

(2001) 07 DEL CK 0065

In the Delhi High Court

Case No : Criminal Writ No. 1195 of 2000

Akhilesh Kumar Tyagi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 22, 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 162

Citation : (2001) 59 DRJ 811

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; Surinder Kumar Aggarwal, J

Bench : Division Bench

Advocate : Mr. Naveen Malhotra, for the Appellant; Mr. K.K. Sud, Addl. Solicitor General and Ms. Barkha Babbar, for the Respondent

Judgement

Arijit Pasayat, C.J.—Order of detention passed on 11.08.2000 by the Joint Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities act, 1974 (in short, "the Act") pursuant to which the petitioner Akhilesh Kumar Tyagi (hereinafter referred to as "detenu") is detained in the Central Jail, Tihar, New Delhi, is assailed in this habeas corpus petition.

2. Detention of the detenu was considered necessary by the Detaining Authority with a view to prevent hi from smuggling goods in future. The grounds of detention dated 11.08.2000 were supplied to the detenu in both English and Hindi language. the detenu was made aware of his right to make representation against the detention to the Detaining Authority, Central government as well as the Advisory Board. it was indicated that the representation meant for the Detaining Authority was to be addressed to the Joint Secretary, (COFEPOSA), Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau; the representation meant for the Central Government was to be addressed to the Secretary, Ministry of Finance, Department of Revenue; and the

representation meant for the Advisory Board to be addressed to the Chairman, Advisory Board (COFEPOSA), Delhi High Court. The grounds were communicated from the purpose of clause (5) of Article 22 of the Constitution of India, 1950 (in short, "the Constitution") and Section 3(3) of the Act. The detenu made representations to the Detaining Authority, the Central Government and the Advisory Board, but the prayer for revoking the detention did not find acceptance.

3. In support of the writ petition primarily following stands have been taken:-

- a) there was no ground for directing detention;
- b) there was variation between the English version and the Hindi version of the grounds of detention of material aspects, thereby depriving the detenu the opportunity of making an effective representation;
- c) a prayer was made for examination of witness, who was present outside the room where the Advisory Boards' meeting was held, and notwithstanding the specific prayer made in this regard the witness was not called, and Therefore, the detenu was deprived of a valuable right of presenting his case.

Learned counsel for the respondents, however, submitted that the factual position highlighted in the grounds of detention shows that on the basis of past conduct the propensities of the detenu indulging in activities considered objectionable and clearly predictable in future. It was further submitted that the detenu is a highly qualified and his feigned ignorance of English language was only a ruse to hide the truth. Even if it is accepted, there were minor variation in the two versions, that in no manner prejudiced the detenu and or deprived him from making an effective representation. At the time of hearing, the challenge to the order was restricted only on the ground of variation in the two version and to the ground of non-examination of the witness. There was no prayer made before the Advisory Board to examine any witness as claimed.

4. We shall first deal with the plea about non-examination of the witness, claimed to be present on the date of hearing before the Advisory Board. For the limited purpose of verifying whether in fact this representation dated 10.10.2000 was before the Advisory Board, we had called for the records of the Advisory Board. On a perusal thereof, we find that the Advisory Board had taken note of the representations dated 07.09.2000 and 04.10.2000. There is not even a reference to the representation dated 10.10.2000, wherein a mention is made about the presence of a witness, i.e, S.P. Sharma. In the order of the Advisory Board, reference has been made to various submissions of learned counsel appearing for the detenu before the Advisory Board. Alleged prayer regarding examination of the witness purported to be present does not appear to have been urged before the Advisory Board. Therefore, the question of the Advisory Board not acting on the prayer to examine the witness present outside the room does not arise. Mere fact that the representation is found in the file of the Advisory Board does not show that the grounds taken therein pressed for consideration by the lawyer appearing for the defense before the Advisory Board.

When the Advisory Board took note of the representations dated 07.09.2000 and 04.10.2000 and took note of the submissions of learned counsel for the detenu, there is no reason why it would have otherwise kept out of consideration the prayer made in the representation dated 10.10.2000. It is not the detenu's stand that his counsel argued before the Advisory Board and pressed for examination of the witness stated to be present outside the Advisory Board's meeting room. The plea is, Therefore, clearly without any substance.

5. That brings us to the main ground of challenge, i.e, variation in the two versions. Coming to the plea that variations in the two versions caused prejudice to the detenu, it is relevant to take note of representations made on behalf of the detenu. A recent judgment of Apex Court is of great relevance in this regard. In *B. Mahalingam v. Distt. Magistrate and District Collector and Another*, AIR 2000 SCW 2029, it was observed by the Apex Court:-

"The petitioner, brother of a detenu, under the provisions of Tamil Nadu Act 14 of 1982 filed a petition for habeas corpus before the High Court of Madras challenging the legality of the order of detention as well as the continued detention of the detenu. Several grounds had been urged in support of the challenge and the Division Bench of the High Court on consideration of the same rejected all the contentions raised and dismissed the petition for habeas corpus. The brother of the detenu, Therefore, approached this Court. In this Court, essentially three grounds have been urged that the detenu being a non-English knowing person, the Tamil version of the relevant documents have not been given and as such he was denied of the opportunity of making an effective representation which constitutes an infraction of Article 22(5) of the Constitution. It is also urged that the relevant material has not been considered by the Detaining Authority and the opinion of the Advisory Board has not been obtained before continuing the detention of the detenu.

Pursuant to the notice issued from this Court, a counter affidavit has been filed on behalf of the respondents refuting each of the assertions made and on going through the said counter affidavit, we see no infirmity with the order of detention as well as the continued detention of the detenu so as to be inferred with by this Court. the petition is accordingly dismissed."

The Apex Court in *Abdul Rahman Bhadar Wahi Vs. State of Jammu and Kashmir*, and *Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others*, held that minor and trivial variation in grounds of detention supplied in two languages does not render detention invalid.

6. We have perused the alleged variations in the two versions. the alleged discrepancies appear to be inconsequential to create any confusion or to amount to denial of an opportunity to make an effective representation in the light of what has been observed by the Apex Court in *Alagaswamy's case*, *Abdul Rahman's case* and *R. Mahalingam's case* (supra), we do not find any substance in this plea also.

7. The distinction between omission and contradiction has great significance. An omission is not a contradiction unless what is actually said contradicts what is omitted to be said. The test to find out whether an omission is a contradiction or not is to see whether one can point to any assertion, which is irreconcilable. In this context, the Explanation appended to Section 162 of the Code of Criminal Procedure, 1973 (in short, "the Code") throws considerable light. Usually an omission is not a contradiction, but the omission to state an important fact is a contradiction or at any rate, it is contradiction in substance. Omission to state minor details would not amount to contradiction. Even omission does not amount to contradiction unless that omission virtually touches the very factum, which is required to be proved or established.

8. What is important in such cases is the prejudice caused to the detenu in the background of his knowledge of English language. This has to be tested on the facts of each case and no general principle of universal application can be laid down. It has to be seen in each case as to whether it was "feigned ignorance" of English language (to borrow the language used by the Apex Court in *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, . It is inconceivable that a post-graduate in Political Science does not have workable knowledge in English. The plea that being a post-graduate from a pre-dominantly Hindi speaking area, knowledge in English is almost non-existent is a too fragile one to deserve acceptance. Petitioner has highlighted omission of one line in the Hindi version. Question is one of, as indicated above, prejudice in the background of an opportunity to make effective representation. This is not a case of variation or contradiction. The omission in the Hindi version, in our opinion, is not sufficient to create confusion. The representation was in English language. The feigned ignorance of the language cannot come to detenu - Petitioner's aid.

9. It may be noted that several instances have come to our notice where variations between the two versions or omissions are highlighted. Learned Additional Solicitor General appearing for the respondents was fair enough to accept this. According to him, however, the variations and/or omissions are usually a result of clerical mistake and unintentional. While that may be so, the requisite care and caution, which has to be exercised in matters where personal liberty of a person is in peril, needs to be kept in view. It is true that in certain cases, like the present one where the variations/omissions are of trifling nature and do not really cause any prejudice, they can be ignored. But there may be cases where variations are significant and really go to the root of the matter. The Authorities have to keep these aspects in mind and no effort should be spared to see that accurate and parallel versions are supplied to the detenu, who has a Constitutional and/or statutory right to make a representation questioning his detention.

10. The petition is without any merit and is dismissed.