*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**
AND
THE HON'BLE SRI JUSTICE M.LAXMAN

+ WRIT PETITION NO.14677 OF 2021

% 04—03—2022

Dandugula Susheela

…Petitioners

vs.

$ The State of Telangana, rep. by its
Principal Secretary, General Administration
(Spl.(Law and Order) Department, Secretariat at
BRKR Bhavan, Tank Bund, Hyderabad and Others

… Respondents

!Counsel for the Petitioner: Sri C.Ruthwik Reddy

^Counsel for Respondents: G.P. For General Administration/
Addl. Advocate General

<Gist :

>Head Note :

? Cases referred

1. 1996 (2) ALD Cri 947
2. (1989) 1 SCC 101
3. (1991) 4 SCC 139
4. (2004) 7 SCC 467

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WRIT PETITION NO.14677 OF 2021

Between:

Dandugula Susheela

...Petitioner

And

The State of Telangana, rep. by its Principal Secretary, General Administration (Spl.(Law and Order) Department, Secretariat at BRKR Bhavan, Tank Bund, Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 04.03.2022

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

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A.RAJASHEKER REDDY, J

_____

M.LAXMAN, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HON'BLE SRI JUSTICE M.LAXMAN

WRIT PETITION No. 14677 OF 2021

ORDER: (*per Hon'ble Sri Justice M.Laxman)*

1. The petitioner seeks a writ of *habeas corpus* directing the respondent authorities to produce her husband, Dandugula Mohan, S/o. Late Sailoo, now detained at Central Prison, Chanchalguda, Hyderabad, and to release him forthwith, after declaring the order of detention dated 23.04.2021 passed by the second respondent herein under proceedings No.SB(I) No.143/PD-5/Hyd/2021, under Section 3 (2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (for short, the Act), confirmed by the first respondent, *vide* G.O.Rt.No.1433, General Administration (Spl.(Law & Order) Department, dated 05.07.2021, as illegal.

2. Heard both sides.

3. The second respondent passed the order of detention stating that the *detenu* is indulged in the acts of goondaism and as a leader of a criminal gang, habitually committing offences including criminal breach of trust, wrongful confinement, assault on public servants thereby obstructing them from discharge of their lawful duties along with your associate in an organized manner in the limits of Hyderabad Police Commissionerate, thereby created panic, terror and fear in the minds of the general public, thereby disturbing the public order and tranquility in the area and has been causing a feeling of insecurity in the minds of the pubic and his activities are prejudicial to the maintenance of public order and peace in the area.

4. The grounds for detention appended to the order of detention dated 23.04.2021 reflect that the detaining authority took into account the following three criminal cases involving the *detenu* for forming the subjective satisfaction that he needed to be detained in exercise of power under the Act.

> **"(i) FIR No.179/2020 of Police Station, Tukaramgate:**
>
> This crime relates to the incident occurred on 02.08.2020 at the house the *detenu*. The facts disclose that on the said date, the patrolling party of Police, Tukaramgate, were on

duty to check the rowdy sheeters, and in that process, to verify the activities of the *detenu*, who was a rowdy sheeter, they visited the house of the *detenu.* The Police found the *detenu* with his assistants (family members) was celebrating a party by forming unlawful assembly. Then the *detenu* and his associates attacked and obstructed the Police while discharging their lawful duties. The *detenu* attacked on the Police and pushed the Constable, Mohan Rao, P.C. 7079 (complainant), as a result of which, he sustained injuries on his abdomen and other parts of the body. Other associates of the *detenu* also attacked on the other Police and caused injuries. The injured were referred to Shenoy Hospital. Basing on the complaint, FIR was registered for the offences under Sections 353, 332, 188, 189 read with Section 34 of IPC, Section 3 of the Epidemic Diseases Act, 1987 and Section 51(B) of the Disaster Management Act, 2005. The *detenu* and his associates were arrested on 12.08.2020. Subsequently, they were enlarged on bail, by order dated 18.08.2020.

(ii) FIR No.183/2020 of Police Station, Tukaramgate:

This crime relates to the incident occurred in the month of February, 2020. The allegations in the crime are that while the complainant i.e., Smt.Vaddi Madhavi and her son Vaddi Mahesh were in search of purchasing a house plot in and around Waddera Basti, Addagutta, East Marredpally, Secunderabad, the *detenu* and his associates, upon knowing the same, hatched a plan to cheat them by fabricating the title documents relating to plot No.115, admeasuring 100 square yards, in Sy.No.74/11, situated at Waddera Basti, Addagutta, East Marredpally. On the basis of forged documents, they misrepresented to the complainant and her son that they were the title holders

and offered to sell the said plot. The deal was finalized for Rs.23,50,000/-. They collected Rs.3 lakhs as advance and assured the complainant and her son that they would arrange loan of Rs.10 lakhs to purchase the said plot. Later, they handed over the fake documents to the complainant and her son. The complainant also gave three cheques to the *detenu* and his associates apart from cash. On 18.08.2020, the *detenu* called the complainant to his house and threatened her with dire consequences at the point of knife and forcibly took an amount of Rs.2,50,000/- from her by wrongfully confining her in his house. Subsequently, the complainant had been requesting the *detenu* and his associates to register the house plot in the name of her son, but they demanded Rs.5 lakhs more and kept the matter pending. On coming to know of the forgery, the complainant has demanded the *detenu* to give back her money, for which, the *detenu* abused in filthy language and insulted her. In this regard, a complaint was lodged on 30.08.2020, basing on which, FIR was registered for the offences under Sections 386, 420, 417, 342, 504, 468, 471, 506 and 509 of IPC and Section 25(1)(B) of the Arms Act. On the same day, the *detenu* as well as his brother Dandugula Venkata Swamy were arrested and a sword was recovered from the possession of brother of the *detenu* and a mobile phone was seized from the *detenu.* The sums of Rs.1,98,500/- and Rs.99,500/- were recovered from the *detenu* as well as his brother. They were enlarged on conditional bail, by order dated 28.08.2020.

(iii) FIR No.259/2020 of Police Station, Tukaramgate:

This crime relates to agreement of sale dated 26.11.2008 pertaining to plot No.258, admeasuring 100 square yards, in Sy.No.74/11, situated behind BPCL, Addagutta, East

Marredpally, Secunderabad. The *detenu* and his associates offered to sell the above plot for a sale consideration of Rs.10 lakhs and received Rs.2 lakhs as advance. On the date of agreement, the complainant paid Rs.6 lakhs to the *detenu* and his associates and they also received balance sale consideration of Rs.2 lakhs form the father of the complainant with a promise to register the house plot. When the registration was demanded, the *detenu* and his associates postponed the same. When the complainant visited the said plot, he found a person at the plot claiming that he purchased the same from the *detenu.* On knowing the same, the complainant and his father went to the house of the *detenu* on 21.10.2020 to discuss the issue. Then the *detenu* arrogantly behaved and wrongfully confined the complainant and his father by threatening at the point of sword and extracted Rs.2 lakhs from them. In that regard, a complaint was lodged on 03.11.2020 and, basing on the same, FIR was registered for the offences under Sections 406, 420, 386, 342 and 506 of IPC and Section 25(1)(B) of the Arms Act. The *detenu* and his associates were arrested and they were enlarged on bail by order dated 16.11.2020. Pending the investigation in the said crime, the *detenu* filed Crl.P.No.6670 of 2020 before this Court to quash the proceedings in the said case, since they compromised the matter with the complainant and his father and the same is pending.

5. By placing reliance upon the above three crimes, the second respondent adverted to 22 crimes against the *detenu* and his associates as past history and background; however, they are not basis for the grounds of order of detention.

6. In the above background of the facts, learned counsel for the petitioner has contended that the order of detention is not in terms of the Act and without jurisdiction. It is also contended that the incidents, which are basis for passing of the order of detention, are not incidents prejudicial to the maintenance of public order. It is also contended that even the incidents relied upon by the second respondent are construed to be true, the same do not cause directly or indirectly any harm, danger or alarm or feeling of insecurity in the minds of general public or any section thereof and they only constitute a law and order problem as they are the private offences and they do not constitute the grounds for detention which can only be done if such activities cause harm, danger or alarm or feeling of insecurity among the larger section of society, as is required under Section 2(a) of the Act. Therefore, he contends that the order of detention suffers from illegality and prayed to allow the writ petition.

7. Learned Government Pleader representing Additional Advocate General has contended that the *detenu* is a rowdy sheeter with past criminal background. His activities of assault, criminal breach of trust, cheating and wrongful detention of persons are causing a feeling of insecurity among

the public at large or the larger section of the society. Such activities themselves constitute a feeling of insecurity among the larger section of society, and hence, they are valid grounds to detain the *detenu.* It is also contended that the activities of attacking on the Police cannot be said to be a private offence and it causes a feeling of insecurity among a section of public in the locality, and hence, it is a valid ground to detain the *detenu.* Placing reliance on other two grounds relied upon by the detaining authority which though appear to be the private offences, they impact larger section of society. According to him, the detention is not punitive and it is intended to prevent the *detenu* in further committing the similar kind of offences. Therefore, he contends that the order of detention suffers from no illegality and prayed to dismiss the writ petition.

8. In the light of the arguments advanced by both the counsel, two issues crop up for consideration. The first issue is whether the second respondent can exercise the powers under Section 3(1) of the Act to pass detention order in the absence of any order authorizing him by the Government under Section 3(2) of the Act. The second issue is whether the incidents relied upon by the second respondent as grounds to

pass the order of detention is justified for passing the order of detention.

9. In order to answer the above issues, it is apt to refer to certain provisions of the Act. Section 2(a) of the Act and its explanation explains what constitute an action prejudicial to the maintenance of public order and the same reads as under:

> "**2(a) 'Acting in any manner prejudicial to the maintenance of public order'** means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender, Land-Grabber, a Spurious Seed Offender, an Insecticide Offender, a Fertiliser Offender, a Food Adulteration Offender, a Fake Document Offender, a Scheduled Commodities Offender, a Forest Offender, a Gaming Offender, a Sexual Offender, an Explosive Substances Offender, an Arms Offender, a Cyber Crime Offender and a White Collar or Financial Offender is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:
>
> Explanation:- For the purpose of this clause, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health."

10. A reading of the meaning of the expression 'acting in any manner prejudicial to the maintenance of public order', it is clear that if a person engaged or is making preparations for engaging in any of his activities which affect adversely, or are likely to affect adversely, the maintenance of public order, such activities constitute the actions which are prejudicial to the maintenance of public order. The explanation further widens the scope of the activities required under Section 2(a) by including any activities which directly or indirectly are causing or to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof.

11. In this regard, Section 3 of the Act is relevant which gives power to the Government as well as the District Magistrate or Commissioner of Police within the local limits of their jurisdiction to pass the order of detention. Therefore, it is required to refer the same and it reads as under:

> "**3.** (1) The Government may, if satisfied with respect to any boot-legger, dacoit, drug-offender, goonda, immoral traffic offender Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender that with a view to

preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, **direct that during such period as may be specified in the order**, such District Magistrate or Commissioner of Police **may also**, if satisfied as provided in sub-section (1), **exercise** the powers conferred by the **said sub-section:**

Provided that the **period specified in the order made by the Government under this sub-section** shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the 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 twelve days after the making thereof, unless, in the mean time, it has been approved by the Government.

4. A detention order may be executed at any place in the State in the manner provided for the execution of

warrants of arrest under the Code of Criminal Procedure, 1973.

5. Every person in respect of whom a detention order has been made shall be liable:-

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, within the State by order of the Government."

12. A reading of the above provision shows that Section 3(1) empowers the Government to order detention with a view to prevent the *detenu* from acting in any manner prejudicial to the maintenance of public order. On the other hand, Section 3(2) enables the District Magistrate or Commissioner of Police within the local limits of their jurisdiction to exercise the power of the Government under Section 3(1), subject to establishing the requirement of Section 3(1) of the Act. Before such exercise of power, there must be a direction from the Government, which after satisfying the prevailing circumstance or circumstance likely to prevail in any area within the local limits of jurisdiction of District Magistrate or Commissioner by directing them during **such a period as may be stated in the order**, to exercise such powers by the said

authorities. The satisfaction of the circumstances enumerated under Section 3(1) of the Act is required. The explanation to Section 3(2) shows that when the Government directs the District Magistrate or Commissioner of Police to exercise the powers in their local limits which the Government can exercise under Section 3(1), a period at first instance must not be exceeded three months, and if the Government satisfies with the prevailing circumstance or circumstance likely to prevail in the local area can extend period by amendment of such a direction/order from time to time. But, at once, it shall not exceed three months. This means, the Government must give direction to exercise the powers by the District Magistrate and Commissioner of Police within their local limits within the time given subject to satisfaction of requirement for detention and such a direction must be extended from time to time, not exceeding three months.

13. Section 3(3) requires when the District Magistrate and Commissioner of Police exercise the power under Section 3(2), they shall forthwith report the fact to the Government together with the grounds on which order has been made, and such other particulars which have bearing on the matter. Such order would be in force for 12 days from the date of order,

unless in the mean time the Government approves. Section 11 deals with consideration of Advisory Board and Section 13 prescribes the maximum period of detention which is 12 months from the date of detention.

14. This Court in **A.Raja Reddy v. The Collector and District Magistrate, Adilabad**[1] held as follows:

> "15. It is further to be seen in this case that the detaining authority passed the detention orders directing the detenu to be detained for a period of one year under the provisions of the Act. As per the provisions of Section 3(2) r/w. Section 3(1) of the Act, the detaining authority has no jurisdiction to fix the period of detention. As per the proviso to Section 3 of the Act, **the period specified in the orders of detention** made by the Government shall not in the first instance exceed three months even though the Government may, if satisfied, subsequently amend such order to extend the period from time to time not exceeding three months at any one time. Even the maximum period for which any person may be detained in pursuance of any detention order made under the Act which has been formed under Section 12 of the Act by the Government subsequent to the receipt of the report of the advisory board, is only 12 months from the date of detention as per the provisions of Section 13 of the Act. The first respondent, however, specified the period of detention as one year even though he has no authority and jurisdiction to fix such period for detention. In this view also the orders of detention are illegal and liable to be quashed. In view of all such circumstances, the impugned orders are

[1] 1996 (2) ALD Cri 947

not valid and legal and cannot be sustained and are, therefore, liable to be quashed."

15. A reading of the above judgment would show that the Court dealt with the issue of whether the order of detention passed under Section 3 of the Act can be at one stretch of 12 months or it has to be reviewed and renewed for every three months. While answering the said issue, by placing reliance on the proviso to Section 3(2) of the Act, held that the District Magistrate or the Commissioner of Police in their limits cannot pass the order of detention at a stretch of 12 months, as contemplated under Section 13 of the Act. According to the learned Judges, the order of detention must be at first instance for 3 months, and later it has to be renewed for every 3 months till the maximum time of 12 months. For arriving such conclusion, they relied upon proviso to Section 3(2) of the Act.

16. With great respect to the eminent judges therein, they did not consider the question whether the District Magistrate or the Commissioner of Police can exercise the power under Section 3(2) of the Act to pass an order of detention without order from the Government directing him to exercise such powers within their local limits for a specified period.

17. For the reasons given hereinbefore, provision to Section 3(2) of the Act which prescribes the 3 months at first instance, and amendment of order for every 3 months is not relating to the order of detention. In fact, it relates to the order passed by the Government directing the District Magistrate or the Commissioner of Police having satisfied with the circumstances prevailing or likely to prevail within the local limits of such District Magistrate or the Commissioner in a specified period to exercise the powers of the Government under Section 3(1) of the Act for passing the order of detention.

18. In this regard, it is relevant to refer to the decision of the Apex Court in **MCD v. Gurnam Kaur[2],** wherein it has been held as follows:

> "11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in **Jamna Das case** [WPs Nos. 981-82 of 1984 decided on 29.3.1985 (SC)] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the

[2] (1989) 1 SCC 101

decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given *per incuriam when it is given in ignorance of the terms of a statute or of a Rule having the force of a statute*. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. **Professor P.J. Fitzgerald, editor of Salmond on Jurisprudence**, 12th Edn. explains **the concept of sub silentio** at p. 153 in these words:

> A decision passes **sub silentio**, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.

12. In **Gerard v. Worth of Paris Ltd**. (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in **Lancaster Motor Co. (London) Ltd. v. Bremith Ltd**. (1941) 1 KB 675 : (1941) 2 All ER 11 (CA), the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that

he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided '***without argument, without reference to the crucial words of the rule, and without any citation of authority***', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This Rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

19. It is also apt to refer to the decision of the Apex Court in **State of U.P. v. Synthetics and Chemicals Ltd**.[3], speaking through His Lordship R.M. Sahai, J., in his concurring judgment set out the principles of *per incuriam* and *sub silentio* and has held thus: (SCC pp. 162-63, paras 40-41)

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the Rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.

[3] (1991) 4 SCC 139

1944 KB 718 : (1944) 2 All ER 293 (CA) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey MANU/SC/0371/1961: AIR 1962 SC 83 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench, extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the Rule of precedents. It has been explained as Rule of sub silentio. 'A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.' (Salmond on Jurisprudence, 12th Edn., p. 153). In Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675 : (1941) 2 All ER 11 (CA) the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the Rule and without any citation of the authority'. It was approved by this Court in MCD v. Gurnam Kaur MANU/SC/0323/1988: (1989) 1 SCC 101. The Bench held that, 'precedents sub silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on

> consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. UT of Pondicherry MANU/SC/0299/1967: AIR 1967 SC 1480 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

20. A reading of the above judgment would show that the Rule of *sub silentio* can be invoked to ignore the previous precedent if it is shown that particular word of law involved in the said decision is not perceived by the Court or present to its mind. In the said circumstances, the Court is not bound to follow the earlier decision as it was rendered without any argument and without reference to crucial words of the Rule. It is needless to say that a decision which is not express and not found on the reasons nor it precedes on consideration of issue cannot be deemed to be a law declared to have a binding effect as contemplated under Article 141 of the Constitution of India.

21. This Court in **A.Raja Reddy**'s case (supra) has not adverted to the issue of jurisdiction of the District Magistrate or the Commissioner to exercise the powers under Section 3(1) of the Act in the absence of any order from the Government giving direction to exercise such a power within the specified time. In the light of the sanctity which is attached to the fundamental right of liberty, the legislature in its wisdom conferred power of detention only on the Government, and in exceptional circumstances, such a power of Government is conferred on the District Magistrate or the Commissioner of Police to meet the immediate necessity occurred on account of the circumstances prevailing or likely to prevail within the local limits of such a District Magistrate or the Commissioner, and such a power is to be exercised within the specified time. Such time, as made out from the proviso to Section 3(2) of the Act, has to be at first instance 3 months and it has to be reviewed and extended for every 3 months by the Government, so that the District Magistrate or the Commissioner can exercise the powers of the Government under Section 3(1) of the Act during such a period. The period contemplated by the proviso to Section 3(2) of the Act is not relating to the period of detention and it relates to the order passed by the Government directing the District Magistrate or the Commissioner to

exercise the powers of the Government under Section 3(1) of the Act. Under the Act, there is nothing to show that the order of detention has to be for every 3 months. The only limitation is that the order of detention shall not exceed 12 months in terms of Section 12 of the Act. Therefore, the view of this Court in **A.Raja Reddy**'s case (supra) is the result of Rule of *sub silentio*, as such, it is not binding on us.

22. In the present case, the impugned order of detention does not indicate whether the second respondent exercised the power on the directions given by the Government and the dates of such directions and whether such directions had been considered and reviewed by the Government for every three months, as is required under Section 3(2) of the Act and its explanation. The above section requires satisfaction of the Government for every three months with regard to prevailing circumstance or the circumstance likely to prevail within the jurisdictional limits of District Magistrate or the Commissioner of Police.

23. These directions are in the form of delegation of its power which is normally exercised by the Government under Section 3(1) of the Act. Such powers have been delegated to meet immediate exigencies considering the prevailing circumstance

or the likelihood of the circumstance which would prevail. Sufficient safeguards have been provided in the form of limiting the period for such powers to be exercised by the authorities and review by the Government for every three months with regard to need of extending further time i.e., not exceeding three months at once and also other safeguard is that the order passed by the authorities would be valid for only 12 days unless and until it is approved by the Government.

24. In the present case, the impugned order of detention does not speak of such delegation or direction from the Government. The challenge in the Writ Petition is not to such a ground, but when we are dealing with the liberties of a *detenu,* the order of detention must speak about their authority to detain and it must be established before an order of detention is passed on the strength of the provision under Section 3(2) of the Act. Without the direction from the Government, the second respondent cannot exercise powers of detention by invoking Section 3(2) of the Act. On this ground, the impugned order of detention, as approved by the Government, is required to be set aside.

25. Apart from the above, now the question is whether the incidents narrated, which are the basis for the grounds of detention, amount to public disorder.

26. There is much case law on the aspect of what acts constitute public order and what acts constitute law and order. This definition has been a matter of debate in catena of judgments of the Apex Court. To avoid confusion, it is apt to refer to one judgment of the Apex Court in **Commr. of Police v. C.Anita**[4] and the relevant paras are extracted below:

> "7. Sub-section (2) of Section 3 with reference to which the order of detention has been passed reads as follows:
>
> > '3(2). If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:
> >
> > Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.'
>
> The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of

[4] (2004) 7 SCC 467

law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question of ask is:

> "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"?

This question has to be faced in every case on its facts.

10. 'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the

potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. (See Kishori Mohan Bera v. The State of West Bengal, [1972] 3 SCC 845; Pushkar Mukherjee v. State of West Bengal, [1969] 2 SCR 635; Arun Ghosh v. State of West Bengal, [1970] 3 SCR 288; Nagendra Nath Mondal v. State of West Bengal, [1972] l SCC 498).

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well defined contour, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily

> result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" justice as "public order comprehends disorders of less gravity than those affecting "security of State". (See Kuso &ah v. The State of Bihar and Ors., [1974] 1 SCC 185, Harpreet Kaur v. State of Maharashtra, [1992] 2 SCC 177; T.K. Gopal v. State of Karnataka, [2000] 6 SCC 168 and State of Maharashtra v. Mohd. Yakub, [1980] 2 SCR 1158."

27. A reading of the above would indicate that true distinction between the law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Similar acts similar in nature sometimes may amount to law and order and sometimes amount to public order. In one case, it might affect specific individual only, but in other case, it might affect larger public, thereby causing public disorder. This shows that act by itself is not a determinant of its own gravity. But in its quality, it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. The stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction

of law does not necessarily result in public disorder. The law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the security of State.

28. In the context of the above principles, if the grounds which are relied upon by the second respondent are examined, the incidents relating to alleged fabrication, wrongful detention and extortion of money are private in nature and they do not fall within the smaller circle of the public order which is within the larger circle of law and order. Such acts may be an infraction of law and all infraction of law may not constitute a public disorder and there is no material to show that such acts had a potential or in fact impacted general public or any section thereof. The only offence left is the attack on the Police officials when they visited the house of the *detenu* in the name of surveillance, according to the Police, as the *detenu* had a past history of criminality.

29. The narration of incidents shows that some incident took place inside the private house of the *detenu* and such incident was not outside the public view, as made out from the facts detailed in the grounds of order of detention. Though the acts of *detenu* claimed to have caused some injury to the

complainant, which themselves cannot be the public disorder, and at the most, it amounts to law and order problem which can be dealt with through ordinary criminal justice system.

30. The second respondent also relied upon 22 criminal cases to show the past history and criminality of the *detenu.* In fact, in the grounds of order of detention, the authorities themselves admitted that such past history was not the basis for grounds of detention. Thus, reference of such past history has no relevancy to appreciate the justifiability of the order of detention passed by the second respondent. Viewed from any angle, the order of detention, as approved by the first respondents, requires to be set aside.

31. In the result, the Writ Petition is allowed setting aside the order of detention dated 23.04.2021 passed by the second respondent under proceedings No.SB(I) No.143/PD-5/Hyd/2021, as confirmed by the first respondent, *vide* G.O.Rt.No.1433, General Administration (Spl.(Law & Order) Department, dated 05.07.2021, is set aside. The *detenu,* Dandugula Mohan, S/o. Late Sailoo, shall be set at liberty forthwith Central Prison, Chanchalguda, Hyderabad, unless his detention is required in connection with any other case.

No order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

M.LAXMAN, J

Date: 04.03.2022
TJMR