
(2016) 08 AP CK 0043
In the Andhra Pradesh High Court
Case No : W.P. No. 4805 of 2016

Farhana Begum

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Citation : (2016) 2 AndhLDCriminal 629

Hon'ble Judges : P.V. Sanjay Kumar and M. Seetharama Murthi, JJ.

Bench : Division Bench

Advocate : T.S. Anirudh Reddy for T. Pradyumna Kumar Reddy, Advocates, for the Petitioner; Government Pleader for Home (TG), for the Respondent

Final Decision : Allowed

Judgement

P.V. Sanjay Kumar, J.—Saleemullah @ Saleem @ Baba, son Shafifullah, was subjected to preventive detention under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter, ? the Act of 1986?), under order dated 26.11.2015 of the Commissioner of Police, Hyderabad City. Farhana Begum, his wife, filed the present writ petition seeking a writ habeas corpus to produce the detenu before this Court by declaring the detention order dated 26.11.2015 as illegal and unconstitutional. A consequential direction was sought for release of the detenu forthwith from Central Prison, Chanchalguda, Hyderabad, where he is lodged.

2. During the pendency of the writ petition, detention of the petitioner?s husband was approved by the Government under G.O. Rt. No. 3207, General Administration (Law and Order) Department, dated 7.12.2015. Thereafter, the matter was referred to the Advisory Board under Section 11(1) of the Act of 1986 and after consideration of the report submitted by the Board on 21.1.2016, the Government confirmed the detention of the petitioner?s husband for a period of 12 months under G.O. Rt. No.450, General Administration (Law and Order) Department, dated 23.2.2016.

3. The main ground on which the detention of the petitioner's husband is challenged is that all the materials relied upon by the detaining authority were not made available to the detenu, who is uneducated and has acquaintance only with Urdu language. Mohd. Shafifullah, the father of the detenu, filed a sworn affidavit before us stating that his son is an uneducated person who could only communicate in Urdu but could not read or write any language. He further stated that but for affixing his signature; the detenu was incapable of reading or writing in Urdu or English.

4. Sri. T.S. Anirudh Reddy, learned Counsel for the petitioner, would contend that as the detenu was neither provided with translations of all the material documents relied upon nor was he explained the contents thereof, he was denied the constitutional right of effectively making a representation against his detention and that this failure on the part of the State would vitiate the entire proceedings.

5. The Commissioner of Police, Hyderabad, filed a counter-affidavit and insofar as this crucial aspect is concerned, he stated that the detention order and the grounds of detention, with Urdu translations thereof, along with material documents were furnished to the detenu on 3.12.2015 in the presence of the Jailor. He further stated that the detenu acknowledged that he was read over the contents of the detention order and the grounds of detention in Urdu and that he thoroughly understood the same. Receipt dated 3.12.2015 signed by the detenu is placed on record. This receipt is in English language and reads as under:

"This is to confirm that I, Md. Saleemullah @ Redeem @ Baba, S/o Shafiullah, aged 32 Yrs, Occ: Cloth Business, R/o H.No.8-1-403/66/A, Mini Ghulshan Colony, Hakimpet Tolichowki, Hyderabad, have received (61) pages of the P.D. Act order, order of Detention and order of Grounds, Severed (sic) to me in Chanchalguda Central Prison before the Jailor by the Inspector of Police, Panjagutta Police Station, Hyderabad. I can well understand Urdu language. The Inspector of Police, Panjagutta Police Station, Hyderabad, translated the order of Detention and Order of Grounds in Urdu language and has explained the contents of the order of detention and order of grounds to me in said language. I have thoroughly understood the terms and conditions specified in the documents. As such, I hereunder sign for completion of due procedure.

Date: 3.12.2015

Sd/-

(Mohd. Saleemullah)"

6. The afore-stated Receipt demonstrates that the detenu received a set of documents numbering 61 pages. It further demonstrates that the Inspector of Police, Panjagutta Police Station, Hyderabad, translated the 'order of detention' and the 'order of grounds' in Urdu language and explained the contents thereof to the detenu in the said language. The Receipt records that the detenu

thoroughly understood the terms and conditions specified in the documents and signed the Receipt for compliance of the due procedure. Significantly, the Receipt only speaks of translations of the "order of detention" and the "grounds of detention" being furnished and the contents thereof being explained to the detenu in Urdu language. The "order of detention" and the "grounds of detention" number only 6 pages in all. The rest of the 55 pages furnished to the detenu were therefore neither translated nor were the contents thereof explained to the detenu. These documents were in English and Telugu.

7. The issue for consideration presently is whether the State fulfilled the requirements prescribed under Article 22 of the Constitution while adhering to the above procedure. Article 22 of the Constitution provides for protection against arrest and detention in certain cases. Clauses (4) and (5) of Article 22, dealing with preventive detention, read thus:

22.

(1)

(2)

(3)

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) Such person is detained under in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6)

(7) Parliament may by law prescribe-

(a) ?.....

(b) ?.....; and

(c) ?.....?

8. The Constitution therefore vests a person subjected to preventive detention with the right of making a representation against the order of detention and to facilitate exercise of this constitutional right, the detaining authority is required to communicate to the detenu, the grounds on which the order has been made so as to afford him the earliest opportunity of making such a representation.

9. As long back as in the year 1950, the Supreme Court observed in *A.K. Gopalan v. State of Madras*, AIR (1950) SC 27, that Article 22(5) mandates that the detaining authority should communicate to the detenu the grounds on which the order has been made, implying that such grounds must essentially be connected with the order of preventive detention. In such a situation, per the Supreme Court, it would be open to the detenu to contend that the grounds on which the order has been made have no connection at all to the order, but to urge such an argument, the aggrieved party must have a right to intimate to the Court the grounds given for alleged detention and representation made by him. The Supreme Court held that if a detenu is not in a position to put before the Court this paper, the Court would be prevented from considering whether the requirements of Article 22(5) were complied with and that is a right which is guaranteed to every person. In a separate opinion, Fazl AH, J., observed that Article 22(5) makes it incumbent upon the detaining authority to communicate to the detenu, the grounds on which the order was made and give him the earliest opportunity of making a representation against the order and that this provision was intended to afford protection to and be a safeguard in favour of a detenu and could not be read as limiting any rights which he has under the law or the Constitution.

10. Again, in *Ram Krishan Bhardwaj v. Delhi*, AIR (1953) SC 318, a Constitution Bench affirmed that preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against improper exercise of this power must be zealously watched and enforced by the Court. As regards the right provided under Article 22(5), the Constitution Bench observed that the detenu has to be furnished with particulars of the grounds of his detention sufficiently to enable him to make a representation which, on being considered, may give relief to him and this constitutional requirement must be satisfied with respect to each of the grounds communicated to the detenu.

11. In *Pankaj Kumar Chakrabarty v. State of West Bengal*, (1969) 3 SCC 400, another Constitution Bench observed that the Constitution recognises the necessity of preventive detention in extraordinary occasions but while recognising the need for preventive detention without recourse to the normal procedure according to law, it provides at the same time certain restrictions on the power of detention which are considered as minimum safeguards to ensure that the power of such detention is not illegitimately or arbitrarily used. The Bench further observed that the power of preventive detention is itself acquiesced in by the Constitution as a necessary evil and is, therefore, hedged in

by diverse procedural safeguards to minimise as much as possible the danger of its misuse.

12. It is therefore clear that preventive detention under Article 22(4) to (7) is an exception of Articles 21, 22(1) and (2). As the sentinel on the qui vive, it is for this Court to ensure that the safeguards and restrictions postulated under Article 22(4) and (5) are scrupulously observed by the State while taking recourse to the drastic measure of prevention detention, whereby a person is deprived of his liberty without adherence to the ordinary procedure laid down by law.

13. As to the issue of what is required to be made available to a detenu under Article 22(5) of the Constitution so as to afford him the earliest opportunity of making an effective representation against his detention, the road is already well traversed. Case law in this regard is abundant but requires reiteration given the importance of the issue.

14. In *Harikisan v. State of Maharashtra*, AIR (1962) SC 911, a Constitution Bench was dealing with detention of a person who only knew Hindi. It was contended on his behalf that the constitutional requirement under Article 22(5) has not been complied with as the grounds on which the order of detention were based were communicated to him in English and oral translation of the same by the Police Officer to the detenu was alleged to be insufficient compliance with the constitutional requirement. The High Court found that the detenu knew enough English to understand the grounds of his detention and negated the contention raised on his behalf. The Supreme Court observed that to a person who is not conversant with English language, service of the order and the grounds of detention in English with an oral translation and explanation thereof by the Police Officer would not fulfil the requirements of law. Reference was made to the earlier judgment in *State of Bombay v. Atma Ram Sridhar Vaidya*, (1951) SCR 167, wherein it was held that to give an opportunity to the detenu under Article 22(5) to make a representation, it would not be sufficient that he is merely physically delivered the means of knowledge to make his representation and that the detenu should be in a position to make such representation effectively. For this purpose, communication to him must mean imparting sufficient knowledge of all the grounds on which the order of detention is based and if the grounds are several, being based on numerous speeches made on different occasions and different dates, any oral translation or explanation given by the Police Officer to the detenu would not amount to communicating the grounds. The Supreme Court further held that communication, in this context, must mean bringing home to the detenu effective knowledge of all the facts and circumstances on which the order of detention is based. Affirming the above position in *Harikisan's* case (supra), the Supreme Court observed that to a person who was not conversant with English knowledge, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language he can understand, and in a script which he can read, if he is a literate person.

15. In *Hadibandhu Das v. District Magistrate*, AIR (1969) SC 43, another

Constitution Bench judgment, the detenu knew only Oriya language. The translation of the order and grounds of detention were served upon him. The grounds in support of the order served on the detenu ran into 14 typed pages and referred to his activities over a period of 13 years, besides referring to a large number of Court proceedings concerning him and other persons who were alleged to be his associates. In such circumstances, the Supreme Court held that mere oral explanation of such a complicated order of the nature made against the detenu without supplying him the translation in a script and language which he understood would amount to denying him the right of being communicated the grounds and being afforded the opportunity of making a representation against the order of detention.

16. In *Chaju Ram v. State of Jammu and Kashmir*, AIR (1971) SC 263 : (1970) 1 SCC 536, the Supreme Court was dealing with a case involving an illiterate detenu and observed that it would be absolutely necessary when dealing with such a detenu, who could not read or understand English or any other language, that the grounds of detention should be explained to him as early as possible in a language he understands, so that he can avail himself of the statutory right of making the representation. Handing over a document written in English and obtaining his thumb impression on it in token of his having received the same was held to be utterly insufficient to comply with the requirements of law.

17. In *Bhola Bhuiya v. The State of West Bengal*, (1975) 3 SCC 253, dealing again with an illiterate detenu, the Supreme Court affirmed that explanation of the grounds of detention to the detenu in his own language was mandatory. As an affidavit was placed before the Court confirming that the grounds of detention were explained to the detenu in Hindi, a language that he understood, the Supreme Court upheld the order of detention and rejected the contention that it stood vitiated on account of non-compliance with Article 22(5) of the Constitution.

18. In *Daroga Rai v. The State of West Bengal*, (1975) 3 SCC 720. the detenu was again an illiterate and mere service of the grounds of detention on him was stated to have vitiated the detention. However, the Supreme Court found that not only a true copy of the order of detention and grounds of detention were furnished but also the vernacular translations thereof were given to the detenu and the contents of the order and grounds of detention were also explained to him in Hindi, his mother tongue. The Supreme Court therefore refused to interfere with the detention.

19. In *Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala*, 1985 (Supp) SCC 144, the Supreme Court affirmed that the word 'grounds' used in Article 22(5) of the Constitution did not mean mere factual inferences but factual inferences plus factual material, which had led to such factual inferences.

20. The learned Government Pleader for Home would rely upon Para 83 of the judgment, which reads as under:

783. As has been set out by Thomas Jefferson "To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means" (Thomas Jefferson, Writings (Washington Ed.), V. 542-545 and The Constitution Between Friends by Louis Fisher 47). By the afore stated approach both justice and power can be brought together and whatever is just may be powerful and whatever may be powerful may be just.?

21. However, it may also be noticed that the above quotation, though made in the context of a case relating to preventive detention, was based on a fact situation where certain Malayalam documents were annexed to the grounds of detention though the detenu did not understand the said language, but the Court found that the gist of the contents of these Malayalam documents was reproduced in the grounds of detention which were in English, a language known to the detenu. The case on hand is therefore not comparable on facts.

22. Further, we are of the opinion that 'scrupulous adherence to written law' is one standard and 'scrupulous adherence to constitutional safeguards' is altogether another. As already pointed out supra, preventive detention is a necessary aberration and evil in the scheme of our democratic society, but recourse to such drastic powers by the State must invariably be within the confines of the constitutional restrictions envisaged under Articles 22(4) to (7) of the Constitution. Such adherence cannot to be sought to be whittled down to suit the State's interest of the moment even if its intention is beyond reproach.

23. In *Powanammal v. State of Tamil Nadu*, 1999 (1) ALD (CrL.) 347 (SC) : (1999) 2 SCC 413, the Supreme Court again affirmed that the safeguards embodied in Article 22(5) would not extend merely to oral explanation of the grounds of detention and the material in support thereof in a language understood by the detenu but also supplying their translation in the script or language which is understandable to the detenu. The detenu in that case could not understand English language, being a Tamilian. The Tamil version of the order of remand was not supplied to her despite her request. Perusal of the grounds showed that the order of remand was relied upon by the detaining authority to reach subjective satisfaction. That being so, the Supreme Court held that non-furnishing of the copy of the order of remand in Tamil prejudiced the right of the detenu to effectively make a representation against her detention.

24. In *A.C. Razia v. Government of Kerala*, (2004) 2 SCC 621, in his dissenting opinion S.B. Sinha, J., observed that it is well settled that the documents on the basis whereof the detaining authority arrived at his subjective satisfaction must be supplied to the detenu and that such documents can be subdivided into two parts - (1) documents which were relied upon by the detaining authority as forming the basis for detention, and (2) additional documents which may be required by the detenu to show that such order of preventive detention was unwarranted. The learned Judge held that if the documents so supplied are in a language which is unknown to the detenu, the correct translated copies thereof

must be made available to him and such copies should be legible and complete. Though these observations were made in a dissenting opinion, they are of guidance as the majority opinion did not touch upon this aspect or express any disagreement therewith. The majority opinion also affirmed that the dual constitutional rights under Article 22(5) were that: (1) the detenu had the right to be informed as soon as may be of the grounds on which the order had been made, and (2) the right to be afforded the earliest opportunity of making a representation against such detention. The majority opinion further went on to state that by judicial craftsmanship, certain ancillary and concomitant rights had been read into this Article so as to effectuate the guarantees/safeguards envisaged by the Constitution under Article 22(5) and one such safeguard was that the grounds of detention along with the supporting documents should be made available to the detenu in a language known to him.

25. In *Mohammed Abdul Qayyum, rep. by his next Friend (Wife) Smt. Umara Qurashi v. Union of India, Ministry of Finance Department of Revenue, Central Economic Intelligence Bureau*, 2004 (1) ALD (CrL.) 554 (AP) = 2004 (3) ALT 627 (D.B.), a Division Bench of this Court observed that by a long line of decisions of the Supreme Court it had been well settled that the expression 'grounds' referred to under Article 22(5) of the Constitution included not only the conclusions reached by the detaining authority for passing the detention order, but also all the relevant material on the basis of which such conclusions are reached by the detaining authority. In that case, the relevant material along with the grounds were supplied to the detenus in English and only the order of detention and the grounds of detention were translated in Urdu, a language known to them. However, the Division Bench found, on facts, that the contention that the detenus did not know English was factually incorrect and refused to interfere.

26. In *V. Muthuvelu v. State of Andhra Pradesh*, W.P. No. 8022 of 2015 decided on 22.9.2015, 2016 (1) ALD (CrL.) 345, another Division Bench of this Court dealt with a case where the detenu was from Tamil Nadu and his only known language was Tamil. The grounds of detention were supplied in Telugu, Tamil and English languages, but the material relied on for passing the order of detention was supplied only in Telugu and English languages. An argument was advanced on behalf of the State that as the detenu had signed his name in English, it could not be said that he did not know English. The Division Bench observed that it is common practise that those who sign in English are not really conversant with the language at all, following the dictum of the Supreme Court in *A.C. Razia's* case (supra). The Division Bench observed that though several crimes, registered against the detenu, were made the basis for passing the order of detention against him, the material relating thereto which was relied upon had not been supplied to him and the failure in this regard was fatal.

27. More recently, in *Vasanthu Sumalatha v. State of Andhra Pradesh* rep. by its Chief Secretary, Hyderabad, 2016 (2) ALD (CrL.) 156 : 2016 (1) ALT 738 (DB), a

Division Bench of this Court, on a comprehensive conspectus of the growth of law on this subject recorded various legal principles. For the purposes of this case it is enough to refer to some of them : Preventive detention is an exception to Article 21 of the Constitution of India and therefore, such an exception can apply only in rare cases. To enable a detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. Failure to supply legible copies of documents, on which the detaining authority placed reliance, to the detenu affects his right to submit an effective representation and thereby renders his continued detention illegal. Similarly, failure to supply documents relied upon by the detaining authority to the detenu in a language known to him, results in the detenu being denied the opportunity of making an effective representation, and would render his continued detention illegal.

28. Though the learned Government Pleader for Home would contend that, as the father of the detenu in the present case had affirmed on oath that the detenu could not read or write even Urdu language, no purpose would have been served by furnishing him translated Urdu copies of all the material documents which formed the basis of the order and the grounds of detention. This Court is not impressed. Irrespective of whether or not the detenu could read Urdu, furnishing him the translated Urdu copies of all the material documents is a must to protect his constitutional right of making an effective representation against the order of detention passed against him. It is not disputed by the learned Government Pleader that the detenu is not subjected to seclusion or isolation and he is not denied visits by his family members and friends. If that be so, there is every possibility that if the documents are furnished to him in his known language, Urdu, the detenu would have the assistance and help of his visiting better-educated family members and friends to discuss and formulate his representation effectively against his detention.

29. It is an admitted fact that the contents of all the material which was relied upon by the detaining authority, running into 55 pages, were not even read over and explained to the detenu in Urdu. The Receipt dated 3.12.2015 which was obtained from the detenu in evidence of his having been told the contents of the order of detention and the order of grounds, clearly manifests that the rest of the documents were not subjected to the same translation process. In effect, the detenu did not even know the contents of these various documents which were in English and Telugu. Reliance placed upon Harikisan's case (supra), by the learned Government Pleader in support of his contention to the effect that only if the detenu is a literate person, he needs to be given the grounds of detention in a language which he can understand and in a script which he can read, is of no avail in the light of the further development of law in this regard as embodied in the later judgments.

30. The State cannot therefore seek to support the order of detention in the present case as it utterly failed in complying with the requirements of Article

22(5). The detenu was prevented from making an effective representation against his detention by virtue of the fact that he was not made aware of all the material that had been relied upon by the detaining authority in reaching its subjective satisfaction. The translated copies of all the documents in this regard were not made available to him and there was no oral explanation thereof in a language known to him.

31. The order of detention dated 26.11.2015, confirmed under G.O. Rt. No.450, General Administration (Law and Order) Department, dated 23.2.2016, is accordingly set aside. The petitioner shall be set free forthwith unless his confinement is required in the relation to any other case.

32. The writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed. No costs.