

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

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| 1. | Case No. | Writ Petition No.27449/2021 |
| 2. | Parties Name | Laxmi Sagar w/o Kamal Kishore Sagar vs. State of Madhya Pradesh & others |
| 3. | Date of Order | 31st of January, 2022 |
| 4. | Bench | <u>Division Bench</u>
Hon'ble Shri Justice Vivek Rusia
Hon'ble Shri Justice Subodh Abhyankar |
| 5. | Order passed by | Hon'ble Shri Justice Subodh Abhyankar |
| 6. | Whether approved for reporting | Yes |
| 7. | Name of counsel for the parties | Shri Manu Maheshwari, learned counsel for the petitioner.
Shri Vivek Dalal, learned Additional Advocate General for the respondent/State. |
| 8. | Law laid down | <p><u>1. Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.-</u> <i>Sub-section (2) of Section 3 of the Act of 1980 clearly provides that such an order of detention can be passed by the District Magistrates or also by Commissioners of Police, wherever they have been appointed. In such circumstances, when Ms. Pal, the Municipal Commissioner, was given the charge of the District Magistrate, it can be safely presumed that she was also empowered to pass an order under the Act of 1980. As, it is apparent from the aforesaid decision in the case of Girja Shankar Shukla Vs. Sub-Divisional Officer, Harda and Ors. AIR (1973) MP 104, that unless there is a prohibition, express or implied, the function of District Magistrate can be performed by an Additional Collector where a proper delegation has been made. Thus, it is held that the Municipal Commissioner, who was also given the charge of the DM by a specific order, was competent to pass the order detention under the Act of 1980 and thus, the impugned order cannot be faulted with so far as the competency of the District Magistrate is concerned. (para 24).</i></p> <p>2. So far as the contention, that the order of detention ought to have been conveyed to the State Government <i>forthwith</i> under Sub Section (3) of Section 3 of the Act of 1980 is concerned, again this Court finds force with the contention raised by the learned Additional Advocate General</p> |

appearing for the respondent / State Government, that the detenu was already absconding in connection with criminal case arising out of same transaction; hence Sub-Section (3) of Section 3 of the Act of 1980 would have not have any effect, if the order is not conveyed to the State Government forthwith, as admittedly, the record reveals that the order of detention was passed on 05.10.2021, whereas the detenu was arrested on 18.11.2021, as he was absconding soon after the case was registered against him on 29.09.2021. Thus, there was no reason for the District Magistrate to forthwith forward the order of detention, when the detenu himself was not arrested/detained on the said date. Thus, the delay in forwarding the copy of the detention order did not cause any prejudice to the petitioner who was already absconding and is of no avail to challenge the impugned order.(para 25).

- 9 Significant paragraph 24 & 25
Girja Shankar Shukla Vs. Sub-Divisional Officer, Harda and Ors. AIR (1973) MP 104 (Judgement Relied upon)
- 10 Judgements referred
 1. *Girja Shankar Shukla Vs. Sub-Divisional-Officer, Harda and Ors. AIR (1973) MP 104 (Judgement Relied upon)*
 2. *Ajaib Singh vs. State of Punjab AIR 1965 SC 1619 (Judgement distinguished)*

(SUBODH ABHYANKAR)
JUDGE

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH**DIVISION BENCH****Writ Petition No.27449-2021****Laxmi Sagar w/o Kamal Kishore Sagar****vs.****State of Madhya Pradesh & others**

Coram : Hon'ble Shri Justice Vivek Rusia
Hon'ble Shri Justice Subodh Abhyankar

Shri Manu Maheshwari, learned counsel for the petitioner.
Shri Vivek Dalal, learned Additional Advocate General for the
respondent/State.

Whether approved for reporting : Yes

ORDER**(Passed on 31 / 01 / 2022)****Per: Subodh Abhyankar, J.**

1] This petition has been filed under Article 226 of the Constitution of India, against the order of detention dated 05.10.2021, passed by the Respondent No.2, District Magistrate, Indore whereby, while exercising its power under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the Act of 1980) the petitioner's son Ajay Sagar has been detained for a period of six months (although in the impugned order the period is not specified).

2] The petition has been filed at the instance of the mother of the detune Ajay Sagar.

3] In brief, the facts giving rise to the present petition are that the respondent No.4/Station House Officer, Police Station Aazad Nagar, Indore, on a complaint made by Mahadev Muvel, Junior Supply Officer, Collector Office (Food) registered the FIR dated 29.9.2021, at Crime No.663/2021 for offences punishable under Sections 420, 120-B and 406 of the Indian Penal Code, 1860 and Section 3 & 7 of Essential Commodities Act, 1955 (hereinafter referred as the E.C. Act). It was alleged in the FIR that a joint inspection team searched the premises of M/s Palak Agro Industry Rice Mill situated at Nemawar Road, wherein a vehicle bearing registration No. MP 09 LQ 9735 was spotted. In the aforesaid vehicle 40 bags filled with foodgrain were also found. It transpired that out of these 40 bags, 30 bags were bought from a fair price shop and thus, on 27.9.2021 the detenu's shop by the name and style *Ahirkhedi Mahila Sahkari Upbhokta Bhandar* having Code No.08016060 was also searched wherein the detenu informed the team that co-accused Mamta is the President and Anshulika is the salesperson of the aforesaid shop. In the aforesaid search, it was found that the accounts of the shop were not kept in order as no sale register was maintained. Pursuant thereto, on 05.10.2021, the respondent No. 5 i.e. In-charge District Supply Controller, Indore informed the respondent No.2 about the alleged offences committed by the accused persons. Acting upon which, while exercising its power conferred under Sections 3 (1) & 3(2) of the Act of 1980, the respondent No.2 passed the impugned order dated 05.10.2021, directing detention of

the detenu for an unspecified period.

4] Shri Manu Maheshwari, counsel for the petitioner has assailed the aforesaid order inter alia on the ground that the impugned order has not been passed by the District Magistrate and in fact it has been passed by Ms. Pratibha Pal, who was posted as the Municipal Commissioner, Indore and was given the temporary charge of the District Magistrate, Indore, for a period from 28.9.2021 to 05.10.2021 i.e. for a period of 08 days only as a stopgap arrangement.

5] Counsel for the petitioner has drawn attention of this Court towards an office order dated 27.9.2021, issued by the Chief Secretary, State Government of Madhya Pradesh, Bhopal wherein the aforesaid order of allocation of power has been passed in favour of Ms. Pratibha Pal, who was posted as the Commissioner, Municipal Corporation Indore at the relevant time. Thus, it is submitted that merely if an additional charge of District Magistrate has been given to a person, he/she cannot exercise and invoke the powers conferred on a District Magistrate under the Act of 1980 to pass the order of detention.

6] In support of his submissions that a person who is holding the additional charge cannot pass an order of detention as the provisions of the Adhinyam have to be strictly construed., Shri Maheshwari has relied upon the decisions rendered by the Supreme Court in the case of Ajaib Singh vs. State of Punjab reported as AIR 1965 SC 1619, Girja Shankar Shukla vs. Sub-Divisional Officer, Harda reported as AIR 1973 MP 104, Ram Ratan Balchand vs. State of Madhya

Pradesh reported as AIR 1964 MP 114, Amit Agarwal Vs. Union of India (UOI) and Ors. reported as (2007) 1 Gau LR 313, Rina T. Sangma vs. State of Meghalaya reported as (2005) Gau LR 563, Hetchin Haokip vs. State of Manipur & Ors reported as (2018) 9 SCC 562.

7] Counsel has further submitted that the detention order was not reported to the State forthwith. It is submitted that under Section 3(3) of the Adhiniyam, which provides for forth with communication by the District Magistrate of the detention order to the State Government together with the grounds on which the order has been made, but no such communication has been made and even if it is made, it was not forthwith, as the order has been passed on 05.10.2021, whereas the intimation was made on 13.10.2021. Thus, it is submitted that the impugned order being contrary to the law is liable to be quashed on this ground also. Reliance is also placed on Hetchin Haokip vs State of Manipur & others reported as (2018) 9 SCC 562.

8] It is also submitted that the order of detention is for an unspecified period which runs contrary to the Article 22(4)(a) of the Constitution of India and has also drawn attention of this Court towards the order passed in the case of Khurshid vs. State of Madhya Pradesh and others (Writ Petition No.3793/2016) wherein it is held that, if in the order of detention the period of detention is not specified then such order of detention is vitiated.

9] It is further submitted that there are no other criminal cases

registered against the detune. In such circumstances, the order of detention was not at all necessary specially when the petitioner was already booked under the provisions of Essential Commodities Act as well as I.P.C. In which he is already arrested.

10] Counsel for the respondent/State, on the other hand, has opposed the prayer and has submitted that no case for interference is called for, as even though Ms. Pratibha Pal, who was the Commissioner, Municipal Corporation Indore, was given the additional charge of the District Magistrate on the date of passing of the impugned order of detention dated 05.10.2021 for the reason that the aforesaid power has been conferred on her by the Chief Secretary of the State Government of Madhya Pradesh by the order of the Governor of the State vide its order dated 27.9.2021. Thus, it is submitted that no case for interference is called for.

11] So far as the period of detention is concerned, Shri Dalal has submitted that the State Government has already notified the detention of the detenu vide its order dated 24.12.2021 for a period of six months only i.e. from 18.11.2021 to 17.5.2022. It is further submitted that the detenu was arrested on 18.11.2021 hence, the aforesaid order shall start to run from 18.11.2021 only as earlier the detenu was absconding.

12] It is also submitted that so far as the intimation of the order of detention to the State Government is concerned, under Section 3(3) of the Adhiniyam, it is in those cases where the detenu is immediately

taken into custody that intimation of such an order is necessary to the State Government. However, in the present case, when the detenu himself was absconding and was arrested only on 18.11.2021, the intimation has been given to the State Government prior to that, i.e. on 12.10.2021 which has been approved by the State Govt. on 13.10.2021. Intimation to this effect has also been sent to the Central Government on 18.10.2021. Thus, it is submitted that in the aforesaid decision cited by the petitioner, the petitioners were detained immediately after passing of the order of detention and in such circumstances, it has been held by the various decisions that the order of detention must be communicated to the State Government forthwith, but in the case on hand, the detenu was not detained soon after when the detention order was passed on 05.10.2021 as he could be arrested only on 18.11.2021. Thus, it is submitted that the petition be dismissed as no case for interference is called for.

13] In rebuttal, Shri Maheshwari has submitted that Ms. Pratibha Pal, the then acting District Magistrate was not authorized by the State Government to pass any order in respect of the provisions of the Adhiniyam, as her authorization letter dated 27.9.2021, filed subsequently by the detenu, cannot be said to be extended for the purposes of the Act of 1980 as under Section 20(3) of the Code of Criminal Procedure a person who is holding an additional charge can exercise its powers of the District Magistrate so far as it relates to the Code of Criminal Procedure only.

14] Heard the learned counsel for the parties and perused the record.

15] So far as the objection of the petitioner regarding the jurisdiction of the respondent no.2 to pass the impugned order is concerned, regarding which Shri Maheshwari has also relied upon the decision of the Supreme Court in the case of *Ajaib Singh (supra)*, it is found that the aforesaid decision has already been distinguished by the Supreme Court in a fairly recent decision, in the case of *State of M.P. v. Dharmendra Rathore, reported in (2019) 20 SCC 379 : (2020) 3 SCC (Cri) 838*, wherein, while comparing the provisions of M.P.Rajya Suraksha Adhiniyam, 1990, it is held as under :-

3. The learned counsel for the appellant in support of the appeal contends that the High Court committed error in relying on the Constitution Bench judgment of this Court in *Ajaib Singh v. Gurbachan Singh*. He submits that in *Ajaib Singh*, this Court had occasion to consider the provisions of the Defence of India Act, 1962 and the Defence of India Rules, which contained a different statutory scheme. The statutory scheme in the Adhiniyam, 1990 being different, the said judgment was not applicable. It is submitted that the Additional District Magistrate was fully competent to pass the order under the Adhiniyam, 1990.

4. *****

11. The entire basis of the impugned judgment of the High Court is the Constitution Bench judgment of this Court in *Ajaib Singh*. In *Ajaib Singh case*, this Court had occasion to consider the provisions of the Defence of India Act, 1962 and the Rules framed thereunder, where in that case, one Lall Singh, who was working as Additional District Magistrate, was invested with the power of District Magistrate under Section 10(2) of the Code of Criminal Procedure, 1898, had passed an order of detention of the appellant under the Defence of India Act as District Magistrate. The challenge was that he was incompetent to pass an order being not the District Magistrate. It is necessary to consider the scheme of Section 3(1) of the Act and notice the relevant provision in Para 6, which is to the following effect:

“6. We do not think it necessary for purposes of this case to decide the first point raised by the learned Advocate General, for we have come to the conclusion that no officer other than the District Magistrate of a District can pass an order of detention under R. 30 of

the Rules in view of the provisions of the Act and of the Rules to which we shall now refer. Section 3(1) of the Act gives power to the Central Government by notification in the Official Gazette to make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of community. Section 3(2) then provides for the making of rules for various purposes without prejudice to the generality of the powers conferred by Section 3(1), and the 15th clause thereof provides for detention. The relevant portion of that clause necessary for our purposes reads thus:

‘3. (15) Notwithstanding anything in any other law for the time being in force—

(i) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable, of being of hostile origin or having acted, acting, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India’s relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner.’

It would be seen that Section 3(2)15)(i) which is the source of power to detain according to the Rules to be framed thereunder itself lays down that the authority empowered to detain shall not be lower in rank than that of a District Magistrate.”

12. It is to be noted that under the statutory scheme under the Defence of India Act, detention order can be passed by the authority empowered by the rules to apprehend or detain with restriction that the authority empowered to detain *not being lower in rank than that of a District Magistrate*. In view of the above statutory scheme, this Court held that the Additional District Magistrate being not the District Magistrate was incompetent to pass the impugned order.

13. In para 7, the following has been held: (*Ajaib Singh case*, AIR p. 1622)

“9. ... ‘7. Then we came to Section 40(2) of the Act, which gives power to the State Government to delegate its powers to any officer or authority subordinate to it. This power of delegation, however, must be read harmoniously with Section 3(2)(15) and therefore under Section 40(2) the State Government cannot delegate its power to detain to

any officer below the rank of a District Magistrate. Rule 30 of the Rules then provides for detention and under that rule that power is conferred on the Central Government or the State Government to detain any person. That power of the State Government can however be delegated under Section 40(2) to any officer subordinate to it. But as we have already indicated the power of delegation must be read harmoniously with Section 3(2)(15) and therefore the State Government cannot delegate the power to detain to any officer who is lower in rank than the District Magistrate. The position is further clearly brought out in Rule 30-A which provides for review of a detention order made by an officer. It is made clear there also that the officer shall in no case be lower in rank than a District Magistrate. The effect of these provisions thus is that the power of detention can either be exercised by the State Government or by its delegate who however can in no case be lower in rank than a District Magistrate. The Act and the Rules therefore show unmistakably that the power of detention can only be exercised by the State Government or an officer or authority to whom it might be delegated but who shall in no case be lower in rank than a District Magistrate.”

14. This Court has further contrasted the provisions of the order of that of the Preventive Detention Act, when where the District Magistrate is specially empowered. Para 8 of the judgment is as follows:

“9. ... ‘8. We may in this connection contrast the language of Section 3(2) of the Preventive Detention Act No. 4 of 1950, which lays down that any of the following officers, namely:(a) District Magistrates,

(b) Additional District Magistrates specially empowered in this behalf by the State Government,

(c)-(d)***

may exercise the powers conferred by Sections 3(1)(a)(ii) and (iii). If the intention under the Act and the Rules was that the Additional District Magistrate may also exercise the power of detention conferred thereunder we would have found a provision similar to that contained in the Preventive Detention Act.”

15. Applying the ratio of the above judgment in the facts of the present case, it is clear that in the statutory scheme of the Adhiniyam, 1990, there is no provision, which prohibits passing an order by an officer lower than the rank of District Magistrate rather under Section 13, there is no limitation on the State Government while specially empowering an officer of the State to exercise the power of District Magistrate under Sections 3, 4, 5 and 6 and further under Section 18, the powers and duties of District Magistrate can be directed to be exercised or performed by the Additional District Magistrate or Sub-Divisional Magistrate for such areas as may be specified in the order. Thus, the scheme of the Adhiniyam, 1990 clearly contemplates exercise of the power of District Magistrate under Sections 3, 4, 5 and 6 by an Additional District Magistrate or Sub-Divisional Magistrate. The Notification dated 5-3-2003 was not under challenge in the writ petition.

16. We are, thus, of the view that the Constitution Bench judgment of this Court in *Ajaib Singh* was not applicable in the facts of the present case and the High Court committed an error in relying on the said judgment for holding that the Additional District Magistrate had no jurisdiction. The impugned judgment is, thus, unsustainable on the above ground. We further notice that the period of externment being one year, which has already expired, there is no useful purpose in considering the other grounds of challenge as contended by the counsel for the respondent.

17. In the result, the appeals are allowed. The impugned judgments of the High Court are set aside.

(emphasis supplied)

16] Thus, the Supreme Court has already distinguished the Constitution Bench judgement in the case of **Ajaib Singh** (supra) on the ground that it pertains to the Defence of India Act, 1962 which specifically provides that an order of detention cannot be passed by any authority lower than the District Magistrate which is not the position in the case of M.P.Rajya Suraksha Adhiniyam, 1990.

17] *Ajaib Singh's* case (supra) has also been distinguished by the full bench of this court in the case of ***Girja Shankar Shukla Vs. Sub-Divisional Officer, Harda and Ors. AIR (1973) MP 104***, on which also the learned counsel for the petitioner has relied upon. In the case of ***Girja Shankar(supra)***, the issue was whether a sub-divisional officer, who was placed in current charge of the duties of Collector during the period when the incumbent Collector proceeded on leave, can preside over a meeting as provided u/s.55(3) of the Municipalities Act, 1961. The relevant paras (not numbered in the original text) of the judgement delivered by J.Verma and concurred by the Justice Bhave read as under:-

PER VERMA, J.:— This whole case has been referred to this full Bench for decision in view of the fact that on the main question for decision herein, there appears to be a conflict between two Division Bench decisions of this Court. The correctness of the construction made of the expression ‘current charge of the duties of a post’ by a Division Bench of this Court in *Ramratnav.State of M.P.*[1964 MP LJ 86.] , was doubted by another Division Bench in *State of v. M.P. Gokul Prasad* [1971 MP LJ 609.] , Hence this reference.

The petitioner, as a voter, has challenged the election of respondent no. 2 as President and of respondents nos 3 and 4 as Vice-Presidents of the Municipal Council, Itarsi, at a meeting held for the purpose on 10-7-1971. This council was constituted after the general elections in April 1969 and the impugned elections were for these officers after expiry of the terms of their first incumbents. The notice (Annexure ‘G’) convening the meeting held on 10-7-1971 was issued by Shri Anand Mohan Collector of the district. However, Shri Anand Mohan having proceeded on leave was absent on 10-7-1971 and the meeting was presided by Shri Arun Kumar Kshetrapal, Sub-Divisional Officer, Harda, who was also placed in current charge of the duties of Collector during that period by an order of the State Government.

The respondent no. 2 is a lawyer and was engaged by the Municipal Council to appear on its behalf as a counsel in some class of cases. However, prior to his contesting the election he had intimated the council on 8-7-1971 that he would thereafter not appear as a counsel for the Municipal Council.

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I now come to the main question for decision in the case, which has been argued with great vehemence from both sides. I will first state a few more facts which are necessary in this connection.

The appointment of Sub-Divisional Officer, Harda, placing him in the current charge of duties of Collector, Hoshangabad, as notified in the Gazette was as follows—

“श्री अरुणकुमार क्षेत्रपाल अनुविभागीय हरदा आगामी आदेश तक अपने कर्तव्यों के साथ साथ कलेक्टर होशंगाबाद का चालू कार्यभार सम्हालने के लिए नियुक्त किए जाते हैं।”

While so functioning, Shri Arun Kumar Kshetrapal presided over the meeting held on 10-7-1971 at which respondent no. 2 was elected President and respondents nos 3 and 4 were elected Vice-Presidents of the Council. This election was, according to section 43(2)(b) of the Act, for the unexpired term of the council. By virtue of clause (c) of sub-section (2) of section 43 it is the provisions of sub-sections (2) and (3) of section 55 of the Act which applied to the meeting as they apply to the first meeting. This council being of Class II, it was the Collector who had to call the meeting according to sub-section (2) of section 55 and also to preside over it according to sub-section (3) thereof. Admittedly, the meeting was called by Shri An and Mohan who was then the Collector, and no non-compliance of sub-section (2) of section 55 is alleged. Thus, the only question is whether there was proper compliance of sub-section (3) of section 55 of the Act.

It is in this context that the controversy arises with respect to the meaning attached to the expression ‘current charge of the

duties of a post'. I shall first examine the decisions which have occasioned this reference.

In *Ramratan's case* (supra) the question for decision was whether the order of dismissal, passed by the Deputy Inspector General of police who had been appointed to be in charge of the current duties of the office of the Inspector General of Police in addition to his own, was valid. The competent authority to pass such an order was the Inspector General of police. The question for determination in that case was formulated by Pandey J., who delivered the the judgment of the Division Bench as follows:—

“The crucial question is whether a subordinate authority, who is not formally appointed to the post of the appointing authority either permanently or in an officiating capacity, can be validly appointed to exercise his powers of dismissal in view of the inhibition contained in Article 311(1) of the Constitution.”

The judgment further proceeds as follows:

“..... These authorities clearly lay down that a protection like the one given by article 311(1) cannot be taken away even by rules framed either under Article 309 or under any relevant statute. The reason is that, by such rules, the subordinate authority is entrusted with the functions of the appointing authority without giving him the rank of that authority. In clause (1) of Article 311, the word 'subordinate' has reference to the rank and not functions. In the instant case, Shri I.J. Johar was appointed and authorised to perform the current duties of the Inspector General of Police without being clothed with his rank. That being so, the impugned order of dismissal, which he purported to pass in disregard of Article 311(2), is bad and inoperative.”

(All underlining is by me).

It was also pointed out in the judgment that there is a difference between a person who is appointed to officiate on a higher post and a person who is appointed to be in charge of the current duties of that post in addition to his own.

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The scheme of the M.P. Land Revenue Code, 1959, shows that an Additional Collector appointed according to section 17 'shall exercise such powers and discharge such duties conferred and imposed on a Collector by or under this Code or by or under any other enactment for the time being in force' as may be specified. Sub-section (3) of section 17 further provides that an Additional Collector, when exercising any powers or discharging any duties under sub-section (2), would do so as if he were the Collector of the district under this Code and every other enactment for the time being in force, etc., except where expressly directed otherwise. Similarly, section 22 of the Code permits delegation of the powers of a

Collector to a Sub-Divisional Officer. Section 26 of the Code provides for the performance of the duties and functions of the Collector in case of a temporary vacancy. Thus, all these provisions clearly show that unless there is a prohibition, express or implied, the functions of a Collector can be performed by an Additional Collector or a Sub-Divisional Officer where a proper delegation is made, and in case of a temporary vacancy section 26 clearly provides that 'the officer who is temporarily placed in charge of the current duties of the Collector shall be held to be the Collector under this Code'. All these provisions in the Code read with sub-section (6) of section 2 of the M.P. General Clauses Act, 1957, clearly show that the function of presiding over a meeting in accordance with the provisions of subsection (3) of section 55 is not that of a persona designata but of an officer who is empowered to perform the duties of the Collector of the district.

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It would be pertinent in this context to also refer to sections 10 and 11 of the Code of Criminal Procedure, which are as under:

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 “10. District Magistrate. —(1) In every district outside the presidency towns the State Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

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

(3) For the purposes of the sections 192, sub-section (1), and 528, sub-sections (2) and (3) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.”

“11. Officers temporarily succeeding to vacancies in office of District Magistrate.— Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.”

These provisions of the Code of Criminal Procedure, which are substantially similar to those contained in sections 16, 17 and 26 of the M.P. Land Revenue Code, 1959, were elaborately considered by their Lordships of the Supreme Court in the aforesaid two decisions, viz., *Ajaib Singh v. Gurbachan Singh* [AIR 1965 SC 1619.] , and *Hari Chand v. Batala Engineering Co.* [AIR 1969 SC 483.] . In the cases before their Lordships there was a prohibition, either express or implied, against an officer below the rank of a District Magistrate in making the impugned order. As such, on the settled view that an officer empowered under sub-section (2) of section 10 and section 11 of the Code of Criminal Procedure does not hold the rank of a District Magistrate and the holding of such a rank being

decisive in those cases, it was held that the impugned orders could not be passed by a person deriving authority under these provisions and not holding the rank of a District Magistrate. However, the clear distinction between the rank and the power to perform the functions of that office was specifically stated. The process of reasoning by which their Lordships of the Supreme Court reached the conclusion clearly supports the view that holding of the rank of District Magistrate is not essential to discharge every function of that office. These provisions of the Code of Criminal Procedure are sufficient to empower an officer to perform the duties of the District Magistrate except those already indicated. In our view, this reasoning clearly applies to this case also.

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Shri Munshi suggests that the Memo. No. 213/2475/63 dated 1st February 1964 (Annexure 'I') issued by the State Government containing some instructions to all the departments is decisive to show the extent of power available to an officer holding current charge of the duties of a post. I am unable to accept this argument. The memo is only in the nature of an executive instruction and has no legal force. In any view it does not have the effect of superseding the legal consequences which flow from the statutory provision already mentioned by us. The legal position as understood by the State Government does not decide the question before us.

I am therefore, of the view that in this case Shri Arun Kumar Kshetrapal was competent to preside over the meeting held on 10-7-1971 and he was the Collector of the district within the meaning of that expression as used in sub-section (3) of section 55 of the Madhya Pradesh Municipalities Act, 1961. Accordingly, the election of respondents 2 to 4 held in that meeting was valid and suffered from no infirmity. I accordingly reject the only remaining contention of the petitioner.

Per Bhavé J.

As to the question whether the Sub-Divisional Officer holding current charge of the office of the Collector could have presided over the meeting, I agree with the interpretation put by Verma, J. on the provisions of the Madhya Pradesh Land Revenue Code and his conclusion that he could do so. I am further of the opinion that it is not necessary to decide in this case as to whether an officer, who is placed merely in charge of current duties of the post, could be equated with an officer holding that post in all circumstances irrespective of the provisions of the statute requiring the named officer to discharge certain functions or to act under it. I agree with Brother Verma, J. that the authority of the decision in *Ramratan v. State of M.P.* [1964 MP LJ 86.], so far as it lays down the law that where any action is to be taken or an order is to be passed by an officer of a particular rank, that act cannot be validly performed or the order can be validly passed by an officer of subordinate rank

discharging current duties of that post, is still unshaken and that the decision enunciates correctly the legal position. I also agree with Verma, J. that certain observations made in *State of M.P. v. Gokul Prased* [1971 MP LJ 609.] , are obiter in nature. I further agree that the petition should be dismissed as proposed by Verma, J. and that the parties should bear their own costs.”

(emphasis supplied)

18] So far as the conferment of powers to make orders of detention as provided under the provisions of the Act of 1980 is concerned, the same is contained in Section 3 of the Act of 1980 which reads as under:

“3. Power to make orders detaining certain persons.—(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

*Explanation.—*For the purposes of this sub-section, the expression “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” means—

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:—

(a) *district magistrates;*

(b) Commissioners of Police, wherever they have been appointed,

may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order

shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1), the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

(Emphasis supplied)

19] It is apparent from the aforesaid s.3 that there is no prohibition that an order of detention cannot be passed by an officer lower in rank than the DM. So far as assigning of the duties of the District Magistrate or giving an additional charge of the District Magistrate to Ms. Pratibha Pal is concerned, the same is governed by Section 20 (3) of the Code of Criminal Procedure, 1973 (herein after referred to as the Code).

20] Section 20 of the Code, being relevant for the purpose of this petition, reads as under: -

"Section 20. Executive Magistrates.

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

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

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

(4) The State Government may place an Executive Magistrate in

charge of a sub- division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub- divisional Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.”

(emphasis supplied)

21] A close scrutiny of the aforesaid section clearly reveals that as per sub-section (2) of s.20, the State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being in force, as may be directed by the State Government. Whereas, Sub-section (3) of Section 20 of the Code provides for temporary arrangements if a vacancy has arisen in the office of the DM. S.20(3) of the Code is pari materia to s.11 of the Code of 1898, which has already been considered by the full bench of this court in the case of ***Girija Shankar Shukla (supra)*** .

22] From the record, it is apparent that Ms. Pratibha Pal, who, at the relevant time, was posted as Commissioner of Municipal Corporation, Indore and was given the charge of the Office of District Magistrate, Indore vide order dated 27.09.2021 (Annexure A/1) passed by the Chief Secretary to the Government of Madhya Pradesh in the name of Governor in the following manner: -

“मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय
आदेश

क्रमांक: ई-51062/आयएस/लीव/5/1भोपाल,दिनांक 27 सितंबर, 2021

श्री मनीष सिंह, भाप्रसे (2009) कलेक्टर, जिला इन्दौर के दिनांक 28.09.2021 से दिनांक 05.10.2021 तक 08 दिन के अर्जित अवकाश पर रहने के फलस्वरूप उनकी अवकाश अवधि में कलेक्टर, जिला इन्दौर का प्रभार सुश्री प्रतिभा पाल, भाप्रसे-2012 आयुक्त नगर पालिक निगम, इन्दौर को उनके वर्तमान कर्तव्यों के साथ-साथ सौंपा जाता है।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
इकबाल सिंह बैस
मुख्य सचिव
मध्यप्रदेश शासन

क्रमांक:ई-5/1062/आयएसएस/लीव/5/1भोपाल, दिनांक 27 सितंबर, 2021

प्रतिलिपि:-

1. प्रमुख सचिव, मध्यप्रदेश शासन, राजस्व विभाग, मंत्रालय, भोपाल।
2. आयुक्त, इन्दौर संभाग, इन्दौर।
3. श्री मनीष सिंह, भाप्रसे, कलेक्टर, जिला, इन्दौर।
4. सुश्री प्रतिभा पाल, भाप्रसे, आयुक्त, नगर पालिक निगम इन्दौर।
5. उप सचिव, मुख्य सचिव कार्यालय, मंत्रालय, भोपाल।
6. उप सचिव, (लेखा) म.प्र. शासन, सामान्य प्रशासन विभाग, कक्ष-6।

हस्ता.

(फजल मोहम्मद)
अवर सचिव "कार्मिक"
मध्यप्रदेश शासन
सामान्य प्रशासन विभाग "

23] Admittedly, the order dated 27.09.2021 (Annexure A/1) provides for conferment of charge of the District Magistrate to Ms. Pratibha Pal, IAS for the period from 28.09.2021 to 05.10.2021 i.e. for a period of eight days only, and as has been held by the full bench of this court in the case of *Girija Shankar Shukla (supra)*, such charge would include all the powers already conferred on the District Magistrate, Indore unless expressly or impliedly prohibited by any other law.

24] Sub-section (2) of Section 3 of the Act of 1980 clearly provides that such an order of detention can be passed by the District

Magistrates or also by Commissioners of Police, wherever they have been appointed. In such circumstances, when Ms. Pal, the Municipal Commissioner, was given the charge of the District Magistrate, it can be safely presumed that she was also empowered to pass an order under the Act of 1980. As, it is apparent from the aforesaid decision in the case of *Girija Shankar Shukla (supra)*, that unless there is a prohibition, express or implied, the function of District Magistrate can be performed by an Additional Collector where a proper delegation has been made. Thus, it is held that the Municipal Commissioner, who was also given the charge of the DM by a specific order, was competent to pass the order detention under the Act of 1980 and thus, the impugned order cannot be faulted with so far as the competency of the District Magistrate is concerned. In the circumstances, the other decisions relied upon by Shri Maheshwari are also of no help to the petitioner.

25] So far as the contention, that the order of detention ought to have been conveyed to the State Government *forthwith* under Sub Section (3) of Section 3 of the Act of 1980 is concerned, again this Court finds force with the contention raised by the learned Additional Advocate General appearing for the respondent / State Government, that the detenu was already absconding in connection with criminal case arising out of same transaction; hence Sub-Section (3) of Section 3 of the Act of 1980 would have not have any effect, if the order is not conveyed to the State Government forthwith, as admittedly, the record reveals that the order of detention was passed on 05.10.2021, whereas

the detenu was arrested on 18.11.2021, as he was absconding soon after the case was registered against him on 29.09.2021. Thus, there was no reason for the District Magistrate to forthwith forward the order of detention, when the detenu himself was not arrested/detained on the said date. Thus, the delay in forwarding the copy of the detention order did not cause any prejudice to the petitioner who was already absconding and is of no avail to challenge the impugned order. The decision *Ajaib Singh's* case (supra) relied upon by Shri Maheshwari is also distinguishable on this point.

28] It is also found that the while affirming the detention order dated 05.10.2021 vide its order dated 24.12.2021, the State Government has prescribed the detention of six months as provided u/s.12 of the Act of 1980 which does also does not call for any inteference.

29] As a result, this court does not find any reason to reflect adversely on the impugend order of detention dated 05.10.2021(Annexure P/1). Consequently, the petition fails and is hereby **dismissed**.

(Vivek Rusia)
JUDGE

(Subodh Abhyankar)
JUDGE

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH**Writ Petition No.27449-2021****(Laxmi Sagar w/o Kamal Kishore Sagar vs. State of Madhya Pradesh & others)****Indore, Dated: 14.01.2022**

Shri Manu Maheshwari, learned counsel for the petitioner.

Shri Vivek Dalal, learned Additional Advocate General for the
respondent/State.

Arguments heard.

Reserved for orders.

**(Vivek Rusia)
JUDGE****(Subodh Abhyankar)
JUDGE****Indore, Dated: 31.01.2022**

Order passed signed and dated.

**(Vivek Rusia)
JUDGE****(Subodh Abhyankar)
JUDGE**