
(1991) 09 PAT CK 0032

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 299 of 1991

Arjun Agrawal alias Arjun Lal Agrawal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-1991

Acts Referred:

Citation : (1991) 09 PAT CK 0032

Final Decision : Allowed

Judgement

Om Prakash, J.—The petitioner has been detained by an order dated 27-5-91 by District Magistrate, Dhanbad, in exercise of powers conferred under Sub-section (2) of Section 12 of the Bihar Control of Crimes Act, 1981. The detention order and the grounds were served on the petitioner on the same date. Such order was approved by the State Government at Patna on 6-6-1991. It was confirmed on 16-7-91 and such confirmation order was served on the petitioner on 21-7-1991. The petitioner filed a representation dated 3-6-1991 which as per respondent's version, was rejected on 16-7-91.

2. Learned counsel for the petitioner has challenged the detention order of the petitioner on the following grounds :

(i) That one of the grounds of detention, namely, ground No. 7, is non est and as such the detention order is illegal and bad in the eye of law as it has violated petitioner's right granted to him under Article 22(5) of the Constitution of India.

(ii) That there has been undue delay in disposal of the representation filed by the State Government which has infringed his right under Article 22(5) of the Constitution of India.

3. Ground No. 7 is as under :

7. On 17-10-89, Arjun Agarwal and his associates went in an armed mob to Taj Hotel, Jharia, and tried to kill one Abdul Gaffar, who, however, managed to escape. They also stonned the hotel and damaged it and injured a lot of persons.

They also broke the lock of a nearby ration shop of one Md. Iqbal and set fire to it. This act of the detenu along with his associates created panic and terror in the area and public order was disturbed. This pertains to Jharia P.S. Case No. 488/89, dated 17-10-89 u/s 147/148/149/452/153(2)/120B/307/ 380/336/353, IPC and 27 Arms Act. In this case charge-sheet has been submitted against Arjun Agarwal and his associates (Copies of FIR and supervision note enclosed)".

4. Referring to ground No. 7, Deputy Collector and the District Magistrate of Dhanbad have stated in their affidavits that "the petitioner was accused in Jharia P.S. Case No. 488 of 1989, dated 17-10-89. Chargesheet, however, was not submitted against him". Thus the respondents admit that the ground No. 7 is non est.

5. The petitioner has been detained under Bihar Control of Crimes Act, 1981 and not under National Security Act, 1980, which contains Section 5(a) which lays down that where a person in pursuance of an order of detention has been detained u/s 3 of the National Security Act which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly such order should not be deemed to be invalid or inoperative merely because one or some of the grounds is or are non existent. But there appears no such provision in Bihar Control of Crimes Act. Hence, I am of the opinion, that where even if one of the grounds relied upon by the detaining authority to detain a person under Bihar Control of Crimes Act is non existent, his detention must be deemed to be invalid and bad in law violating his right granted under Article 22(5) of the Constitution. Each of the grounds including the non existent ground influences the mind of the detaining authority to arrive at his subjective satisfaction the the person concerned should be detained. It is too difficult to say that had such non est ground been not considered by the detaining authority, even then he would have arrived at his subjective satisfaction at which he has arrived after taking into consideration such non est ground. It is not possible to determine the extent to which non est ground has influenced the mind of the detaining authority to arrive at his such subjective satisfaction.

6. The learned counsel for the petitioner has referred to a number of decisions in this connection.

In the case of Shibban Lal Saksena Vs. The State of Utter Pradesh and Others, , it has been held that where the State Government itself admits that one of the two grounds of detention is unsubstantial or non existent, to say that the other ground, which still remains, is quite sufficient to sustain the order would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the Legislative Policy underlying the statute. In such cases, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole.

7. It has been held in the case of Pushkar Mukherjee and Others Vs. The State of West Bengal, that it is now well established that even if any one of the grounds or reasons that led to the satisfaction of the detaining authority is irrelevant, the order of detention would be invalid even if there were other relevant grounds, because it can never be certain to what extent the bad reasons operated on the mind of the authority concerned or whether the detention order would have been made at all if only one or two good reasons had been before them.

8. It has been held in the case of Biram Chand Vs. State of Uttar Pradesh and Others, that it is well settled that the decision of the detaining authority is a subjective one and if one of the grounds for the order is non-existent or irrelevant or is not available under the law, the entire detention order will fall since it is not possible to predicate as to whether the detaining authority would have made an order, for detention even in the absence of non-existent or irrelevant ground.

9. In the case of Dhananjoy Das Vs. District Magistrate, Darrang and Another, it has been held that the inclusion of an irrelevant or non-existent ground, among other relevant grounds is an infringement of detenu's right under Article 22(5) of the Constitution to be informed as soon as may be of the grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority.

10. In the case of Raj Kumar Gupta Vs. State of Bihar and Others, a Full Bench of this Court while dealing with a case of detention u/s 12 of the Bihar Control of Crimes Act, has held that the order of detention is bad where one of the grounds on which order of detaining authority is based is vague or non est.

11. Learned Standing Counsel has relied upon decisions in the cases of Yogendra Murari Vs. State of U.P. and Others, and Shafiq Ahmad Vs. District Magistrate, Meerut and Others, .

12. In Yogendra Murari's case it has been held that where a detention order has been passed on the basis of three incidents of disturbance of public order, the fact that some of the incident did not relate to public order, cannot be ground for quashing the order. In Safiq Ahmad's case it has been held that where one of the alleged grounds of detention is found to be bad and unsubstantial, the detention is not vitiated when remaining grounds are valid.

13. But each of the above two decisions is clearly distinguishable as they were given in cases under National Security Act (65 of 1980 as amended in 1984). The 1984 amendment has incorporated Section 5(a) in the Act, referred to above. The detention order in the instant case has been passed not under National Security Act, 1980, as amended by amendment of 1984 but under Bihar Control of Crimes Act, 1981, which contains no provision corresponding to Section 5(a). I am, therefore, of considered opinion that none of the above two decisions is relevant for the present purpose.

14. Learned Standing Counsel has further submitted that above Biramchand's case supra has been considered by larger Bench of the Supreme Court in the case of Haradhan Saha Vs. The State of West Bengal and Others, and it has been not relied upon.

Having looked into in Haradhan's case, I am of the opinion, that the question presently under consideration that is legal effect of reliance by the detaining authority on a non est ground was not considered in that case, Biramchand's case was considered while considering the question as to whether criminal prosecution and detention order based on some facts can go together or not.

15. In view of the above discussion, I am of the opinion, that as the detention order has been passed on a non existent ground also, the whole order of detention is vitiated. It cannot reasonably and legally be sustained.

16. As regards the second ground of attack, the Deputy Collector, Dhanbad, has stated in his counter affidavit in this regard as under :

The representation of the petitioner was sent to the District Magistrate, Dhanbad, Vide Home (Police) Department letter No. 5324, dated 15-6-91, which was received in his office on 20-6-91. Comments on the representation was sent to Government vide this office letter No. 879/DC, dated 20-6-91. Comments on the supplementary representation dated 25-6-91 was sent to Home (Police) Department vide letter No. 913 /DC, dated 26-6-91. The representation of the petitioner detenu has been rejected by the Government vide letter No. 6491, dated 16-7-91, and communicated to the petitioner through jail Superintendent.

The District Magistrate, Dhanbad, in his separate counter affidavit has repeated the above version of the Deputy Collector.

17. Thus petitioner's representation dated 3-6-91 was rejected after 43 days. In my view, there has been undue delay in disposal; of the representation of the petitioner and no satisfactory explanation has been given for such delay. It has not been explained as to what action was taken with regard to the representation dated 3-6-91 during the 12 days period from 3-6-91 to 15-6-91 by the Home (Police) Department and how it took five days to reach in the office of the Deputy Commissioner. It has not been at all explained as to how and why or under what circumstances the State Government took 25 days from 20-6-91 to 16-7-91 (excluding both these dates) in taking a decision on the representation. It appears that the Government acted in a leisurely way in considering the representation of the petitioner detained without trial. It should have been dealt with utmost expedition continuously from day to day without losing time as above.

18. As has been held in the case of Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, the obligation imposed on the detaining authority by Article 22(5) of the Constitution of India to afford detenu at the earliest opportunity of making a representation, carries with it the imperative implication

that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little, i.e., afforded by the procedural safeguards prescribed by Article 22(5) read with article 19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu.

19. In the case of Harish Pahwa Vs. State of U. P. and Others, the detenu made representation on 3rd June, 1980. It was received by the State Government on 4th June, 1980. But for two days no action was taken in this connection. On 6th June, 1980, comments were called for and the same were received by the State Government on 13th June, 1980. On 17th June, 1980 the State Government referred the representation to its Law Department for opinion which was furnished on 19th June, 1980. Rejection was ordered on 24th June, 1980 and it was communicated to the jail authority two days later. In such situation, the Supreme Court took the view that the manner in which the representation has been dealt with reveals a sorry state of affairs in the manner of consideration of representation made by person detained without trial. The Court opined that there is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980. The Supreme Court further observed that it failed to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. The Court made it clear that the Court (Supreme Court) does not look with equanimity upon such delays when the liberty of a person concerned. It emphasised that it is the duty of the State to proceed to determine the representations of the character above mentioned with utmost expedition, which means that the matter must be taken up for consideration as soon as such representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case, the Supreme Court declared the detention unconstitutional and directed that the appellant be set at liberty forthwith.

20. In Raj Kumar Gupta's case (supra) this Court set aside the detention order on account of inordinate delay of one month in disposal of detenu's representation by the State Govt.

21. In view of the above discussion, I am of the opinion, that the detention of the petitioner is vitiated on ground of undue delay in disposing of the representation of the petitioner also and it cannot be sustained on this ground alone.

22. Challenging the jurisdiction to entertain in the writ petition learned Standing Counsel has argued that the detention order has been passed at Dhanbad and hence the Ranchi Bench of this Court has jurisdiction to entertain it. On the other

hand, learned counsel for the petitioner has contended that the order of detention passed at Dhanbad has been approved and confirmed by the State Government at Patna and hence this Court has got jurisdiction to entertain it. I find substance in the submission of the learned 1 counsel for the petitioner. As the order of detention reached its final stage at Patna, this Court at Patna has jurisdiction to entertain the writ petition.

23. In the result, this application is allowed. The detention order dated 27-5-91 passed by District Magistrate, Dhanbad, under Sub-section (2) of Section 12 of the Bihar Control of Crimes Act is hereby set aside. It is ordered that the petitioner be set at liberty forthwith in this case.