

PETITIONER:
ABHAY SHRIDHAR AMBULKAR

Vs.

RESPONDENT:
S.V. BHAVE, COMMISSIONER OF POLICE AND ORS.

DATE OF JUDGMENT 17/12/1990

BENCH:
SHETTY, K.J. (J)
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SHETTY, K.J. (J)
AHMADI, A.M. (J)

CITATION:
1991 AIR 397 1990 SCR Supl. (3) 552
1991 SCC (1) 500 JT 1990 (4) 759
1990 SCALE (2) 1274

ACT:
Preventive Detention.

National Security Act, 1980: Section 3(2) & (3)--Detention order--Confirmation of power on Commissioner of Police to exercise powers conferred on the State Government by sub-section (2) of Section 3--Use of the disjunctive word 'or' in the order conferring power on the commissioner indicates non-application of mind--Subjective satisfaction can not be lightly recorded by reproducing both the alternative clauses of the Statute.

HEADNOTE:

The petitioner herein was detained pursuant to an order of detention dated 12.2.1990 passed by the Commissioner of Police, Greater Bombay under section 3(2) of the National Security Act, 1980 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The validity of this order was challenged by the petitioner by means of a Writ Petition under Article 226 of the Constitution before the High Court of Bombay but the same was rejected. Against this judgment he has filed a petition for special leave to appeal and also a Writ Petition under Article 32 of the Constitution raising therein a new ground not taken in the High Court namely, the validity of the Government order dated 6th January 1990 whereby the powers conferred on the State government by sub-section (2) of section 3 of the Act were also conferred on the Commissioner of Police, Greater Bombay for the period commencing 30th January 1990 and ending on 29th April 1990. It was argued that the Govt. had issued the order dated 6.1.1990 in a mechanical manner without applying its mind inasmuch as it was not certain which of the alternate circumstances, that is those prevailing on the date of the order or those that are likely to prevail during the three months period for which this power was being conferred on the commissioner, was relevant for reaching the subjective satisfaction. There was thus no valid Confirmation of power on the Commissioner to make the detention order.

Dismissing the SLP but allowing the Writ Petition quashing the Government order dated 6th January 1990 and consequently the deten-

553

tion order also as being without authority of law, the court,

HELD: The subjective satisfaction for the exercise of power under sub-section (3) of Section 3 must be based on circumstances prevailing on the date of the order or likely to prevail at a future date. The specification of the period during which the District Magistrate or Commissioner of Police is to exercise power under sub-section (2) of Section 3 would depend on the subjective satisfaction as to the existence of the circumstances in *presenti* or *futuro*. Since very drastic powers of detention without trial are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding the period during which such power shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail. [557F-558B]

The subjective satisfaction cannot be lightly recorded by reproducing both the alternative clauses of the statute. The subjective satisfaction on the prevailing circumstance, or circumstances that are likely to prevail at a future date is the *sine qua non* for the exercise of power. The use of the word 'or' signifies either of the two situations for different periods. [558B]

That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail in future. The latter may stem from the former. [558C]

The use of the disjunctive word 'or' in the impugned Government order dated 6th January, 1990 only indicates non-application of mind and obsecurity in thought. The obsecurity in thought inexorably leads to obscurity in language. Apparently, the Government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used the disjunctive word 'or' in the impugned order. [558D-E]

JUDGMENT: