

(2016) 11 AP CK 0054
In the Andhra Pradesh High Court
Case No : Writ Petition Nos. 19183 of 2016

Krishna

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 09-11-2016

Acts Referred:

Citation : (2017) 1 ALTcr1 352 : (2017) 1 AndhLDCriminal 805 : (2017) 1 HLT(Cr1) 1

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

Bench : Division Bench

Advocate : Mrs. B. Mohana Reddy, Advocate, for the Petitioner; G.P. for Home (TS), for the Respondents

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—Two persons, by name, Mr. Surender Singh and Mr. Phool Singh, were detained by separate, but identical orders passed on 07.03.2016 by respondent No.2, under sub-section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, the Act). The aforementioned orders were confirmed by respondent No.1 vide G.O. Rt. No.1222, General Administration (Law & Order) Department, and G.O. Rt. No.1221, General Administration (Law & Order) Department, both dated 31.5.2016 respectively. Assailing these orders, the mother and the wife of the detenus respectively, filed these writ petitions for their release from detention by issuing a writ of Habeas Corpus.

2. In support of their challenge to the detention orders, the petitioners have mainly raised two pleas, namely, (i) that the activities of the detenus even assuming to be true do not disturb public order, that the same at best would be a law and order problem and that therefore the provisions of the preventive detention law cannot be invoked as the ordinary penal laws are sufficient to deal with the detenus and (ii) that the orders of the detention, the grounds of

detention and the material relied upon by the detaining authority for detention of the detenus were not served on the detenus in Hindi language, the only language known to them, within the statutory period of five days of their detention in order to make a representation against the detention orders to the authorities concerned. It is further averred that the detenus were served with the orders of detention, grounds of detention and the material relied upon by the detaining authority in English language on 08.3.2016 and that all the translated copies were served on them one month after they were detained, which amounts to denial of the right of the detenus to make an effective representation to the authorities concerned as provided under Article 22(5) of the Constitution of India.

3. Identical but separate counter affidavits have been filed by Mr. M. Mahendar Reddy, Commissioner of Police, Hyderabad City. The counter affidavits have termed the activities of the detenus as disturbing public order, i.e., disturbing the even tempo of life of the people, and that therefore the detention orders cannot be interfered with on the ground of nonexistence of disturbance to public order. As regards the plea of the petitioners that the detenus were not supplied with the translated copies of the orders of detention, the grounds of detention and the material relied upon by the detaining authority in Hindi language within the stipulated period of five days, in paragraph 8 it is stated as under:

In this regard it is submitted that though the detention order and grounds for detention were served upon the detenu on 8.3.2016, i.e., date of detention and material relied upon by the detaining authority both in English and Hindi version were served on the detenu on 12-3-2016 itself in the presence of the jail authorities and the detenu acknowledged the same on the said date. Perusal of the spiral binding booklet disclose the said fact. Hence, no prejudice was caused to the detenu in making effective representation to the concerned authorities. Hence, the allegations are false and baseless and the same are denied.

4. With regard to the first submission, in the view we are proposing to take on the second submission of the learned counsel for the petitioners, we feel it not necessary to render any finding.

5. Coming to the second submission, namely, non-supply of the material in the language known to the detenus, under Section 8 of the Act, when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made. The Apex Court in a number of judgments held that the requirement of furnishing the grounds and the material relied upon by the detaining authority, to the detenu cannot be said to be satisfied unless the grounds and the material are not translated and supplied to the detenu in the language known to him. In *Harikisan v. State of Maharashtra* AIR 1962 SC 911, while interpreting Article 22(5) of the Constitution of India which envisages communication of grounds to the detenu, the Supreme Court held that communication means bringing home the detenu to the effective knowledge of the facts and circumstances on which the order of

detention is passed and that if the detenu does not know English language, he must be given the grounds in a language which he can understand. This view was reiterated in the subsequent decision of the Supreme Court in Hadibandhu Das v. District Magistrate, Cuttack AIR 1969 SC 43. The learned Government Pleader for Home (TS) has not disputed the afore discussed legal position. However, he has strenuously contended that the detenus were supplied with the translated copies/detention orders as well as the material within the statutory period of five days, namely, on 12.3.2016. On our direction, the learned Government Pleader has placed before us the original record with regard to the petitioner in W.P. No.19183 of 2016. It is admitted that record in both the cases is identical. We find from the record that the pagination is made with pencil. At page No.X, an acknowledgement dated 08.03.2016 was written as under:

I, Surender Sing @ Surender. S/o.Sarvar Sing, aged 25 yrs, Occ: Labour, R/o. H.No.420, Rohnath (Village), Bawani Khera Tq., Bhiwani Dist, Haryana State, received the original copies of orders of Detention and grounds of detention under PD Act issued by Commissioner of Police, Hyderabad City in English, vide SB (I) No.126/PD/S-1/2016 by enclosing the list of documents of cases at Chanchalguda Jail, Hyderabad, in presence of Jailor, Chanchalguda, Hyderabad.

(Emphasis is ours)

At the bottom of the acknowledgement we find left thumb impression (L.T.I.), which undisputedly belongs to the detenu. We also find the signature along with seal of the Jailor, Central Prison, Hyderabad, on the left side of the acknowledgement. On the very next page i.e., page No.XI, we also find the following endorsement.

Today i.e. on 12/03/2016, I. Surender Singh @ Surender, S/o. Sarvar Singh, 25 years, R/o. H.No.420, Rohnath (Vill), Bawani Khera Tq, Bhiwani Dist., received Hindi translation copies vide No.SB(1) No.126/PD/S-1/2016 at Cahnchalguda Central Prison, Hyderabad.

At the bottom of the endorsement, we find the LTI of Surender Singh.

When we turn to the next page, i.e., page XII, it was written as under:

"On:- 8/3/2016

The contents of the orders of detention and grounds for detention explained to the detenu in vernacular language in my presence and he admitted to be true and correct.

(Sd/-)

JAILOR

CENTRAL PRISON, HYDERABAD"

It is quite evident from the above that page No.XI, the purported event of 12.3.2016, has intercepted page Nos.X and XII, in that, page No.XII is

continuation of page No.X, because, in page No.X a statement was made in the name of Surrender Singh, the detenu in Writ Petition No.19183 of 2016 that he has received the original copies of orders of detention and grounds of detention under PD Act issued by respondent No.2 in English at Chanchalguda Jail, Hyderabad. In continuation of this statement, the Jailor of Central Prison, has certified at page No.XII that the contents of the orders of detention and grounds for detention explained to the detenu in vernacular language (in his presence) and he admitted the same to be true and correct. Undoubtedly this certificate of the Jailor at Page No.XII is with reference to the documents and the material supplied to the detenu on 08.03.2016 under the detenus acknowledgement on page No.X. If, on 12.3.2016 the respondents have supplied the translated copies, we do not find any reason whatsoever for the purported acknowledgement being placed in between page Nos.X and XII breaking the sequence. Apart from this, at page No.XI the statement of Surrender Singh acknowledging Hindi translation copies is not certified by the Jailor, Central Prison, Hyderabad, as neither his seal nor at least his signature is found on this document. Further more, in the acknowledgement dated 8.3.2016, it was specifically stated that the copies of order of detention and grounds of detention under PD Act in English language were served on the detenu in the presence of the Jailor, Central Prison, Hyderabad, whereas, the presence of the Jailor has not been recorded at Page No.XI, which pertains to supply of Hindi translation copies. If the translated documents were really supplied to the detenus on 12.3.2016, we can see no reason for the respondents to not obtain the signature with seal of the Jailor at Page No.XI as done while supplying documents in English on 08.03.2016. We also fail to understand as to why the respondents did not file the Jailors affidavits at least after this issue was emphasized on behalf of the detenus during the hearing of these writ petitions. Nothing more is required to convince us to hold that the document at page No.XI has been subsequently inserted by the respondents in order to mislead this Court into believing that the respondents have satisfied the mandatory requirement of supply of the required material within the statutory period of five days.

6. This conduct on the part of the respondents is abhorrent to say the least. The respondents being State and the Department of Police are not expected to hoodwink the Court by coming out with such a false plea. Such attempt on the part of the executive apparatus of the State not only causes serious prejudice to citizens, but also the same pollutes the stream of justice.

7. As the respondents failed to supply translated copies of the material to the detenus within the statutory period, the impugned detention orders as confirmed by respondent No.1, are set aside. The writ petitions are allowed with punitive costs of Rs.25,000/- (Rupees twenty five thousand only) in each writ petition to be paid by respondent No.1 to the Chief Justice Relief Fund within one month. Respondent No.2 is directed to cause a detailed enquiry, identify the persons responsible for the abominable act and recover the costs from them besides initiating departmental action.