meeting of November 16, 1955 and the other meeting held on October 20, 1955. The meeting of November 16, 1955, was held at Shivaji Park which, according to these grounds, was attended by about 20,000 persons and Thakre is alleged to have stated in the course of his speech that the Maharashtrians seldom lost their temper, but if they did so, they would go to the extreme and in the meeting of October 20, 1955, which was held at Currey Road, Bombay, he is alleged to have stated in his speech that Maharashtrians would never take things lying down and would show that Maharashtra would not die and could not be wiped out off the map of India, and the allegation of the Commissioner of Police is that by these speeches he instigated the listeners to commit acts of violence and to cause a breach of public order in Greater Bombay.

Now, these grounds must be looked at from two points of view. In the first place, we must look at them to consider whether they come within the ambit of the Act and the second, which is equally important, is whether they furnish an opportunity, and a reasonable opportunity, to the detenu of making a representation which he has a right to make under s. 7 of the Act. The grounds that are to be furnished to the detenu under s. 7 are grounds on which the order has been made and perhaps the grounds may also be looked at for this purpose, viz., to satisfy ourselves whether the Government or the officer concerned

1956

BAL KESHAV THAKREY v. COMMISSIONER OF POLICE, BOMBAY

Chagla C. J.

arrived at the satisfaction which is necessary under s. 3 before a valid order could be made. Parliament has left it to the Government or to the officer concerned to be satisfied with regard to the prejudicial activity of the person whom it is proposed to detain, and that satisfaction must indubitably be based upon the grounds which are subsequently furnished to the detenu under s. 7. It may be that the detaining authority may have more materials than the grounds; but the grounds must be the essential basis upon which the detaining authority arrives at its satisfaction and makes the order of detention.

Now, in the petition which has been made by the petitioner, who is the son of the detenu, it was alleged that the detenu is an old man of 72 years, and on November 16, 1955 he was treated for cataract by Dr. Oak, an eye-specialist of Dadar, and was confined to his bed for three days thereafter. The treatment was in the form of an injection to the eye which was particularly painful in nature. The pain lasted for more than two days, and the detenu therefore could not and did not attend any meeting or deliver any speech on November 16, 1955.

The Commissioner of Police has made an affidavit in reply to this petition and he admits that it is true that no meeting was addressed by the detenu on November 16, 1955. He proceeds to say that

> "as regards the notice of grounds of detention I find that on account of a typographical error, in the date of the first meeting referred to therein the month has been wrongly mentioned as November instead of October."

He further says that the meeting referred to therein was the meeting held at Shivaji Park, Dadar, Bombay, on October 16, 1955 which was attended by about 20,000 persons.

The Government Pleader contends that this mere error in giving a wrong date in the grounds is not sufficient to invalidate the order. It is a fact that not only there was a meeting on October 16, 1955, but there was also a meeting on November 16, 1955, and what the detenu is charged with is having made a speech of an inflammatory character at the meeting of November 16, 1955. It is this that he is called upon to answer when he makes his representation to the Government. It is difficult to understand how, if there were two meetings, one held on October 16, and another on November 16, and the detenu is charged specifically with regard to having attended a meeting on November 16 and not of October 16, it could possibly be said that the grounds furnished to him afforded a reasonable opportunity to make a representation. It will be noticed how effective the answer he has given to the charge with regard to the meeting of November 16, 1955. The answer is: He was laid up; he was in bed; he was in serious eye trouble; he was so incapacitated that he could not possibly attend the meeting. If he had been charged with having attended a meeting on October 16, we do not know what answer he could have possibly given. But the

whole object of furnishing the grounds is to enable the person detained to put forward his defence and his answer which may be considered by the proper authority. We do not at all agree with the Government Pleader when he says that the date of the meeting is an insignificant particular. Under no circumstance the date of the meeting can be an insignificant particular and as we shall presently point out, in the present context it is a particular of the greatest significance.

Turning again to the affidavit of the Commissioner of Police, he says that on account of the inflammatory speeches of the detenu, there was a probability of incidents of violence taking place in Greater Bombay, and then he goes on to say:

> "In fact, several such incidents of violence had taken place in Greater Bombay on 21st November 1955, on which day stones were thrown on the buses and trams of the B. E. S. T. Undertaking and a number of passengers travelling in them were injured, some buses were also burnt, Police Officers and men were assaulted with stones and a Police chowky was also burnt."

In view of these serious incidents which took place on November 31, 1955, the proximity of the meeting held on November 16, 1955, assumes an ominous significance. A meeting addressed on October 16, and a meeting addressed on November 16, stand on an entirely different footing. The detaining authority which has got to consider the materials may come to one conclusion with regard to the necessity of detaining the detenu if he had made a speech on October 16, and an entirely different view if he had made a speech on November 16, 1955. Unfortunately, the Commissioner of Police in his affidavit does not tell us as to whether the material placed before him showed that the detenu had made the speech on November 16, or October 16. Nor any light is thrown on the rather unfortunate error of the date November 16, being substituted for October 16. We are told this is a typographical error, but we are not told under what circumstances this error came to be committed. Did the draft contain the date October 16, and did the typist in typing it by mistake change it to November 16, or did the draft itself contain November 16, and there was no error on the part of the typist and the error went back to some other person who was responsible for referring to this particular date? In the absence of any material before us, we must assume, as indeed we must, that the material before the Commissioner of Police on which he made this order was the grounds furnished to the detenu and in those grounds what was mentioned was that at a meeting of November 16, 1955 the detenu made this inflammatory speech and consequent upon that speech serious trouble broke out in Bombay on November 21, 1955. It is therefore on these materials that the Commissioner of Police arrived at the satisfaction which the statute requires. Can it possibly be said that that is a proper satisfaction which would justify the making of this order? When admittedly a most important material is placed

1956

BAL KESHAV THAKREY v. COMMISSIONER OF POLICE, BOMBAY

Chagla C. J.

before the detaining authority, which material now turns out to be a material which did not exist then, it cannot be said that the detaining authority applied its mind to all the relevant and proper circumstances which he must do before he makes the order contemplated by the Act. But the matter does not stop there. There is another important safeguard which the Act provides and that is to be found in s. 3 (*3*). When an order of detention is made by any of the officers mentioned in s. 3 (*2*), it is obligatory upon him forthwith to report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than 12 days after the making thereof, unless in the meantime it has been approved by the State Government. Therefore Parliament in its wisdom did not leave it to an officer, however important and responsible, to take away the liberty of a citizen. Parliament insisted that when an officer encroached upon the civil liberty of a citizen, the State Government must apply its mind to the materials which were placed before the detaining authority and approve the order passed by the detaining authority. The difference in the language used in s. 3 (*1*) and s. 3 (*3*) will be noticed. Whereas at the time of detention the detaining authority has to be satisfied about the prejudicial activities of the person sought to be detained, when the matter comes before the State Government under s. 3 (*3*), it is not mere satisfaction; it is approval that is required. In other words, the State Government must put its seal of approval upon the order made by the detaining authority. It is only in that case that the order can survive beyond 12 days. In this case we have the affidavit of Krishnaji Narayan Goray, Assistant Secretary to the Government of Bombay, Home Department, who says that the Commissioner of Police made a report as required by s. 3 (*3*), and the Government of Bombay passed its order of approval on January 23, 1956. But what is significant is that this order of approval was passed on the basis of the grounds which were furnished to the detenu, to which reference has already been made. Therefore, not only the Commissioner of Police, but the State Government were given to understand that it was on November 16, that the detenu had made the inflammatory speech, and the State Government were conscious as much as the Commissioner of Police, that on November 21, serious trouble broke out in Bombay. Now, can it be said that the approval given by the State Government is the approval contemplated by s. 3 (*3*)? In our opinion the approval that the Parliament required from the State Government was an approval arrived at after consideration of all relevant and material circumstances. The State Government was agreeing to the action of an officer to deprive a citizen of his liberty, and such an agreement could not be arrived at in law unless the State Government had before it all the relevant and material considerations. But when we find that a consideration is placed before the State Government

1956

BAL KESHAV THAKREY v. COMMISSIONER OF POLICE, BOMBAY

Chagla C. J.

in order to obtain its approval, which consideration is admittedly incorrect and contrary to facts, it is impossible to take the view that the approval given by the State Government is the approval required by law. The Government Pleader has attempted to argue that so long as the certificate of Government is there that it has approved the order, the provision of s. 3 (3) has been complied with. In our opinion, the approval required is not a mechanical approval; it is an approval which requires a certain mental process and that mental process can only be possible provided not only relevant and proper materials are placed before the Government, but also correct facts are placed before the Government. If the Court is satisfied that the State Government gave its approval on incorrect facts placed before it, then the approval is vitiated by extraneous factors and it cannot be an approval required by law. Therefore, in our opinion, the order made by the Police Commissioner is bad by reason of the fact that an important ground mentioned is not a correct ground, also by reason of the fact that we are satisfied that the detaining authority did not and could not apply its mind to the relevant circumstances which are required by law; finally for the reason that the approval given by the State Government not being a proper approval, in any view of the case the order of detention cannot subsist beyond the period of 12 days mentioned in s. 3 (3).

Therefore the order we propose to pass is that the order passed by the Commissioner of Police will be quashed, and the detenu will be ordered to be released forthwith.

The petitioner must get his costs.

Order set aside.

K. B. S.

APPELLATE CRIMINAL

Before the Chief Justice Mr. M. C. Chagla and Mr. Justice Desai.

1956 Mar. 5

BALKRISHNA KASHINATH KHOPKAR *v.* THE DISTRICT MAGISTRATE, THANA AND OTHERS.*

Preventive Detention—Constitution of India Art. 22 (5) and (6)—Preventive Detention Act (IV of 1950), s. 7 (1) (2)—Practice—Grounds for detention—Correct Practice of furnishing—Privilege of not disclosing facts in the public interest—Affidavit of a detaining authority when the detention order is challenged on the ground that certain specific facts are not disclosed and this prevented the detenu from making a proper representation.

Section 7 (1) and (2) of the Preventive Detention Act practically reproduce the provisions of Art. 22 (5) and (6) of the Constitution of India.

Article 22 (5) of the Constitution of India affords to the detenu two important constitutional safeguards: viz. (1) that he should be furnished the grounds on which the detention order has been made, and (2) he

*Criminal Application No. 287 of 1956.