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DURGADAS SHIRALI

v.

UNION OF INDIA AND OTHERS

November 12, 1965

B [P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, V. RAMASWAMI AND P. SATYANARAYANA RAJU, JJ.]

Defence of India Rules, 1962, *rule* 30—*Detention under—Membership of a political party not declared illegal whether relevant consideration for ordering detention.*

C The petitioner was detained under rule 30 of the Defence of India Rules 1962, by an order of the District Magistrate and the necessary formalities were gone through. He filed a petition under Art. 32 and contended : (1) The order of the District Magistrate was *mala fide* as he had not applied his mind to the specific activities of the petitioner and there was complete absence of material before him to suggest that the conduct of the petitioner would be prejudicial to the defence of India etc. (2) One of the grounds of detention mentioned in the order was that the petitioner was a **member** D of the Leftist Communist Party of India and Secretary of one of its branches. This consideration was not relevant as the said party had not been declared illegal or banned by the Government.

HELD : (i) It was open to the petitioner to challenge his detention on the ground of *mala fide* or on the ground that all or any of the grounds mentioned in the order of detention were irrelevant. Such pleas were not covered by Art. 358 and were outside the purview of the Presidential E Orders under Art. 359(1). [576 D]

Makhan Singh Tarsikka v. *State of Punjab,* [1964] S.C.R. 797 referred to.

(ii) Taking into account the affidavit filed by the District Magistrate it could not be said that he did not apply his mind to the specific activities of the petitioner or that there was no material before him to justify the order. [577 C]

F (iii) It was not correct to State that the activities of the Leftist wing of the Communist Party cannot in any circumstances be illegal and would necessarily be irrelevant merely because the Government of India has not declared the Party illegal or imposed a ban. In the light of the reports received by the District Magistrate the political association of the petitioner and his membership of a particular political group was a relevant consideration in the matter of detention of the petitioner. This ground had close and proximate connection with the security of State and maintenance of G public order as contemplated by rule 30 of the Defence of India Rules. [578 A-C]

ORIGINAL JURISDICTION : Writ Petition No. 95 of 1965.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

R. K. Garg, M. K. Ramamurthi, S. C. Agarwal and *D. P.* H *Singh,* for the petitioner.

G. S. Kasliwal, Advocate-General, Rajasthan and *R. N. Sachthey,* for respondent no. 2.

The Judgment of the Court was delivered by

Ramaswami, J. In this case the petitioner—Durgadas Shirali has obtained a rule calling upon the respondents to show cause why a writ of *habeas corpus* should not be issued under Art. 32 of the Constitution directing his release from detention under an order passed by the District Magistrate of Bhilwara, Rajasthan under Rule 30(1)(b) of the Defence of India Rules. Cause has been shown by the Advocate-General of Rajasthan on behalf of the respondents to whom notice of the rule was ordered to be given.

The petitioner was arrested on January 2, 1965 at Jaipur in pursuance of an order dated December 29, 1964 made by respondent no. 3, Shri Narayan Das Mehta, District Magistrate of Bhilwara which states as follows :

> "It is reliably brought to my notice that the Leftist wing of the Communist Party has been carrying on anti-national and pro-Chinese propaganda and are preparing to act as Peking's member. The party having been formed at Peking's behest are preparing for widespread agitation with the object of establishing communist regime by subversion and violence. I, therefore, come to the irresistible conclusion that the Leftist Communist Party constitutes a real danger to external and internal security of the country and that it has become necessary to take immediate action.
>
> I am also satisfied from the report that Shri Durgadas Shirali of Bhilwara is the Secretary of the Leftist Wing of the Communist Party and he is likely to act in manner which is prejudicial to the Defence of India and Civil Defence, India's relations with Foreign powers, public safety and the maintenance of the public order.
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> I, Narayan Das Mehta, District Magistrate, Bhilwara in exercise of the powers delegated to me under rule 30(1) clause (b) of the Defence of India Rules 1962 *vide* Government of Rajasthan Notification No. F. 7/1(16)Home(A.Cr. I)63 dated the 4th November, 1963 and all other powers enabling in that behalf direct the Superintendent of Police, Bhilwara that Shri Durga Das Shirali be arrested and detained in the Bhilwara Jail until further orders."

On January 13, 1965 the orders of the District Magistrate was reviewed by the Reviewing Authority who recommended that

A the detention order dated December 29, 1964 should be confirmed. The State Government confirmed the detention order by its order No. F7/1(19)Home(A-Cr. I)/65 dated January 22, 1965.

On behalf of the petitioner it was contended by Mr. Garg that the District Magistrate had not applied his mind to the specific B activities of the petitioner and there was complete absence of material before the District Magistrate to suggest that the conduct of the petitioner would be "prejudicial to the Defence of India and Civil Defence, India's relations with foreign powers, public safety and the maintenance of the public order". It was, therefore, submitted on behalf of the appellant that the order of C detention made by the District Magistrate was *mala fide* and illegal. Mr. Garg submitted, in the second place, that one of the grounds mentioned in the order of detention was that the petitioner was a member of the Leftist Wing of the Communist Party of India and Secretary of the local branch of that party at Bhilwara. The Leftist Communist Party has been carrying on anti-D national and pro-Chinese propaganda and the District Magistrate was of the opinion that the Leftist Communist Party, therefore, constituted a real danger to external and internal security of the country. It was submitted by Mr. Garg that the Leftist wing of the Communist Party had not been declared illegal or banned by the Government of India and the membership of the petitioner E of the Leftist Communist Party of India was, therefore, not a relevant ground for the order of detention.

Before proceeding to deal with these points raised on behalf of the petitioner it is necessary to state that in *Makhan Singh Tarsikka* v. *The State of Punjab*(1) this Court had occasion to F consider the legal effect of the proclamation of Emergency issued by the President on October 26, 1962 and two orders of the President—one dated November 3, 1962 and the other dated November 11, 1962 issued in exercise of the powers conferred by cl. (1) of Art. 359 of the Constitution. It was held by this Court that the sweep of Art. 359(1) and the Presidential Order G issued under it is wide enough to include all claims made by citizens in any Court of competent jurisdiction when it is shown that the said claims cannot be effectively adjudicated upon without examining the question as to whether the citizen is, in substance, seeking to enforce fundamental rights under Arts. 14, 19, 21 and 22. It was pointed out that during the pendency of the Presiden-H tial Order the validity of the Ordinance or any rule or order made thereunder cannot be questioned on the ground that it contravenes

(1) [1964] 4 S.C.R. 797

Arts. 14, 21 and 22. But this limitation cannot preclude a citizen from challenging the validity of the Ordinance or any rule or order made thereunder on any other ground. If the petitioner seeks to challenge the validity of the Ordinance, rule or order made thereunder on any ground other than the contravention of Arts. 14, 21 and 22, the Presidential Order cannot come into operation. It is not also open to challenge the Ordinance, rule or order made thereunder on the ground of contravention of Art. 19, because as soon as a Proclamation of Emergency is issued by the President under Art. 358 the provisions of Art. 19 are automatically suspended. But a petitioner can challenge the validity of the Ordinance, rule or order made thereunder on a ground other than those covered by Art. 358, or the Presidential Order issued under Art. 359(1). Such a challenge is outside the purview of the Presidential Order. For instance, a citizen will not be deprived of his right to move an appropriate Court for a writ of *habeas corpus* on the ground that his detention has been ordered *mala fide*. Similarly, it will be open to the citizen to challenge the order of detention on the ground that any of the grounds given in the order of detention is irrelevant and there is no real and proximate connection between the ground given and the object which the legislature has in view.

It is contended, in the first place, on behalf of the petitioner, that the order of detention is bad because the District Magistrate had not applied his mind to the specific activities of the petitioner. It was pointed out that in the order of detention the District Magistrate has mainly dealt with the activities of the Leftist Wing of the Communist Party of India which was carrying on anti-national and pro-Chinese propaganda. The District Magistrate proceeds to say that the party was formed at Peking's behest and was preparing for widespread agitation with the object of establishing communist regime by subversion and violence. The District Magistrate, therefore, reached the conclusion that the Leftist Wing of the Communist Party constituted a real danger to external and internal security of the country. So far as the petitioner is concerned, the District Magistrate has described him as Secretary of the Leftist Wing of the Communist Party and has proceeded to state that he was satisfied that the petitioner was likely to act in a manner which was prejudicial to the Defence of India and Civil Defence, India's relations with foreign powers, public safety and the maintenance of the public order. In reply to the petition of the detenu the District Magistrate, Bhilwara has filed an affidavit in this Court. In paragraph 3 of the affidavit the District Magistrate has stated that he was satisfied from the

A reports that the petitioner was carrying on anti-national and pro-Chinese propaganda as a member of the Leftist Wing of the Communist Party. In paragraph 5 the District Magistrate has stated that he passed the order of detention after satisfying himself on the reports that the petitioner was the Secretary of the Leftist Wing of the Communist Party of India, Bhilwara branch and that B he was likely to act in a manner prejudicial to Defence of India and Civil Defence, India's relations with foreign powers, public safety and the maintenance of public order. In view of the affidavit of the District Magistrate it is not possible for us to accept the argument of Mr. Garg that the District Magistrate did not apply his mind to the specific activities of the petitioner and that C he made the order of detention solely on the ground that the Leftist wing of the Communist Party of India was carrying on anti-national and pro-Chinese propaganda.

It was next argued on behalf of the petitioner that the Leftist wing of the Communist Party of India has not been declared D illegal by the Government of India and the party has not been banned. It was submitted, therefore, that membership of that party was not *per se* illegal and the order of detention of the petitioner cannot be legally based upon this ground. In other words, it was submitted by Mr. Garg that the ground that the E petitioner was the Secretary of the Leftist Wing of the Communist Party of India was irrelevant for the purpose of Rule 30 of the Defence of India Rules. The argument was put forward that if this ground was irrelevant for the purpose of the Rule or was wholly illusory, the order of detention as a whole was vitiated and must be quashed by grant of a writ of *habeas corpus*. In support F of his argument Mr. Garg referred to the decision of this Court in *Shibban Lal Saksena* v. *The State of Uttar Pradesh*(1). We are unable to accept the argument of Mr. Garg as correct. It is not correct to state that the activities of the Leftist wing of the Communist Party cannot in any circumstances be illegal and would necessarily be irrelevant merely because the Government of India G has not declared the party illegal or imposed a ban. In considering the question whether the petitioner was acting in a manner prejudicial to the defence of India within the meaning of Rule 30 of the Defence of India Rules it is open to the District Magistrate to take into account the reports which he had received as to the political association of the petitioner, his political friends and his H political loyalties. In considering the circumstance that the petitioner was a member of the Leftist wing of the Communist

(1) [1954] S.C.R. 418.

Party of India which, according to the said reports, was preparing for a widespread agitation with the object of establishing communist regime by subversion and violence the District Magistrate was not applying his mind to any irrelevant circumstance with regard to the need for detention of the petitioner under the Defence of India Rules. In our opinion, in the light of the reports received by the District Magistrate the political association of the petitioner and his membership of a particular political group is a relevant consideration in the matter of detention of the petitioner. This ground has close and proximate connection with the security of State and maintenance of public order as contemplated by Rule 30 of the Defence of India Rules. In our opinion, Mr. Garg is unable to make good his submission on this aspect of the case.

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For these reasons we hold that the petitioner has not made out a case for the grant of a writ under Art. 32 of the Constitution. The Writ Petition fails and is accordingly dismissed.

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Petition dismissed.