

CASE NO.:
Appeal (crl.) 702 of 2006

PETITIONER:
A.N. Roy, Commissioner of Police & Anr.

RESPONDENT:
Suresh Sham Singh

DATE OF JUDGMENT: 04/07/2006

BENCH:
H.K. SEMA & A.K. MATHUR

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P.(Crl.) No. 150 of 2006)
WITH

CRIMINAL APPEAL NO. 708 OF 2006
CRIMINAL APPEAL NO. 714 OF 2006
CRIMINAL APPEAL NO. 711 OF 2006
CRIMINAL APPEAL NO. 703 OF 2006
CRIMINAL APPEAL NO. 704 OF 2006
CRIMINAL APPEAL NO. 705 OF 2006
CRIMINAL APPEAL NO. 706 OF 2006
CRIMINAL APPEAL NO. 712 OF 2006
CRIMINAL APPEAL NO. 713 OF 2006
CRIMINAL APPEAL NO. 710 OF 2006
CRIMINAL APPEAL NO. 707 OF 2006
CRIMINAL APPEAL NO. 709 OF 2006

(Arising out of S.L.P.(Crl.) Nos.133, 134, 135, 136, 137, 138,
139, 147, 148, 151, 164 and 165 of 2006)

H.K.SEMA, J.

Leave granted.

The challenge in these batches of appeals is to the order dated 6.5.2005 passed by the High Court of Judicature at Bombay in Criminal Writ Petition No.1333 of 2004 whereby the High Court quashed the Notification dated 1.10.1999 issued by the State of Maharashtra.

The Background facts:-

The Parliament enacted the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the Act). Statement of objects and reasons is as follows:-

(1) In 1950 the Government of India ratified an International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others. Under Article 23 of the Convention, traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by law. Under Article 35 such a law has to be passed by Parliament as soon as may be after the commencement of the Constitution.

(2) Legislation on the subject of suppression

of immoral traffic does exist in a few States but the laws are neither uniform nor do they go far enough. In the remaining States there is no bar on the subject at all.

(3) In the circumstances it is necessary and desirable that a Central Law should be passed which will not only secure uniformity but also would be sufficiently deterrent for the purpose. But a special feature of the Bill as that it provides that no person or authority other than the State Government shall establish or maintain any protective home except under a licence issued by the State Government. This will check the establishment of homes which are really dens for prostitution.

As the problem of trafficking of minor girls and women in the metropolitan city of Bombay was on the increase in an epidemic form, the State of Maharashtra issued a Notification NO.PPA-0199/778/CR-10/POL-8 dated 1.10.1999 conferring on the Commissioner of Police, Brihan Bombay, the powers of District Magistrate within the metropolitan area of Brihan Bombay, for the purposes of Sections 18 and 20 of the Act. The Notification was issued in exercise of powers conferred by sub-section (5) read with sub-sections (1) and (2) of Section 20 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) and of all other powers enabling it in that behalf.

The powers so conferred on the Commissioner of Police, Brihan Bombay, was with a laudable object to check the alarming rise in the incidences of trafficking of minor girls and women to the cities, luring of young girls to the cities who ended up in brothels, back log of cases piling up and resultant alarming increase in AIDS and other venereal diseases in cities.

Pursuant to the aforesaid Notification, the Police Commissioner constituted the task force, which conducted an effective raid and ordered eviction or closure of the brothels as preventive steps to curb the menace, which has achieved desired results.

On 1.4.2004 the show cause notice under Section 18 clause (1) of the Act was issued. On 15.4.2004 the respondent herein replied to the show cause notice. After examining the reply to the show cause notice an eviction order was passed against the respondent by an order dated 28.6.2004. Being aggrieved by the order of eviction the respondents herein filed a Writ Petition No. 1333 of 2004 challenging the order dated 28.6.2004 as bad in law. The High Court by its impugned order dated 6.5.2005 set aside the order dated 28.6.2004 of the Commissioner of Police and held that the Notification dated 1.10.1999 pursuant to which the order of eviction was passed was ab initio bad in law. According to the High Court, aforesaid Notification does not empower the Police Commissioner, Bombay to assume the jurisdiction of the District Magistrate for the purposes of Sections 18 and 20 of the Act.

We have heard the parties at length.

The whole controversy boils down to this issue, as to whether the Notification dated 1.10.1999 issued by the

State of Maharashtra empowering the Commissioner of Police, Brihan Bombay, the powers of District Magistrate for the purposes of Sections 18 and 20 of the Act, has been validly made?

The important questions of law involved in these appeals are common and they are being disposed by this common order.

To answer the aforesaid question it will be necessary to notice the Notification itself. The Notification dated 1.10.1999 reads:-

"In exercise of the powers conferred by sub-section (5) read with sub-sections (1) and (2) of section 20 of the Code of Criminal Procedure, 1973(2 of 1974), and of all other powers enabling it in that behalf, the Government of Maharashtra hereby confers on the Commissioner of Police, Brihan Mumbai, the powers of the District Magistrate, within the metropolitan area of Brihan Mumbai, for the purposes of sections 18 and 20 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956)."

From the Notification, it clearly appears that the State of Maharashtra invoked the power conferred upon the State by sub-section 5 read with sub-section (1) and (2) of Section 20 of the Code of Criminal Procedure.

Section 20 of the Code is extracted in extenso:

20. Executive Magistrates.-(1)In every district and in every metropolitan area. The State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have (such) of the powers of a District Magistrate under this Code or under any other law for the time being in force (as may be directed by the State Government).

(3) Whenever, in consequence of the office of a District Magistrate becoming Vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring. Under any

law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

Section 20 as quoted above plainly consists of three parts. The first part deals with the power of the State Government to appoint as many persons as it thinks fit to be Executive Magistrates and to appoint one of them to be the District Magistrate. The second part empowers the State Government to appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have the powers of a District Magistrate under the Code or under any other law for the time being in force as may be directed by the Government. The third part is sub-section (5) of Section 20 which empowers the State Government for conferring under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

We may at this stage clarify that the admitted position is that Brihan Bombay is a metropolitan area.

The main thrust of arguments of Mr. UU Lalit, learned senior counsel for the appellants, is that the State Government issued a Notification in exercise of Powers under sub-section (5) read with sub-sections (1) and (2) of Section 20. Therefore, the provisions of sub-sections (1) and (2) of the Code shall be deemed to have been complied with and the High Court has erred in law in setting aside the Notification for non compliance of sub-sections (1) and (2) of Section 20.

Per contra learned counsel for the respondents contended that unless a person is appointed as an Executive Magistrate by virtue of sub-section (1) of Section 20 he cannot be conferred powers of Additional District Magistrate under sub-Section (2) of Section 20. It is further contended by the counsel that the powers of State Government conferred by sub-section (5) of the Code only speak about conferring on Commissioner of Police powers of the Executive Magistrate and not the District Magistrate and, therefore, the Commissioner of Police cannot act as a District Magistrate for the purposes of Sections 18 and 20 of the Act and therefore, the High Court has rightly set aside the Notification as ab initio bad in law. It is further contended that the Commissioner of Police cannot be appointed as an Executive Magistrate under sub-sections (1) and (2) of the Code in view of specific provision made in sub-section (5) of the Code.

We may at this stage notice the view taken by the High Court while setting aside the Notification. In paragraph 11 the High Court has stated as under:-

"Very fact that in case of Commissioner of Police and that too restricted in the metropolitan area, a specific provision has been made in sub-section (5) inspite of a general provision being there in sub-section (1) empowering the State Government to appoint any person as an Executive Magistrate, that itself discloses the intention of the Legislature to classify the Commissioner of Police to be different from the person who can be appointed as an Executive Magistrate in exercise of the powers under sub-section (1). Otherwise, there was absolutely no need of incorporating a specific provision under sub-section (5) in relation to Commissioner of Police. Otherwise, even in the absence of sub-

section (5) a Commissioner of Police could have been appointed as an Executive Magistrate. The Legislature in its wisdom, however, has excluded the office of the Commissioner of Police under sub-section (1) while reserving the power to the State Government to confer the powers of an Executive Magistrate upon the Commissioner of Police in relation to a metropolitan area. In other words, it discloses that in case of the office of the Commissioner of Police only all or any of the powers of an Executive Magistrate can be conferred upon him and that too in relation to a metropolitan area but the Commissioner of Police cannot be appointed as an Executive Magistrate. The appointment of a person in an office is different from the conferment of powers attached to an office upon the person. In fact the decision sought to be relied up by the learned A.P.P., rather than assisting the contention on the part of the respondents, justifies the view that we are taking in the matter.

In paragraph 17 it is stated as under:-

"Plain reading of the said Notification discloses that undoubtedly the Government was seeking to exercise the powers under sub-section (5) r/w sub-section (1) and (2) of Section 20 of the Code to confer upon the Commissioner of Police the powers of the District Magistrate within the metropolitan area of Brihan Mumbai for the purpose of Section 18 of the said Act. However, as already seen above, the provisions of law comprised under Section 20 of the Code nowhere speak of the Government being empowered to confer the powers of the District Magistrate upon the Police Commissioner either in any metropolitan area or otherwise. On the contrary, sub-section (1) specifically restricts the appointment of District Magistrate from amongst the Executive Magistrates. The sub-section (2) relates to the appointment of an Additional District Magistrate and that too any one of the Executive Magistrates and the sub-section (5) merely speaks of conferment of powers of an Executive Magistrate. The Notification nowhere discloses either conferment of the powers of the Executive Magistrate or even the appointment of the Police Commissioner as the Executive Magistrate. As already stated, there cannot be appointment of District Magistrate unless the person is primarily an Executive Magistrate. It is settled law that when the statute defines the limits of the power that can be conferred upon a specific officer, the conferment of power has to be within the parameters prescribed under the statute.

The High Court after expressing its views in paragraphs 11 and 17 as quoted above came to the following findings:

"i) The District Magistrate or the Additional

District Magistrate can be appointed out of the Executive Magistrate so appointed under Section 20(1) of the Code.

ii) The Additional District Magistrate can exercise the powers of the District Magistrate to the extent directed by the State Government.

iii) Unless a person is appointed as an Executive Magistrate, he can neither be appointed as a District Magistrate nor an Additional District Magistrate.

iv) In relation to a metropolitan area the powers of an Executive Magistrate can be conferred upon the Commissioner of Police.

v) The State Government's power to appoint any person as an Executive Magistrate in terms of the provisions of law under sub-section (1) of Section 20 of the Code does not include the power to appoint the Commissioner of Police as an Executive Magistrate.

vi) As far as the Commissioner of Police is concerned, he can only be conferred with the powers of the Executive Magistrate in terms of sub-section (5) of Section 20 of the Code but is not entitled to be appointed even as an Executive Magistrate under sub-section (1) of Section 20 of the Code.

vii) The District Magistrate, Additional District Magistrate and the Executive Magistrate are three different offices.

We have already noticed the provisions of sub-section (1) and (2) of Section 20 of the Code. Sub-section (1) deals with the power of the State Government to appoint Executive Magistrates as many persons as it thinks fit in every district and in every metropolitan area. Sub-section (2) of Section 20 deals with the power of the State Government to appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have the powers of a District Magistrate under the Code or under any other law for the time being in force as may be directed by the State Government. We agree with the view of the High Court that unless a person is appointed as an Executive Magistrate he cannot be appointed as either an Additional District Magistrate or the District Magistrate. To this extent, the High Court's view is correct. But the views of the High Court contained in sub clause V and VI of the findings, in our view, are not correct.

Under sub-section (1) of Section 20 the Government has got the power to appoint as many persons as it thinks fit to be Executive Magistrates in every district and in every metropolitan area and shall appoint one of them to be the District Magistrate. The words, "as many persons" employed in sub-section (1) are adequately elastic to include the Commissioner of Police. In other words, the State Government is not precluded from appointing the Commissioner of Police in metropolitan area as an Executive

Magistrate. We have already noted that Brihan Bombay is a metropolitan area. Once the Commissioner of Police is appointed as an Executive Magistrate in Brihan Bombay, he can be appointed as an Additional District Magistrate, who shall have the powers of the District Magistrate for the purposes of Sections 18 and 20 of the Act. In our opinion, this would be the correct reading of the statute. This view of ours is further clarified by sub-section (5) of Section 20 when it is stated that nothing in this section shall preclude the State Government from conferring under any law for the time being in force, on Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

It is now well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.

In Anwar Hasan Khan v. Mohd. Shafi and Ors. (2001) 8 SCC 540 this Court held: (SCC p.543 para 8)

"8.....It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved...."

Reading sub-sections (1), (2) and (5) of Section 20 in conjunction, we are of the view, that the State has power to appoint the Commissioner of Police of Brihan Bombay as an Executive Magistrate and further appoint him as an Additional District Magistrate, who shall have the powers of District Magistrate for the purposes of Sections 18 and 20 of the Act.

The State Government shall now appoint the Commissioner of Police as an Executive Magistrate in Brihan Bombay and shall further appoint him as an Additional District Magistrate, who shall have the powers of District Magistrate for the purposes of Sections 18 and 20 of the Act.

In the peculiar facts and circumstances of this case, the status quo ante as on 28.6.2004 shall be maintained till the Commissioner of Police is appointed by the State Government in the above terms. This would mean the Commissioner of Police after necessary appointment shall revive the case from the stage of order of eviction i.e. 28.6.2004.

In the view that we have taken, these appeals are partly allowed and disposed of in terms of the above order. Needless to say that necessary orders appointing the Commissioner of Police as an Executive Magistrate in terms of the above order shall be made within a month from the date of the receipt of the order.