
(2016) 03 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition No. 32683 of 2015

Indira Bai

APPELLANT

Vs

The State of Telangana and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Andhra Pradesh Prohibition Act, 1995 — Section 7 (a), Section 8(e)
Constitution of India, 1950 — Article 14, Article 19, Article 22, Article 22(3)(b), Article 22(5)

Citation : (2017) 2 ALTcr1 16 : (2016) 2 AndhLDCriminal 325

Hon'ble Judges : C.V. Nagarjuna Reddy and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Challa Dhanamjaya, for the Appellant;

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—1. The wife of the detenu filed this Writ Petition for issue of a Writ of Habeas Corpus, assailing the detention order, dated 02.05.2015, of respondent No. 2 passed under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short the Act) and G.O. Rt. No. 1966, General Administration (Law and Order) Department, dated 15.07.2015, of respondent No. 1, whereby it has confirmed the said detention order.

2. We have heard Mr. Challa Dhanamjaya, learned counsel for the petitioner and the learned Government Pleader for Home (Telangana State) appearing for the respondents.

3. The detenu is a resident of Lower Dhoolpet, Hyderabad and he is accused in as many as seven Criminal cases, all registered for the offences under the Act. On 02.05.2015, respondent No. 2 has invoked the provisions of the Act and passed the impugned order of detention. In the said detention order, respondent No. 2 while referring to the seven criminal cases pending against the detenu,

observed that the detenu has habitually engaged himself in unlawful activities and has been continuously indulging in clandestine possession, sale and distribution of illicitly distilled liquor, which is unfit for human consumption and injurious to health, and that, thereby, he created a situation which caused a feeling of insecurity among the public and wide spread danger to the public health, thus, disturbing the public order. It is further stated that the detenu is a bootlegger as defined in Clause-(b) of Section-2 of the Act and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and public health at large, respondent No. 2 was satisfied that the provisions of the Act should be invoked to detain him and that, accordingly, detention of the detenu has been ordered.

4. Respondent No. 2 has enclosed the grounds for detention to the impugned detention order, wherein the detenu was informed that he has a right to represent against the detention order to the detaining authority-the Chief Secretary to the Government of Telangana and the Advisory Board. The detenu has, accordingly, appeared before the Advisory Board and pleaded his case. Based on the opinion and report, dated 07.6.2015, of the Advisory Board on the Preventive Detention cases, respondent No. 1 has issued G.O. Rt. No. 1966, General Administration (Law and Order) Department, dated 15.7.2015, confirming the order of detention made by respondent No. 2 for a period of one year from the date of his detention i.e., on 05.5.2015.

5. At the hearing, Mr. Challa Dhanamjaya, learned counsel for the detenu, has strenuously submitted that in view of the fact that the detenu is already subjected to as many as seven criminal cases, there is no need to invoke the Act against him. Learned counsel has further submitted that some of the documents supplied to the detenu were in Telugu, with which, he had no familiarity and thereby, serious prejudice was caused to him. He has also submitted that some of the Chemical analysis reports were not legible, as a result of which, the detenu could not understand the true allegations made against him leading to serious prejudice being caused to his interests.

6. Opposing the above submissions, learned Government Pleader for Home (Telangana State) submitted that the detenu was born and brought up in Hyderabad; that he is well acquainted with Telugu; and that, therefore, he has not suffered any prejudice due to the fact that some of the documents supplied to him were in Telugu. He has further submitted that the detenu has not at all raised this ground either before the Advisory Board or before this Court in the Writ Petition, but, as an after thought, he has raised this plea for the first time by way of an additional affidavit. Learned Government Pleader has also denied the allegation that some of the Chemical analysis reports were illegible.

7. We have considered the submissions of the learned counsel for the parties and perused the record.

8. The law on Preventive Detention is well crystallised by a long line of

judgments.

9. In *Haradhan Saha v. The State of West Bengal and others*, (1975) 3 SCC 198, the Constitution Bench of the Supreme Court has considered the constitutional validity, the nature and scope of the preventive detention, while dealing with the Maintenance of Internal Security Act, 1971 and also the Preventive Detention Act, 1950. The Court has discussed the scheme of the Act vis-à-vis Article 22 of the Constitution of India and inter alia observed as under: The representation of a detenu is to be considered. There is an obligation on the State to consider the representation. The Advisory Board has adequate power to examine the entire material. The Board can also call for more materials. The Board may call the detenu at his request. The constitution of the Board shows that it is to consist of Judges or persons qualified to be Judges of the High Court. The constitution of the Board observes the fundamental of fair play and principles of natural justice. It is not the requirement of principles of natural justice that there must be an oral hearing. Section 8 of the Act which casts an obligation on the State to consider the representation affords the detenu all the rights which are guaranteed by Article 22(5). The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considered whether in the light of the representation there is sufficient cause for detention.

10. The representation is to be considered by the Advisory Board by following the substance of natural justice as far as it is consistent with the nature of the impugned Act, the nature of the relative jurisdiction of the Government and of the Advisory Board. Procedural reasonableness for natural justice flows from Article 19. Article 22(5) speaks of liberty and making of representation. The combined result of clauses (4), (5) and (6) of Article 22 is that a procedure which permits representation will give all the facts before the Board. Article 22(5) shows that law as to detention is necessary. The requirements of that law are to be found in Article 22. Article 22 gives the mandate as to what will happen in such circumstances.

11. The opinion of the Board as well as the order of the Government rejecting the representation of the detenu must be after proper consideration. There need not be a speaking order. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be a real and proper consideration by the Government and the Advisory Board.

12. Dealing with the principles of natural justice, the Court held that elaborate rules of natural justice are excluded either expressly or by necessary implication where procedural provisions are made in the Statute or where disclosure of relevant information to an interested party would be contrary to the public interest; that if a statutory provision excludes the application of any or all the principles of natural justice, then the Court does not completely ignore the mandate of the Legislature; that the Court notices the distinction between the duty to act fairly and a duty to act judicially in accordance with natural justice;

that the detaining authority is under a duty to give fair consideration to the representation made by the detenu, but it is not under a duty to disclose to the detenu any evidence or information; and that the duty to act fairly is discharged even if there is not an oral hearing. The Supreme Court made succinct distinction between the preventive detention and punitive detention as under:

"The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution."

13. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

14. In *Rekha v. State of Tamil Nadu* , (2011) 5 SCC 244, the Supreme Court held that preventive detention also amounts to punishment by way of imprisonment for a certain period and exercise of jurisdiction of suspicion, though it is repugnant to democratic ideas and an anathema to the rule of law, since Article 22(3)(b) of the Constitution of India permits preventive detention, the same cannot be held to be illegal and that to prevent abuse of this law, the preventive detention should be strictly construed and confined to narrow limits of rare and exceptional cases, with meticulous compliance with procedural safeguards.

15. In *G. Reddeiah v. Government of Andhra Pradesh* , (2012) 2 SCC 389, after referring to the case law on the subject, including the judgments in *Haradhan Saha* , (1975) 3 SCC 198 (supra) and *Rekha* , (2011) 5 SCC 244 (supra), the Supreme Court upheld the detention of the detenu by observing that the detenu was a master mind in organizing the felling of red-sander trees owned by the Government and also providing vehicles for illegally transporting the red-sanders wood, hiring of labourers from the fringe forest villages and responsible for destruction of valuable governmental property and that it also shows that it was he who operated a gang for destruction of the national wealth causing deforestation leading to ecological imbalance affecting the community as a whole. In paragraphs 21 and 22 of the judgment, the Supreme Court held as under: The grounds of detention also show that the Detaining Authority, after scrutinizing all the details including various orders of arrest and release, bail on various dates and noting that he is habitually indulging in trespass in forest area,

illicit cutting, felling, smuggling and transporting red-sanders from the reserved forest owned by the State, arrived at a definite conclusion that the provisions of normal law were not sufficient in the ordinary course to deal firmly because of his habitual nature and after satisfying all aspects including the fact that the detenu was in jail from 09.10.2010 to 10.11.2010 and the factum of release from the jail in 4 criminal cases, passed an order of detention with a view to prevent him from further indulging in such offences.

16. In a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the detaining authority is subjectively satisfied about the various offences labelled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass appropriate order under Section 3 of the 1986 Act by fulfilling the conditions stated therein. We have already concluded that there is no infirmity either in the reasonings of the detaining authority or procedure followed by it. We are also satisfied that the detenu was afforded adequate opportunity at every stage and there is no violation of any of the safeguards. In these circumstances, we reject the contention raised by learned senior counsel for the appellant.

17. In the context of the present case, this Court does not propose to burden this judgment with innumerable precedents holding the field. Suffice it to observe that the Courts examining the detention orders do not sit in appeal and while exercising the power of judicial review, they would only examine whether there was proper application of mind by the detaining authority and sufficient material existed before it to arrive at the conclusion that the detention of the person is necessary in order to maintain public order and peace and to prevent him from committing offences in future.

18. Ordinarily, when a law, punitive in nature, is not sufficient and adequate to prevent a person from indulging in commission of the offences which affects public order, preventive detention is resorted to. Therefore, whether the detention order is legal or not needs to be adjudicated with reference to the facts of each case.

19. In the case on hand, it is not in dispute that the detenu is an accused in the following Crimes:

"1. Crime No. 819/2013-14 under Section-7 (a) read with 8(e) of A.P. Prohibition Act of Dhoolpet Excise Police Station.

2. Crime No. 1091/2013-14 under Section-7 (a) read with 8(e) of A.P. Prohibition Act of Dhoolpet Excise Police Station.

3. Crime No. 1172/2013-14 under Section-7 (a) read with 8(e) of A.P. Prohibition Act of Dhoolpet Excise Police Station.

4. Crime No. 1965/2013-14 under Section-7 (a) read with 8(e) of A.P. Prohibition

Act of Dhoolpet Excise Police Station.

5. Crime No. 83/2014 under Section-7 (a) read with 8(e) of A.P. Prohibition Act of Mangalhat Police Station.

6. Crime No. 270/2014 under Section-7 (a) read with 8(e) of A.P. Prohibition Act of Mangalhat Police Station.

7. Crime No. 65/2015-16 under Section-7 (a) read with 8(e) of A.P. Prohibition Act of Dhoolpet Excise Police Station."

20. All the afore-mentioned criminal cases are still pending. Respondent No. 2 has specifically mentioned in the detention order that the activities of the detenu were causing a feeling of insecurity among the public and wide spread danger to the public health, thereby, disturbing the public order.

21. Respondent No. 2, being the Commissioner of Police, has assessed the danger to the public health as well as the disturbance to the public order based on the fact that the detenu was involved in as many as seven criminal cases in a span of about one year and that, all these cases pertain to clandestine possession, sale and distribution of illicitly distilled liquor, which is unfit for human consumption and injurious to health.

22. No material whatsoever is placed before us on behalf of the detenu to show that the said grounds on which he was detained are patently wrong. In the absence of any such material, this Court will not sit in appeal over the satisfaction arrived at by respondent No. 2 in the detention order.

23. As regards the ground that some of the documents supplied to the detenu were in Telugu and that, he is not familiar with the said language, on the direction of this Court, the petitioner has filed an affidavit sworn to on 03.3.2016, wherein she has candidly admitted that Telugu was the second language of the detenu during his studies, but, as he stopped his studies in 1992, he has completely forgotten Telugu. Along with the affidavit, the petitioner has filed the Secondary School Certificate of the detenu showing that Telugu was his second language.

24. In our opinion, a person, whose ancestors may have migrated from another State, but, was born and brought up in Hyderabad and studied up to Intermediate with Telugu as second language is not expected to forget Telugu to such an extent that he would not understand the purport of the documents supplied to him in that language.

25. Therefore, we have no doubt in our mind that this ground, which was not even raised at least in the Writ Petition initially, if not before the Advisory Board, is a pure after thought and without any substance.

26. Even otherwise, we could find from the material that the detention order as well as substantial part of the material furnished in support thereof to the detenu are in Hindi only, except a few panchanamas which are in Telugu. Hence, we do

not find any prejudice having been caused to the detenu.

27. As regards the ground that some of the Chemical analysis reports were not proper and legible, even this ground is not specifically raised in the Writ Petition. The petitioner has not filed the alleged illegible copies of the Chemical analysis reports. Hence, we do not find any merit in this ground too.

28. Learned counsel for the petitioner has not argued any other ground to impeach the correctness of the impugned detention order.

29. For the above-mentioned reasons, we do not find any illegality in the impugned detention order and the Writ Petition is accordingly dismissed.

30. As a sequel to dismissal of the Writ Petition, WPMP. No. 52902 of 2016 filed by the petitioner for interim relief is dismissed as infructuous.