

(1993) 04 MAD CK 0049
In the Madras High Court
Case No : H.C.P. No. 501 of 1992

Baskaran

APPELLANT

Vs

The Secretary to Government and another

RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) LW(Cri) 249

Hon'ble Judges : Thanikkachalam, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : S. Ilamparithi, for the Appellant; Shunmuga Velayutham, Assistant Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—This Writ Petition is filed by the detenu himself under Article 226 of the Constitution of India seeking for the issuance of a Writ of Habeas Corpus quashing the order of detention dated 12-6-1992 and set him at liberty.

2. The detenu came to the adverse notice as Goonda in view of the 2 adverse cases referred to in the preamble of the grounds of detention and was detained on the basis of the ground case. The impugned order of detention was passed by the Commissioner of Police, Madurai City, Madurai, the second Respondent herein, in exercise of the powers conferred u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The details of the ground case which led to the passing of the impugned order were set out in the grounds of detention which was duly served on the detenu and hence, we do not propose to reiterate the same here save those that are necessary for consideration in this Writ Petition.

3. Though the learned Counsel for the Petitioner challenged the impugned order on many grounds mentioned in the affidavit filed in support of the Writ Petition,

he confined his argument on ground No. C, which reads as follows:

The copies furnished to the detenu are not clear and legible. The accident register copies in the ground case and some of the statements of witnesses are not legible. Further the copies of the telex message and the letter from the Secretary to Government informing the detenu that he would be produced before the Advisory Board at "Sudar" Madras on 23.7.1992 i.e., just 3 days before the date of enquiry. Thus by furnishing illegible copies and by producing him before the Advisory Board at the last minute, prevented him from making effective representation before the Board. Further the Accident register copies relating to the detenu herein was also not furnished to him.

4. Though this Writ Petition was admitted on 16.11.1992, the Respondents entered appearance, took time for filing counter affidavit and finally within four weeks by order dated 7.1.1993, till this date no counter affidavit has been filed and the averments stated in the affidavit filed in support of the Writ Petition and the grounds raised therein stand unrebutted.

5. In support of his contention, the learned Counsel for the Petitioner produced before us the copies of the documents which were served on the Petitioner along with the grounds of detention and pointed out that page Nos. 295, 297 and 299 of Accident Register, statements of witnesses page Nos. 214, 215 and 221 in the ground case, Page Nos. 107, 109, 111 and 113 of the document, Page No. 233 in the rough sketch and statements of witness at page No. 259 are not legible and readable. We have gone through the said documents and find that pages referred to above are not legible and readable. The learned Additional Public Prosecutor also fairly conceded that pages referred to above in the documents are not legible and readable and those documents are vital documents and the detaining authority considered and relied on them while arriving at the subjective satisfaction.

6. In this connection, the learned Counsel for the Petitioner drew our attention to the decision in *Panjali v. District Magistrate & Collector North Arcot Ambedkar District. Vellore and two others* (1992 L.W.(CrI.) 497), rendered by a Division Bench of this Court, to which one of us viz. K.M. Natarajan, J. was a party, wherein this Court after referring to the decision of the Delhi High Court in *Bhamgat Raj v. Union of India and Ors.* (1991 (2) Crimes 498) held as under:

It is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority.

In this case according to the learned Additional Public Prosecutor, the documents in question are vital documents and the detaining authority considered them and

relied on them while arriving at the subjective satisfaction. We find that those documents supplied to the detenu are not legible and readable. Hence it can be held that the detenu was not able to make an effective representation against the impugned order. The supply of illegible and unreadable documents along with the grounds of detention would amount to non-supply of documents as well, as held in the above decisions. We have no hesitation in holding that by the supply of illegible and unreadable material documents, the detenu was deprived of making effective representation and as such, the impugned order is violative of Article 22(5) of the Constitution of India and hence it is vitiated.

7. In *Bhamgat Raj v. Union of India and Ors.* (1991 (2) Crimes 498), the Delhi High Court held as follows:

It is the admitted case of the Respondent that the documents were necessary to be considered by the detaining authority and that was the reason that all these documents were relied upon for coming to a subjective satisfaction by the detaining authority. The supply of illegible copies *pari pasu* with the grounds of detention cannot be said to be compliance with regard to the supply of documents and in the eye of law it would be presumed that the documents which are illegible have, in fact, not been supplied. Thus there is a default on the part of the detaining authority in supplying the relied upon documents and thus the Petitioner has been deprived of his right of making an effective representation, against the order of detention. On this ground that order of detention cannot be sustained. I find support for this view from the case *Bhupinder Singh v. Union of India and Ors.* (1987 SCC (Cr.) 528). The aforesaid case has been followed by the Supreme Court in Criminal Appeal No. 258/89 *Smt. Dharmista Bhagat v. State of Karnataka and Anr.* decided on 7.4.89. These judgments have been followed by various courts in India including this Court in numerous cases and reference can be made in this regard to the case *Vijay Bhaw Singh v. U.O.I. and Ors.* Criminal Writ No. 75-76/90 decided on 23.7.1990.

8. Applying the ratio laid down in the above cases to the facts of this case, we have no hesitation in holding that by the supply of illegible and unreadable material documents, the detenu was deprived of making an effective representation and as such the impugned order is violative of Article 22(5) of the Constitution of India and hence it is vitiated.

9. In the result, the Writ Petition is allowed, the impugned order is quashed and the detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.