**2019 M L D 1016**

**[Peshawar (D.I. Khan Bench)]**

**Before Ijaz Anwar and Shakeel Ahmad, JJ**

**ALLAH NAWAZ---Petitioner**

**Versus**

**GOVERNMENT OF KHYBER PAKHTUNKHWA and others---Respondents**

Writ Petition No.1047-D of 2018, decided on 3rd December, 2018.

**Khyber Pakhtunkhwa Maintenance of Public Order Ordinance (XXXI of 1960)--**

----S.3(1) & (6)---Constitution of Pakistan, Arts. 9, 10 & 199---Preventive detention---Representation to government---Scope---Petitioner was aggrieved of order passed by authorities taking him in preventive detention for a period of 30 days---Authorities raised the plea that Constitutional petition was not maintainable due to non-filing of representation under S. 3(6) of Khyber Pakhtunkhwa Maintenance of Public Order Ordinance, 1960, to Provincial Government, which had power to rescind or modify order passed by the Deputy Commissioner---Validity---Order of detention must show on the face of it that detaining authority was satisfied to the effect specified under relevant law and if there was no record of satisfaction of detaining authority, the order of detention could be declared to have been passed without lawful authority and ab initio void---Objection of authorities was not tenable as order in question was passed in utter disregard of law and was coram non-judice and nullity in the eyes of law---Petitioner need not have filed representation before Provincial Government as contemplated under S.3(6) of Khyber Pakhtunkhwa Maintenance of Public Order Ordinance, 1960---Representation could only be made when order was passed within four corners of the provisions of S.3(1) of Khyber Pakhtunkhwa Maintenance of Public Order Ordinance, 1960---No adequate or efficacious remedy was available to petitioner which could debar him from filing Constitutional petition before High Court---High Court declared order passed by Deputy Commissioner as illegal, without lawful authority, without jurisdiction, void ab-initio and the same was set aside---Constitutional petition was allowed in circumstances.

Liaquat Ali v. Government of Sindh through Secretary Home and another PLD 1973 Kar. 78; M.R.S. Mani v. District Magistrate AIR 1950 Mad. 162; M.R.S Mani v. District Magistrate 51 Cri.L.Jour 525; Seetamma v. Kotareddi AIR 1949 Mad. 586; PLR 1957(2) W.P. 215 and A.K.Khalid PCS Section Officer, Ministry of

Interior Government of Pakistan, Rawalpindi v. Ghulam Qadir Khan PLD 1962 (WP) Lahore 411 ref.

Ahmad Ali Khan for Petitioner.

Adnan Ali, Asstt. A.G. for Respondents.

Assistant Commissioner, Tank in person.

Date of hearing: 3rd December, 2018.

**JUDGMENT**

**SHAKEEL AHMAD, J.---**This petition under Article 199, of the Constitution of Islamic Republic of Pakistan, 1973, calls in question the validity of the order of the Deputy Commissioner, Tank, dated 11.10.2018, made under Section 3(I), of the West Pakistan Maintenance of Public Order Ordinance, 1960, directing the detention of petitioner for a period of one month from the date of this order . The impugned order is reproduced below:-

> "Whereas, it is reported by the Assistant Commissioner, Tank vide letter No. 916/AC(T)/HC(Develop) dated 13.07.2018, that Mr. Allah Nawaz son of Shah Nawaz resident of Kot Pathan, Tehsil and District, Tank, create problem from District Administration and also continuously cause of Polio refusal, and recommended for 3MPO.
>
> And whereas, it appears to me through AC, Tank, report that to prevent Mr. Allah Nawaz son of Shah Nawaz resident of Kot. Pathan, Tehsil and District Tank, from acting in a manner pre-judicial to public order in the district, it is necessary to detain him as per law.
>
> Now therefore, I Shahrukh Ali, D.C., Tank in exercise of the powers conferred upon under Section 3(I) of the West Pakistan Maintenance of Public Order, 1960 do hereby order the detention of Mr. Allah Nawaz son of Shah Nawaz resident of Kot Pathan, Tehsil and District, Tank, in custody of the Superintendent Central Prisons, D.I. Khan for a period of one month (30) days.
>
> The period of his detention will be communicated to him at time of his arrest by the SHO concerned."

2. Vide order dated 26.11.2018, the learned Assistant Advocate General, was put on notice, whereafter the writ petition was fixed for hearing for today. Today, Assistant Commissioner, Tank, appeared in person and defended the impugned order, contending that, petitioner is a contractor by profession, he was awarded a contract for construction of streets in district, Tank, but, he failed to abide by the terms and conditions of the contract and could not complete the construction work within the stipulated period which causes great inconvenience to the polio workers/staff, when they walk through the streets, therefore, he recommended to detain him under Section 3. Maintenance of Public Order Ordinance, 1960. No other material worth mentioning has been put forth before the Court.

3. So far as merits of the case are concerned, it is submitted by the learned counsel for the petitioner that the impugned order has been passed on the

recommendation of the Assistant Commissioner, Tank, without application of mind as well as presence of any material except, that the petitioner failed to complete construction work of the street in district, Tank, which causes inconvenience to the polio staff when they walk through the street. It was next contended that before passing the detention order under Section 3 of the MPO Ordinance, 1960, the detaining authority must be satisfied objectively and not subjectively and not merely on the wish of Assistant Commissioner. It was further argued that right of life and liberty of a citizen is fully protected by Articles 9 and 10 of the Constitution of Islamic Republic of Pakistan, 1973 and further Article 10 of the Constitution provides sufficient safeguards in the matters of arrest and detention, while impugned order has been passed in violation of the above said Articles of the Constitution. It was lastly, contended that the impugned order is not only pregnant with mala fide intentions, but have been passed in a highly uncalled for manner. The allegation is vague and hazy and no nexus exists between the allegations and order, therefore, the proposed detention is illegal and without lawful authority.

4. The learned AAG appearing on behalf of respondents opposed the contentions of the learned counsel for the petitioner and argued that the writ petition is not maintainable on the ground of availability of alternate remedy of filing representation against the impugned detention order before the Home Secretary as provided under Section 3(6) of MPO Ordinance, 1960, and secondly on the ground that impugned order has been passed in accordance with provisions of law and after proper applica-tion of mind as well as satisfaction of the Deputy Commissioner, Tank.

5. We have carefully examined the respective contentions as agitated on behalf of the parties in the light of relevant provisions of Constitution of Islamic Republic of Pakistan, 1973, and judicial precedents. The pivotal question for determination would be as to whether sufficient incriminating material justifying the detention of the petitioner under Section 3(I) of the MPO Ordinance and 1960, was available with the Deputy Commissioner or not?

6. In the case of Liaquat Ali v. Government of Sindh through Secretary Home and another (PLD 1973 Karachi 78), after a detailed survey of the law and the judgments passed by the august Supreme Court, the dictum has been laid down as follows:

> "An order of preventive detention has to satisfy the requirements laid down by their Lordships of the Supreme Court that is to say (i) the Court must be satisfied that the material before the detaining authority was such that a reasonable person would be satisfied as to the necessity for making the order of preventive detention (ii) that satisfaction should be established with regard to each of the round of detention and if one of the ground is shown to be bad non existent or irrelevant the whole order of detention would be rendered invalid (iii) that initial burden lies on the detaining authority to show the legality of the preventive detention and (iv) that the detaining authority must place the, whole material upon which the order of detention is based before the Court notwithstanding its claim of privilege with respect to any document the validity of which claim shall be within the competence

of the Court to decide. In addition, to these requirements, the Court has further to be satisfied, in cases of preventive detention, that the order of detention was made by the authority prescribed in the law relating to preventive detention: that each of the requirements of the law relating to preventive detention should be strictly complied with; that 'satisfaction' in fact existed with regard to the necessity of preventive detention of the detenu; that the grounds of detention had been furnished within the period by law, and if no such period is prescribed, then 'as soon as may be; that the grounds of detention should not be vague and indefinite and should be comprehensive enough to enable the detenu to make representation against his detention to the authority prescribed by law; that the grounds of detention that is they are not irrelevant to the aim and object of this law and that the detention should not be for extraneous considerations or for purposes which may be attacked on the ground of malice".

7. The order of detention must show on the face of it that the detaining authority is satisfied to the effect specified under the relevant detention law and if there is no record of satisfaction of the detaining authority the order of detention can be declared to have been passed without lawful authority and ab initio void. In this regard reference can be made to the cases reported as M.R.S. Mani v. District Magistrate AIR 1950 Mad. 162; M.R.S Mani v. District Magistrate 51 Cri.L.Jour 525; Seetamma v. Kotareddi AIR 1949 Mad. 586; PLR 1957(2) W.P. 215.

8. The only impression which one can gather from the impugned order is that it was passed on the recommendation of Assistant Commissioner. The Deputy Commissioner did not apply his independent Judicious mind without considering the worth of material made available to him, and issued the impugned detention order, there is not a single word mentioned in the impugned order that either activity of the petitioner is against the State or any of its organ, whereas non-completion of construction work of the streets within the stipulated period is neither an offence nor can be equated with acting against the interest of State nor detrimental to the sovereignty, integrity of Pakistan, public order or morality. The impugned order not only shows lack of knowledge of the Deputy Commissioner with regard to the application of Section 3(I) of MPO Ordinance, 1960, but further shows lack of application of conscious mind while passing the impugned order as held in the case reported as A.K.Khalid PCS Section Officer, Ministry of Interior Government of Pakistan, Rawalpindi v. Ghulam Qadir Khan (PLD 1962 WP Lahore 411 (Division Bench), where in it was held that: "any order passed or action taken in violation or ignorance of law is nothing but a mala fide order amounting to colourable exercise of jurisdiction and for acting such like manner the Home Secretary is liable to be sued for damages and each detenu, if so advised, may file suit for damages against Home Secretary (Khusro Pervaiz Khan) for keeping them in false imprisonment".

9. We are unable to understand that how the provisions of Maintenance of Public Order, Ordinance, 1960, could be attracted merely on failure of the petitioner to

complete the construction work of the streets within a specified period at district, Tank.

10. Adverting to objection of the learned AAG, that petition is not maintainable due to non filing of representation under Section 3(6) of the Ordinance to the provincial Government, which has the power to rescind or modify the order passed by the Deputy Commissioner. The objection as is not tenable impugned order was passed in utter disregard of law, hence it was coram non-judice and nullity in the eye of law and therefore, there was no need for the petitioner to file representation before the Provincial Government as contemplated under Section 3(6) of the Ordinance, because representation could only be made when the order is passed within four corners of the provisions of Subsection (I) of Section 3 of the Ordinance, hence there was no adequate or efficacious remedy available to the petitioner which could debar him from filing constitutional petitioner, before this Court.

11. In the circumstances, the impugned detention order issued by the Deputy Commissioner, Tank on 11.10.2018, is declared illegal, without lawful authority, without jurisdiction and void ab-intio and the same is laid to rest.

MH/13/P Petition allowed.

;