1960

October 3.

THE STATE OF MADHYA PRADESH AND ANOTHER

v.

BALDEO PRASAD

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Goondas, Control and Exclusion of—Constitutional validity of enactment—Test—Central Provinces and Berar Goondas Act, 1946 (X of 1946) as amended by Act XLIX of 1950, ss. 4, 4-A—Constitution of India, Arts. 19(1)(d) & (e), 13.

By an order passed under s. 4-A of the Central Provinces and Berar Goondas Act, 1946 (X of 1946), as amended by the Madhya Pradesh Act XLIX of 1950, the State of Madhya Pradesh directed the respondent to leave the district of Chhindwara, which had been specified as a proclaimed area under the Act, and the District Magistrate by another order communicated the same to the respondent. The respondent challenged the said orders under Art. 226 of the Constitution on the ground that the Act violated his fundamental rights under Art. 19(1)(d) and (e) of the Constitution and was, therefore, invalidated by Art. 13 of the Constitution. The High Court held that ss. 4 and 4-A of the impugned Act were invalid and since they were the

main operative provisions of the Act, the whole Act was invalid.

Held, that when a statute authorises preventive action against the citizens, it is essential that it must expressly provide that the specified authorities should satisfy themselves that the conditions precedent laid down by the statute existed before they acted thereunder. If the statute fails to do so in respect of any such condition precedent, that is an infirmity sufficient to take the statute out of Art. 19(5) of the Constitution.

Although there can be no doubt that ss. 4 and 4-A of the impugned Act clearly contemplated as the primary condition precedent to any action thereunder that the person sought to be proceeded against must be a goonda, they fail to provide that the District Magistrate should first find that the person sought to be proceeded against was a goonda or provide any guidance whatsoever in that regard or afford any opportunity to the person proceeded against to show that he was not a goonda. The definition of a goonda laid down by the Act, which is of an inclusive character, indicated no tests for deciding whether the person fell within the first part of the definition.

Gurbachan Singh v. *The State of Bombay*, [1952] S.C.R. 737, *Bhagubhai Dullabhabhai Bhandari* v. *The District Magistrate, Thana*, [1956] S.C.R. 533 and *Hari Khenu Gawali* v. *The Deputy Commissioner of Police, Bombay*, [1956] S.C.R. 506, referred to.

Although the object of the impugned Act was beyond reproach and might well attract Art. 19(5) of the Constitution, since the Act itself failed to provide sufficient safeguards for the protection of the fundamental rights and the operative sections were thus rendered invalid, the entire Act must fail.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 271 of 1956.

Appeal from the judgment and order dated August 2, 1955, of the former Nagpur High Court in Misc. Petition No. 249 of 1955.

M. Adhikari, Advocate-General for the State of Madhya Pradesh, B. K. B. Naidu and *I. N. Shroff*, for the appellants.

R. Patnaik, for the respondent.

1960. October 3. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This appeal with a certificate issued by the Nagpur High Court under Art. 132(1) of the Constitution raises a question about the validity of the Central Provinces and Berar Goondas *Gajendragadkar J.*

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Act X of 1946 as amended by Madhya Pradesh Act XLIX of 1950. It appears that against the respondent Baldeo Prasad the State of Madhya Pradesh, appellant 1, passed an order on June 16, 1955, under s. 4-A of the Act. Subsequently the District Magistrate, Chhindwara, appellant 2, passed another order dated June 22, 1955, communicating to the respondent the first externment order passed against him. The respondent then filed a writ petition in the High Court (No. 249 of 1955) under Art. 226 challenging the validity of the said orders, inter alia, on the ground that the Act under which the said orders were passed was itself ultra vires. The appellants disputed the respondent's contention about the vires of the Act. The High Court, however, has upheld the respondent's plea and has held that ss. 4 and 4-A of the Act are invalid, and since the two sections contain the main operative provisions of the Act, according to the High Court, the whole Act became invalid. It is the correctness of this conclusion which is challenged before us by the appellants.

It would be convenient at this stage to refer briefly to the scheme of the Act and its relevant provisions. The Act was passed in 1946 and came into force on September 7, 1946. It was subsequently amended and the amended Act came into force on November 24, 1950. As the preamble shows the Act was passed because it was thought expedient to provide for the control of goondas and for their removal in certain circumstances from one place to another. Section 2 defines a goonda as meaning a hooligan, rough or a vagabond and as including a person who is dangerous to public peace or tranquillity. It would thus be seen that the definition of the word "goonda" is an inclusive definition, and it includes even persons who may not be hooligans, roughs or vagabonds if they are otherwise dangerous to public peace or tranquillity. Section 3(1) empowers the State Government to issue a proclamation that disturbed conditions exist or are likely to arise in the areas specified in such proclamations if the State Government is satisfied that public peace or tranquillity in any area is disturbed or is

likely to be disturbed. The area in respect of which a proclamation is thus issued is described in the Act as the proclaimed area. Section 3(2) limits the operation of the proclamation to three months from its date and provides that it may be renewed by notification from time to time for a period of three months at a time. The first step to be taken in enforcing the operative provisions of the Act thus is that a proclamation has to be issued specifying the proclaimed areas, and the limitation on the power of the State Government to issue such a proclamation is that the proclamation can be issued only after it is satisfied as required by s. 3(1), and its life will not be longer than three months at a stretch. Section 4 reads thus:

"4(1). During the period the proclamation of emergency issued or renewed under Section 3 is in operation, the District Magistrate having jurisdiction in or in any part of the proclaimed area, if satisfied that there are reasonable grounds for believing that the presence, movements or acts of any goonda in the proclaimed area is prejudicial to the interests of the general public or that a reasonable suspicion exists that any goonda is committing or is likely to commit acts calculated to disturb the public peace or tranquillity may make an order—

(i) directing such goonda to notify his residence and any change of or absence from such residence during the term specified and to report his movements in such manner and to such authority as may be specified;

(ii) directing that he shall not remain in the proclaimed area within his jurisdiction or any specified part thereof and shall not enter such area; and

(iii) directing him so to conduct himself during the period specified as the District Magistrate shall deem necessary in the interests of public order:

Provided that no order under clause (ii) which directs the exclusion of any goonda from a place in which he ordinarily resides shall be made except with the previous approval of the State Government:

Provided further that no such order shall be

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made directing exclusion of any goonda from the district in which he ordinarily resides.

(2) No order under sub-section (1) shall be made by a District Magistrate in respect of a goonda without giving to such goonda a copy of the grounds on which the order is proposed to be made and without giving an opportunity to be heard:

Provided that where the District Magistrate is of opinion that it is necessary to make an order without any delay he may for reasons to be recorded in writing, make the order and shall, as soon as may be within ten days from the date on which the order is served on the goonda concerned, give such goonda a copy of the grounds and an opportunity to be heard.

(3) After hearing the goonda, the District Magistrate may cancel or modify the order as he thinks fit."

This section confers on the District Magistrate jurisdiction to make an order against a goonda if there are reasonable grounds for believing that his presence, movements or acts in any proclaimed area is likely to be prejudicial to the interests of the general public, or if there is a reasonable suspicion that a goonda is committing or is likely to commit prejudicial acts. Sub-clauses (i), (ii) and (iii) indicate the nature of the directions and the extent of the restrictions which can be placed upon a goonda by an order passed under s. 4. Sub-section (2) requires the District Magistrate to give the goonda a copy of the grounds on which an order is proposed to be made, and to give him an opportunity to be heard why such an order should not be passed against him. The proviso to the section deals with an emergency which needs immediate action. After hearing the goonda the District Magistrate may under sub-s. (3) either cancel or modify the order as he thinks fit.

Section 4-A reads thus:

"(1) Where the District Magistrate considers that with a view to maintain the peace and tranquillity of the proclaimed area in his district it is necessary to direct a goonda to remove himself outside the district in which the proclaimed area is comprised or

to require him to reside or remain in any place or within any area outside such district, the District Magistrate may, after giving the goonda an opportunity as required by sub-section (2) of Section 4 forward to the State Government a report together with connected papers with a recommendation in that behalf.

(2) On receipt of such report the State Government may, if it is satisfied that the recommendation made by the District Magistrate is in the interests of the general public, make an order directing such goonda—

(a) that except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not remain in any such area or place in Madhya Pradesh as may be specified in the order;

(b) to reside or remain in such place or within such area in Madhya Pradesh as may be specified in the order and if he is not already there to proceed to that place or area within such time as may by specified in the order :

Provided that no order shall be made directing the exclusion or removal from the State of any person ordinarily resident in the State."

Thus an order more stringent in character can be passed under this section. The safeguard provided by the section, however, is that the District Magistrate is required to give the goonda an opportunity to be heard and further required to make a report to the State Government and forward to the State Government papers connected with the recommendation which the District Magistrate makes. Sub-section (2) of s. 4-A then requires the State Government to consider the matter and empowers it to make an order either under cl. (a) or cl. (b) of the said sub-section. The proviso to this section lays down that no order shall be made by which the goonda would be excluded or removed from the State where he ordinarily resides. The last section to which reference may be made is s. 6. It gives a goonda aggrieved by an order made against him, inter alia, under s. 4 or s. 4-A to make a representation to the State Government within the

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time prescribed, and it requires the State Government to consider the representation and make such orders thereon as it may deem fit. That in brief is the scheme of the Act.

At this stage it would be material to state the relevant facts leading to the writ petition filed by the respondent. Appellant 1 issued a proclamation under s. 3 on August 10, 1954, specifying the limits of Police Stations Parasia and Jamai and Chhindwara Town as proclaimed area. This proclamation was renewed in November, 1954 and February, 1955. Thereafter on May 9, 1955, appellant 1 issued a fresh proclamation specifying the whole of the Chhindwara District as the proclaimed area. This proclamation was to remain in force till August 8, 1955.

Whilst the second proclamation was in force the second appellant received reports from the District Superintendent of Police, Chhindwara, against the respondent, and he ordered the issue of a notice to him to show cause why action should not be taken against him under s. 4; this notice required the respondent to appear before the second appellant on April 29, 1955. The respondent, though served, did not appear before the second appellant. Thereupon the second appellant sent a report to appellant 1 on April 30, 1955, and submitted the case against him with a draft order for the approval of the said appellant under the first proviso to s. 4(1). In the meantime the third notification was issued by appellant 1. The second appellant then issued a fresh notice against the respondent under s. 4 on May 24, 1955. The respondent appeared in person on May 30, 1955, and was given time to file his written statement which he did on June 4, 1955. The case was then fixed for hearing on June 22, 1955. Meanwhile the State Government passed an order on June 16, 1955, directing that the respondent shall, except in so far as he may be permitted by the second appellant from time to time, not remain in any place in Chhindwara District. This order was to remain in force until August 8, 1955. On June 22, 1955, the second appellant communicated the said order to the respondent and directed him to leave the District

before 10 a. m. on June 23, 1955. The respondent appealed to appellant 1 to cancel the order passed against him. The first appellant treated the appeal as a representation made by the respondent under s. 6 and rejected it on July 9, 1955. A day before this order was passed the respondent filed his writ petition in the High Court from which the present appeal arises.

The respondent challenged the validity of the Act on the ground that it invades his fundamental rights under Art. 19(1)(d) and (e) and as such it becomes invalid having regard to the provisions of Art. 13 of the Constitution. This plea has been upheld by the High Court. On behalf of the appellants the learned Advocate-General of Madhya Pradesh contends that the High Court was in error in coming to the conclusion that the restrictions imposed by the Act did not attract the provisions of Art. 19(5). The legislative competence of the State Legislature to pass the Act cannot be disputed. The Act relates to public order which was Entry 1 in List II of the Seventh Schedule to the Constitution Act of 1935. There can also be no doubt that the State Legislature would be competent to pass an act protecting the interests of the general public against the commission of prejudicial acts which disturb public peace and order. Section 3 of the Act indicates that it is only where the public peace or tranquillity is threatened in any given area of the State that the State Government is authorised to issue a proclamation, and as we have already noticed, it is in respect of such proclaimed areas and for the limited duration prescribed by s. 3(2) that orders can be passed against goondas whose prejudicial activities add to the disturbance in the proclaimed areas. Therefore, broadly stated the purpose of the Act is to safeguard individual rights and protect innocent and peaceful citizens against the prejudicial activities of goondas, and in that sense the Act may prima facie claim the benefit of Art. 19(5). This position is not seriously disputed.

The argument against the validity of the Act is, however, based on one serious infirmity in s. 4 and

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s. 4-A which contain the operative provisions of the Act. This infirmity is common to both the sections, and so what we will say about s. 4 will apply with equal force to s. 4-A. It is clear that s. 4 contemplates preventive action being taken provided two conditions are satisfied; first, that the presence, movements or acts of any person sought to be proceeded against should appear to the District Magistrate to be prejudicial to the interests of the general public, or that a reasonable suspicion should exist that such a person is committing or is likely to commit acts calculated to disturb public peace or tranquillity; and second that the person concerned must be a goonda. It would thus be clear that it is only where prejudicial acts can be attributed to a goonda that s. 4 can come into operation. In other words, the satisfaction of the first condition alone would not be enough; both the conditions must be satisfied before action can be taken against any person. That clearly means that the primary condition precedent for taking action under s. 4 is that the person against whom action is proposed to be taken is a goonda; and it is precisely in regard to this condition that the section suffers from a serious infirmity.

The section does not provide that the District Magistrate must first come to a decision that the person against whom he proposes to take action is a goonda, and gives him no guidance or assistance in the said matter. It is true that under s. 4 a goonda is entitled to have an opportunity to be heard after he is given a copy of the grounds on which the order is proposed to be made against him; but there is no doubt that all that the goonda is entitled to show in response to the notice is to challenge the correctness of the grounds alleged against him. The enquiry does not contemplate an investigation into the question as to whether a person is a goonda or not. The position, therefore, is that the District Magistrate can proceed against a person without being required to come to a formal decision as to whether the said person is a goonda or not; and in any event no opportunity is intended to be given to the person to show

that he is not a goonda. The failure of the section to make a provision in that behalf undoubtedly constitutes a serious infirmity in its scheme.

Incidentally it would also be relevant to point out that the definition of the word "goonda" affords no assistance in deciding which citizen can be put under that category. It is an inclusive definition and it does not indicate which tests have to be applied in deciding whether a person falls in the first part of the definition. Recourse to the dictionary meaning of the word would hardly be of any assistance in this matter. After all it must be borne in mind that the Act authorises the District Magistrate to deprive a citizen of his fundamental right under Art. 19(1)(d) and (e), and though the object of the Act and its purpose would undoubtedly attract the provisions of Art. 19(5) care must always be taken in passing such acts that they provide sufficient safeguards against casual, capricious or even malicious exercise of the powers conferred by them. It is well known that the relevant provisions of the Act are initially put in motion against a person at a lower level than the District Magistrate, and so it is always necessary that sufficient safeguards should be provided by the Act to protect the fundamental rights of innocent citizens and to save them from unnecessary harassment. That is why we think the definition of the word "goonda" should have given necessary assistance to the District Magistrate in deciding whether a particular citizen falls under the category of goonda or not; that is another infirmity in the Act. As we have already pointed out s. 4-A suffers from the same infirmities as s. 4.

Having regard to the two infirmities in ss. 4, 4-A respectively we do not think it would be possible to accede to the argument of the learned Advocate-General that the operative portion of the Act can fall under Art. 19(5) of the Constitution. The person against whom action can be taken under the Act is not entitled to know the source of the information received by the District Magistrate; he is only told about his prejudicial activities on which the satisfaction of the District Magistrate is based that action

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should be taken against him under s. 4 or s. 4-A. In such a case it is absolutely essential that the Act must clearly indicate by a proper definition or otherwise when and under what circumstances a person can be called a goonda, and it must impose an obligation on the District Magistrate to apply his mind to the question as to whether the person against whom complaints are received is such a goonda or not. It has been urged before us that such an obligation is implicit in ss. 4 and 4-A. We are, however, not impressed by this argument. Where a statute empowers the specified authorities to take preventive action against the citizens it is essential that it should expressly make it a part of the duty of the said authorities to satisfy themselves about the existence of what the statute regards as conditions precedent to the exercise of the said authority. If the statute is silent in respect of one of such conditions precedent it undoubtedly constitutes a serious infirmity which would inevitably take it out of the provisions of Art. 19(5). The result of this infirmity is that it has left to the unguided and unfettered discretion of the authority concerned to treat any citizen as a goonda. In other words, the restrictions which it allows to be imposed on the exercise of the fundamental right of a citizen guaranteed by Art. 19(1)(d) and (e) must in the circumstances be held to be unreasonable. That is the view taken by the High Court and we see no reason to differ from it.

In this connection we may refer to the corresponding Bombay statute the material provisions of which have been examined and upheld by this Court. Section 27 of the City of Bombay Police Act, 1902 (4 of 1902), which provides for the dispersal of gangs and bodies of persons has been upheld by this Court in *Gurbachan Singh* v. *The State of Bombay* (1) whereas s. 56 and s. 57 of the subsequent Bombay Police Act, 1951 (22 of 1951), have been confirmed respectively in *Bhagubhai Dullabhabhai Bhandari* v. *The District Magistrate, Thana* (2) and *Hari Khemu Gawali* v. *The Deputy Commissioner of Police, Bombay* (3). It would be

(1) [1952] S.C.R. 737. (2) [1956] S.C.R. 533.

(3) [1956] S.C.R. 506.

noticed that the relevant provisions in the latter Act the validity of which has been upheld by this Court indicate how the mischief apprehended from the activities of undesirable characters can be effectively checked by making clear and specific provisions in that behalf, and how even in meeting the challenge to public peace and order sufficient safeguards can be included in the statute for the protection of innocent citizens. It is not clear whether the opportunity to be heard which is provided for by s. 4(2) would include an opportunity to the person concerned to lead evidence. Such an opportunity has, however, been provided by s. 59(1) of the Bombay Act of 1951. As we have already mentioned there can be no doubt that the purpose and object of the Act are above reproach and that it is the duty of the State Legislature to ensure that public peace and tranquillity is not disturbed by the prejudicial activities of criminals and undesirable characters in society. That, however, cannot help the appellants' case because, as we have indicated, the infirmities in the operative sections of the Act are so serious that it would be impossible to hold that the Act is saved under Art. 19(5) of the Constitution. There is no doubt that if the operative sections are invalid the whole Act must fall.

In the result the order passed by the High Court is confirmed and the appeal is dismissed with costs.

Appeal dismissed.