

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 6535 of 2024

Petitioner :- Ravi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Girijesh Kumar Gupta, Shiv Shankar Pd Gupta

Counsel for Respondent :- G.A.

Hon'ble Siddharth, J.

Hon'ble Surendra Singh-I, J.

This writ petition has been filed praying for quashing the impugned notice dated 15.01.2024 issued by Additional District Magistrate (Judicial), Hapur/respondent no.2 in case No.D202411730000011 (State Vs. Ravi) under Section 3/4 of U. P. Control or Goondas Act, 1970, Police Station Hapur Dehat, District Hapur.

Learned counsel for the petitioner submits that the notice issued against the petitioner is in violation of law. He is implicated in single Case Crime No.238 of 2021, under Sections 269, 270, 273 I.P. C and Section 3/5/8 Cow Slaughter Act @ 03 The Epidemic Diseases Act 1987 & 240 J.P. Act. He was charge-sheeted. On the basis of the aforesaid two cases the impugned notice has been issued against him under Section 3/4 of U.P. Control of Goondas Act. He has been granted bail in the only case by the court below.

Learned counsel for the petitioner has further submitted that apart from above case, there is no other implication of the petitioner of similar nature in any case. The impugned notice dated 15.01.2024 issued by respondent no. 2 is bad in law and deserves to be quashed. It does not contains the general nature of material allegations.

Learned A.G.A. has opposed the submissions and has stated that the petitioner has opportunity of making representation before the respondent no. 2 and therefore his writ petition does not deserves to be entertained by this Court. Petitioner has criminal history of one case and two beat reports are also against him as mentioned in the notice.

There are no disputed facts warranting call of counter-affidavit from the respondents.

After hearing the rival contentions a look at the definition of "Goonda" is required to be made as defined under section 2(b) of U.P. Control of Goondas Act, 1970 which is as follows:-

"2[(b) 'Goonda' means a person who-

(i) either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable under Section 153 or Section 153-B or Section 294 of the Indian Penal Code or Chapter XV, Chapter XVI, Chapter XVII or Chapter XXII of the said Code;

or

(ii) has been convicted for an offence punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or

(iii) has been convicted not less than thrice for an offence punishable under the U.P. Excise Act, 1910 or the Public Gambling Act, 1867 or Section 25, Section 27 or Section 29 of the Arms Act, 1959; or

(iv) is generally reputed to be a person who is desperate and dangerous to the community; or

(v) has been habitually passing indecent remarks or teasing women or girls; or

(vi) is a tout;

Explanation.- 'Tout' means a person who-

(a) accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means any public servant or member of Government, Parliament or of State Legislature, to do or forbear to do anything or to show favour or, disfavour to any person or to render or attempt to render any service or disservice to any person, with the Central or State Government, Parliament or State Legislature, any local authority, Corporation, Government Company or public servant; or

(b) procures, in consideration of any remuneration moving from any legal practitioner interested in any legal business, or proposes to any legal practitioner or to any person interested in legal business to procure, in consideration of any remuneration moving from either of them, the employment of legal practitioner in such business; or

(c) for the purposes mentioned in explanation (a) or (b), frequents the precincts of civil, criminal or revenue Courts, revenue or other offices, residential colonies or residences or vicinity of the aforesaid or railway or bus stations, landing stages, lodging places or other places of public resort; or

(vii) is a house-grabber.

Explanation. - 'House-grabber' means a person who takes or attempts to take or aids or abets in taking unauthorised possession or having lawfully entered unlawfully remains in possession, of a building including land, garden, garages or out-houses appurtenant to a building.]

(viii) is involved in offences punishable under the Regulation of Money Lending Act, 1976;

(ix) is involved in offences punishable under the Unlawful Activities(Prevention) Act, 1966 and the Indian Forest Act, 1927;

(x) is involved in illegally transporting and/or smuggling of cattle and

indulging in acts in contravention of the provisions in the Prevention of cow Slaughter Act, 1955 and the Prevention of Cruelty of Animals Act, 1960;

(xi) is involved in human trafficking for purposes of commercial exploitation, forced labour, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and like activities.]

This Court finds that the petitioner is not alleged to be leader of or member of any gang or he himself habitually commits or attempts to commit or abets the commission of offences mentioned in the definition clause quoted above.

There is one case registered against him and he was not found to be habitual of committing the alleged offences. This Court in the case of Shankar Ji Shukla Vs. Ayukt Allahabad Mandal and others reported in 2005 (52) ACC 638 and in the case of Lalani Pandey @ Vijay Shankar Vs. State of U.P. and others, 2011(1) ACrJ 207 has held that a person cannot be held to be 'goonda' only on the basis of one or two acts. He can be held to be 'goonda' only when he is in the habit of committing repeated offences.

The Division Bench of this Court in the case of Idu Ali Vs. State of U.P. (Criminal Misc. Writ Petition No. 2895 of 2023) and others has held that where general nature of material allegations have not been mentioned in the notice issued under section 3 of the Act, notice will not be considered to be in accordance with mandatory provision of law as follows:-

"Learned counsel for the petitioner drew our attention to two Full Bench decisions in Ramji Pandey Vs. State of U.P. and others; 1981 Cri LJ 1083 and Bhim Sen Tyagi v. State of U.P. through D.M. Mahamaya Nagar, 1999 (2) JIG 192 (All) (FB).

In Ramji Pandey's case (supra), it has specifically been observed in paragraph 7 of the judgment that although the expression "material allegations" has not been defined by that Act, according to the dictionary meanings, the word "material" means "important and essential", "of significance". The word "allegation" means statement or assertion of facts. Thus, the notice under Section 3(1) should contain the essential assertions of facts in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of Section 3 of the Act. It needs not refer to any evidence or other particulars or details. The names of witnesses, and persons who may have made the complaint against the person against whom action is proposed to be taken or the time, date and place of the offence committed by the person needs not be mentioned in the notice. There is a distinction between the "general nature of material allegations" and "particulars of allegations". In accordance with the former expression, the notice needs not give any details of the allegations, instead the requirement of law would be satisfied if the notice contains a general statement of facts which need not contain any details or particulars. In Ramji Pandey's case, where there were allegations that, (a) the petitioner was a goonda, (b) his movements were causing alarm, danger and harm to the lives and properties of the persons within the circle of P.S.-Sikandarpur and there was reasonable ground for believing that he was engaged in the commission and abetment of offences punishable under Chapters XI, XII and XXII of the Indian Penal Code, and (c) the witnesses were not willing to give evidence against him by reason of apprehension on their part as regards their safety and

danger to their persons and personal property. Regarding the aforesaid subparagraphs (a), (b) and (c), the material allegations of general nature were that there were various cases pending against the petitioner and the crime numbers and sections of those cases had been given in the notice and it was mentioned therein whether the petitioner had been convicted or acquitted in the cases or they were pending. In spite of mention of the crime numbers and sections and status of those cases, the notice in Ramji Pandey's case (supra) was held not to contain the general nature of material allegations and it was struck down.

In the present case also, nothing more than mention of the crime number and sections is all that we find, instead of the general nature of material allegations. A list of case crimes/first information reports/beat report registered against the petitioner does not satisfy the test of a valid notice under Section 3(1) carrying the "general nature of material allegations". Truly, the notice, on the foundation of which the order impugned has been made, is strictly in the teeth of the law laid down consistently by this Court; particularly, the Full Bench decision in Ramji Pandey (supra) and reiterated in Bhim Sain Tyagi (supra). A notice under Section 3(1) of the kind that is the foundation of proceedings here has been held in Bhim Sain Tyagi (supra) and in earlier decisions also, to violate the minimum guarantee of the opportunity that the Statute envisages for a person proceeded with/against under the Act of 1970. Thus, in this case, the impugned order, founded as it is, on a notice under Section 3(1) of the Act, stands vitiated by defects that go to the root of the matter."

In view of the above consideration, it is clear that the respondent no. 2 has issued the impugned notice without considering the provisions of law and only on the basis of implication of the petitioner in a single case only on the basis of two beat reports. The basis of his implication second case under Gangsters Act is related to implication earlier case under Cow Slaughter Act. Therefore, the recital in the notice that the petitioner is a goonda and habitually commits the offences under Chapter XVI, XVII and XXII of the Indian Penal Code and witnesses are not willing to give evidence against him by reason of apprehension on their part regarding their safety etc., are absolutely false.

There is presumption in favour of performance of official acts under section 114, illustrations (e) of Evidence Act that they have been regularly performed. This Court finds that the presumption in favour of respondent no.2 of performance of his official acts in accordance with law stands rebutted by the undisputed facts of this case and relevant provisions of law.

This Court finds that the powers of the State vested in state authorities is being misused by issuing wanton and arbitrary notices under Section 3/4 of U.P. Control of Goondas Act, 1970 by the public servants like respondent no. 2. Earlier this Court vide Criminal Misc. Writ Petition No. 12619 of 2023 had cautioned the State Government for forming uniform guidelines regarding the applicability of U.P. Control of Goondas Act and granted time by 31st October, 2023 for circulation of the same to all the District Magistrates of the State by the following order :

"1. Heard Sri Akhilesh Srivastava, learned counsel for the petitioner and the learned A.G.A. for the State and also perused the record.

2. Present petition has been filed on behalf of petitioner Govardhan seeking following main prayer:

"Issue a writ, order or direction in the nature of Certiorari quashing the show cause notice dated 15.6.2023, issued by the Additional District Magistrate (Finance & Revenue), Aligarh, in Case No. 3400 of 2023 (State Vs. Govardhan), under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Chharra, District Aligarh (Annexure No. 1 to the writ petition)."

3. Normally, we do not entertain such type of petitions, where only show cause notice is issued by the Additional District Magistrate (Finance & Revenue), Aligarh (the Executive Authority of the District), in Case No. 3400 of 2023, State Vs. Govardhan), under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Chharra, District Aligarh.

4. In the instant case, the notice under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970 dated 15.6.2023 has been issued on the basis of two cases, (i) Case Crime No. 69 of 2023, under Sections 323, 504, 506, 354, 354B, 452 IPC, Police Station Chharra, District Aligarh and (ii) Rapat No. 20, dated 3.5.2023. On the basis of these "so called two cases" the Additional District Magistrate (Finance & Revenue), Aligarh has issued a notice under aforesaid section of the Act, 1970 against the petitioner for the purposes of bringing an additional offence within the four corners of Uttar Pradesh Control of Goondas Act, 1970. For this objective the person must be a "Goonda" and this expression of "Goonda" has been defined in Section 2(b) of the Uttar Pradesh Control of Goonda Act, 1970.

5. The peculiar feature of this enactment that the person who is branded as "Goonda" should be ousted from the municipal limits of the city as a preventive measure by the executive authorities of the district by passing externment order. That the person either himself or as a member or leader of a gang, who is habitually commits the offences mentioned in the Section 2(b) of the Act or he has got the tendency to commit the offence time and again. If a person is having a solitary case to his credit, he cannot be branded that he has a habitual Goonda pleaded by the learned counsel for the petitioner.

6. Provisions of Uttar Pradesh Control of Goonda Act, 1970 are applicable in the entire State of U.P. From the plain reading of the enactment, it could be said with utmost certainty that this enactment has been promulgated to save the citizens from habitual "Goonda". The expression of Goonda has been defined in Section 2(b) of Uttar Pradesh Control of Goonda Act, 1970 which is as under:

2(b) "Goonda" means a person who-

(i) either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable under Section 153 or Section 153-B or Section 294 of the Indian Penal Code or Chapter XV, or Chapter XVI, Chapter XVII or Chapter XXII of the said Code; or

(ii) has been convicted for an offence punishable under the Suppression of

Immoral Traffic in Women and Girls Act, 1956; or

(iii) has been convicted not less than thrice for an offence punishable under the U.P. Excise Act, 1910 or the Public Gambling Act, 1867 or Section 25, Section 27 or Section 29 of the Arms Act, 1959; or

(iv) is generally reputed to be a person who is desperate and dangerous to the community or

(v) has been habitually passing incident remarks or teasing women or girls; or

(vi) is a tout.

7. Its punishment is provided in Section 3 of the aforementioned enactment that when it appears to the District Magistrate that any person is a "Goonda" or his movements or acts in the district or any part thereof may cause or are calculated to alarm, danger or harm to the persons or property of the district. The District Magistrate feels and have a sufficient material of believing that, he is engaged or about to engage in the District or any part thereof, in the commission of offence referred to in sub-clauses (i) to (iii) of clause (b) of Section 2, or its abetment of such an offence and no witness would come forward to give evidence against him, meaning thereby, that individual has earned lots of bad name and has got sufficient 'nuisance value' in the district. By this reason of apprehension with regard to the safety of their person or property, the District Magistrate may pass externment order for a period of six months as specified in law with sole motive to save the citizens from the wrath of that individual "Goonda". Thus, it can safely be termed that under this enactment, the District Magistrate are empowered to handle such type of miscreants and oust them from the municipal limit of the district maximum for the period of six months by way of preventive measures. This is a deterrent law whereby a person who is termed as a "Goonda" is asked to leave the premises of the district. It shall be branded as "Goonda" for rest of his life.

8. The District Magistrate before exercising this extraordinary and unusual powers conferred by this enactment, must exercise with all caution and care, but we are noticing that there is a rampant misuse of provisions of this enactment. The executive authorities for the extraneous consideration exercising this extraordinary powers at their whims and capricious and are issuing notices on a solitary case or some beat reports. This amounts to make the deterrent enactment blunt. The indiscreet exercise of provisions of Goonda Act and sending the notices to the persons is not based on executive authorities' sweet will or choice. Issuing notice on solitary case is quite irritating and unnecessarily, there is piling up of litigation. In the instant case there is solitary case and solely on this basis no executive authority can justify that the petitioner is a 'habitual offender' or involved in the cases mentioned in Section 2(b) of the Uttar Pradesh Control of Goondas Act, 1970.

9. It is a fundamental right of every citizen to reside peacefully and profess his business, but if the executive authorities are issuing notice under this deterrent law, then they must be doubly sure about the individual's past image, his past credentials, his family, social educational back ground and

after assessing all these factors if the executive authorities comes to the conclusion that individual is a "Goonda" or a potential threat to society at large and should be thrown out from the municipal limits, then only by well reasoned order, after applying his own independent judicial mind pass a well reasoned order for externment of that individual or even issue notice to that individual calling upon him to justify his past conduct.

10. The public perception regarding the individuals' image carries weight. If the individual is enjoying a bad reputation and name in the area and coupled with the fact that he has got a chequered past then executive authorities are well within their right to issue notice to that individual or to pass an externment order for that individual. Trivial and insignificant offences having one or two in number would not make the person branded as a "Goonda". This adjective "Goonda" itself carries bundle load of bad name, and the executive authorities casually and irresponsibly brand a person as a Goonda, goes without saying, that his entire future and reputation would go to dogs and cause irreparable damage to his name and reputation of his family.

11. Sri Srivastava, learned counsel for the petitioner has relied upon a judgment of this Court in the case of Kailash Jaiswal Vs. State Of U.P. And 3 Others (Criminal Misc. Writ Petition No. 10241 of 2019) decided on 14.11.2022 in which the co-ordinate Bench of this Court while relying upon the judgment of Suresh Tewari Versus State of U.P. and others, 2018 (5) ALJ 1 opined that requirement of applicability of clause (1) of Section 2 of Uttar Pradesh Control of Goondas Act, 1970 is that a person who either himself or as a member or leader of a gang habitually commits or attempt to commits or abets the commission of offence is punishable as referred in the clause (1) itself.

12. Paragraph nos. 11, 12, 14 & 16 of Kailash Jaiswal (Supra) are reproduced hereunder:

"11. In this backdrop, it is submitted that the notice under the U.P. Goondas Act Is not only malicious but misuse of the power vested upon the District Magistrate, the proceedings have been initiated in colourable exercise of power to coerce the petitioner to vacate the premises which admittedly does not vest with the State. Further, it is submitted that on a single case, proceedings under the U.P. Goondas Act cannot be initiated as the petitioner is not a habitual offender.

12. Reliance has been placed on the decision of this Court rendered in Suresh Tewari Versus State of U.P. and others, 2018 (5) ALJ 1.

14. Learned counsel for the petitioner submits that impugned notice is not in conformity with the Rule 4 of the U.P. Control of Goondas Rules, 1970. He further submits that Section 3 of the U.P. Control of Goondas Act, 1970 (hereinafter to be referred to as the "Act") confers powers on the concerned District Magistrate to extern anyone, who is the Goonda outside the district or to place restriction on his movement. If the District Magistrate is satisfied that the matters set forth in clauses (a), (b) and (c) of sub-Section (1) of the Goondas Act are made out he may issue notice to the Goonda informing him of the general nature of material allegations against him in clause (d) of the Act. He further submits that in the instant case clause (d) mentions about the

only case registered against the petitioner being Case Crime No. 212 of 2019, thus the second respondent has mechanically noted the case pending against the petitioner in the prescribed proforma without applying its mind, as well as, without recording satisfaction about the matter set out in clauses (a), (b) and (c) of Act.

16. The Division Bench of this Court in Suresh Tewari (2018(5) ALJ1), held relying upon the Supreme Court judgment that on one stray incident only petitioner could not be deemed to be habitual offender on the basis of that single incident. Para no. 19 reads thus:-

19..... The requirement of applicability of the clause (i) is that Goonda means that a person who either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of offences punishable referred to in the said clause. In the impugned show cause notice there is a description of only one criminal case against the petitioner, while as per the definition and the law settled by this Court as well by the Hon'ble Apex Court, one cannot be treated to be a habitual offender unless and until there is recurrence of offences. Since there is a reference of one stray incident only in the notice, the petitioner could not be deemed to be a habitual offender on the basis of that single incident only and so the notice fails to satisfy the legal requirement."

13. In the impugned notice, there is a description of only one criminal case and one beat report against the petitioner while as per the definition and law settled by the Hon'ble Apex Court as well as by this Court "one" cannot be treated to be a 'habitual offender' unless and until there is a tendency of recurrence of the offence. In the instant case there is a solitary case to the credit of the petitioner, in which he has been granted anticipatory bail till the conclusion of trial, we find that this notice is nothing, but a sheer abuse of power vested in the executive authorities of the district.

14. In addition to above, there is mandatory requirement of the law, that if the executive authority is satisfied that the proceedings under Goonda Act spells out offences under clause (a), (b) and (c) of sub-Section 1 of the Act, he may issue notices to the particular "Goonda" informing him general nature of material allegations against him in clause (d) of the Act, his image among the masses, his nuisance value by which he is a potential threat to the peace and public order of the society at large.

15. But in the instant case, in the notice under challenge spells out the cases required against the petitioner which is allegedly issued on a "prescribed printed proforma" without application of mind by the executive authorities. Not only this, except enumeration of pending solitary case and a beat report, there is total lack of any judicial mind spelling out the general nature of material allegations against the petitioner, making entire impugned notice per se defective and cannot be acted upon any further.

16. We record our strong displeasure in such type of routine pasting of such provisions of the Uttar Pradesh Control of Goondas Act, 1970 and Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 in a most capricious and casual way.

17. At this juncture, learned A.G.A. stood up and informed the Court that in

addition to the cases mentioned in the show cause notice, the petitioner is also involved in two-three more cases which do not find place in the show cause notice. This submissions advanced by the learned A.G.A. itself is amusing. This clearly indicates that one hand does not know what another hand is doing. All of a sudden learned A.G.A. woke up and revealed that in addition to two cases mentioned in impugned notices, the petitioner has got two more cases. The Court cannot take the judicial notice of those additional cases; we cannot permit this hide and seek practice with the proposed "Goonda" i.e. the petitioner.

18. Present matter is squarely covered by the aforesaid judgment and liable to be quashed. Accordingly, we are quashing the show cause notice dated 15.6.2023, issued by the Additional District Magistrate (Finance & Revenue), Aligarh, in Case No. 3400 of 2023, State Vs. Govardhan), under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Chharra, District Aligarh.

19. Registrar General, High Court is directed to circulate the copy of this judgment apprising all the executive authorities of the State of U.P. to strictly adhere the ratio laid down mentioned above. Hence forth it is expected from the authorities that they would necessarily spell out 'general nature of particular allegations against the proposes Goonda', his personal image among the masses his social family background and then only pass a well reasoned order not on a prescribed proforma while issuing a show cause notice and thereafter a pass a well reasoned order of externment, (if at all required and needed) by the said executive authorities concerned. All the District Magistrates and the executive authorities working under him are directed to take appropriate action hence forth and proceed against the individual where they have got a strong reason to believe that the individual is rogue to the society and his externment is a desirable.

20. As mentioned above, we are witnessing rampant misuse of the provisions of Uttar Pradesh Control of Goondas Act, 1970. There is no uniformity in the executive authorities of the districts of UP regarding applicability of this deterrent enactment causing unwarranted piling up of the cases, challenging the notices under this Act etc.

(A). Thus in this regard, it is directed that the State Government too would form a uniform guide lines regarding the applicability of this Act in the light of the above judgment.

(B). This guidelines must be framed latest by 31st October 2023 and shall be circulated among all the District Magistrates of the Districts, so that they may strictly adhere to those guidelines and their shall be Uniformity in the application of the provisions of Uttar Pradesh Control of Goondas Act, 1970.

21. With this direction, the writ petition stands allowed. The impugned show cause notice dated 15.6.2023 issued by the Additional District Magistrate (Finance & Revenue), Aligarh is hereby quashed. No order as to cost."

This Court finds that despite earlier order of this Court, the State Government has not bothered to issue any guidelines to the District Magistrates regarding applicability of the Act and the District Magistrates and their subordinates are

continuously issuing illegal notices under Section 3 of the Act.

The present case is one such example. It is clear that respondent no. 2, Additional District Magistrate(Judicial), Hapur has issued showcause notice dated 15.01.2024 in abuse of power vested in him by law and has acted against the presumption of fairness in due discharge of his official duties.

This Court restrains itself from passing any further remarks against the respondent no. 2 but a direction is being issued to the respondent no.1, Secretary, Department of Home, Government of U.P., Lucknow that he should ensure that the public servants exercising powers of the State should remain within the bounds of law and violation of law may entail disciplinary proceedings against them.

The impugned show cause notice is hereby quashed.

The writ petition is, accordingly, allowed with cost of Rs. 20,000/- payable to the petitioner by the State within two months.

The State is free to recover the amount of costs from respondent no.2 after affording him opportunity of hearing.

Registrar (Compliance) is directed to communicate this order to respondent nos. 1 and 2 within two weeks.

Respondent no. 1 will report compliance of this order to the Registrar (Compliance) of this Court within ten weeks.

Order Date :- 25.4.2024

SS

(Surendra Singh-I,J.) (Siddharth,J.)