

SUPREME COURT OF INDIA

on

Armed Forces (Special Powers) Act, 1958

Writ petition (Cr1) 550 of 1982 with Writ Petition (C) Nos. 5328/80, 9229-30/82, Civil Appeals Nos. 721 to 724 of 1985, 2173-76/1991, 2551/81 and Writ Petition (C) Nos. 13644-45/84

Naga People's Movement of Human Rights, etc. - Petitioner
vs.

Union of India - Respondent

Before J.S. Verma, CJI and other four Judges
27 November, 1997

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Operative Part of the Judgement (Relevant extracts)

74. In the light of the above discussion we arrive at the following conclusions:

(1) Parliament was competent to enact the Central Act in exercise of the legislative power conferred on it under Entry 2 of List I and Article 248 read with Entry 97 of List I. After the insertion of Entry 2A in List I by the Forty Second Amendment of the Constitution, the legislative power of Parliament to enact the Central Act flows from Entry 2A of List I. It is not a law in respect of maintenance of public order falling under Entry I and List II.

(2) The expression 'in aid of the civil power' in Entry 2A of List I and in Entry 1 of List II implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State.

(3) The word 'aid' postulates the continued existence of the authority to be aided. This would mean that even after deployment of the armed forces the civil power will continue to function.

(4) The power to make a law providing for deployment of the armed forces of the Union in aid of the civil power of a State does not include within its ambit the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State. The armed forces of the Union would operate in the State concerned in cooperation with the civil administration so that the situation which has necessitated the deployment of armed forces is effectively dealt with and normalcy is restored.

(5) The Central Act does not displace the civil power of the State by the armed forces of the Union and it only provides for deployment of armed forces of the Union in aid of the civil power.

(6) The Central Act cannot be regarded as a colourable legislation or a fraud on the Constitution. It is not a measure intended to achieve the same result as contemplated by a Proclamation of Emergency under Article 352 or a proclamation under Article 356 of the Constitution.

(7) Section 3 of the Central act does not confer an arbitrary or unguided power to declare an area as a 'disturbed area". For declaring an area as a 'disturbed area" under Section 3 there must exist a grave situation of law and order on the basis of which the Governor/Administrator of the State/Union territory of the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of the armed forces in aid of civil power is necessary.

(8) A declaration under Section 3 has to be for a limited duration and there should be periodic review of the declaration before the expiry of six months.

(9) Although a declaration under Section 3 can be made by the Central Government *suo motto* without consulting the concerned State Government, but it is desirable that the State Government be consulted while making the declaration.

(10) The conferment of the power to make a declaration under Section 3 of the Central Act on the Governor of the State cannot be regarded as delegation of the power of the Central Government.

(11) The conferment of the power to make a declaration under Section 3 of the Central Act of the Government is not violative of the federal scheme as envisaged by the Constitution.

(12) The provision contained in Sections 130 and 131 Cr.P.C. cannot be treated as comparable and adequate to deal with the situation requiring the use of armed forces in aid of civil power as envisaged by the Central Act.

(13) The powers conferred under clauses (a) to (d) of Section 4 and Section 5 of the Central Act on the officers of the armed forces, including a Non-Commissioned Officer, are not arbitrary and unreasonable and are not violative of the provisions of Articles 14, 19 or 21 of the Constitution.

(14) While exercising the powers conferred under Section 4(a) of the Central Act, the officer in the armed forces shall use minimal force required for effective action against the person/persons acting in contravention of the prohibitory order.

(15) A person arrested and taken into custody in exercise of the powers under Section 4(c) of the Central Act should be handed over to the officer in charge of the nearest

police station with least possible delay so that he can be produced before nearest Magistrate within 24 hours of such arrest excluding the time taken for journey from the place of arrest to the court of magistrate.

(16) The property or the arms, ammunition etc., seized during the course of search conducted under Section 4(d) of the Central Act must be handed over to officer in charge of the nearest police station together with a report of the circumstances occasioning such search and seizure.

(17) The provision of Cr.P.C. governing search and seizure have to be followed during the course of search and seizure conducted in exercise of the power conferred under Section 4(d) of the Central Act.

(18) Section 6 of the Central Act in so far as it confers a discretion on the Central Government to grant or refuse sanction for instituting prosecution or suit or proceeding against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act does not suffer from the vice of arbitrariness. Since the order of the Central Government refusing or granting the sanction under Section 6 is subject to judicial review, the Central Government shall pass an order giving reasons.

(19) While exercising the power conferred under clauses (a) to (d) of Section 4 the officers of the armed forces shall strictly follow the instructions contained in the list of 'Do's and Don'ts' issued by the army authorities which are binding and any disregard to the said instructions would entail suitable action under the Army Act, 1950.

(20) The instructions contained in the list of 'Do's and Don'ts' shall be suitably amended so as to bring them in conformity with the guidelines contained in the decisions of this Court and to incorporate the safeguards that are contained in clauses (a) to (d) of Section 4 and Section 5 of the Central Act as construed and also the direction contained in the order of this Court dated July 4, 1991 in Civil Appeal No. 2551 of 1991.

(21) A complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act shall be thoroughly inquired into and, if on enquiry it is found that the allegations are correct, the victim should be suitably compensated and the necessary sanction for institution of prosecution and/or suit or other proceeding should be granted under Section 6 of the Central Act.

Source: A.I.R. 1998 SUPREME COURT 463-464