
INTERPRETATION OF STATUTE: A CASE ANALYSIS OF SONU BAIRWA V. STATE OF MP & ORS. (2021)

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ABSTRACT

After upholding the detention of a man accused of smuggling Remdesivir injections during the Covid-19 epidemic, the Madhya Pradesh High Court recently ruled that a Chief Minister's social media posts cannot be likened to an official order or instruction. Invoking the National Security Act of 1980, the court upheld the man's arrest after he was suspected of selling Remdesivir injections illegally during the pandemic.

Sujoy Paul and Anil Verma, two judges who sat on a division bench, further ruled that it is not required for the administrative hierarchy to view, read, and follow every social media post made by a government official. Mudit Maheshwari, the petitioner's attorney, claimed that the District Magistrate violated the National Security Act of 1980 when he issued the detention order by relying on several social media statements made by the state's Chief minister. The State's CM stated in those posts that he believed Remdesivir injection black marketers should be held in custody in accordance with the NSA Act.

INTRODUCTION

The District Magistrate detained the petitioner on the basis that he had sold two Remediesvir injections illegally, two of which had been found on him. A significant threat to "public order" was posed by the petitioner's action, which occurred at a time when Indore had a staggeringly high number of Covid patients. In light of the aforementioned behaviour, the detention order was subsequently issued. It was asserted that the District Magistrate's detention order amounted to acting in accordance with the Chief Minister's social media posts and that the order was in support of those posts. However, the Court stated that possibly the situation would have been different if a District Magistrate had issued a detention order in response to an executive instruction or direction from a higher functionary to act in a particular way.

STATUTES INVOLVED

- 1) National Security Act, 1980 – Section 3(2)
- 2) Essential Commodities Act
- 3) Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980

ARGUMENTS ADVANCED

From the side of the Petitioner:

As the detention order was given to the petitioner's uncle rather than his parents, the petitioner's attorney questioned the order as contrary to the apex court's observations in the case of *A.K. Roy v Union of India*¹.

The petitioner was initially detained for a previously filed FIR before being apprehended and held in custody in accordance with the NSA Act. The State Government and District Magistrate incorrectly described the petitioner's status in the documents as "absconding," which could have a negative impact on the State Government, Advisory Board, or the Central Government's ability to come to a judicial decisions.

¹ (1982) 1 SCC 271.

The Chief Minister's social media statements, in which he expressed his opinions that anyone engaging in the illicit market for Remdesivir injections should be imprisoned under the NSA Act, were also cited by the petitioner's counsel claiming that the detention order was made by acting on orders because the District Magistrate lacked the necessary subjective judgement and mental exercise to make it.

The decision-making authorities must act with extreme care and prudence whenever a citizen's freedom and fundamental rights are threatened to be taken away and the reliance for the same was placed on two judgements namely *Khudiram Das Vs. State of West Bengal & Ors*,² and *Dr. Kafeel Khan vs. State of U.P.*³

The "Explanation" of Section 3 (2) of the NSA Act was cited, which distinctively states that If a person has engaged in a way that is harmful to the maintenance of supplies and services that are crucial to the community but is covered by the 1980 Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, (Black marketing Act) they cannot be detained under the NSA Act.⁴

In order to detain a person under the NSA Act who is already under custody certain conditions need to be considered as observed by the Court in the case of *Yatindra Verma Vs. State of MP*⁵. These aforesaid conditions were not satisfied and thus the detention order should be set aside.

From the side of the Respondents:

Regarding the argument that "subjective satisfaction" and "application of mind" were not used, the A.A.G. stated that during the Covid epidemic, Indore had a high patient population and a significant shortage of injections, oxygen cylinders, and hospital beds. Remdesivir's illegal promotion by the petitioner posed a serious risk to "public order," hence it was appropriate to use the NSA Act.

No prejudice was caused to the petitioner by supplying the detention order to his uncle instead of his parents since the object of the same was to make them aware about the grounds so that

² 1975) 2 SCC 81.

³ 2020 SCC Online All.

⁴ Shrutika Pandey, Blackmarketing of Remdesivir Directly Impacts Public Order: Madhya Pradesh High Court Upholds Detention Under NSA, LiveLaw, 2021 <https://www.livelaw.in/news-updates/madhya-pradesh-high-court-upholds-nsa-detention-for-blackmarketing-remdesivir-177318>

⁵ W.P. No.9792/2021.

they can take legal recourse against it. Informing the petitioner's uncle regarding the detention order cannot be said that the concerned person has not been informed about the same.

Under Section 3 (2) of the NSA Act, a commodity to be treated as an essential commodity the conditions that must be satisfied are (i) the Act must define the said commodity as an essential commodity and (ii) provisions with reference to the said commodity are made in any other law. The second condition was not satisfied in the present case.

Lastly, since 2 injections of the essential drug Remedesivir was found to be in the possession of the petitioner, there was no flaw in the decision-making process.

ISSUE INVOLVED

- 1) Whether invoking NSA Act for detaining petitioner for black marketing Remedisivir drug was valid?

TOOLS OF INTERPRETATION USED AND THE JUDGEMENT LAID DOWN

Internal Aids:

National Security Act, 1980 – Section 3(2) –

The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services 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, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act 1980 (7 of 1980), and accordingly, no order of detention

shall be made under this Act on any ground on which an order of detention may be made under that Act.

The reference made to this explanation is an internal aid to construction as seen in para 21 of the judgement. The following are the objects of an explanation to a statutory provision⁶:

- (a) “To explain the meaning and intendment of the act*
- (b) To clarify any vagueness or obscurity in the main enactment by bringing it to be consistent with the main object of the act*
- (c) Provide additional support to the dominant object of the act and make it meaningful and purposeful*
- (d) Explanations do not interfere or change the enactment but where there is a gap, the explanation can be relevant in helping prevent mischief and advancing the object of the act and also help the court interpret the true purpose and intendment of the enactment.*
- (e) An explanation cannot take away a statutory right or become a hindrance in interpreting an Act.”*

S. Sundaram Pillai & Ors. vs. V.R. Pattabiraman & Ors. (1985)1 SCC 591.

“A reading of the section clearly interprets as per para 23 of the judgement that the sub-section 2 has a wide ambit and includes three contingencies for detaining a citizen:

- i) for preventing him from acting in any manner prejudicial to the security of State.
- ii) for preventing him from acting in any manner prejudicial to the maintenance of public order.
- iii) for preventing him from acting in any manner prejudicial to the maintenance of

⁶ Shrutika Pandey, Blackmarketing Of Remediesvir Directly Impacts Public Order: Madhya Pradesh High Court Upholds Detention Under NSA, LiveLaw, 2021 <https://www.livelaw.in/news-updates/madhya-pradesh-high-court-upholds-nsa-detention-for-blackmarketing-remedesivir-177318>

supplies and services essential to the community.”⁷

Furthermore, in paragraph 26 the Bench states that an interpretation must depend on the text as well as the context and the best interpretation is one that makes the two match in line with each other.

External Aids:

History:

In the time of a global pandemic there was acute shortage of necessary medical equipment such as essential drugs, oxygen cylinders, hospital beds, etc and a part of this problem was the fact that people were indulging in the practice of black marketing of the essential equipment to profit off the lives of innocents suffering during such times. In order to prevent these practices, the National Security Act, 1980 was invoked by the government on those who indulged in black marketing. The Act authorises the detention without trial by the Central and State Government.

Courts have also repeatedly upheld the validity of invoking the Act on such people and included medical equipments essential during the time of the pandemic to be equivalent to the supplies and services essential to the community as specified under Section 3 of the NSA Act.

Judicial Precedents:

In *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd & Ors.*,⁸ the Apex Court poignantly held that the precedential value of a judgment depends on the facts and circumstances of a case. One different fact may change the precedential value of a previous judgment. In this pandemic era, the era of extreme crisis one singular incident of indulging in black marketing, in our opinion is sufficient to invoke Black marketing Act and no fault can be found on this account in the order of detention.

⁷ Shrutika Pandey, Blackmarketing Of Remediesvir Directly Impacts Public Order: Madhya Pradesh High Court Upholds Detention Under NSA, LiveLaw, 2021 <https://www.livelaw.in/news-updates/madhya-pradesh-high-court-upholds-nsa-detention-for-blackmarketing-remedesivir-177318>

⁸ (2003) 2 SCC 111.

A plain reading of the aforesaid analysis in the case of Manikant Asati⁹ leaves no room for any doubt that during pandemic crisis wherein the nation in general and Indore in particular was facing extreme crisis because of paucity of injections, medicines, oxygen, hospital beds etc, singular act of black marketing of Remedesivir injection is sufficient to invoke Section 3 of NSA Act against the petitioner. This pandemic situation has arisen almost after 100 years from previous pandemic of Spanish flu. In this scenario, it cannot be held that NSA Act can be invoked only when petitioner has past record of similar nature.

Application of Literal Rule of Construction:

According to the literal or grammatical interpretation principle, a statute's provision should take effect regardless of the implications provided its words are given their plain and unambiguous ordinary and natural meaning. The words used to communicate the legislation's aim should be read in accordance with the fundamental grammatical rules. The objective of the law can be inferred from the language used in the enactment itself, making this the safest rule because the court just needs to look at the words used to interpret the law.

The words of a statute are first understood in their natural, ordinary or popular sense and the sentences should be construed according to their literal meaning unless it leads to absurdity or something in the context suggests to the contrary.¹⁰

Para 23 of the judgement of the case in question highlights the wide ambit of the Section 3 sub-section 2 of the Act and how it deals with three eventualities. Paragraph 28 further explains the intention of the law makers of inserting an explanation to take out cases of black marketing from NSA Act to the extent when it is covered by the Black marketing Act.

Relying on the case of *Ajay Maken v. Adesh Kumar Gupta*¹¹, it held as under: —

"Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., such an approach would be "to see the skin and miss the soul."

⁹ WP No.9846/2021.

¹⁰ Prof. T. Bhattacharyya, *The Interpretation of Statutes*, Central Law Agency.

¹¹ (2013) 3 SCC 489.

‘Public Order’ as per Section 3 of the NSA Act has a very wide meaning and during the pandemic an act of blacklisting of essential drug like Remedisivir can be brought under the purview of ‘public order.’

However, it was noted that plainly applying the rule of literal construction without considering and analysing the context and scheme of the statute would not subserve the purpose of the statute.

Application of Golden Rule of Interpretation

It is a modification of the literal rule when the words lead to absurdity, repugnance, inconvenience, hardship or injustice, the court can modify the meaning to the extent of preventing such a consequence. In certain situations, a statute could have been construed within a limited scope and have restricted interpretation with regards to its object even though the language or grammatical construction would carry its operation for beyond. Whenever more than one interpretation is possible, the one which seems more reasonable and justiciable will and should be given effect to. The object is to suppress any evasion in continuance of mischief and reject conclusions that could lead to such consequences.

As per the judgement, since the basic reading of the section could be construed to mean that the black marketing of essential medicines can be and act that threatens public order, the application of NSA Act was justified and the court need not use the golden rule to interpret it further.

Application of Mischief Rule or Purposive Construction:

The Courts must interpret the law as it reads and not unnecessarily indulge in interpretation of the law if the words provide a clear and unambiguous meaning which is in line with the intention of the Act. A purposive construction can be undertaken when there are two interpretations arising from the wording of the statute and the interpretation which runs in line with the intention and preserves the constitutionality of the statute or the provision must be applied.

Had the provisions of the NSA not been clear or ambiguous, the Court could have made use of the mischief rule to look into the purpose of the Act and with reference to the mischief it intended to address, it could determine the meaning of the provision. However, since the

section 3 clearly specifies the conditions and essentials, the use of the literal rule was sufficient enough.

ANALYSIS

The National Security Act (NSA) is a law in India that allows the government to detain individuals without trial for up to 12 months if it believes that they pose a threat to national security or public order. The Act also allows the government to detain individuals if it believes that they have committed a prejudicial act.

With regards to the black marketing of Remdesivir, a drug used in the treatment of COVID-19, there have been reports of some individuals and groups involved in hoarding and black marketing of the drug, leading to an artificial shortage and inflating its price. The government has taken a serious view of this and has invoked the Essential Commodities Act to regulate the price and supply of the drug.

If the government believes that an individual or group involved in black marketing Remdesivir poses a threat to national security or public order, it may invoke the NSA Act to detain them without trial. However, the detention would need to be made in accordance with the provisions of the Act, including the requirement for the detaining authority to record the reasons for the detention and to provide the detained person with an opportunity to make a representation against the detention.

The Essential Commodities Act is a law that empowers the central and state governments to regulate the production, supply, distribution, and trade of essential commodities in the interest of the public. The law includes a list of essential commodities, which is periodically updated by the government.

Remdesivir has been included in the list of essential medicines by the National Pharmaceutical Pricing Authority (NPPA), which comes under the Ministry of Chemicals and Fertilizers. This means that the production, supply, distribution, and trade of Remdesivir is subject to regulation under the ECA. The government had taken several steps to regulate its price and supply, including capping its price and imposing stock limits on its production and sale. These measures are aimed at preventing the black marketing of the drug and ensuring its availability to patients who need it since the act gives the government the power to regulate the prices of

essential commodities, and to impose stock limits on them to prevent hoarding and black marketing.

While the Court made use of the literal rule to interpret section 3 of the NSA Act and detain the black marketers of Remedisivir, the following principles of interpretation could also have been used for the purpose of interpreting the statute.

Construction *Contemporanea exposition est fortissimo in lege*: If an authority is an enactment or a judicial decision it is a binding force. Where an exposition has been done by a long usage it should be excepted even though it is different from the ordinary or popular sense. In a modern progressive society, it is illogical to keep the intention of legislature confined to that which was there at the time of enacting it since it must be interpreted while keeping abreast with the evolution and development of the society. Looking at the NSA Act, the pandemic was something the judiciary could not have foreseen however, the circumstances made it necessary to include the acts of black marketing Remedisivir and including it as an essential commodity during that time. Thus with this development and change in circumstances, the invocation of the Act for the same and detaining someone under it can be justified under the act even though it may not specifically refer to it.

CONCLUSION

The heavy use of National Security Act of 1980 by the authorities during the pandemic remains a topic of discussion and debate till date. Nonetheless, it is clear that each individual case's details will determine whether the NSA was properly used during the pandemic. There may be instances where this strict Act was used correctly to stop crimes from being committed, and on the other hand, there may be instances where it was used incorrectly as an abuse of the legal system.

In the present case, the invocation of the Act was justified since instances which involve the black marketing of necessary medical equipments such as the drugs, injections, oxygen cylinders and hospital beds along with instances involving violence against medical healthcare workers and the police personnel were a direct threat to the public order and prejudicial to the maintenance of supplies and services essential to the community which is a requisite under Section 3 of the act.