
(1984) 01 DEL CK 0013

In the Delhi High Court

Case No : Criminal Writ No"s. 109 and 110 of 1983

Haji Jaffer

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 18-01-1984

Acts Referred:

Citation : (1986) 24 ELT 15

Hon'ble Judges : Prakash Narain, C.J;Charanjit Talwar, J

Bench : Division Bench

Judgement

Prakash Narain, C.J.—This judgment will dispose of two petitions under Article 226 of the Constitution of India moved by Haji Zaffer and Naseem Shah for issue of writs of habeas corpus or in the nature of habeas corpus in regard to their alleged illegal detention in the Central Jail, Tihar.

2. Both the petitioners, namely Haji Zaffer and Naseem Shah, claim to be Afghan nationals. They were detained by virtue of orders passed regarding each one of them on May 7, 1983 for their detention without trial by invoking Section 3(1) of the Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. They were both detained with a view to preventing them from acting in any manner prejudicial to the augmentation of foreign exchange and as the appropriate authority was of the view that it was necessary to make orders in regard to them u/s 3(1) of the aforesaid Act. Grounds of detention, also dated May, 7, 1983, in English and a translation in Urdu of the said grounds of detention were served on the two persons in Tihar Jail. According to these grounds of detention, these two persons were allegedly indulging in activity of dealing in foreign exchange in an unauthorised manner. It is not necessary to note further facts mentioned in the grounds of detention in the view that we are going to take.

3. The detention has been challenged inter alia, on the grounds that the grounds of detention served on the detenus are in a language which is not fully understood by detenus as they neither know English nor Urdu. In reply to this

contention, an affidavit of Shri M.V.N. Raom working as Addl. Secretary (Anti Smuggling) in the office of Ministry of Finance, Department of Revenue at New Delhi was filed. This affidavit merely says that the grounds of detention along with documents relied were supplied to the detenus in Urdu. The grounds of detention were read over and explained in the language known to the detenus and in token of having received the same and the same having been explained to them, the detenus had acknowledged the same by signing on sheets of paper. They had also signed on the carbon copies of the grounds of detention at every page in token of having received the same. From a reading of this counter-affidavit, it is clear that the grounds of detention that were supplied were in English but a translation in Urdu of those grounds of detention was also given to the detenus. We were not satisfied with the respondents to file Additional Affidavits. Two affidavits have been filed, one sworn by Shri R. Mukhopadhyay, working as Deputy Secretary in the Ministry of Finance (Department of Revenue) at New Delhi and the other of Shri B. S. Jarial, working as Assistant Superintendent in Central Jail, Tihar. According to these additional affidavits, in the Ministry/Department while processing the detention case there was insistence to put up Urdu translations of documents which were proposed to be relied upon by the detaining authority. Urdu translations of those were also supplied to the detenus, Shri Mukhopadhyay's affidavit throws no light on whether the grounds of detention were explained to the detenus in the language understood by the detenus. Shri Jarial's affidavit makes an interesting reading. He states that grounds of detention were served on the detenus in Jail on May 11, 1983 in his presence. He goes on to say "The grounds of detention were read over and explained to the petitioner in his mother tongue i.e. PESHTO". The verification dated January 12, 1984 of this affidavit reads. "The above named deponent do hereby verify that the contents of my above affidavit are true to my knowledge derived from the records maintained in my office." If the grounds of detention were read over and explained to the detenus in their mother tongue in Peshto, it would be in the personal knowledge of Shri Jarial and not a matter of record. We leave it at that.

4. Learned counsel for the petitioner submits that the requirements of Article 22(5) are still not satisfied and Therefore the continued detention of the petitioners is vocative of the fundamental rights of any one, be he a citizen or not as guaranteed by Article 22(5) of the Constitution. He contends and in our opinion rightly, that postulates or Articles 22(5) are mandatory and have to be strictly observed. A detenus cannot make an effective representation unless he is not only made to understand the grounds of detention in a language which he understands by translating the same in the language which he understands but also by giving a script of the translated grounds of detention in the language which the detenu understands. If the detenu is to make an effective representation he should be able to read for himself not once but more than once the grounds of detention given to him and understand and digest them so that he can make his submissions adequately in a representation. Merely translating

the grounds of detention if at all once for the detenus would not be good enough. He further says that even otherwise the requirements have not been fulfilled as no affidavit of the person who actually translated the grounds of detention to the detenu has been filed. He relies on the judgment of the Supreme Court in Smt. Raziya Umar Bakshi v. Union of India and others AIR 1980 U.G. 1751, explained to the detenus in Peshto language. This according to him is sufficient compliance with the requirements of Article 22(5).

5. We do not agree. It was for the detaining authority to have satisfied us that the detenus knew Urdu. His ipse dixit cannot be accepted when admittedly the detenus are Afghan nationals and are not reported to be highly educated. No affidavit of the person who actually translated the grounds of detention has been filed. Mr. Sharma stated that according to his instructions there were some letters dated January 6, 1984 to the effect that one Aziz another prisoner in the Central Jail, Tihar was called to translate and explain the grounds of detention to the detenus. As we have noticed earlier the affidavit of this Aziz has not been filed. This fact is not even recorded anywhere on the files of the Department shown to us. It is not so stated by Shri Jarial in his affidavit. There is no probative value, Therefore that can be attached to the affidavit of Shri Jarial even assuming that one Aziz did translate and explain the grounds of detention to the detenus. We have not been assured that Aziz translated correctly and explained fully and wholly all that is written in the grounds of detention to the detenus. Further, there is force in the contention of the learned counsel for the petitioners that even if grounds of detention are explained and translated at the time of delivery it would not be good enough in order to make an effective representation. The detenus should be able to read, re-read or have read or re-read the grounds of detention to them quite a few times before they can really give an effective representation. This necessitates giving a translation of the ground of detention to the detenus in the language known to them. That is the law. If this safeguard is not observed the right to make an effective representation as contemplated by Article 22(5) will be denied to a person held without trial in a civilized society.

We, Therefore, hold that the detention is vitiated by non-compliance of the provisions of Article 22(5) of the Constitution. The detention of the petitioners are quashed. The respondents are directed to set them at liberty forthwith if not required to be detained under any other valid order of detention or an order of a court.