

(2008) 04 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 28378 of 2007

Amritha

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 12(1), 13(1), 2, 3, 3(1)
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 22, 22(5), 226
Maintenance of Internal Security Act, 1971 — Section 8, 8(1)
National Security Act, 1980 — Section 3, 8
Preventive Detention Act, 1950 — Section 8

Citation : (2008) 2 ALD(Cri) 233 : (2008) 3 ALT 563 : (2008) CriLJ 3123

Hon'ble Judges : Nooty Ramamohana Rao, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy for C. Praveen Kumar, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—A short question that arises for our consideration in this writ petition is:

Whether non-consideration of the representation by the officer mentioned in Sub-section (2) of Section 3 of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1896 (for short "the Act"), made after approval of the detention order by the Government will vitiate the detention order or renders further detention of the detenu illegal?

2. In this application under Article 226 of the Constitution of India for issuing a writ of Habeas Corpus, the petitioner seeks release of her husband, namely,

Shankar Singh @ Nala Shanker (hereinafter referred to as "the detenu"), who has been detained on 26-11-2007 by virtue of an order of detention passed by the first respondent, namely, the Collector & District Magistrate, Hyderabad under Sub-section (2) of Section 3 r/w Section 3(1) of the Act by setting aside the order of detention.

3. The factual matrix leading to the passing of the order of detention to the extent essential to understand the controversy, which is to be dealt with in this case is:

The first respondent passed the order of detention dt. 23-11-2007 u/s 3(1) and (2) r/w Section 2(a) & (b) of the Act, that he was satisfied to detain the detenu as he is found to be a "bootlegger" within the meaning of Section 2(b) of the Act and he shall be detained to further prevent him from indulging in such dangerous activities prejudicial to the maintenance of public order. The detention order was approved by the Government under Sub-section (3) of Section 3 on 30-11-2007 through G.O.Rt.No.7302, General Administration (L & Order II) Department. On referring the matter to the Advisory Board u/s 9 of the Act, the Advisory Board reviewed the case on 27-12-2007 and after having heard the detenu and the investigating officers and after perusing the connected orders; the Advisory Board gave its opinion that "there is sufficient cause for the detention of the detenu Shankar Singh @ Nala Shanker". After approval of the detention order by the Government vide G.O.Rt. No. 7302 dt. 30-11-2007 but before the Advisory Board reviewed the case on 27-12-2007, the detenu made a representation dt.11-12-2007 to the Advisory Board, Hyderabad and also to the Collector & District Magistrate, Hyderabad and the Chief Secretary, Government of A.P., Hyderabad through the Superintendent, Central Jail, Chenchalaguda. On receipt of the report of the Advisory Board dt. 27-12-2007, the Government in exercise of powers conferred under Sub-section (1) of Section 12 r/w 13 of the Act confirmed the order of detention and directed that the detention of the detenu be continued for a period of 12 months from the date of his detention i.e. 26-11-2007 by G.O.Rt. No. 173 dt.7-1-2008 General Administration (Law & Order-II) Department dt. 7-1-2008. Questioning the said G.O. the wife of the detenu filed the present writ petition contending that the detention order was passed in a mechanical manner and on non-existing grounds; that in respect of incident No. 2 referred to in the grounds of detention, analyst report does not say that the sample which is seized from the house which is the subject matter of COR No. 206/2007-08 is injurious to health and unless it is injurious, it cannot be said that public at large are affected and that the acts of detenu has disturbed the tempo of life, thus disturbing the public order. Though the detenu was released on bail in all incidents, said orders of releasing the detenu were not placed before the detaining authority, therefore the order of detention and the order of Government confirming the detention fixing the period of detention, which are totally contrary to law are, hence liable to be set aside.

4. On respondents filing their counter-affidavit dt. 18-1-2008, the petitioner filed

WPMP No. 2126/2008 to permit her to file an additional affidavit raising a ground that non-consideration of the representation dated 11-12-2007 of the detenu by the first respondent-detaining authority would vitiate the detention order.

5. The only submission made by the learned Senior Counsel Sri C. Padmanabha Reddy appearing for the petitioner is that the representation made to the detaining authority was not considered and decided independently by the detaining authority, therefore the detenu has been denied the right safeguarded under Article 22(5) of the Constitution of India and the detention order is liable to be set-aside. Alternatively, he submits that the approval of the detention by the State Government gives further life to the order, therefore, non-consideration of the representation independently by the detaining authority is illegal. This contention was sought to be supported by placing reliance on the following judgments:

1. Union of India v. Harish Kumar (2008) 1 SCC (Cri.) 164.
2. Meena Jayendra Thakur Vs. Union of India and Others, .
3. Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, .

6. On the other hand, the learned Government Pleader representing the Advocate General appearing for the respondents would contend that the representation dt. 11-12-2007 made to the Advisory Board and the Government has been considered and after rejecting the representation of the detenu, the Government confirmed the order of detention based on the report of the Advisory Board directing that the detention of the detenu be continued for a period of 12 months from the date of his detention, therefore the petitioner cannot complain of any violation of Article 22(5) of the Constitution of India. She further submits that failure to consider the representation of the detenu would not invalidate the detention order. In support of her contentions she relied on the following judgment:

1. Raj Kishore Prasad Vs. State of Bihar and Others, .

7. At this stage we set out the most relevant provisions of the Act before considering in detail the issue involved in the present case.

8. Section 3 confers power to make orders detaining certain persons, which reads as under:

(1) The Government may, if satisfied with respect to any boot legger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to

do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(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 Government 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 Government.

Section 8 mandates Grounds of order of detention to be disclosed to persons affected by the order, which reads as under:

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the Government.

(2) X x x x.

9. It is convenient to consider these submissions in the context of two cases decided by a five-Judge Bench of the Supreme Court in *Jayanarayan Sukul Vs. State of West Bengal*, and *Haradhan Saha Vs. The State of West Bengal and Others*, .

10. In *Jayanarayan Sukul Vs. State of West Bengal*, , Justice Ray (as he then was) speaking for the Bench while considering Section 8 of the Preventive Detention Act, 1950, which contemplates constitution of Advisory Boards observed as under:

...that five recent decisions of this Court on the provisions of the Preventive Detention Act particularly in record to the right of the detenu to have his representation considered by the appropriate Government and the obligation of the appropriate Government in that behalf. In *Sk. Abdul Karim and Others Vs. State of West Bengal*, , this Court held that the appropriate Government could not be said to discharge the obligation merely by forwarding the representation of the detenu to the Advisory Board. Article 22 of the Constitution guarantees the right of a detenu to have a proper consideration of the representation by the appropriate authority (para 10).

The Supreme Court in the above-cited case broadly laid down four principles, which are to be followed in regard to representation of detenus. They are as follows:

First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu.

11. In *Haradhan Saha Vs. The State of West Bengal and Others*, speaking for the Bench, Chief Justice Ray while considering Section 8 of the Maintenance of Internal Security Act, 1971, which is *pari materia* to Section 8 of the Act observed as under:

The representation of a detenu is to be considered. There is an obligation on the State to consider the representation.... Section 8 of the Act which casts an obligation on the State to consider the representation affords the detenu all the rights which are guaranteed by Article 22(5). The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law.... (para 24)

It is further observed at 26 thus:

...all that is necessary is that there

should be real and proper consideration by the Government and the Advisory Board.

12. In *John Martin Vs. State of West Bengal*, Justice Bhagwati (as he then was) speaking for a three-Judge Bench while considering Section 8 of the Maintenance of Internal Security Act, 1971 held that "under Section 8(1) of the Maintenance of Internal Security Act, 1971 it is appropriate Government that is required to

consider the representation of the detenu. This, however, does not mean that the appropriate Government can reject the representation of the detenu in a casual or mechanical manner. The appropriate Government must bring to bear on the consideration of the representation an unbiased mind. There should be, as pointed by this Court in *Haradhan Saha Vs. The State of West Bengal and Others*, , "a real and proper consideration" of the representation by the appropriate Government. We cannot over-emphasize the need for the closest and most zealous scrutiny of the representation for the purpose of deciding whether the detention of the petitioner is justified."

13. In the case *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, on which strong reliance is placed by the learned Senior counsel for the petitioner, the Supreme Court while dealing with the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act") and Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short "PIT NDPS Act") held that COFEPOSA Act and PIT NDPS Act differ from that of other preventive detention laws, namely, the National Security Act, 1980, the Maintenance of Internal Security Act, 1971, and the Preventive Detention Act, 1950. While dealing with the National Security Act, 1980, the Supreme Court observed as under:

...The effect of the approval by the State Government is that from the date of such approval the detention is authorised by the order of the State Government approving the order of detention and the State Government is the detaining authority from the date of the order of approval. That appears to be the reason why Section 8(1) envisages that the representation against the order of detention is to be made to the State Government.... (para 34)

14. Distinguishing the earlier judgments of it in *Jayanarayan Sukul Vs. State of West Bengal*, ; *Haradhan Saha Vs. The State of West Bengal and Others*, and *John Martin Vs. State of West Bengal*, in the light of the statutory provisions of those two Acts, the Supreme Court answered the question posed, namely, When an order for preventive detention is passed by an officer especially empowered to do so by the Central Government or the State Government, is the said officer required to consider the representation submitted by the detenu? thus:

Where the detention order has been made u/s 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central

Government, and to have the same duly considered.... (para 38)

The judgment on which reliance is placed by the learned Senior Counsel for the petitioner in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, is not applicable to the facts of the present case in view of the statutory provision as referred to above, which is directly covered by the dicta laid down by the Supreme Court in three cases referred to above i.e. Jayanarayan Sukul Vs. State of West Bengal, ; Haradhan Saha Vs. The State of West Bengal and Others, and John Martin Vs. State of West Bengal, . Similarly, the other two cases, relied on by the learned Senior Counsel, in John Martin Vs. State of West Bengal, and Meena Jayendra Thakur Vs. Union of India and Others, which dealt with the provisions of COFEPOSA Act, are also to the same effect and hence is not applicable to the facts of the present case.

15. In Harish Kumar's case (2008) 1 SCC (Cri.) 164 the Supreme Court held that failure on the part of the Central Government to independently consider the representation submitted by the detenu against his detention renders further detention of the detenu illegal.

16. The file produced by the learned Government Pleader also discloses that a representation dt.11-12-2007 was made by the detenu to the (1) The Advisory Board, Hyderabad; (2) The Collector & District Magistrate, Hyderabad; and (3) The Chief Secretary, Government of A.P., Hyderabad through the Superintendent, Central Jail, Chenchalaguda. On receipt of the report, the State Government through its memo dated 20-12-2007 called for a report from the detaining authority, namely, the Collector & District Magistrate, Hyderabad. On receipt of the memo dt. 20-12-2007, the detaining authority through letter dt. 25-12-2007 submitted his para-wise remarks to the Government. The Government considering the representation of the detenu and the para-wise remarks furnished by the detaining authority, through its G.O.Rt. No. 172, General Administration (Law and Order-II) Department dt. 7-1-2008 rejected the representation of the detenu dt.11-12-2007. After rejection of the representation of the detenu dt. 7-1-2008 (sic. 11-12-2007), the Government after considering the report of the Advisory Board dt. 27-12-2007 confirmed the order of detention vide G.O.Rt. No. 173 General Administration (Law & Order-II) Department dt. 7-1-2008.

17. In Raj Kishore Prasad Vs. State of Bihar and Others, , the Supreme Court after considering the provisions of Section 3 and 8 of the National Security Act, 1980, which are identical to the provisions of Act as already observed, held that the detaining authority who made an order of detention under the powers conferred on him has constitutional obligation to communicate the grounds of detention to the person detained and also to afford him earliest opportunity of making a representation against the order of detention. This constitutional obligation has been statutorily recognized in Section 8 of the Act with a specific provision, which prescribes a time schedule within which a copy of the grounds has to be furnished to the detenu and further enjoins a duty to afford the detenu

the earliest opportunity of making a representation against the order, not to the detaining authority but to the appropriate Government. The Supreme Court further held that "if the appropriate Government has considered the representation of the detenu it cannot be said that there is contravention of Article 22(5) or there is failure to consider the representation by the detaining authority."

18. In view of the law laid down as aforesaid and in view of the statutory provisions of the Act as referred to above, the question posed is answered thus: Where the detention order has been made u/s 3 by the Collector and District Magistrate or a Commissioner of Police in exercise of the powers conferred by Sub-section (2) of Section 3 and when the order of detention has been approved by the State Government, the State Government becomes the detaining authority from the date of such approval. Any representation has to be made to the State Government/detaining authority and the State Government is obliged to consider such a representation independently and failure on its part to do so results in further detention illegal. Once the State Government considered the representation, the requirement of constitutional mandate under Article 22(5) of the Constitution has been complied with and the order of detention passed by the officer mentioned in Sub-section (2) of Section 3, as approved by the State Government, cannot be declared as void ab initio and illegal nor can it be said that further detention of the detenu is illegal for non consideration of the representation by the officer on whom the powers were conferred under Sub-section (2) of Section 3.

19. For the reasons aforementioned and the view we have taken, we are not persuaded to accept the contention of the learned senior counsel that failure to consider the representation by the Collector and District Magistrate would invalidate the order and renders his further detention illegal. As no other point has been urged before us, we have no other option except to dismiss the writ petition and we accordingly do so.