AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1635 of 2017

Order reserved on: 8-9-2017

Order delivered on: 12-9-2017

Bastar Parivahan Sangh Jagdalpur, a registered Sangh under the Registrar of Firms and Societies, Chhattisgarh having its registered office at Jagdalpur, District Bastar (C.G.), through its Secretary Rajeev Sharma, S/o Late Shri G.S. Sharma, aged about 47 years, R/o Shiv Mandir, Ward No.3, Jagdalpur, District Bastar (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Home/Transport Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)

2. Collector cum District Magistrate, Jagdalpur, Bastar (C.G.)

3. Registrar, Firms and Societies, Chhattisgarh, Indravati Bhawan, Block-1, 3rd Floor, New Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.
For Respondents/State: Mr. Prasun Kumar Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, the petitioner herein, which is a society registered under the provisions of the Chhattisgarh Societies Registration Act, 1973 (for short, 'the Act of 1973'), has called in question the order dated 16-5-2017 passed by respondent No.2 – District Magistrate in purported exercise of power under Section 144 of the Code of Criminal Procedure, 1973 (for short,

'the Code') prohibiting all activities of the petitioner Association and also causing seizure of all documents and accounts of the petitioner Association and further effecting the seizure of building and office of the petitioner Association. The petitioner also challenges the subsequent order of the State Government dated 24-7-2017 extending the order dated 16-5-2017 for a further period of two months in purported exercise of power under sub-section (4) of Section 144 of the Code. The petitioner also challenges the show cause notice dated 19-5-2017 issued by respondent No.3 intimating the petitioner to show cause about cancellation of registration in view of massive irregularities and lapses in management of the petitioner society.

2. The aforesaid challenge has been made by the petitioner on the ground that the petitioner is a society registered under the provisions of the Act of 1973 and same is an association of merchants involved in the business of transportation and they have right to carry-on trade and business under Article 19(1)(g) of the Constitution of India. The District Magistrate has not only purportedly exercised the power under Section 144 of the Code prohibiting activities of the petitioner Association, but also directed for seizure of documents and accounts of the petitioner Association and seizure of building of the petitioner Association thereby halting the business activities of the petitioner which is violative of their right to livelihood under Article 19(1)(g) of the Constitution of India which includes right to life under Article 21 of the Constitution of India. It has been pleaded that the learned District Magistrate has

no jurisdiction and authority to seize their documents and to seal their office premises and the order passed by the State Government after lapse of the period of two months extending the period for further two months without there being any notification in the official gazette as required under Section 2 (m) of the Code, is unsustainable and bad in law.

3. Return has been filed opposing the averments made in the writ petition stating inter alia that the members of the petitioner Association were involved in unlawful activities and they were preventing the business activities of the members of other associations/transporters namely Nagarnar Transport Association and Bastar Tipper and Trailor Union, and the petitioner Association is involved in extracting illegal money preventing these two Associations/Unions from exercising their right to trade and business and therefore the orders passed are strictly in accordance with law and no interference is required in exercise of jurisdiction under Article 226/227 of the Constitution of India.

4. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner Association, would vociferously submit as under: -

    1. The order passed by the learned District Magistrate in exercise of power under Section 144 of the Code is without due application of mind and the lawful activities of the petitioner could not have been restrained by the learned District Magistrate and such power could not have been exercised to override temporary private rights, as such,

there is no reason giving rise to cause of apprehended danger requiring invocation of Section 144 of the Code.

2. The power and jurisdiction under Section 144 of the Code cannot be exercised to direct seizure of documents and accounts of the petitioner Association as well as sealing of the petitioner's official building depriving the members of the petitioner Association to carry-on their right to trade and business under Article 19(1)(g) of the Constitution of India.

3. The appointment of Administrative Committee to manage the affairs of the petitioner Association is absolutely illegal and lacks sanction of law.

4. Show cause notice dated 19-5-2017 has been issued by respondent No.3 with premeditated mind and termination of registration is a foregone conclusion, as respondent No.3 has acted contrary to the principles of natural justice and the show cause notice is vitiated from its inception.

5. The operation of the order under Section 144 of the Code issued by the District Magistrate on 16-5-2017 came to an end on 15-7-2017 by efflux of time and thereafter, unauthorisedly and acting contrary to law, the State Government has issued the alleged notification dated 24-7-2017 extending the order dated 16-5-2017 for two months i.e. from 15-7-2017 to 14-9-2017 which is bad in law for two reasons firstly, that inoperative/dead order could not be extended from retrospective date i.e. from 15-7-2017 and

secondly, that the alleged notification dated 24-7-2017 has not been notified in the official gazette as required under Section 144(4) read with Section 2(m) of the Code.

6. Thus, from the order dated 16-5-2017 it is apparent that no reasonable opportunity was granted to the petitioner to put-forth his submissions as such the order is without jurisdiction and without authority of law and all the impugned orders be quashed and the respondents be directed to unseal the petitioner's official building premises.

5. Mr. Prasun Kumar Bhaduri, learned Government Advocate appearing on behalf of the State/respondents, vehemently opposing the submissions raised on behalf of the petitioner, would submit as under: -

1. The learned District Magistrate has exercised the power under Section 144 of the Code by passing the impugned order which is a sort of reasonable restriction on the petitioner's right to carry-on trade under Section 19(1)(g) of the Constitution of India and the same is strictly in accordance with law.

2. The learned District Magistrate apprehending danger to public peace and tranquility has passed the impugned order which is subjective satisfaction of the District Magistrate based on the material available on record and in which the scope of interference is extremely limited and it is primarily within the province of the administrative authority and the

District Magistrate by and large is the best authority to assess the situation and determining the immediate need and reason to deal with the situation has passed the order based on material on record which has rightly been extended by the State Government in exercise of power conferred under Section 144 of the Code and as such, seizure of documents followed by seizure of official building and further followed by appointment of Administrator to look into the affairs of the petitioner Association is strictly within the domain and authority of the District Magistrate in exercise of power conferred under Section 144 of the Code and, therefore, it is in accordance with law.

3. On the petitioner's submitting appropriate reply, the respondents would act strictly in accordance with law observing the principles of natural justice.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection critically and minutely as well.

7. The order passed by the learned District Magistrate under Section 144 of the Code and extended by the State Government for a further period of two months under Section 144(4) of the Code has to be tested on the touchstone of constitutional limitation of reasonable restriction of fundamental rights conferred under Article 19(1)(g) of the Constitution of India.

8. The petitioner is a society registered under the provisions of the Act of 1973. The petitioner Association is an association of merchants in the business of transportation. They have a right to freedom of trade, profession and occupation and also have a freedom and right to form association for peaceful and lawful purposes. These rights are in favour of the petitioner enshrined in Part III of the Constitution. Article 19(1)(c) clearly provides to form associations or unions or co-operative societies. Article 19(1)(g) provides to practise any profession, or to carry on any occupation, trade or business. In Article 19(4) it is provided that nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

9. The restriction has to be reasonable and in exercise of legislative power under Articles 245 and 246 of the Constitution of India with respect to Entry No.1 of List II – Public Order; Entry No.1 of List III – Criminal Law, including all matters included in the Indian Penal Code; and Entry No.2 of List III – Criminal Procedure, including all matters included in the Code of Criminal Procedure, the State Government has vested the said authority under Section 144 of the Code with the District Magistrate.

10. Section 144 of the Code falls in Chapter X relating to maintenance

of public order and tranquility. Chapter X is divided into four parts (A) Unlawful Assemblies, (B) Public Nuisances, (C) Urgent Cases of Nuisance or Apprehended Danger, and (D) Disputes as to Immovable Property.

11. In the present case, this Court is concerned with clause (C) of Chapter X i.e. public order i.e. Urgent Cases of Nuisance or Apprehended Danger. As it has already been held herein-above, Section 144 of the Code is a reasonable restriction on freedom under Articles 19(1)(c) and 19(1)(g) of the Constitution of India and reasonableness of restriction has to be tested on nature of the right infringed; underlying purpose of the restriction imposed; evils sought to be remedied by law, its extent and urgency; how far the restriction is not proportionate with the evil; and prevailing condition at the time.

12. Section 144 of the Code relates to power to issue order in urgent cases of nuisance or apprehended danger. Nuisance means that which annoys or hurts or that which is offensive. If persons indulge in an act of beating on railway platform, it would cause annoyance to other persons who happen to be there and would be a nuisance. Similarly, anything done which unwarrantedly affects the rights of others, endangers life or health, gives offence to the senses, violates the law of decency or obstructs the comfortable and reasonable use of property amounts to nuisance. (Law Lexicon – P. Ramnath Aiyar, Reprint 2004 at page 1326-1327.)

13. Section 144 of the Code is a piece of legislation. Sub-sections (1),

(2) and (3) of Section 144 provide as under: -

> "**144. Power to issue order in urgent cases of nuisance or apprehended danger-**.(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.
>
> (2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.
>
> (3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area."

14. A perusal of Section 144(1) of the Code would show that the District Magistrate can give only two types of directions to any person: (1) to abstain from a certain act, and (2) to receive certain order with respect to certain property in his possession or under his management.

15. Section 144 of the Code is a piece of legislation wherein speed is vital and extremely important. Sub-section (1) of Section 144 uses the terms "sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable". The circumstances which may give rise to such immediacy are

mentioned in sub-section (1) itself that “such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray”. Thus, it implies that the subjective satisfaction of the District Magistrate concerned is relevant and under consideration i.e. his own understanding of the situation and not a general or objective understanding.

16. The term “public order” fell for interpretation before the Supreme Court in the matter of **Ram Manohar Lohia (Dr.) v. The State of Bihar**[1] (that was a Constitution Bench decision), and M. Hidayatullah, J, in his opinion at paragraphs 51 and 52 observed as under: -

> “51. ... Does the expression "public order” takes in every kind of disorder or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

1 AIR 1966 SC 740

> 52. ... "law and order" also comprehends disorder of lesser gravity than those affecting “public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as it may affect public order but not security of the State.”

17. In the matter of **Babulal Parate v. The State of Maharashtra and others**[2] where the constitutional validity of Section 144 of the Code was challenged, upholding the provision Their Lordships observed as under: -

> “Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order. ...
>
> But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order. ...”

18. Thus, the provision of Section 144 of the Code was intended to meet an emergency, this postulates a situation temporary in character and the duration of an order under Section 144 could never have been intended to be semi-permanent in character.

19. In the matter of **State of Bihar v. Kamla Kant Misra**[3], the case was related to dispute between two sections of workers in the Tata Workers Union, Jamshedpur. The tension amongst rival sections led to imposition of an order under Section 144 of the Code. The Supreme Court relied completely on **Babulal Parate's** case (supra)

2 AIR 1961 SC 884
3 (1969) 3 SCC 337

and affirmed the law laid down in the said judgment.

20. Similarly, in the matter of **Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and others**[4], a Bench of seven Judges was constituted to reconsider the decision of **Babulal Parate's** case (supra) and in that case the law laid down in **Babulal Parate** (supra) was held to be correct. The Supreme Court took note of the theory of three concentric circles as mentioned in **Ram Manohar Lohia (Dr.)** (supra) to interpret Section 144 of the Code and action taken under it. The Supreme Court in paras 18, 19 and 24 held as under: -

> "18. ... All cases of disturbances of public tranquility fell in the largest circle but some of them are outside 'public order' for the purpose of the phrase 'maintenance of public order', similarly every breach of public order is not necessarily a case of an act likely to endanger the security of the State.
>
> 19. Adopting this test we may say that the State is at the centre and society surrounds it. Disturbances of society go in a broad spectrum from more disturbance of the serenity of life to jeopardy of the State. The acts become graver as we journey from the periphery of the largest circle towards the centre. In this journey we travel first through public tranquility, then through public order and lastly to the security of the State.
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> 24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. ... Disturbances of public tranquility, riots and affray lead to subversion of public order unless they are prevented in time. ... The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the

4 (1970) 3 SCC 746

> Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order."

21. In the matter of **Gulam Abbas and others v. State of U.P. and others**[5], Their Lordships of the Supreme Court in paragraph 27 reiterated the law laid down in **Babulal Parate** (supra) and **Madhu Limaye** (supra) and held that the Magistrate's action must be directed against the wrong-doer rather than the wronged. The Court respectfully agreed with the finding of **Madhu Limaye** (supra) that the Section is directed against those who attempt to prevent the exercise of legal rights by the others or imperil the public safety and health and that was a case of clashes between Shia and Sunni sects of the Islam during the occasion of Muharram when Tazia procession was taken out in the city of Varanasi.

22. In the matter of **State of Karnataka v. Dr. Praveen Bhai Thogadia**[6], while examining the prohibitory orders being passed against the respondent therein for delivering public speeches that were likely to incite communal passions, the Supreme Court again while following the law laid down in **Babulal Parate** (supra) and **Madhu Limaye** (supra) observed as under: -

> "Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences it may result in if not prevented forthwith, cannot be lost sight of. The valuable and cherished right of freedom of expression

5 (1982) 1 SCC 71
6 (2004) 4 SCC 684

> and speech may at times have to be subjected to reasonable subordination of social interest, needs and necessities to preserve the very core of democratic life – presentation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts – unless a concrete case of abuse or exercise of such sweeping powers of extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent."

23. Having noticed the principles of law laid down by the Supreme Court, mentioned herein-above, relating to scope and ambit of passing order under Section 144 of the Code, reverting back to the facts of the present case, in the present case, the incident took place on 11-5-2017 at Village Khuntpadar on National Highway No.63 when the office bearers of the petitioner Association armed with deadly weapons namely pistols, revolvers, sticks and swords in a riotous assembly accosted the office bearers of Nagarnar Transport Association and a free fight ensued bringing the traffic on highway to a halt. The dispute relates to the petitioner Association and Nagarnar Transport Association regarding movement of goods trucks in Bastar District. It is stated that the petitioner Association is older and the Nagarnar Transport Association is formed recently and therefore the petitioner Association using their upper hand to harass the members of the newly constituted Transport Association were operating their own toll barriers and were also exacting hefty illegal fee from any one whose goods trucks were to enter Bastar District. The petitioner Association was unhappy with the

establishment of Nagarnar Transport Association and they started creating unrest and tried to obstruct transportation of logistics to Nagarnar Steel Plant in specific and Bastar District in general. The matter was reported by the Superintendent of Police to the District Magistrate and the District Magistrate passed following order based on the report of the Superintendent of Police: -

> अतएव दण्ड प्रक्रिया संहिता की धारा 144 के प्रावधानों के अंतर्गत बस्तर परिवहन संघ, बस्तर टिप्पर–टेलर संघ, नगरनार टांसपोर्ट एसोसियेशन की एवं उनके सदस्यों के द्वारा समस्त संचालित गतिविधियों/कार्यवाहियों को सम्पूर्ण रूप से प्रतिबंधित करता हूँ साथ ही उनके कार्यालयों/बही–खातों/परिवहन संबंधी दस्तावेजो एवं सबंधित विशिष्ट सम्पतियों के लिए विशिष्ट व्यवस्था के अंतर्गत पूर्ण अधिकारिता के सा प्रशासनिक नियंत्रण समिति के पूर्ण नियंत्रण के अधीन बस्तर जिले में मुक्त परिवहन व्यवस्था संचालित करने का आदेश पारित किया जाता है।
>
> यह आदेश तत्काल प्रभावशील होगा।
>
> आज दिनांक 16/05/2017 को मेरे हस्ताक्षर एवं न्यायालय की मुहर सहित आदेश पारित किया गया।

24. A careful perusal of the aforesaid order of the District Magistrate based on the report of the Superintendent of Police would reveal that when the situation reached its crescendo on 11-5-2017, the District Magistrate has taken immediate action under Section 144 of the Code. It would also appear from the aforesaid report that there is complete unrest and obstruction in transportation due to the incident on 11-5-2017 at Village Khuntpadar on National Highway No.63 when the office bearers of the petitioner Association armed with deadly weapons namely pistols, revolvers,

sticks and swords in a riotous assembly accosted the office bearers of Nagarnar Transport Association and a free fight ensued bringing the traffic on highway to a standstill. The report of the Superintendent of Police mentions that some of the persons injured were so serious, as they have to be airlifted for better medical facilities at Raipur by helicopter and that led to registration of FIR in Police Station Nagarnagar under Crime No.104/2017 for offences punishable under Sections 341, 294, 307, 427, 560B, 147, 148 and 149 of the IPC and Sections 25 and 27 of the Arms Act. Crime No.105/2017 was also registered in the same police station. The District Magistrate finding that the acts of the petitioner Association left terror in the hearts of the ordinary public, passed the order in exercise of power under Section 144(1) of the Code which is impugned herein.

25. At this stage, scope of interference in the prohibitory order under Section 144 of the Code deserves to be noticed.

26. In **Dr. Praveen Bhai Thogadia's** case (supra), the Supreme Court has held as follows: -

> "At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts – unless a concrete case of abuse or exercise of such sweeping powers of extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent.

27. Thus, the satisfaction of the District Magistrate is a subjective

satisfaction and not objective. Delineating the scope of interference, the Supreme Court further observed in **Dr. Praveen Bhai Thogadia's** case (supra) as under: -

> "Courts should not normally interfere with matters relating to law and order which is primarily the domain of administrative authorities concerned. They are by and large best to assess and to handle the situation depending upon the peculiar needs and necessities within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order."

28. Their Lordships in the same judgment cautioned the Courts as under in paragraph 8: -

> "The court was not acting as an appellate authority over the decision of the official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimisation by those in power, normally interference should be the exception and not the rule. The court cannot in such matters substitute its view for that of the competent authority."

29. Thus, examining the order of the learned District Magistrate in the touchstone of scope of interference delineated by the Supreme Court in **Dr. Praveen Bhai Thogadia's** case (supra), it is quite apparent that Bastar being the most Maoist insurgency effected district and the manner in which the members of the petitioner Association acted leading to registration of offences and the manner in which the attack was made on the members of Nagarnar Transport Association, the wanton acts of destructions by the petitioner Association had to be dealt with in the way it has been

dealt with by the District Magistrate under Section 144 of the Code. It can safely be held that the learned District Magistrate upon his subjective satisfaction based on the material available in the shape of recommendation of the Superintendent of Police has taken a decision to pass order under Section 144 of the Code which cannot be said to be unreasonable and illegal requiring interference in exercise of jurisdiction under Article 226/227 of the Constitution of India. Therefore, the District Magistrate is absolutely justified in issuing prohibitory order under Section 144 of the Code by order dated 16-5-2017, except seizure of their official documents and office building premises.

30. The above-stated determination would take me to the impugned order of the State Government by which the State Government has extended the life of the prohibitory order for a period of two months from 15-7-2017 to 14-9-2017 by order dated 24-7-2017 in exercise of power conferred under sub-section (4) of Section 144 of the Code. It is the case of the petitioner that the life of the original order dated 16-5-2017 having been expired on 15-7-2017, it could not have been extended by order dated 24-7-2017 for a further period of two months that too without issuing notification in official gazette under the proviso to Section 144(4) read with Section 2(m) of the Code. Sub-sec. (4) of Sec. 144 of the Code states as under:

> "(4) No order under this section shall remain in force for more than two months from the making thereof:
>
> Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any

> affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification."

31. A careful perusal of the aforesaid provision would show that the State Government is entitled to extend the order passed by the District Magistrate for a period of not exceeding six months but that has to be done by issuing notification. The word "notification" has been described in Section 2(m) of the Code, which states as under:-

> ""Notification" means a notification published in the official gazette."

32. It is the case of the petitioner that notification of order dated 24-7-2017 has not been published in the official gazette.

33. Following the earlier decisions, the Supreme Court in the matter of **State of Kerala and others v. Kerala Rare Earth and Minerals Limited and others**[7] has clearly reiterated the law that if statute requires any particular act to be done in a particular manner, the act must be done in that particular manner alone and held as under: -

> "17. It is well settled that if the law requires a particular thing to be done in a particular manner, then, in order to be valid the act must be done in the prescribed manner alone. (See *CIT v. Anjum M.H. Ghaswala*[8], *Captain Sube Singh v. Lt. Governor of Delhi*[9], *State of U.P. v. Singhara Singh*[10] and *Mohinder Singh Gill v. Chief Election Commr.*[11]) Absence of the Central Government's approval to reservation and a notification

7 (2016) 6 SCC 323
8 (2002) 1 SCC 633
9 (2004) 6 SCC 440
10 AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)
11 (1978) 1 SCC 405

> as required by Section 17-A, therefore, renders the State Government's claim of reservation untenable till such time a valid reservation is made in accordance with law. It is trite that the State Government's general executive power cannot be invoked to make a reservation dehors Section 17-A."

34. In the matter of **Subhash Ramkumar Bind @ Vakil and another v. State of Maharashtra**[12], the Supreme Court has held that 'notification' in common English acceptation mean and imply a formal announcement of a legally relevant fact and "notification published in Official Gazette" means notification published by the authority of law. It is a formal declaration and publication of an order and shall have to be in accordance with the declared policies or in the event the requirement of the Statute then in that event in accordance therewith. Administrative instructions cannot possibly be a substitute for a notification which stands as a requirement of the Statute.

35. Thus, in view of the proviso to Section 144(4) read with Section 2(m) of the Code, notification under Section 144(4) is required to be published in the official gazette. Thus, it is quite vivid that the notification prescribed under the proviso to sub-section (4) of Section 144 of the Code extending the life of prohibitory order passed by the learned District Magistrate under Section 144(1) has to be by a notification and by virtue of Section 2(m) of the Code, it has to be published in the official gazette. However, learned State counsel has produced a copy of the Chhattisgarh Rajpatra (extraordinary) dated 24-7-2017 in which the notification dated 14-7-2017 has been published and as such, this ground is not

12 AIR 2003 SC 269

available to the petitioner that the order has not been published as per the requirement of law.

36. Now, the question is whether the notification so passed and published in the Rajpatra under the proviso to Section 144(4) of the Code, is in accordance with law or not.

37. In the proviso to sub-section (4) of Section 144 of the Code, it is the requirement of law that if the State Government considers it necessary for preventing danger to human life, health or safety or for preventing a riot or any affray, the State Government may, by notification, direct that the order passed by the Magistrate shall remain in force for a period not exceeding six months from the date on which the order made by the Magistrate would have expired, but for the order of the State Government by specifying in the notification.

38. The legislature has used the words “if the State Government considers it necessary” in the proviso to sub-section (4) of Section 144 of the Code. The words “considers it necessary” came up for consideration before a Constitution Bench of the Supreme Court in the matter of “**The Barium Chemicals Ltd. and another v. Sh. A.J. Rana and others**[13] in which Their Lordships of the Supreme Court have held that the words “considers it necessary” postulate that the authority concerned has thought over the matter deliberately and with care and it has found necessary as a result of such thinking to pass the order. The Constitution Bench observed as under in paragraphs 14 and 15: -

13 (1972) 1 SCC 240

> “14. The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is 'to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect' (vide shorter Oxford Dictionary). According to Words and Phrases-Permanent Edition Vol. 8-A 'to consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.
>
> 15. A necessary corollary of what has been observed above is that mind has to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned regarding the necessity to obtain the documents in question.”

39. Reverting back to the facts of the case, it would reveal that by the impugned order dated 24-7-2017 (Annexure P-13), the State Government did not consider and held that it is necessary for preventing danger to human life, heath or safety or for preventing a riot or any affray, such an order is required to be extended. What it

has held is that extension of order is imperative, whereas it ought to have deliberated the matter and it must be shown application of mind particularly with regard to consideration as to the emergent situation for preventing danger to human life, health or safety or for preventing a riot or any affray, it is necessary to be extended. It is a purely casual and perfunctory extension and only for making extension, such an order of extension has been passed which is in teeth of first part of the proviso to sub-section (4) of Section 144 of the Code.

40. Now, the question is whether the proviso to sub-section (4) of Section 144 of the Code permits the State Government to resuscitate an order which is no longer in force. The original order was passed by the District Magistrate on 16-5-2017 for a period of two months as Section 144(4) of the Code clearly provides that “no order under this section shall remain in force for more than two months from the making thereof”. In the instant case, the order in question has been passed on 16-5-2017 and validity of that order has expired on 15-7-2017 and in exercise of the proviso to sub-section (4) of Section 144 of the Code, the State Government has passed order on 24-7-2017 after the life of the order dated 16-5-2017 had already come to an end on 15-7-2017, whereas in order to exercise the power under the proviso to sub-section (4) of Section 144, order under Section 144(1) must be in force and during the currency of order under Section 144(1), power under the proviso to sub-section (4) of Section 144 can be exercised by the State Government.

41. In the matter of **Chanan Singh v. Emperor**[14], similar is the proposition held by the Lahore High Court in which it has been held that Section 144 of the Code does not permit the State Government to resuscitate an order which is no longer in force. The Lahore High Court observed as under: -

> "... In other words, the Local Government has power under sub-section (6) of Section 144 to extend an order already in force. In this case, however, the evidence led shows that the Local Government in issuing the notification of 22nd May which purported to extend an order already in force did not in fact extend any order in force, but resuscitated an order which had expired three weeks previously. In my view, Section 144, Criminal P.C., does not permit the Local Government to resuscitate in this way an order which is no longer in force. It was open to the Local Government to extend the order of the District Magistrate before it expired on 1st May or it was open to the District Magistrate to promulgate another order under Section 144 on 22nd May. But once the order of the District Magistrate had expired on 1st May, I am of opinion that the notification by the Local Government purporting to extend as from 22nd May, an order which was no longer in force, is in valid."

42. Similar is the proposition held by the Delhi High Court in the matter of **M/s. M.S. Associates v. Commissioner of Police and another**[15] in which the Delhi High Court has held thus,

> "... The reading of the proviso clearly show that the order of the Magistrate as stipulated under sub-section (4) of Section 144 would have expired, but for the notification, issued under the proviso to this Section. It means the notification has to be issued while the order passed under sub-section (1) of Section 144 is in existence. ..."

43. It has further been held by the Delhi High Court as under: -

> "... It cannot fill up the lacuna caused in the impugned notification issued after the expiry of the order dated 26-12-95 passed by respondent No. 1. The notification

14 AIR 1940 Lah 459
15 1997 Cri. L.J. 377

> cannot have retrospective operation. Therefore, the impugned notification on this ground can be said to be bad in law and without jurisdiction. By this notification the Government could not revive the dead order nor this notification could inject life into the order which had already expired."

44. Thus, in the considered opinion of this Court, life of the order of the District Magistrate having been expired on 15-7-2017, the State Government has no authority and jurisdiction in exercise of power under the proviso to sub-section (4) of Section 144 of the Code to extend the same from retrospective date, as the notification has no retrospective operation. Therefore, the order of the State Government cannot sustain and deserves to be quashed.

45. This would bring me to the next submission raised on behalf of the petitioner that the second part of the order of the District Magistrate prohibiting all activities of the petitioner Association and causing seizure of all documents and accounts of the petitioner Association and effecting seizure of the building/office premises of the petitioner Association is bad in law.

46. Now, the question would be whether the District Magistrate has power and jurisdiction to direct seizure/sealing of the petitioner's office building and thereby appointing Administrative Committee in exercise of power conferred under Section 144 of the Code.

47. In the matter of **Restaurant and Lounge Vyapari Association, Bhopal and another v. State of M.P. and others**[16], a prohibitory order was passed seizing hookah bar hotels and restaurants which was set aside by the M.P. High Court stating that passing of

16 2016(2) M.P.L.J. 504

general order that said activities are giving bad reputation to administration is unsustainable in law and no order giving status of permanent and semi-permanent character can be passed under Section 144 of the Code.

48. In this regard, a Division Bench decision of the Patna High Court in the matter of **Indrasan Rai v. Enayat Khan and another**[17] may be noticed herein gainfully in which the Patna High Court has held that the Magistrate acting under Section 144 of the Code had no authority to seize the truck in question and take custody of the truck from the owner therein and observed in paragraph 10 as under: -

> "10. The Magistrate, acting under Section 144, had no authority to seize the truck in question and take away the truck from the custody of the petitioner to the police station and thence to the Fort at Buxar or to anywhere else. No person can be deprived of the possession of his property except in accordance with law and there was no provision contained in Section 144 of the Cr PC, or in any other law, authorising the learned Sub-divisional Officer to act in the manner he did on the facts before him. To say the least, it was the most high-handed action of the Sub-divisional Officer which had no foundation in law. It was argued before us on behalf of the opposite party that, law or no law, the learned Sub-divisional Officer in charge of law and order in his Sub-division was in the right in seizing the truck and removing it from the custody of the petitioner to prevent breach of the peace. ..."

49. Thereafter, in the matter of **All India Trade Union Congress v. M/s. Neyveli Lignite Corporation Ltd. and others**[18] where the Magistrate acting under Section 144 of the Code directed sealing

17 AIR 1952 Pat 316
18 2010 SCC OnLine Mad 346

of building, it was directed to be unsealed by the High Court of Madras relying upon the decision of the Supreme Court in the matter of **Kachrulal Bhagirath Agrawal v. State of Maharashtra**[19].

50. In the matter of **Karan Singh, etc. v. Kurukshetra University, Kurukshetra, Through Registrar and others**[20] where the Magistrate acting under Section 144 of the Code not only sealed the college but also appointed administrative committee for discharge of the functions of the college and where the District Magistrate had appointed Sub-Divisional Officer (Civil) as the Administrator of the college to run the same and has further ordered that the persons named in the order shall not interfere with the action of the Sub Divisional Officer, the Division Bench of the Punjab and Haryana High Court quashed the order of the District Magistrate and held that under Section 144 of the Code, the District Magistrate could not authorise any other person to take possession of the property in dispute and appoint Administrative Committee. Paragraphs 35 and 36 of the report state as under: -

> "(35) In our opinion, the language of sub-section (1) of section 144, Cr. P.C., does not admit of any other construction but that the District Magistrate was competent only to direct the persons named in his order constituting the Management to refrain from a certain act or acts, which act, in the light of the grounds mentioned in the order, necessitated the passing of that order viz. to refrain from holding of the College or dealing with its finances or in the alternative to take orders from the District Magistrate in regard to the property, in the possession of the Management regarding which the dispute, if any, existed between

19 (2005) 9 SCC 36
20 ILR 1976 (2) P&H 859

> the members of the Management of the College as mentioned in the order which was the alleged illegally accepted amount from the students in the form of donations for the College.
>
> (36) There is no mention that any dispute in the Management existed regarding the College premises or regarding the appointment of the staff or regarding the manner of interviewing the students or the date thereof. Surely, the provisions of Section 144, Criminal Procedure Code, by no stretch of imagination, can be construed either to mean that the District Magistrate could himself or authorise any person to take possession of the property in dispute (in this case the entire management of the college and its premises and assets and the duty of running the College) regarding the possession whereof any dispute existed which was likely to lead to breach of peace or to public disturbance."

51. Finally, the Patna High Court in **Karan Singh** (supra) quashed the appointment of administrative committee and further direction not to interfere with the action of the Sub Divisional Officer was also quashed being illegal and unauthorised.

52. In the matter of **Rupan Singh and others v. Emperor**[21], the Patna High Court held as under: -

> "On a perusal of section 144, Cr. P.C., there is not the slightest doubt that the discretion to the Sub-Inspector to harvest the crop was without jurisdiction. The powers of a Magistrate under section 144 extend to a direction, in the proper circumstances, to any person 'to abstain from a certain act or to take certain order with certain property in his possession or under his management.' Here the property was not in the possession or under the management of the Sub-Inspector of Police. The Magistrate had no authority to put him in possession of that property and direct him to harvest the crop."

53. In light of the aforesaid principles of law stated herein-above, I shall revert back to the factual score of the present case. The learned District Magistrate acting under Section 144(1) of the Code not only

21 AIR 1944 Patna 213

directed the members of the petitioner Association to refrain from the activities of the Association, but also restrained them from involving in the said activities of the Association. Finding sufficient ground, passing of such an order was necessary. But thereafter, the learned District Magistrate directed seizure of all the properties of the Association and further appointed Administrative Committee to look after the affairs of the petitioner Association by a separate order dated 16-5-2017 i.e. three-member Administrative Committee consisting of the Sub Divisional Magistrate, Jagdalpur (President); the City Superintendent of Police (Member); and the Regional Transport Authority, Jagdalpur (Member). Under sub-section (1) of Section 144 of the Code, the District Magistrate can only issue two types of directions to any person; (1) to abstain from a certain act, and (2) to receive certain order with respect to certain property in his possession or under his management. Therefore, in the garb of power conferred under sub-section (1) of Section 144 of the Code, seizure and sealing of the petitioner's office premises as well as appointment of Administrative Committee to run the working of the petitioner Association is totally illegal and unauthorized and therefore it is liable to quashed, as such a power of sealing/seizure and appointment of Administrative Committee is not conferred to the District Magistrate under Section 144(1) of the Code and violative of their fundamental right conferred under Article 19(1)(g) of the Constitution of India.

54. This would finally bring me to the last submission made by Mr. Paranjpe that the District Magistrate on 16-5-2017 had made

recommendation to the Registrar, Firms and Societies for cancellation of registration of the petitioner Association. It is the case of the petitioner that the said recommendation has been issued with a premeditated mind and termination of registration of the petitioner Association is a foregone conclusion. The learned District Magistrate has no jurisdiction and authority to make such recommendation and only on the basis of such recommendation, show cause notice has been issued by respondent No.3 – Registrar, Firms and Societies.

55. In the matter of **Siemens Ltd. v. State of Maharashtra and others**[22], the Supreme Court has held that where the authorities have made up their mind to impose certain kind of punishment while issuing show cause notice, writ petition would be maintainable and held as under in paragraphs 9 and 11: -

> "9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma[23], Special Director v. Mohd. Ghulam Ghouse[24] and Union of India v. Kunisetty Satyanarayana[25], but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India[26].) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

22 (2006) 12 SCC 33
23 (1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943
24 (2004) 3 SCC 440 : 2004 SCC (Cri) 826
25 (2006) 12 SCC 28 : (2006) 12 Scale 262
26 (1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686

10. The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant[27], stating: (SCC p. 60, paras 48-49)

> "48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.
>
> 49. In K.I. Shephard v. Union of India (supra) this Court held: (SCC p. 449, para 16)
>
> 'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' " "

(See also Shekhar Ghosh v. Union of India[28] and Rajesh Kumar v. D.C.I.T.[29])

56. It is correct to say that the learned District Magistrate by a separate order dated 16-5-2017 recommended to the Registrar, Firms and Societies, for making enquiry into the accounts of the petitioner Association and further recommended for suspension/cancellation of registration of the petitioner Association in the public interest. The Registrar, Firms and Societies by its order dated 19-5-2017 enquired the affairs of the Society under Section 32(1) of the Act of 1973 and finding prima facie irregularities incorporated in the show-cause notice dated 19-5-2017, Sr.No.1 to 15, issued show-cause notice to the petitioner Association under Section 34(3) of the Act of 1973 to explain as to why appropriate action be not taken against the petitioner Association for said lapses within 30 days. The said show-cause notice has not been replied by the petitioner and this instant writ petition has been filed challenging the said

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27 (2006) 11 SCC 42 : (2006) 6 Scale 66
28 (2007) 1 SCC 331 : (2006) 11 Scale 363
29 (2007) 2 SCC 181 : (2006) 11 Scale 409

notice.

57. It appears from the said notice that after making due enquiry and after due satisfaction and finding serious irregularities and continuing lapses, such a show-cause notice has been issued. It is necessarily initiated pursuant to the recommendation of the District Magistrate, but it cannot be held that the Registrar, Firms and Societies has already made up his mind to cancel the registration without any basis and material on record and issued show-cause notice only on the basis of recommendation of the District Magistrate. It is based on the outcome of enquiry, specifying reasons and based on material and it cannot be held to be issued on premeditated mind forming an opinion and show-cause notice is a mere formality. It has been issued with jurisdiction also and it is not without jurisdiction.

58. Therefore, in light of the aforesaid discussion it is held as under: -

1. The part of order passed by the District Magistrate on 16-5-2017 issuing prohibitory order under Section 144 of the Code directing the members of the petitioner Association to refrain from the activities of the petitioner Association and restraining them, is sustainable in law
2. The order of the State Government dated 24-7-2017 extending the validity period of order dated 16-5-2017 for a further period of two months under Section 144 of the Code, is illegal, unauthorized and bad in law.
3. The order passed by the learned District Magistrate seizing

the petitioner's office and appointment of Administrative Committee by order dated 16-5-2017 to run the affairs of the petitioner Association is also totally illegal, without jurisdiction and without authority of law.

4. The District Magistrate, Jagdalpur, is directed to unseal the office of the petitioner Association and the Administrative Committee – Sub Divisional Magistrate, Jagdalpur is directed to handover the entire possession of the petitioner's office premises, documents etc., and charge of the office of the petitioner Association to the petitioner Association forthwith.

5. The petitioner Association is directed to file reply to the show-cause notice before the Registrar, Firms and Societies, within a period of 30 days from today and upon receipt of reply, the Registrar, Firms and Societies shall proceed further in accordance with law.

59. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

Writ Petition (C) No.1635 of 2017

Bastar Parivahan Sangh Jagdalpur

- Versus -

State of Chhattisgarh and others

HEAD NOTE

Sealing of the office of the petitioner Association by the District Magistrate in exercise of power under Section 144(1) CrPC is violative of the petitioner's fundamental right under Article 19(1)(g) of the Constitution of India to carry-on trade and business.

शीर्ष टिप्पण

दण्ड प्रक्रिया संहिता की धारा 144(1) के अन्तर्गत शक्ति के प्रयोग में जिला दण्डाधिकारी द्वारा याचिकाकर्ता संघ के कार्यालय को सील (बंद) किया जाना भारत के संविधान के अनुच्छेद 19(1)(g) के अन्तर्गत याचिकाकर्ता के व्यापार तथा व्यवसाय करने के मौलिक अधिकार का हनन करने वाला है।