
(1975) 12 CAL CK 0042
In the Calcutta High Court
Case No : Civil Rule No. 18657 (W) of 1975

Jayantibhai G. Patel

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-12-1975

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 359(1)

Citation : 80 CWN 421

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Naranarayan Goopta and Pulak Ranjan Mondal, for the Appellant; Somendra Chandra Basu and S. Banerjee for the Respondent No. 1, P.K. Sngupta and Samarjit Gupta for Respondent No. 26, for the Respondent

Judgement

M.N. Roy, J.—By order No. 1135 H.S. CO, dated 8th April, 1974, issued in exercise of powers conferred by section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (here in after referred to as the said Act), the petitioner was directed to be detained and thereafter by another order of that date bearing No. 1136 HS C) it has further been directed that while on detention, the petitioner shall be treated as Division II undertrial prisoner under the West Bengal Jail Code. Against the said orders amongst others, the petitioner on 5th December 1975 moved and obtained the Rule. At the time of issuing the said Rule, which was made returnable within ten weeks, it was directed that although no interim order was issued at that stage, the petitioner would be entitled to renew the prayer for necessary interim orders on that application with notice to the Respondent No. 4. viz., the Superintendent, Presidency Jail. It appears from the affidavit of service filed in Court that service on the said Respondent No. 4 has been duly made. The petitioner has renewed his prayer for ad interim orders not in terms of prayer (j) of the petition but in terms of prayer (i) of the same which is to the following effect :

(i) Injunction ordering the Respondents and or each one of them to classify the petitioner as a Division I (Group C) undertrial prisoner till the petitioner is released and/or set at liberty and to grant him all facilities for family and/or legal interviews twice a week in accordance with law.

2. In support of his contentions Mr. Gooptu submitted with reference to the statements contained in the petition about the social status, financial and educational qualification and also the way of life to which the petitioner is used to. These statements do get support from the statements in paragraphs 1, 2, 3 and 5 of the petition, That apart, with reference to the statements contained in paragraph 6 of the petition, it was also contended that the petitioner has several other ailment and he is also accustomed to special diet of a particular kind and he requires constant care and attention. It has been alleged that the petitioner is not getting such diet and in fact he is now detained with the convicted criminals and has been kept in sub-human conditions and environments. With reference to the provisions of Rule 617B of the Jail Code, which are to the following effect:

Undertrial prisoners shall be divided into two Divisions, viz., Division I undertrial and Division II undertrial. Division I undertrial shall include all undertrial prisoners who by social status, education and habit of life have been accustomed to a superior mode of living. Division I undertrial shall also include persons who have been arrested for offences in connection with political or, democratic (including working class or peasant) movements provided that they have not been arrested for --

(a) offences involving elements of cruelty or moral degradation; or

(b) offences involving serious or premeditated violence; or

(c) serious offences against property; or

(d) offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed; or

(e) offences involving the illegal acquisition, storage or movement of an essential commodity, or other acts which impede, delay or restrict, except in furtherance of an industrial dispute as defined in the Industrial Disputes Act, 1947 --

(i) any work or operation, or

(ii) any means of transport or locomotion, necessary for the production, procurement, supply or distribution of any essential commodity.

Explanation: -- In this rule "Essential Commodity" has the same meaning as defined in section 2(1) of the West Bengal Security Act 1950.

(f) offences involving acts which injuriously affect whether by impairing the efficiency or impeding the working of anything or in any other manner whatsoever or cause damage to -

- (i) any building, vehicle, machinery, apparatus or other property used or intended to be used, for the purpose of Government or any local authority;
- (ii) any railway, rolling stock of a railway or tramway or any vessel or aircraft;
- (iii) any building or other property used in connection with the production, distribution or supply of any essential commodity, any sewage works, mine or factory;
- (ff) offences relating to contempt of Court;
- (g) offences involving abetment or incitement of offences falling within paragraphs (a), (b), (c), (d), (e), (f) or (ff) above.

All other undertrial prisoners shall be included in Division II undertrial.

Subject to any general or special order of the State Government the classification of undertrial prisoners shall be done by trying courts with the approval.

- (i) in Calcutta, of the Chief Presidency Magistrate;
- (ii) elsewhere, of the District Magistrate.

Such approval will not be necessary when orders on classification are passed by the High Court or Courts of Session.

It was submitted that in view of his social status, financial condition, the educational qualifications and habit of living are more particularly in view of his health, the petitioner should be allowed amenities applicable to Division I (Group "C") undertrial prisoner. In reply to the argument of the learned Advocate appearing for the Respondent Nos. 2-6, that in view of the provisions of section 5 of the said Act, which deals with the power to regulate place and conditions of detention. Mr. Goopta contended that since on the date of the issue of the impugned orders there was no specification in terms of section 5(a) of the said Act. so the provisions of the of the (ail Code would hold good and would have application and the more so when the order of detention specifically mentions those provisions. At that stage Mr. Bose appearing for the Respondent No. 1 produced the West Bengal Conservation of Foreign Exchange and Prevention of Smuggling Activities Order, 1975. framed u/s 5(a) of the said Act. The said order specifies the places where and the conditions under which persons in respect of whom detention orders have been made under the said Act, shall be liable to be detained. The said order in clause 3 has prescribed that every Central Jail. Special Jail. District or Subsidiary Jail in West Bengal shall be a place where any person, in respect of whom a detention order has been made, shall be liable to be removed and detained and clause 4 of the same provides that --

- (1) a person served with a detention order shall receive the treatment accorded to a Division II undertrial prisoner as provided in the West Bengal Jail Code save as otherwise mentioned in the order, and
- (2) a person served with a detention order shall for the purposes of discipline

and treatment, be subject to such provisions of the West Bengal Jail Code as applies to a Division II under-trial prisoner and are not inconsistent with this order or any other special orders made by Government in that behalf.

The said order admittedly was made on 29th November, 1975 and relying on that Mr. Gooptu contended that as such, the same has no application in the instant case as the impugned orders were passed on 8th April, 1975, i.e., long prior to the making of the said order. He, in short, submitted that since the said order is of a subsequent date than that of the impugned orders and has no retrospective effect or operation so the provisions of the Jail Code, as mentioned, should apply and as such, because of the said special features, the petitioner would be entitled to the Division and other amenities as prayed for. Prior to the making of the said order, a matter like the present one, came up for consideration before this Court in the case of Vashudev Parasram Samtani v. The State of West Bengal & Ors [Civil Rule Nos. 7768(W) of 1974] before A.K. Janah J and His Lordship, by the order, dated 20th January 1975 on consideration of the provisions of Rule 617 B of the West Bengal Jail Code, allowed the application in part and directed the Respondents therein to place and consider the petitioner in that Rule as a Division I (Group C) undertrial prisoner, Mr. Gooptu has submitted that when such an order has been made, the same is binding on me. There cannot be any dispute about the fact that the judgment of a learned Single Judge of co-ordinate jurisdiction is binding on another learned Judge of the same High Court. This view finds support from the case of Jagadish Lal Gupta Vs. The Director of Rationing and Others, . Thus, I shall have no other alternative but to hold that the determination of A.K. Janah J is also binding on me and the more so when the same has also been made practically on the self-same grounds and facts if the petitioner succeeds in other points as raised by the Respondents and more particularly, on the points as noted hereafter. Mr. Gooptu has of course mentioned further that the said determination of A.K. Janah J. has also reached finality as the Respondent State of West Bengal took an appeal, being F.M.A. No. 884 of 1975 and in the said appeal, they made an application for stay of operation of the said order of A.K. Janah J. but have not ultimately succeeded in having such order as ultimately by order, dated 23rd June 1975, the said application has been disposed of by making no order on the same- From a reference to the records of the said FMA 884 of 1975 it further appears that liberty has however been given to the appellants to file fresh application for stay or modification of the interim order.

3. Mr. Bose. appearing for the Respondent No 1 submitted that the Rule in which the order of injunction is being asked for, is itself not maintainable, as admittedly, the petitioner on the selfsame cause of action moved this Court for a writ of Habeas Corpus (Criminal Miscellaneous Case No. 1008 of 1975) which has not only been dismissed but an application for releasing the petitioner on bail has also been rejected He further contended that in view of that and in view of the further fact that in that proceeding no prayer was made for classification (as made in this Rule) the prayers as made are not also available to the petitioner

Mr. Bose further submitted that the aforesaid facts, which incidentally are very material and relevant have been suppressed by the petitioner and for that alone apart from the other grounds as urged. no order in the Rule and consequently in aid of that in this application should be made. Mr. Goopta could not dispute the facts as mentioned by Mr. Bose but contended that the reliefs in the two proceedings will have to be considered. He submitted that the prayers in this proceeding are distinct and different from those in the said Habeas Corpus proceeding before the Division Bench. He submitted further that in the said Habeas Corpus proceeding the petitioner has asked for his release, whereas in this proceeding he has asked for writs of Mandamus, consequential declaration on that basis and a writ of Certiorari. He submitted that in any event the present Rule will not be barred in its entirety or in respect of all the prayers because of the earlier Habeas Corpus application, as the petitioner would be entitled to maintain this petition, on the basis of the submissions as made, at least in respect of prayer (c) which is to the following effect:

(c) A writ of and/or writs in the nature of Mandamus do issue commanding and/or directing the Respondents and/or each one of them to act according to law by granting and or classifying the petitioner the status of a Group "C", Division I. undertrial prisoner, till the petitioner is released and/or set at liberty;

and in fact he made it clear that if necessary, he would withdraw all the other prayers of the petition, viz. prayers (a), (b), (d) and (e).

4. The power of the High Court to issue the writs under Article 226, as has been observed in the cases of *The State of Orissa Vs. Madan Gopal Rungta*, and *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . can be exercised for enforcement of (a) fundamental rights and as well as (b) non-fundamental or ordinary legal rights. The words for any other purpose" in the concluding portion of Article 226 would in view of the determination in *Election Commission, India Vs. Saka Venkata Subba Rao* and, . mean a purpose for which any of the writs could according to well established principles be issued. Article 226 itself has two parts. In terms of the determination in the case of *The Samarth Transport Co. (P) Ltd. Vs. The Regional Transport Authority, Nagpur and Others*, , under the first part, a writ may be issued only after a decision that the aggrieved party has a fundamental right and that the same has been infringed and under the second part, such writs can be issued only after a finding that the aggrieved party has a legal right which entitles him to any of the writs and that such right has been infringed.

5. The question in the instant case would be whether the earlier proceedings in the said Criminal Miscellaneous Case No. 1088 of 1975 (*Jayantibhai G. Patel v. The State of West Bengal (& Ors.)*) wherein a Division Bench of this Court has held the self-same order of detention pasted by the detaining authority as valid and the satisfaction reached by them was bona fide and thus rejected the application in question on merits, would operate as a bar on the petitioner's right to maintain this application and the petition in the main Rule. The Supreme Court

has held in the case of *The VIth Income Tax Officer, City Circle II-A, Bangalore Vs. K.Y. Pillaiiah and Sons*, that when a question has been agitated before the High Court in other jurisdiction such question cannot be reagitated in a petition under Article 226 of the Constitution of India. Such determination has of course been made in connection with a reference under the Indian Income Tax Act. The same view has also been expressed in the case of *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, with reference to a revisional application under the Code of Civil Procedure. Habeas Corpus as has been found in the case of *Ghulam Sarwar Vs. Union of India (UOI) and Others*, , is a writ in the nature of an order calling upon the person who has detained another to produce the latter before the Court in order to let the Court know on what ground he has been confined and to set him free if there is no legal jurisdiction for the imprisonment. Mandamus on the other hand literally means a command which is issued to direct any person Corporation, inferior Court or Government, requiring him or them to do some particular thing therein specified which as has been found in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , apperrains to his or their office and is in the nature of public duty.

6. In this case from the determination as made in the said Criminal Miscellaneous Case on the pleadings therein, the pleadings in the instant case and the prayers made therein, I find that the present proceeding would not be barred by res judicata or principles analogous thereto as the scope in the said application for Habeas Corpus was limited or restricted only to the issue of a writ in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court know on what grounds he has been confined and to set him free if there was no legal Jurisdiction for the imprisonment. Although the application would be maintainable, in view of the pleadings of the petitioner in the instant case and in view of the objections as raised, it will have to be determined whether and how far the prayers in the case can be entertained In this matter, the following notifications will have to be considered :

- (i) G. S. R. 1454. dated 3rd November. 1962,
- (ii) Notification dated 16th November. 1974, issued in exercise of powers conferred by Article 359(1) of the Constitution of India,
- (iii) G.S.R. 694(E). dated 23rd December, 1974,
- (iv) G.S.R. 353(E), dated 26th June, 1975,
- (v) G.S.R. 361(E), dated 27th June, 1975,

and considering the said notifications and applying them to the facts of the instant case, I am of the view that the petition is maintainable but the only prayer of the petitioner, which can be considered or agitated now is prayer (c), wherein the petitioner has asked for a writ of Mandamus for classifying him or giving him the status of Division I (Group "C") undertrial prisoner. The petitioner

in prayer (i), as stated hereinbefore has prayed for an order for classifying him as Division I (Group "C") undertrial prisoner and that too on the basis of the provisions of Rule 617 B of the Jail Code.

7. In my view such an order in aid of the available prayer in prayer (c) cannot be made at this stage or in this interlocutory proceeding as that would mean or have the effect of making the Rule absolute even without hearing the matter on merits. The power to grant injunction should be very cautiously exercised and such order of injunction at the interlocutory stage, unless by consent, should not be issued, which would virtually and effectively have the effect of having the Rule made absolute. I am also of the view that in respect of matters like this, the conduct of the petitioner should also be very clean and in a petition he must disclose all the relevant and material facts. A writ of Mandamus being controlled by equitable principles can be issued only in favour of a person who comes to Court with clean hands and is not guilty of such laches like suppression of material facts and furthermore, has not made the application for an indirect purpose. Here in the instant case, the petitioner is admittedly guilty of laches inasmuch as he has not disclosed the facts regarding the said Criminal Miscellaneous case and the different orders made therein. This conduct of the petitioner is also not bona fide. The relief by way of Mandamus, which is discretionary and is not of "course or of right may in the instant case be refused ultimately as the petitioner is guilty of such laches and in that view of the matter the order which is prayed for now, in aid of the prayers in the petition. if made, would be an act of prejudging the entire issue. Furthermore, the infringement alleged is only of a technical nature and of a temporary character and on that view also, the writ may be ultimately refused and the more so when there cannot be any doubt as to the jurisdiction of the Respondents to pass the orders in question. I am further of the view that the facts of the case where A.K. Janah J has made his determination, are distinguishable from the facts of this case as in the case before His Lordship such points regarding the effect of suppression of material facts and so also the effect of making an interlocutory order in the mandatory form in the present case were not raised. In view of the above, I am of the view that the prayer as made cannot be entertained now and as such the application should be rejected and I order accordingly. There will however be no order as to costs.