
(1994) 06 AHC CK 0005

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 167(M/C) of 1994

Girhari Lal

APPELLANT

Vs

Dist. Magistrate, Shahjehanpur

RESPONDENT

Date of Decision : 28-06-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 11
Constitution of India, 1950 — Article 22(5)
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 14, 3(1), 8

Citation : (1994) 06 AHC CK 0005

Hon'ble Judges : Srinath Sahay, J

Final Decision : Allowed

Judgement

1. This writ petition is directed against an order of District Magistrate, Shahjehanpur dated April 19, 1994 for detaining the petitioner under Section 3(1) of the Prevention of Blackmarketing and maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the Act for the sake of brevity).

2. The learned counsel for the petitioner has urged in support of the writ petition that from a perusal of the grounds of detention furnished to the petitioner, vide Annexure 3, it will appear that on the basis of two incidents, that are said to have taken place on January 19, 1992 and March 1, 1994. The District Magistrate felt satisfied that it was necessary to detain the petitioner under Section 3(1) of the Act. It is stated that the incidence of January 19, 1992 is not proximate and cannot constitute a reasonable basis for forming subjective satisfaction with regard to the detention of the petitioner. If that incident is excluded out of consideration, it cannot be predicted that the District Magistrate would have felt satisfied regarding the detention of the petitioner on the basis of the sole incident of March 1, 1994. The contention of the learned counsel is that in that case the whole of the detention order in question must be held to be invalid.

Learned counsel has pointed out that in the Act, there is no provision analogous to Section 5A of the National Security Act, which was inserted by amendment in order to enable the detention order to be sustained on any one of the grounds, even if other grounds are held to be invalid and are liable to be excluded. The learned counsel has also submitted that the facts relating to the incident of March 1, 1994, mentioned in the ground of detention are verbatim reproduction of the facts as narrated in the police report and since they are a mechanical reproduction of the relevant facts, they would indicate a nonapplication of mind on the part of the detaining authority and on that ground also the impugned detention order would be liable to be quashed. Apart from these contentions, the learned counsel for the petitioner has also urged that the petitioner has been deprived of his constitutional right of making a representation to the Central Government against the impugned order, inasmuch as he was not informed by the detaining authority that he has a right to make a representation to the Central Government and no opportunity was afforded to the petitioner to exercise that right. In support of his contentions, the learned counsel for the petitioner has referred to a large volume of case law.

3. The learned Government Advocate has refuted the arguments raised on behalf of the petitioner and has urged that the impugned order is perfectly legal and valid. He has also referred to the fact that the cases which have given rise to the incidents, referred to above, leading up to the passing of the impugned order, involved lacs of rupees and in view of the magnitude of the case, the satisfaction of the District Magistrate with regard to the detention of the petitioner was perfectly justified and should not be lightly interfered with. The learned Government Advocate has also referred to certain authorities in support of this contention.

4. After hearing the arguments of the learned counsel for the parties and considering the facts and circumstances of the case, I am of opinion that it is not necessary to examine the validity and effect of all the contention raised on behalf of the petitioner, because the writ petition deserves to be allowed on only one ground, namely, that the petitioner has been deprived of his constitutional right of making representation to the Central Government. It will appear from a perusal of Section 14 of the Act that the Central Government and the State Government have concurrent powers to revoke a detention order, passed under the Act and the power may be exercised by the Central Government notwithstanding the fact that the order has been made by a State Government. It is necessarily implied from the provisions of Section 14 that the detenu has a right to make a representation to the Central Government for revocation of the detention order that is passed against him. The reason is that the power conferred by Section 14 of the Central Government cannot be exercised, unless the Central Government proceeds in the matter either suo motu or the matter is brought to its notice by same person. In a large number of cases, it is most unlikely that the Central Government will take up the matter on its own initiative, for the simple reason that it may not be aware of the detention order. It is

reasonable to expect that it is the detenu, who being the affected person, is the person most likely to move the Central Government for the revocation of the detention order. Therefore, the right to make a representation to the Central Government flows from the provisions of Section 14, by necessary implication. That being so, it must be held that the detenu has a right to make a representation against the detention order to the Central Government and he is entitled to due opportunity, being afforded to him for the purpose, so that he may make a representation, which may be considered by the Central Government and it may come to its own conclusion with regard to the sustenance or revocation of the detention order.

5. The learned counsel for the petitioner has referred to the cases of Balvinder Singh v. Union of India, 1992 Cri LJ 93 (Delhi) and Fatmabi Sheikha Bhikan alias Sunabi v. Commr. of Police, Crimes. (1993) 1 Crimes 262 (Bom) in support of his contention that no opportunity having been afforded to the petitioner to make a representation to the Central Government, the detention order would be invalid and the same liable to be quashed. The former is a case arising under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 decided by the Delhi High Court and the latter is a case arising under the National Security Act, 1980 decided by the Bombay High Court. But apart from these cases, in the case of Amir Shad Khan v. L. Hminghana, AIR 1991 SC 1983 the provisions of Article 22(5) of the Constitution have been analysed by their Lordships of the Supreme Court and after referring to the dual obligation created by the Article, it has been stated by Hon"ble Mr. Justice Ahmadi in a very lucid language, that there can be no doubt that the representation, which is to be made by a detenu in pursuance of the provisions of Article 22(5), must be made to the authority which has the power to rescind or revoke the decision, if need be and our search for the authority must, therefore, take us to the statute, since the answer cannot be found from Article 22(5) of the Constitution read in isolation. This principle has been applied by him in the case, which was before the Hon"ble Court and after referring to the provisions of Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, it was held that the detenu has a right to make representation to the Central Government also and it cannot be said that the power conferred by Section 11 of that Act has no relation whatsoever with the constitutional obligation cast under Article 22(5).

6. The principle laid down in Amir Shad Khan's case (AIR 1991 SC 1983) has also been applied by a Division Bench of this Court in Writ Petition No. 493 (HC) of 1993, Ramesh Kalia alias Dinesh alias Dineshwar alias Ramesh v. State of U.P. decided on May 20, 1994. The Division Bench has referred to certain other decided cases and also to the provisions of Section 14 of the National Security Act, which were the relevant provisions applicable to the facts of that case and has held in clear terms that the detenu had a right to make representation to the State Government as well to the Central Government, but in the order. which has been served on him, he has been asked to make representation either to the State Government or to the Central Government and in view of what has been

stated above, the Division Bench was of the view that the petitioner was in fact deprived of this right of making effective representation and this in their opinion was sufficient to quash the detention order.

7. The learned Government Advocate has contended that the cases referred to above, are not good authorities for the proposition that the principle is also applicable to the cases arising under the provisions of Blackmarketing and Maintenance of Supplies of Essential Commodities Act. He has submitted that the law, which was laid down in the above mentioned cases related to the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, in which there is no provision similar to Section 8 of the Act. I do not see how on principle the law laid down in Amir Shad Khan's case cannot be made applicable to cases arising under the Act. The reason is that the enunciation of law in that case proceeds from an interpretation of the constitutional provisions contained in Article 22(5) of the Constitution and if the exercise of the right conferred by Article 22(5), which has been given the status of fundamental right, is to be guaranteed and guarantee is there, for the enforcement of the fundamental rights in the Constitution itself, then the benefit of the law cannot be denied to persons detained on the basis of enactments. Secondly, it is not in dispute that the provisions of the Act and the National Security Act are in parimateria and are based on the same pattern and design and, therefore, the authority of this Court and the manner in which the provisions of Section 14 of the National Security Act have interpreted, is to be followed for the interpretation of the provisions of Section 14 of the Blackmarketing and Maintenance of Supplies of Essential Commodities Act also.

8. The learned Government Advocate was at pains to point out that there is only one statutory obligation which has been cast on the detaining authority under Section 8 of the Act, which is corresponding to the provisions of Section 8 of the National Security Act that the detenu has a right to make a representation to the appropriate Government and according to the definition of the appropriate Government, given in the Act, it is the State Government which alone can be considered to be relevant for the purpose. His contention is that the statutory obligation cannot be enlarged by means of interpretation of the provisions of Section 14 or any other provisions of the Act and if there is evidence to show that the detaining authority has informed the detenu about his right to make a representation to the appropriate Government, it would be a sufficient compliance of the provisions of law and the detention order cannot be called in question on that ground. In my opinion the legal maxim expression *exclusio alterius* is not applicable to the provision of Section 8 of the Act. The fact that the statute has created a specific obligation by means of Section 8 would not show that if the right is available to the detenu, either expressly or by necessary implication under any other provisions of the Act, the corresponding duty of the detaining authority cannot be allowed to be enforced because it has not been specifically mentioned by the statute in that particular Section or in Section 8. If the Detenu has a right under Section 14 and as discussed above he

has a right to make a representation to the Central Government, a corresponding duty lies on the detaining authority to inform the detenu about that right and to give him an opportunity to make representation to the Central Government. Moreover, it is not a question of the interpretation of Section 8 of the Act only, because as discussed above, it is the question of the exercise of a constitutional right, that has been conferred by Article 22(5) of the Constitution on the detenu and since the Constitution is the paramount law and it overrides all other legislative enactments, the right emanating from Article 22(5) read with Section 14 of the Act, cannot be denied to the detenu. I am, therefore, of the view that the contention of the learned Government Advocate cannot be accepted and cannot be permitted to prevail.

9. It may be mentioned that the learned Government Advocate has referred to the cases of John Martin v. State of West Bengal, AIR 1975 SC 775, Smt. Pushpa v. Union of India, 1979 SCC (Cri) 1015 : (AIR 1979 SC 1953) and State of Maharashtra v. Sushila Mafatlal Shah, AIR 1988 SC 2090 in support of his contention with regard to the obligation of the appropriate Government to consider a representation made to it by the detenu in pursuance of the provisions of Section 8 of the National Security Act. These cases are distinguishable inasmuch as the point which has been considered directly in the case of Amir Shad Khan's case did not arise and no pronouncement was made on that point. Therefore, these cases have no application on the issue, that has been raised before me. I do not agree with the contention of the learned Government Advocate that the case of Ramesh Kalia was not correctly decided and it calls for reconsideration and a reference needs to be made to a larger Bench.

10. Annexure3 to the writ petition will show that in the grounds of detention, the petitioner was informed in pursuance of Section 8 of the Act that he has a right to make representation to the State Government and if he so desires, he may exercise that right in the manner indicated therein. There is nothing on record to show that the petitioner was also informed of his right to make a representation to the Central Government under Section 14 of the Act and since no opportunity was given to him for making the said representation, it is obvious that the petitioner was deprived of his constitutional right and on that ground alone the detention order must fall to the ground. It is needless to observe that the provisions of an Act, providing for preventive detention, make a serious inroad on the personal liberty of a citizen and the law requires that the provisions of any Legislative enactment which permits such detention must be strictly construed. In this view of the matter, I have come to the conclusion that the impugned order dated April 19, 1994 is illegal and is liable to be quashed and the continued detention of the petitioner is bad in law.

11. The writ petition is accordingly allowed and the impugned order dated April 19, 1994, contained in Annexure1 to the writ petition, is hereby quashed and it is directed that the petitioner shall be set at liberty forthwith unless he is wanted in some other case.

Petition allowed.