
(1996) 02 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 6539 of 1995

Juganta Kumari Khora

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Constitution of India, 1950 — Article 22
National Security Act, 1980 — Section 3

Citation : (1996) 1 OLR 474

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : G.K. Misra, G.N. Misra, B. Misra, K. Swain and A.K. Pati, for the Appellant; A.G.A. and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—In this habeas corpus application under Article 226 of the Constitution of India, 1950 (in short, "the Constitution") Juganta Kumari Khora calls in question legality of detention of her brother Raju Khora alias Raj Kumar Khora (hereinafter referred to as "the detenu"), who has been interned in the District Jail, Koraput on the basis of an order of detention passed by the District Magistrate, Koraput under Sub-section (2) of Section 3 of the National Security Act, 1980 (in short, "the Act").

2. Main grounds of attack as revealed from the petition and as submitted during the course of hearing of the application are twofold, namely : (i) alleged denial of opportunity for making effective representation to the Government; and (ii) allegations made even if accepted to be correct do not relate to any public order situation to warrant detention of the detenu.

3. A brief reference to the factual aspects would suffice.

The District Magistrate, Koraput passed the order of detention on the ground that the activities of the detenu were prejudicial to maintenance of public order. Six

instances were cited to come to the conclusion that in view of the activities of detenu which affected maintenance of public order, his detention to prevent him from acting in the manner prejudicial to the maintenance of public order was necessary. The order of detention dated 18-7-1995 was followed by grounds of detention contained in the order dated 17-7-1990. It referred to an incident dated 14-7-1995 in the evening when the detenu and his friend created an intensity of terror in the minds of members of public in Dasamanthapur. The impact of the activities of the detenu was so serious that women and children ran halter-skelter, the shop-keepers pulled down their shutters, and closed the shops, and the general public did not venture to come out of their houses. Even Government officials could not carry on their official duties because of such acts. Three of the other incidents related to incidents of 23-1-1990, 5-7-1991 and 24-8-1994. Two of the incidents related to 7-4-1995. and 26-6-1995. The latter related to an alleged incident when the detenu forcibly entered inside the hospital premises and threatened to kill Dr. J.P. Biswal, who was working in the Dasmanthapur hospital around 9.30 p. m. On 24-8-1994 the detenu and this friend attacked one Police Inspector Shri Dhaneswar Tripathy so seriously that one of his teeth was uprooted and there was profuse bleeding and he was hospitalised. The accusations also related to attacks on other persons with swords and lathis. Demand for huge quantity of rice was made from the Public Distribution System and when one constable tried to protest, he was threatened and he could not carry on his duties. The incident relating to 7-4-1995 appears to be between the detenu and his father-in-law, one Bijaya Chandra Khosla, and an attempt to throttle the wife of the detenu.

4. To buttress the first stand it is submitted that the copies of grounds of detention were not served and the copies of documents on which reliance have been placed also have not been supplied. This according to learned counsel for petitioner constituted denial of opportunity to make an effective representation.

5. So far as the public order aspect is concerned, it is submitted that most of the incidents took place several years back and have no live-link with the order of detention. It is submitted that the situations as enumerated even if accepted to be true were at the most law and order situations and do not constitute public order situations.

learned counsel for State with reference to the records and the counter-affidavit filed by the Collector and District Magistrate, Koraput, submitted that the detenu himself has acknowledged to have received all the relevant documents as well as the order of detention and therefore, the plea does not stand to reason. So far as the plea relating to public order aspect is concerned, it is submitted that it is the potentiality of the activities of the detenu which is relevant while deciding the question of continued detention. With reference to the alleged incident on 14-7-1995 at a populous place, just prior to the order of detention, it is submitted that the said activity of the detenu itself was sufficient to warrant an order of detention.

6. Article 22 of the Constitution confers four Fundamental Rights on every person, except in two cases mentioned in Clause (3), as essential requirements and safeguards to be followed when it is necessary to deprive any person, for any cause whatsoever and for, however, brief a period, of his personal liberty by placing him under arrest or keeping him in detention. Those are (i) to be informed, as soon as may be, of the grounds for such arrest; (ii) not to be denied the right to consult and to be defended by a legal practitioner of his choice; (iii) to be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; (iv) not to be detained in custody beyond the said period of twenty four hours without the authority of a Magistrate. Clauses (1) and (2) contain the guarantee of the four Fundamental Rights enumerated above. Clause (3) contains two exceptions and provides that the constitutional guarantees do not apply to (a) enemy aliens, and (b) persons arrested or detained under any law providing for preventive detention. Clauses (4) to (7) are devoted to laying down certain fundamental principles as to preventive detention and guaranteeing certain Fundamental Rights to persons who are arrested under any law for preventive detention. The Fundamental Rights guaranteed by Clauses (4) to (7) to persons detained under any law for preventive detention relate to the maximum period of detention, the provision of any Advisory Board to consider and report on the sufficiency of the cause for detention in certain cases, the right to be informed the grounds of detention and the right to have the earliest opportunity of making a representation against the order of detention. Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law. The action of Executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is a purely subjective affair. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. In case of preventive detention of citizen, Article 22(5) of the Constitution enjoins that the obligation of the appropriate Government or of the detaining authority to accord the detenu the earliest opportunity to make a representation and to consider that representation speedily. The right to make a representation implies that is meant "the right of making an effective representation". It is the constitutional right of the detenu to get all the grounds on which the order has been made. As has been said by Benjamin Cardozo, "A Constitution states or ought to state not rules

for the passing hour but the principles for an expanding future". The concept of "grounds" used in the context of detention in Article 22(5) has to receive an interpretation which will keep it meaningfully in tune with contemporary notions of the realities of the society, and the purpose of the Act in the light of concepts of liberty and fundamental freedoms. While the expression "grounds" for that matters includes not only conclusions of fact but also all the "basic facts" on which those conclusions were founded, they are different from subsidiary facts or further particulars or the basic facts. The detenu is entitled to obtain particulars of the grounds which will enable him, to make an effective representation against the order of detention.

Where the documents concerned are referred to, relied upon or taken into consideration by the detaining authority, they have to be supplied to the detenu as part of grounds so as to enable him to make an effective representation immediately on receiving the grounds of detention. When it is not done, the detention would be void. There are two obligations of the State in the case of preventive detention under the Act: (1) to communicate to the detenu the grounds on which the order of detention is made; (2) to afford him an opportunity of making a representation to the appropriate Government against the order. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands.

From the counter affidavit, we find that the detenu has acknowledged receipt of the order of detention, the grounds of detention and the accompanying documents. Therefore, the plea that detenu was denied the opportunity of making an effective representation and/ or the requisite documents were not supplied is untenable.

7. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, while "public order" has a narrower ambit and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the Public Order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise the problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is; Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ? This question has to be faced in every case on its facts.

8. Even on consideration of one of the allegations made, i. e., the instance relating to the activities of the detenu on 14-7-1965 which has unmistakable link with the order of detention, the antisocial activities of the detenu leading to disruption of public peace and tranquillity and even tempo of the life of community can be culled out. There is no substance in the plea that allegations related to law and order situations and not any public order situation.

The writ application fails and is dismissed.

P.C. Naik, J.

I agree.