
(1990) 11 DEL CK 0009

In the Delhi High Court

Case No : Criminal Writ Appeal No. 304 of 1990

Iqbal

APPELLANT

Vs

Vijay Karan and Others

RESPONDENT

Date of Decision : 07-11-1990

Acts Referred:

Citation : (1991) 1 Crimes 173 : (1991) 43 DLT 275

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : Sunil Mehra and B.D. Batra, for the Appellant;

Judgement

Arun B. Saharya, J.

(1) By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for a writ of certiorari to quash an order of detention dated 22nd of May 1990 passed by the Commissioner of Police, Delhi under sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as the Act), with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order and to direct that the petitioner be set at liberty forthwith.

(2) The deletion order was served on the petitioner on 22nd of May 1990 along with the grounds of detention and copies of six documents marked as Annexures I to VI. The detention order and the grounds were in English language whereas the copies of documents were in Urdu script. The detention order was approved by the State Government u/s 3(4) of the Act. Petitioner's representation dated 7th of June 1990 was rejected. On the basis of a report of the Advisory Board, the detention order was confirmed.

(3) The petitioner has challenged his detention on various grounds. It is unnecessary to refer to all of them except one off which the impugned order has to be set aside.

(4) The petitioner has contended that he cannot read or write any language other than Hindi script but copies of the detention order, the grounds of detention and the six documents annexed thereto were not supplied to him in the language known to him until 5th of July 1990, the day when the Advisory Board meeting was held.

(5) In the petition, in para 7, the relevant facts have been pleaded as follows:-
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"".....He could neither read, write or understand Urdu script nor can understand English script properly. The petitioner can read and understand only Hindi language. The petitioner was forcibly made to sign certain paper purported to be in Urdu and English script, which he did not understand. The petitioner neither understood the contents of any documents nor any body explained to him. The petitioner studied up to 8th Class in Atma Ram Sanatam Dharma School at Kundewalan, Ajmere Gate, Delhi, which is a Hindi medium school."

(6) In answer, the respondents have stated as follows :-

"That para No. 7 of the petition as stated is wrong. The order of detention, grounds of detention and annexures thereto in English language as well as in vernacular (Urdu) were correctly supplied to the petitioner. It is wrong that the petitioner can read and understand only Hindi language. He can very well understand Urdu and Hindi languages. It is emphatically denied that the petitioner was forcibly made to sign certain papers in Urdu and English scripts. It is wrong that the petitioner neither understood the contents of the documents so supplied to him nor explained to him. It is submitted that at the time of receiving the documents the petitioner did not point out that he did not know Urdu language. He signed the receipt in English. The petitioner was never forced to sign any document or any receipt. The documents were read over to the petitioner and the contents of the same were explained to him. The petitioner, after having understood the contents of the documents signed the receipt in English which is annexed as annexure 1. It is submitted that a person when signs in English it should be presumed that he knows the English language. It is submitted that copies of all the documents have been supplied to him in Hindi as well. Before the Hon"ble Advisory Board he has admitted that he has studied up to 10th class and in that submission if a person signs in English it is presumed that with his academic studies he knows English language."

(7) Article 22(5) of the Constitution of India read with Section 8(1) of the Act requires that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than 5 days and in exceptional circumstances and for reasons to be recorded in writing not later than 10 days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him an earliest opportunity for making the representation against it to the appropriate Government.

(8) Explaining this requirement, the Supreme Court in *Hadibandhu Das Vs. District Magistrate and Another*, , observed that mere oral Explanation of complicated order without supplying to the detenu the translation in script and language which he understood would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

(9) In the instant case, the grounds of detention referred to alleged involvement of the petitioner in three criminal case from 1983 to 1986 and thereafter in connection with an Fir No. 309 dated 16th August, 1989 u/s 147/148/149/307/353/332/186/427/435 IPC, P.S. Kamla Nagar, Delhi and another Fir No. 134 dated 31st of December, 1989 u/s 307/34 Ipc, P.S. Jama Masjid, Delhi. The facts alleged in the last two FIRs. have been setout in detail in the grounds of detention. As such, the order made in the instant case is of a complicated nature and a mere oral Explanation of the same would not constitute sufficient compliance of the requirement of law.

(10) The stand taken by the respondents is based upon the receipt of the order and the grounds being signed by the petitioner in English. In a similar case of *Nainmal Partap Mal Shah v. Union of India and others*, *Fazal Ali, J.* observed as under :-

"....." THE Under Secretary further suggested that as the detenu had signed suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English. This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English. Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, - that he had a working knowledge of English."

(11) In the case of *Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others*, , the order of detention and the grounds were framed in English language, the petitioner, wife of the detenu, a Tibetan, knew both English and Tibetan languages; whereas the detenu himself did not know English language, but an effective representation as a fact had been made. Despite this feature, *Ranganath Misra, J.* observed as follows :-

".....The fact that the detenu's wife knew the language in which the grounds were framed does not satisfy the legal requirement. Reliance was placed by the learned Additional Solicitor General on a decision of this Court in *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, , in support of his contention that unless the detenu was able to establish Prejudice on account of the fact that the grounds of detention and the documents accompanying the grounds were not in a language known to the detenu the order would not be vitiated. There in no clear indication of the test of prejudice being applied in that case. On the facts relevant before the Court, a conclusion was reached that the detenu was merely feigning ignorance of English and on the

footing that he knew English, the matter was disposed of. We must make it clear that the law as laid down by this Court clearly indicates that in the matter of preventive detention, the test is not one of prejudice but one of strict compliance with the provisions of comply with those requirements it becomes difficult to sustain the order. *Khudiram Das Vs. The State of West Bengal and Others*, ."

It is thus clear that unless there is cogent material on record to show that the detenu could read, write and understand English language, it cannot be presumed merely because of the detenu signing in English that he had working knowledge of that language.

(12) In the instant case, the petitioner has specifically pleaded that he studied up to 8th class in Atma Ram Sanatam Dharma School which is a Hindi medium school; that he could neither read, write or understand Urdu script nor could he understand English script properly; and that he could read and understand Hindi language only. These pertinent facts have not been specifically controverted by the respondents. It has been merely denied that the petitioner can "read and understand only Hindi language. He can very well understand Urdu and Hindi languages" . The answer is really of no avail. It has not even been suggested that the petitioner could read or write Urdu script.

(13) The receipt dated 22nd of May 1990 (Annexure I to the counter affidavit) is written by the petitioner in hand in Hindi script but he has signed it in English. Same is the position with regard to Annexure R-11 whereby the petitioner acknowledged receipt of a communication dated 1st of June 1990 forwarding to him copies of some documents in Urdu script. These two documents produced by the respondents support the facts pleaded by the petitioner. Further, S.I. Raj Kumar who served the detention order and grounds on the petitioner has specifically slated in his report that the same had been read out and explained to the petitioner "in the language understood by him". This confirms that the detenu could not read any of these documents.

(14) Here, it may be worth mentioning that the vernacular used in this part of our country is a blend of Urdu and Hindi languages which may well be called "Hindustani". When spoken, both the languages may have common diction and can be understood by any person knowing only one and not the other language. The script, however, in which each of these languages is written, is entirely different. Unless a person is well-versed, it would not be possible for him to read anything written in Urdu script if he can read and write only Hindi. This indeed is the case of the petitioner.

(15) Now, there is no controversy about the fact that the detention order and the grounds were written in English language and copies of documents annexed to the grounds were in Urdu script. Despite the fact that the petitioner wrote out the receipts dated 22nd of May 1990 and 5th of June 1990, Annexures R-I and R-II respectively in Hindi and specifically demanded by his representation dated 7th of June 1990 Hindi translation of the documents, the same were supplied to him

only on documents, the same were supplied to him only on the day of the meeting of the Advisory Board, or thereafter, on 5th of July 1990.

(16) Even assuming that the petitioner could understand little bit of English language, as alleged by the respondents; copies of the documents annexed to the grounds were in Urdu script, which the petitioner could not read, and the copies in Hindi were supplied to him only on 5th of July 1990.

(17) In these circumstances, it is apparent that the detaining authority failed to afford to the petitioner the opportunity of making an effective and proper representation against the detention order; and, thus, it failed to observe the safeguards provided by Article 22(5) of the Constitution of India and Section 8 of the Act. As a result, detention of the petitioner is vitiated,

(18) Consequently, the Rule is made absolute ; and the respondents are directed to release the petitioner forthwith, unless he is required in some other case.

(19) The writ petition is, accordingly, allowed. No costs.