
(1985) 09 GUJ CK 0001
In the Gujarat High Court

Abdul Rasid Abdul Hamid Shaikh

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 24-09-1985

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3, 3

Citation : (1986) 2 GLR 759 : (1986) 2 GLR 1120

Hon'ble Judges : M.B. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

M.B. Shah, J.—This is an instance where detention order is dealt with by the officers of State Government in a casual and cavalier fashion.

2. The detenu has challenged the detention order dated 1-6-85 passed by the Commissioner of Police, Ahmedabad City, u/s 3 of the Gujarat Prevention of Anti-Social Activities Ordinance, 1985. The grounds of detention are annexed to the petition at Annexure "B" wherein it is alleged that the petitioner was required to be detained because he was a person known for illegally selling liquor and that because of the said activity fear and terror in the mind of the persons staying in the locality was created. Three instances of prohibition cases in which the detenu was acquitted are relied upon and also one case wherein investigation was not complete is relied upon. It is also admitted that along with the grounds of detention the statements of two police constables were furnished to the detenu wherein in identical terms they have stated that the detenu was indulging in selling liquor illegally, and that he was required to be detained as because of this activity he was creating fear and terror in the mind of the persons residing in the locality.

3. At the time when the matter came up for admission, this Court passed the following order:

Rule returnable on 2-9-85. Affidavit-in-reply, if any, shall be filed on or before 26-8-85. Immediate service.

Inspite of the specific direction that the affidavit was to be filed on or before 26-8-85 no affidavit-in-reply was filed. Subsequently on 12-9-85 an application for amendment of the petition was filed which was granted on the said date. As per the amendment it was contended that the petitioner had made representation against the detention order on 29-7-85 and the said representation was not considered by the Government till today. We directed the Public Prosecutor to file an affidavit-in-reply dealing with the said ground of challenge to the petition. Time was given to file an affidavit-in-reply upto 16-9-85. The learned Public Prosecutor requested for further time on 16-9-85 and the matter was adjourned to 17-9-85. On 17-9-85 also no affidavit-in-reply was filed. Therefore the matter was adjourned to 19-9-85 and the learned Public Prosecutor was directed to file affidavit before that date. It is the say of Mr. Trivedi that he had prepared a draft affidavit and sent it to Mr. Parmar, Under Secretary, Home Department, on 17-9-85 but Mr. Parmar had refused to file any affidavit in the matter and he had returned it to him on 19-9-85. He, therefore, contacted the Secretary, Home Department, on 19-9-85 and sought instructions whether or not any affidavit was required to be filed. It is his say that the Secretary, Home Department, informed him that the Deputy Secretary, Home Department, would file the necessary affidavit.

4. It is the say or Mr. Trivedi that on the next day Mr. Randhawa, Deputy Secretary, contacted him and he gave the draft affidavit to him for swearing. On 20-9-85 Mr. Randhawa was in the High Court premises for the whole day. Mr. Trivedi was informed that it was not necessary for Mr. Randhawa to file the affidavit-in-reply but the Under Secretary Mr. Parmar would file the affidavit. Till today no affidavit-in-reply is filed. Inspite of all the sincere efforts made by the learned Public Prosecutor, he has failed to get a proper reply or the affidavit-in-reply from the Home Department.

5. The facts stated above reveal an unfortunate state of affairs. The concerned officers of the State are not prepared to file affidavit-in-reply stating whether the representation of the detenu is considered or not, and if it is not considered, the reason why they have failed to discharge the statutory obligation. In this case it seems that no officer is prepared to shoulder the responsibility. If in the opinion of the State Government or the authorised officer it is necessary to detain a person and to deprive him of his personal liberty in the interest of society, then it is the bounden duty of the authority to follow the necessary procedure prescribed under the legislation. Mere passing of detention order is not sufficient but the authority should strictly act according to the procedure established by law.

6. The Supreme Court in a series of its decisions has laid down that the burden of showing that the detention is in accordance with the procedure established by law has always been placed on the detaining authority and the constitutional right of life and personal liberty of the individual is placed on such a high pedestal that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the

Court that it has acted in accordance with the law. In the case of State of Rajasthan and Another Vs. Shamsheer Singh, , the Supreme Court referred to and relied upon its previous decision in paragraph 6 of its judgment which reads as under:

6. A Constitution Bench in A.K. Roy and Others Vs. Union of India (UOI) and Others, , has upheld the vires of the Act. It was pointed out in Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, that "the burden of showing that the detention is in accordance with the procedure established by law has been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the Court that it has acted in accordance with the law. This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the bench occurred." This Court in Khudiram Das Vs. The State of West Bengal and Others, , said:

The constitutional imperatives enacted in this Article (22) are two-fold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security.

This view indicated in these decisions is well accepted and the same is not open to doubt or dispute.

In this view of the matter it was the bounden duty of the State Government to consider the representation made by the detenu and that too it ought to have considered it within reasonable time or without undue delay. In this matter, apart from the fact that the State Government has failed to discharge its bounden duty of considering the representation, it has failed, and it seems some of its officers wilfully avoided, to file affidavit-in-reply inspite of the fact that we gave sufficient time to the Public Prosecutor to file affidavit. The learned Public Prosecutor also made strenuous efforts on his part to see that proper affidavit-in-reply is filed. We fail to understand the reason for not filing affidavit-in-reply why the detenu's representation was not considered by the Government or if there was any delay in considering it, the reason therefore. In this view of the matter, it is clear that

as the representation made by the detenu is not considered till today, the petitioner's continued detention becomes illegal.

7. In the case of Kamla Kanyalal Khushalani Vs. State of Maharashtra and another, , the Supreme Court has expressed its great concern and deep dismay that despite repeated warnings by the Supreme Court, the detaining authorities do not care to comply with the spirit and tenor of the constitutional safeguards contained in Article 22(5) of the Constitution. The Court held that if the detaining authority is really serious in passing a valid order of detention, then the documents and materials which form the basis of the detention order should be furnished to the detenu and that there should not be any delay in disposing of the representation of the detenu. In this particular case it would be necessary to quote the following observations made by the Supreme Court in that case so that the Government may take appropriate action against the defaulting officers:

We would like to suggest that whenever a detention is struck down by the High Court or the Supreme Court, the detaining authority or the officers concerned who are associated with the preparation of the grounds of detention, must be held personally responsible and action should be taken against them for not complying with the constitutional requirements and safeguards viz. delay in disposing of the representation, not supplying the documents and materials relied upon in the order of detention *pari passu* the order of detention, etc. etc.) or, at any rate, an explanation from the authorities concerned must be called for by the Central Government so that in future persons against whom serious acts of smuggling are alleged, do not go scot free. In the instant case, not only were the documents and materials not supplied along with the order of detention, but there has been a delay of about 25 days in disposing of the representation of the detenu and no explanation for the same has been given. These are matters which must be closely examined by the Government.

8. In the result, the petition is allowed. The impugned order of detention passed against the petitioner is quashed and set aside. It is directed that the petitioner be set at liberty forthwith unless he is required in connection with some other matter or order. Rule made absolute.

9. The office is directed to send a copy of this judgment to the Chief Minister and Chief Secretary to the Government of Gujarat for taking appropriate action against defaulting officers.